Portfolio, and quotation and last sale information for the Shares. The proposed rule change would benefit investors by providing them with additional choice of transparent and tradable products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of other actively-managed exchange-traded products that hold equity securities and will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2014–23 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2014–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2014–23, and should be submitted on or before April 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06966 Filed 3–27–14; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71786; File No. SR–FINRA–2014–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices)

March 24, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 2243, which would establish disclosure and reporting obligations related to member recruitment practices.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

FINRA members dedicate substantial resources each year to recruit registered persons (''representatives'') to their firms. Implicit in these recruitment efforts is an expectation that many of the representative's former customers will transfer assets to the member recruiting the representative (''recruiting firm'') based on the relationship that the representative has developed with those customers. To induce representatives to leave their current firm, recruiting firms often offer inducements to the representatives in the form of recruitment compensation packages. Recruitment compensation packages provide a significant layer of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

compensation in addition to the commission payout grid or other compensation that a representative receives based on production at a new firm. Recruitment compensation typically takes the form of some combination of 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 representatives.

FINRA understands that representatives who contact former customers to join them at their new firm often emphasize the benefits the former customers would experience by transferring their assets to the firm, such as superior products, platforms and service. However, while the recruiting firm and the representative understand the financial incentives at stake in a transfer, the representative's former customers who are contacted or notified about moving assets to the recruiting firm generally are not informed that their representative is receiving a recruitment compensation package to transfer firms, or the potential magnitude of such packages. Furthermore, the former customers often may not be aware of the potential financial impacts to their assets that may result if they decide to transfer assets to a new firm, including, among other things, costs incurred to close an account with their current firm, transfer assets or open an account at the recruiting firm, and tax consequences if some assets are not portable and must be liquidated before transfer.

The proposed rule change aims to 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 recruitment 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. A representative's most recent 12-month gross production and revenue, often referred to as his or her ''trailing 12,'' is typically the prominent factor in how firms calculate recruitment compensation packages. Other factors may include the firm from which the representative is transferring, the representative's book of business, the percentage of a representative's book of business that he or she expects will transfer to the new firm, the representative's years of service, debts to his or her previous firm, and the business model of the firm offering the package. FINRA understands that for representatives transferring to a large wirehouse firm, a standard recruitment compensation package may include an upfront payment, usually in the form of a forgivable loan, with a 7 to 10 year term that equals from 150 to 200 percent of the representative's trailing 12. These packages also typically include potential future payments that the representative earns if specified production targets are met at the recruiting firm.

FINRA understands that smaller firms generally do not offer significant recruitment compensation packages to representatives. For representatives that move to a firm with an independent broker-dealer model, recruitment compensation also may not include significant upfront payments. Firms that operate under an independent model typically offer compensation packages that include transition assistance and higher commission payout grid compensation in lieu of upfront payments. Transition assistance packages are intended to offset costs incurred by a representative to transfer firms, such as moving expenses, leasing space, buying office supplies and furniture, and hiring staff. These arrangements also are often based on the representative's trailing 12 and can result in significant recruitment compensation packages depending on the recruited representative's production and client base.

FINRA recognizes the business rationales for offering financial incentives and transition assistance to recruit experienced representatives and seeks neither to encourage nor discourage the practice with the proposed rule change. However, FINRA believes that former customers currently are not receiving important information from recruiting firms and representatives when they are induced to move assets to the recruiting firm. There are a number of factors a former customer should consider when making a decision to transfer assets to a new firm. These factors include, among other things, a representative's motives to move firms, whether those motives align with the interests and objectives of the former customer, and any costs, fees, or product portability issues that will arise as a result of an asset transfer to the recruiting firm. The proposed rule change is intended to provide former customers information pertinent to these considerations, so they have a more complete picture of the factors relevant to a decision to transfer assets to a new firm and can engage in further conversations with the recruiting firm or their representative in areas of personal concern. FINRA believes that former customers would benefit from knowing, among other things, the magnitude of the financial incentives that may have led their representative to change firms, how the former customer's assets, or trading activity, factored into the calculation of such incentives, and whether moving their assets to the recruiting firm will impact their holdings or impose new costs. The proposed rule change is intended to focus a former customer's attention on the decision to transfer assets to a new firm, and the direct and indirect impacts of such a transfer on those assets, so they are in a position to make an informed decision whether to follow their representative.

In addition, the proposed rule change would require members to report to FINRA information related to significant increases in total compensation over the representative's prior year compensation that would be paid to the representative during the first year at the recruiting firm so that FINRA can assess the impact of these arrangements on a member's and representative's obligations to customers and detect potential sales practices abuses. FINRA believes that incorporating such data into its risk-based examination program will help to identify and mitigate potential harm to customers associated with member recruitment practices.

Disclosure and Reporting Obligations Related to Recruitment Practices

The proposed rule change would provide targeted and meaningful information to customers at what FINRA believes to be a relatively low cost to firms and without implying any bad faith on the part of representatives who receive recruitment compensation to move firms. The proposed rule change includes a disclosure obligation to ''former customers''[3] who the recruiting firm attempts to induce to follow a transferring representative and a reporting obligation to FINRA. First, it would require disclosure to former customers of a representative of the financial incentives the representative will receive in conjunction with the transfer to the recruiting firm and the basis for those incentives. Second, the proposed rule change would require disclosure to former customers of any costs, fees or product portability issues, including taxes if some assets must be liquidated prior to transfer, that will result if the former customer decides to transfer assets to the recruiting firm. The

[3] *See* definition of ''former customer'' discussed *infra* at page 81.

proposed disclosures are intended to encourage customers to make further inquiry to reach an informed decision by providing a framework with some specific information to consider the impact to their accounts. Finally, the proposed rule change would require a recruiting firm to report to FINRA, at the beginning of a representative's employment or association with the firm, significant increases in total compensation over the representative's prior year compensation that would be paid to the representative during the first year at the recruiting firm. The details of proposed FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices) are set forth in detail below.

Disclosure Requirement

The proposed rule change would require a member that hires or associates with a representative and directly or through that representative attempts to induce a former customer of that representative to transfer assets to an account assigned, or to be assigned, to the representative at the member to disclose to the former customer if the representative has received or will receive $100,000 or more of either (1) aggregate ''upfront payments'' or (2) aggregate ''potential future payments'' in connection with transferring to the member.[4] The proposed rule change would require members to disclose recruitment compensation by separately indicating aggregate upfront payments and aggregate potential future payments in the following ranges: $100,000 to $500,000; $500,001 to $1,000,000; $100,000,001 to $2,000,000; $2,000,001 to $5,000,000; and above $5,000,000.[5] Thus, the proposed rule change effectively establishes two separate de minimis exceptions for payments of less than $100,000: One applied to aggregate upfront payments and one applied to aggregate potential future payments. Members also would be required to disclose the basis for determining any upfront payments and potential future payments (*e.g.,* asset-based or production-based) the representative has received or will receive in connection with transferring to the member.[6]

The proposed rule change would define a ''former customer'' as any customer that had a securities account assigned to a representative at the representative's previous firm. The term ''former customer'' would not include a customer account that meets the definition of an ''institutional account'' pursuant to FINRA Rule 4512(c); provided, however, accounts held by a natural person would not qualify for the ''institutional account'' exception.[7] For the purpose of the proposed rule, ''upfront payments'' would mean payments that are either received by the representative upon commencement of employment or association or specified amounts guaranteed to be paid to the representative at a future date, including, *e.g.,* payments in the form of cash, deferred cash bonuses, forgivable loans, loan-bonus arrangements, transition assistance, or in the form of equity awards (*e.g.,* restricted stock, restricted stock units, stock options, etc.) or other ownership interest.[8] The term ''potential future payments'' would include, *e.g.,* payments (including the forms of payments described in the definition of the term ''upfront payments'') offered as a financial incentive to recruit the representative to a member that are contingent upon satisfying performance-based criteria, or a special commission schedule for representatives paid on a commissioned basis beyond what is ordinarily provided to similarly situated representatives, or are an allowance for additional travel and expense reimbursement beyond what is ordinarily provided to similarly situated representatives.[9] FINRA understands that members sometimes partner with another financial services entity, such as an investment adviser or insurance company, to recruit a representative. In those circumstances, both upfront payments and potential future payments would include payments by the third party as part of the recruitment arrangement.

In addition to the recruitment compensation disclosure, the proposed rule change would require the member to disclose to a former customer of the representative if transferring the former customer's assets to the member: (1) Will result in costs to the former customer, such as account termination or account transfer fees from the former customer's current firm or account opening or maintenance fees at the member, that will not be reimbursed to the former customer by the member; [10] and (2) if any of the former customer's assets are not transferable to the member and that the former customer may incur costs, including taxes, to liquidate and transfer those assets in their current form to the member or inactivity fees to leave those assets with the former customer's current firm.[11]

The proposed rule change would allow a member to rely on the reasonable representations of the representative, supplemented by the actual knowledge of the member, in determining whether the proposed disclosures must be made to a former customer.[12] In the event that a member, after considering the representations of the newly hired representative, cannot make a determination whether any of the former customer's assets are not transferable to the member, the member must advise former customers in the disclosure: (1) To ask their current firms whether any of their assets will not transfer to the member and what costs, if any, the customers will incur to liquidate and transfer such assets or keep them in an account with their current firm and (2) that nontransferable securities account assets will be identified to the former customer in writing prior to, or at the time of, validation of the account transfer instruction pursuant to FINRA Rule 11870 (Customer Account Transfer Contracts).[13]

FINRA believes that the proposed rule change would provide key information to investors that they seldom receive today—that compensation may have been a motivating factor for a representative's transfer of firms, that the basis of any recruitment compensation may have or could impact the representative's treatment of the customer or the recommendation to move assets to the recruiting firm, that there may be costs associated with

[4] *See* proposed FINRA Rule 2243(a)(1). *See also* FINRA Rule 0140(a), which states that persons associated with a member shall have the same duties and obligations as a member under FINRA rules.

[5] *See* proposed FINRA Rule 2243.01 (Disclosure of Ranges of Compensation).

[6] *See* proposed FINRA Rule 2243(a)(2).

[7] *See* proposed FINRA Rule 2243.05(a). FINRA Rule 4512(c) defines ''institutional account'' to mean the account of (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[8] *See* proposed FINRA Rule 2243.05(b).

[9] *See* proposed FINRA Rule 2243.05(c). FINRA notes that neither category of recruitment compensation would include higher commission schedule payouts received by a transferring representative, such as may occur where a representative transfers to an independent broker-dealer, unless such payouts are beyond what is provided to similarly situated representatives, and that amount, alone or in combination with other payments, meets the $100,000 threshold for one of the categories of recruitment compensation.

[10] *See* proposed FINRA Rule 2243(a)(3).

[11] *See* proposed FINRA Rule 2243(a)(4).

[12] *See* proposed FINRA Rule 2243.03 (Representations of a Registered Person).

[13] *See supra* note 12.

transferring assets, and that there may be direct and indirect costs associated with liquidating or leaving behind nontransferable assets—relevant to a decision to follow the representative to the recruiting firm.

FINRA believes starting the disclosure of ranges of compensation at $100,000 for each category of recruitment compensation creates a reasonable de minimis exception from the proposed disclosure requirement at a level where the recruitment compensation or transition assistance are lesser motivating factors for a representative to move. FINRA will consider with interest comments on the appropriateness of the proposed de minimis exception amount of $100,000 for aggregate upfront payments and aggregate potential future payments; whether the disclosure of ranges of recruitment compensation should begin at a different amount; and whether the threshold should apply separately to upfront payments and potential future payments.

More generally, FINRA believes disclosure of ranges of compensation received strikes a balance that will provide former customers detailed information about the nature and magnitude of the financial incentives involved in their representative's move to factor into their decision whether to transfer assets to the new firm, while reducing privacy concerns about specific disclosure of a representative's compensation. FINRA believes the specified level of detail regarding the representative's recruitment compensation and the treatment of former customer's assets is necessary to make the disclosures valuable to former customers. The disclosures are intended to prompt a dialogue between the former customer and the representative or recruiting firm by providing a framework to consider the impact of a decision to transfer assets to a new firm. FINRA believes that the proposed disclosures would encourage customers to make further inquiries to the representative and the recruiting firm to reach an informed decision about whether to transfer assets. In addition, FINRA believes that requiring the basis for recruitment compensation to be disclosed would allow a former customer to review his or her account activity during the relevant time to see if any unusual activity occurred to boost the representative's revenue base in anticipation of a move and to more closely monitor activity at the new firm, should the customer decide to move assets there.

Delivery of Disclosures

The proposed rule change would require a member to deliver the proposed disclosures at the time of first individualized contact with a former customer by the representative or the member that attempts to induce the former customer to transfer assets to the member.[14] If such contact is in writing, the written disclosures must accompany the written communication; if such contact is oral, the member must give the disclosures orally at the time of contact followed by written disclosures sent within 10 business days from such oral contact or with the account transfer approval documentation, whichever is earlier. If the representative or the member attempts to induce a former customer to transfer assets to an account assigned, or to be assigned, to the representative at the member, but no individualized contact with the former customer by the representative or member occurs before the former customer seeks to transfer assets, the disclosures must be delivered to the former customer with the account transfer approval documentation.[15] The disclosure requirement would apply for a period of one year following the date the representative begins employment or associates with the member.[16]

FINRA believes that any action taken by a recruiting firm directly or through a representative that attempts to induce former customers of the representative to transfer assets to the recruiting firm should trigger the disclosures. As such, under the proposed rule change, actions by the recruiting firm or the representative that do not involve individualized contact, such as a tombstone advertisement, a general announcement, or a billboard, would be considered attempts to induce former customers to move their assets. In these circumstances, if a former customer subsequently decides to transfer assets to the recruiting firm without individualized contact, the proposed rule change would require the recruiting firm to provide the proposed disclosures to former customers with the account transfer approval documentation.

Format of Disclosures

The proposed rule change would require a member to deliver the proposed disclosures in paper or electronic form in a format prescribed by FINRA, or an alternative format with substantially similar content.[17] The proposed rule change would require that written disclosures must be clear and prominent.[18] To facilitate uniform disclosure under the proposed rule change and to assist members in making the proposed disclosures to former customers of a representative, FINRA has developed a disclosure template form that members may use to make the required disclosures.[19] Members may, however, create their own disclosure form, as long as it contains substantially similar content to the FINRA-developed template.

On the disclosure form, a member would be required to indicate the applicable range of compensation in each category of recruitment compensation (*i.e.,* aggregate upfront payments and aggregate potential future payments), for compensation in amounts of $100,000 or more that the representative has received or will receive in connection with transferring to the member. Thus, a representative who receives $75,000 in aggregate upfront payments and $75,000 in potential future payments would not trigger the compensation disclosure under the proposed rule because the $100,000 threshold applies separately to each category of recruitment compensation. Members also would be required to indicate the basis for those payments, *e.g.,* assets brought in or future production. In addition, members would be required to indicate if transferring assets to the representative's new firm will result in costs to the former customer that will not be reimbursed by the member, if any of the former customer's assets are not transferable to the member and that the former customer may incur costs, including taxes, to liquidate and transfer those assets in their current form to the member or inactivity fees to leave those assets with the former customer's current firm.

The FINRA-developed disclosure template would include a free text section in which the member or representative may include additional, contextual information regarding the disclosures, as long as such information is not false or misleading. A member could provide the same context in a disclosure form of its own design, as long as it does not obscure or overwhelm the required disclosures and is not false or misleading. FINRA believes that allowing members and representatives an opportunity to provide context regarding the disclosures will alleviate concerns that

[14] *See* proposed FINRA Rule 2243(b)(1).

[15] *See* proposed FINRA Rule 2243(b)(2).

[16] *See* proposed FINRA Rule 2243(b)(3).

[17] *See* proposed FINRA Rule 2243.02 (Format of Disclosures).

[18] *See supra* note 17.

[19] *See* Exhibit 3, attached to FINRA's filing with the Commission.

the disclosures will be confusing or imply bad faith on the part of the representative. FINRA believes that providing a uniform disclosure form will allow members to make the required disclosures at a relatively low cost and without significant administrative burdens.

Reporting Requirement

The proposed rule change would require a member to report to FINRA at the beginning of the employment or association of a representative that has former customers (as defined by proposed Rule 2243.05) if the member reasonably expects the total compensation paid to the representative by the member during the representative's first year of employment or association with the member to result in an increase over the representative's prior year compensation by the greater of 25% or $100,000.[20] In determining total compensation, the member must include any aggregate upfront payments, aggregate potential future payments, increased payout percentages or other compensation the member reasonably expects to pay the representative during the first year of employment or association with the member. A member's report to FINRA must include the amount and form of such total compensation and other related information, in the time and manner that FINRA may prescribe.

The compensation information reported to FINRA pursuant to the proposed rule would not be made available to the public. FINRA intends to use the reported compensation information as a data point in its risk-based examination program. As such, FINRA believes it is important to capture the compensation information in a structured way. FINRA believes this data will help FINRA examiners better assess the adequacy of firm systems to monitor conflicts of interest and systems to detect and prevent underlying business conduct abuses potentially attributable to recruitment compensation incentives, and target exams where concerns appear. This data also will help FINRA to identify whether the conflicts of interest attendant to particular levels or structures of increased compensation when a representative transfers firms result in customer harm that is not adequately addressed by current FINRA rules.[21] Further, FINRA believes such data would inform any future rulemaking to require firms to manage conflicts arising from specific compensation arrangements. In addition, FINRA believes the proposed reporting requirement itself could mitigate potential sales practice violations, as it might encourage firms to give greater supervisory attention to the more lucrative compensation packages that will be reported to FINRA.

Calculating Compensation

The proposed rule change would provide that in calculating compensation for the purpose of the proposed disclosure requirement and the proposed reporting requirement to FINRA, a member: (1) Must assume that all performance-based conditions on the representative's compensation are met; (2) may make reasonable assumptions about the anticipated gross revenue to which an increased payout percentage will be applied; and (3) may net out any increased costs incurred directly by the representative in connection with transferring to the member.[22] Members must include as part of such calculations all compensation the representative has received or will receive that is based on gross commissions and assets under care from brokerage business and, if applicable, fee income and assets under management from investment advisory services. For example, a dual-hatted representative that receives from the recruiting firm an upfront payment of $1.5 million based on gross commissions from brokerage business and an upfront payment of $1 million based on fees and assets under management from investment adviser business would be required to indicate on the customer disclosure form that he or she has received recruitment compensation in the range of $2,000,001 to $5,000,000 in aggregated upfront payments, and include $2.5 million in upfront payments as part of calculating total compensation for the purposes of the reporting requirement to FINRA.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[23] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote investor protection by providing information on the costs and conflicts associated with a former customer's important decision whether to transfer assets to a representative's new firm. FINRA further believes that the proposed rule change would allow a former customer to make a more informed decision, taking into account the financial incentives that may motivate a representative to move firms and induce a customer to follow, as well as the costs to be borne by the customer in connection with transferring assets and the possibility that some assets cannot transfer. In addition, the proposed requirement to report to FINRA significant increases in total compensation in a representative's first year at a recruiting firm will enhance investor protection by allowing FINRA to monitor such practices and use the data collected to detect potential sales practice abuses.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. By relying on disclosure and reporting, the proposed rule seeks to focus a former customer's attention on the decision to transfer assets to a new firm, and the direct and indirect impacts of such a transfer on those assets, so they are in a position to make an informed decision whether to follow their representative.

The proposed rule would require a recruiting firm to determine the dollar

[20] *See* proposed FINRA Rule 2243(c) (Reporting Requirement).

[21] Recruitment compensation packages offered to representatives have been the subject of regulatory concern for many years. Former SEC Chairman Schapiro identified potential conflicts raised by recruitment practices in 2009 in an open letter to broker-dealer CEOs. The letter noted that: ''[s]ome types of enhanced compensation practices may lead registered representatives to believe that they must sell securities at a sufficiently high level to justify special arrangements that they have been given. Those pressures may in turn create incentives to engage in conduct that may violate obligations to investors. For example, if a registered representative is aware that he or she will receive enhanced compensation for hitting increased commission targets, the registered representative could be motivated to churn customer accounts, recommend unsuitable investment products or otherwise engage in activity that generates commission revenue but is not in investors' interest.'' *See* Open Letter to Broker-Dealer CEOs from SEC Chairman Mary L. Schapiro, dated August 31, 2009.

[22] *See* proposed FINRA Rule 2243.04 (Calculating Compensation).

[23] 15 U.S.C. 78*o*–3(b)(6).

value of a representative's recruitment compensation, and if meeting a threshold, provide disclosure to former customers the recruiting firm or representative attempt to induce to transfer assets during the representative's first year of employment or association. In addition, the proposed rule would require the recruiting firm to report information about a representative's total compensation to FINRA if it meets the proposed threshold. Firms also would be responsible for developing compliance policies, training and tracking for the proposed rule. Some commenters have noted that the proposed rule also may have an impact on the market for representatives.

FINRA does not believe that the proposed rule change will impose undue operational costs on members to comply with the disclosure and reporting obligations because the information needed to make the calculations resides with either the recruiting firm or the representative. The recruiting firm knows how much upfront compensation they will be paying the representative, as well as the additional potential future income the representative may earn if he or she satisfies conditions. Furthermore, the proposed rule change permits the recruiting firm to make reasonable assumptions about the gross revenue to which any increased payout percentage may apply. In addition, FINRA understands that the recruiting firm or the representative typically has ongoing contact with former customers, thereby facilitating the opportunity for the disclosures to be made. With respect to the disclosure of costs, FINRA believes that the representative will know of costs a former customer will incur at the current firm to transfer assets or leave them inactive and that the recruiting firm knows the costs it imposes to transfer assets and open and maintain an account there. Also, the proposed rule change allows the recruiting firm to rely on the reasonable representations of the representative for much of the information, and with respect to portability, give more generalized disclosure where the information cannot be ascertained from the representative or other actual knowledge.

In developing the proposed rule change, FINRA considered several alternatives to the proposed rule change, which are set forth below, to ensure that it is narrowly tailored to achieve its purposes described previously without imposing unnecessary costs and burdens on members or resulting in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change addresses many of the concerns noted by commenters in response to an earlier version of the proposal.[24]

First, the earlier version of the proposed rule change would have required a member that provides, or has agreed to provide, to a representative enhanced compensation in connection with the transfer of securities employment of the representative from another financial services firm to disclose the details, including specific amounts, of such enhanced compensation [25] to any former customer of the representative at the previous firm that is contacted regarding the transfer of the securities employment (or association) of the representative to the recruiting firm, or who seeks to transfer assets, to a broker-dealer account assigned to the representative with the recruiting firm. The earlier proposal did not include any disclosure of costs or portability ramifications associated with transferring assets to the new firm. As discussed in detail in Item C., a majority of the comments received on the earlier version of the proposal opposed specific disclosure of enhanced compensation, stating that it was burdensome, an invasion of privacy and failed to address a particular harm to customers. Some commenters instead favored general disclosure that a representative is receiving unspecified compensation as part of a transfer.

FINRA considered, as an alternative to the proposed rule change, a proposal that would have included a general recruitment compensation disclosure (*i.e.,* no specific dollar amounts) and general disclosure that the former customer *may* incur costs or encounter portability issues in connection with any asset transfer. However, FINRA believes that the proposed rule change is preferable to alternatives with general disclosure requirements because the general disclosure approach does not give former customers any sense of the scope or magnitude of a representative's recruitment compensation package or whether the cost and portability disclosures will actually impact their personal holdings. FINRA developed the revised approach in the proposed rule change to strike a balance between specific disclosure and general disclosure by requiring disclosure of ranges of compensation of $100,000 or more as applied separately to aggregate upfront payments and aggregate potential future payments and affirmative cost and portability statements.

The proposed disclosure of ranges of recruitment compensation provides customers with meaningful information, *i.e.,* that compensation may have been a motivating factor in their representative's decision to change firms, to consider in conjunction with a representative's other stated reasons for changing firms, without requiring members to disclose specific information about the payments that may compromise the privacy of the representative. As noted in Item A., representatives often emphasize the superior products, platforms and services of the recruiting firm without disclosing the lucrative financial incentives they have received or will receive in connection with the transfer. In addition, to assist members with compliance with the proposed rule change and to mitigate costs and administrative burdens, FINRA developed a disclosure form that members may use to make the required disclosures. The proposed rule change adds flexibility by allowing recruiting firms to deliver the disclosures in an alternative format with substantially similar content so firms can leverage existing compliance efforts or procedures.

Second, as noted above, the proposed rule change exempts compensation that does not meet a $100,000 threshold as applied separately to aggregate upfront payments and aggregate potential future payments for purposes of disclosure to former customers and compensation that does not meet a threshold of the greater of 25% or $100,000 over the representative's prior year's compensation for purposes of reporting total compensation to FINRA, and allows members to net out direct costs paid by the representative in a transfer to a new firm when making such calculations. The initial proposal included a $50,000 exception, which many commenters opposed because, among other things, they felt it was arbitrary, too low to cover expenses incurred by representatives to transfer firms and did not allow firms to net out direct costs incurred by the representative in calculating recruitment compensation. Based on the

[24] *See* Item C., which contains a detailed discussion of the earlier version of the proposal that was published in *Regulatory Notice* 13–02 (January 2013).

[25] In the initial proposal, the term ''enhanced compensation'' was defined as compensation paid in connection with the transfer of securities employment (or association) to the recruiting firm other than the compensation normally paid by the recruiting firm to its established registered persons. Enhanced compensation included but was not limited to signing bonuses, upfront or back-end bonuses, loans, accelerated payouts, transition assistance, and similar arrangements, paid in connection with the transfer of securities employment (or association) to the recruiting firm.

comments and discussions with firms, FINRA believes that raising the proposed de minimis exception for recruitment compensation to $100,000 for each of aggregate upfront payments and aggregate potential future payments will substantially mitigate costs for firms without compromising investor protection. Based on input from firms that offer recruitment compensation, FINRA believes the proposed de minimis exception will except from the disclosure obligation those firms whose payments are only intended as transition assistance to help cover relocation and overhead costs, such as new business cards and letterhead, and that amounts below this threshold significantly diminish the motivating impact for the representative to move firms and therefore would not be as meaningful to customers. FINRA also understands that recruitment compensation that exceeds the $100,000 threshold for aggregate upfront payments and aggregate potential future payments is typically offered only by the largest firms and therefore the disclosure obligation should not impact most small firms or independent broker-dealers, where the relative costs of compliance would be more burdensome.

FINRA understands the proposed de minimis exception for disclosure of compensation under $100,000 in each category of recruitment compensation may impose some burden on small member firms to establish administrative processes to track compensation and to ensure that records are available to evidence compliance. FINRA does not believe that the administrative costs to track recruitment compensation outweighs the investor protection benefits of increased transparency to inform former customers about recruitment compensation that may have motivated their representative to move firms before they decide to transfer account assets to their representative's new firm. In addition, FINRA notes that the proposed rule change incorporates a provision that permits members to net out costs directly incurred by a representative in connection with a transfer to the recruiting firm. Members would measure compensation amounts for purposes of determining the $100,000 threshold in each category of recruitment compensation after direct costs to the representative in connection with the transfer have been netted out. Therefore, FINRA believes it is more likely that the de minimis exception will apply when a representative moves from a wirehouse firm to a firm with an independent broker-dealer model or when a representative otherwise incurs direct costs associated with a transition.

Third, the proposed rule change limits the proposed disclosures to situations where a member, directly or through a representative, attempts to induce that representative's former customers to transfer assets to the member. Recruiting firms would not have to make the disclosures to former customers if the recruiting firm or representative does not undertake any efforts to induce former customers to transfer assets to the member, either through individualized contact, such as an email or phone call, or non-individualized contact, such as a tombstone advertisement, a billboard or a notification on the firm's Web site.

Fourth, FINRA notes that the proposed rule change includes a one-year disclosure period so that members do not have to track for or provide disclosures to customers after the representative has been with the firm for a year. FINRA considered an alternative that would have required disclosure for as long as the representative continued to receive recruitment compensation, which in some cases, could be 10 years. FINRA understands that most former customers who transfer assets to the representative's new firm do so soon after the representative changes firms so the one-year period should provide a reasonable end date for the proposed disclosure requirement.

Fifth, FINRA considered whether the proposed rule should apply to any new customers of the representative at the new firm, or whether disclosure to just former customers would accomplish the goals of the proposed rule change. FINRA determined that it would limit the proposed rule to former customers of the representative because the recruitment compensation the representative has received or will receive in a transfer is likely based on activity in the accounts of such former customers and the expectation that they will transfer assets to follow the representative to the recruiting firm. In addition, representatives should have a sense of how moving assets to the recruiting firm will impact former customers' accounts because they are aware of the costs associated with account termination, transfer and opening and product limitations at their previous firm and at the recruiting firm. Representatives are less likely to have similar information for new customers opening an account with the recruiting firm. A customer opening a new account also does not have an established relationship with the representative and, in many cases, has already determined to place assets with a new firm without any inducement from the representative.

Sixth, FINRA considered whether the proposed rule should require disclosure to current customers when their representative receives a retention bonus. As explained in more detail in Item C., the proposed rule change does not include that requirement because the proposal is more narrowly focused on providing a former customer important information when deciding whether to follow his or her representative to a new firm, and incentives offered to a representative while at a firm do not implicate the same considerations for customers, such as transfer costs and portability issues. FINRA notes that to the extent a retention bonus is part of a recruitment compensation package, disclosure would be required as a potential future payment if the magnitude of the bonus exceeds the $100,000 threshold. FINRA further notes that the reporting requirement in the proposed rule change is intended, in part, to provide insight as to whether compensation packages are resulting in increased risk to customers of inappropriate sales practice activities. That information will help inform whether additional regulation around retention bonuses or other compensation incentives is necessary.

Finally, in considering the proposed requirement that members report to FINRA significant increases in a recruited representative's total compensation over the prior year, FINRA notes that it consulted with its advisory committees to determine the proposed threshold of the greater of $100,000 or 25%, which is intended to exclude compensation arrangements that do not pose the same level of potential conflicts of interest. FINRA believes compensation increases of amounts below the threshold are less valuable for its examination program, particularly when compared to the burden of compliance on smaller firms that are more likely to offer recruitment packages in those ranges. FINRA will consider with interest comment on whether the proposed threshold is appropriate and, if commenters favor an alternative, the reasons why such alternative is preferable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA published an earlier version of the proposal for comment in *Regulatory Notice* 13–02 (January 2013) (the ''Notice Proposal''). A copy of the

Notice Proposal is attached as Exhibit 2a. The comment period expired on March 5, 2013. FINRA received 567 comment letters in response to the proposal, of which 65 were unique letters. A list of the comment letters received in response to the Notice Proposal is attached as Exhibit 2b.[26] Copies of the comment letters received in response to that proposal are attached as Exhibit 2c.[27] Of the 65 unique comment letters received, 21 were generally in favor of the proposed rule change, 43 were generally opposed, and one letter did not address the merits of the proposal.

The Notice Proposal required a member that provides, or has agreed to provide, to a representative ''enhanced compensation'' in connection with the transfer of securities employment of the representative from another financial services firm to disclose the details of such enhanced compensation to any former customer of the representative at the previous firm who: (1) Is individually contacted by the member or representative, either orally or in writing, regarding the transfer of employment (or association) of the representative to the member; or (2) seeks to transfer an account from the previous firm to an account assigned to the representative with the member. The proposal defined enhanced compensation to include signing bonuses, upfront or back-end bonuses, loans, accelerated payouts, transition assistance, and similar arrangements. The proposal would have required disclosure for one year following the date the representative associates with the recruiting firm. The proposal included an exception for enhanced compensation of less than $50,000 and customers that meet the definition of an institutional account pursuant to FINRA Rule 4512(c), except any natural person or a natural person advised by a registered investment adviser.

Comments in support of the proposal were split between those that favored specific disclosure and those that advocated general disclosure of recruitment compensation. In general, comments opposed to the proposal asserted that it did not address an identifiable harm to customers, was pejorative toward representatives, invaded their privacy, and failed to include other cost impacts to customers when transferring their accounts. The comments and FINRA's responses are set forth in detail below.

[26] All references to the commenters under this Item are to the commenters as listed in Exhibit 2b.

[27] Exhibits 2a, 2b, and 2c are attached to FINRA's filing with the Commission.

Support for the Notice Proposal

In general, commenters that supported the proposal stated that disclosing specific recruitment compensation to customers would provide investors with information relevant to investment decisions, promote greater transparency, increase investor confidence and trust, and increase customer awareness of potential conflicts of interest relating to recruitment compensation packages.[28] One commenter noted that the proposal put the interest of customers first, supported a high standard of business ethics, and provided disclosure appropriate for customers to make informed decisions without prohibiting legitimate business practices.[29] Another commenter noted that informing customers of potential conflicts of interest regarding recruitment compensation is especially important if the representative's compensation is determined by the assets a customer moves to the representative's new firm.[30] One commenter also noted that most representatives do not tell customers that they are receiving recruitment compensation for moving customer assets to the new firm and inflate production to benefit trailing 12 calculations.[31] Another commenter stated that registered investment advisers are required to disclose all conflicts of interest, including those that may arise when the adviser changes firms.[32] Two commenters noted that transparency is a key component of a customer's ability to make an informed decision about transferring his or her assets.[33]

Specific vs. General Enhanced Compensation Disclosure

Several commenters wrote in support of uniform, industry-wide disclosure of recruitment compensation to customers, including the form of the recruitment compensation arrangement and specific dollar amounts.[34] One commenter suggested that FINRA should work with the industry to create a model approach that clearly articulates appropriate disclosure for enhanced compensation arrangements and supported 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.[35] Another commenter noted that specific disclosure would make it significantly easier for former customers to assess the merits of the change to reach an informed decision about whether to transfer an account to the new firm.[36]

The Notice Proposal requested comment on an alternative approach that would require a general upfront disclosure by the recruiting firm or representative that the representative is receiving, or will receive, material enhanced compensation in connection with the transfer of securities employment (or association) to the recruiting firm and that additional specific information regarding the details of such compensation would be available at a specified location on the firm's Web site or upon request.

A few commenters asserted that a general disclosure would dilute the goal of proactive, timely disclosure because customers would carry the burden to seek out the more detailed disclosures from the member or representative.[37] One commenter opposed the alternative approach because the more detailed web-based disclosure would be accessible not only by customers, but also the public.[38] Numerous commenters suggested that the proposal should require general disclosure of recruitment compensation, instead of specific disclosure, with an opportunity for customers to request more information from the representative or member regarding the details of such compensation.[39] Some commenters also stated that a general disclosure would prompt a dialogue between the representative and retail customers that would be more valuable than raw numbers without context.[40]

Several commenters stated that a brief, plain English, generic disclosure with the delivery of Automated Customer Account Transfer Service (''ACATS'') forms or at account opening would be more meaningful to customers than specific disclosure of compensation, and also would avoid

[28] APA, Arrigo, Capstone-FA, Cornell, Edward Jones, HDVest, JGHeller, Merrill, Miami, Morgan Wilshire, MSWM, NASAA, Oppenheimer, PIABA, Ruchin, Scott Smith, Summit-E, UBS, Wedbush, WFA.

[29] UBS.

[30] Capstone-FA.

[31] APA.

[32] Cornell.

[33] Morgan Wilshire, Wedbush.

[34] Edward Jones, Merrill, MSWM, NASAA, Summit-E, UBS, WFA.

[35] SIFMA.

[36] Oppenheimer.

[37] Edward Jones, Summit-E, UBS.

[38] Summit-E.

[39] Advisor Group, Ameriprise, BDA, Bischoff, Cetera, Janney, LaBastille, Lax, Lincoln, Miami, NAIFA, Plexus, Stifel, Summit-B, Sutherland, Wedbush.

[40] Ameriprise, Cetera, Wedbush.

privacy and anti-competitive issues.[41] Several other commenters noted that specific disclosure might mislead or confuse customers and would, therefore, not be helpful or serve the purposes of investor protection.[42] One commenter stated that customers might view recruitment compensation as a bribe or excessive.[43] One commenter suggested that firms should provide customers with a single page, plain English form to inform the client that their representative is receiving recruitment compensation exceeding $50,000 and, although the representative is under no suspicions of acting unethically, FINRA has identified enhanced compensation as an area prone to conflicts, and any concerns regarding the management of investment accounts and objectives should be raised with the representative.[44] Two commenters noted that disclosure of specific recruitment compensation may be viewed as a measure of the new firm's endorsement of the representative.[45]

As discussed in Item B., FINRA does not agree that general disclosure of recruitment compensation would provide sufficient information for a former customer to weigh in a decision whether to transfer assets to his or her representative's new firm. FINRA continues to believe that some level of specificity regarding the magnitude of recruitment compensation paid by a member to a representative is necessary for the disclosure to be meaningful to former customers. FINRA believes that customers need some quantifiable measure to evaluate the impact recruitment compensation may have had on the representative's decision to move firms and his or her attempt to induce former customers to transfer assets to that new firm. FINRA further believes that the disclosure of ranges of compensation will provide a former customer enough sense of the magnitude of the payments to foster further inquiry with the representative if the customer finds the compensation relevant to his or her decision to transfer assets to the new firm.[46]

Opposition to the Notice Proposal

In general, commenters opposed to the proposal stated that it does not address an identifiable harm or conflict of interest, is unnecessary and redundant, and does not provide additional protections to retail investors beyond existing rules (*e.g.,* FINRA's suitability rule already addresses churning and unsuitable recommendations and FINRA's supervision rules address firms' supervisory systems).[47] Three commenters noted that the benefits of the proposal are unclear because, among other things, a representative's compensation has no direct impact on a customer's account and recruitment compensation does not present a conflict of interest that is distinguishable from other compensation arrangements not covered by the proposal.[48]

Five commenters stated that the proposal is not helpful to customers and will not assist them in making a decision to transfer assets to a new firm.[49] Three commenters stated that the proposal is not well designed to mitigate conflicts or help customers because it does not prohibit any action; it merely provides an incomplete disclosure of one of many potential conflicts.[50] A few commenters stated that if the true intent of the proposal is to reduce conflicts of interest by curtailing recruitment compensation packages, then it would be more efficient for FINRA to address such arrangements, rather than requiring disclosure to customers with the hope that the second order impact will be for firms to change their practices.[51]

Numerous commenters questioned the purpose of the proposal given the lack of evidence that recruitment compensation harms clients in any way.[52] Several commenters noted that FINRA cited no enforcement actions, cases, customer complaints or other empirical evidence that enhanced compensation creates a conflict of interest between customers and representatives and requested that FINRA consider modifying the proposal to more accurately address any perceived harm.[53] One commenter stated that more rigorous analysis is needed to determine if an actual conflict exists.[54]

Several commenters were concerned that the proposal assumes that representatives act in bad faith and implies that customers should not trust representatives if they have received recruitment compensation, even if it merely helps offset the cost of moving firms.[55] One commenter noted that the backlash from customers will outweigh any benefits of the proposal.[56] Another commenter noted that the proposal does not explain how the significant consequences to the representative of specific compensation disclosure are outweighed by the benefit to retail customers and suggested focus group testing to determine whether a general disclosure would be as effective as specific disclosure.[57] One commenter stated that the proposal will cause jealousy and bad will among clients, create a more litigious environment, and will force representatives to take on larger and fewer clients.[58] Another commenter stated that the disclosure will put pressure on representatives to perform above prevailing market conditions to justify payouts.[59] One commenter stated that the proposal will further sensationalize the transition of a representative to another firm.[60] Another commenter stated that it, instead, could harm a representative's interests with no practical purpose.[61] However, one commenter stated that specific disclosure of recruitment compensation that is moderate and reasonable will not negatively affect representatives because he or she can explain the benefits of the move and the costs and lost revenues involved in the transition.[62]

Some commenters raised concerns that the proposed disclosure will be confusing to customers because they cannot understand the complexity of compensation packages and, therefore, the proposal will not be valuable to them or serve the purposes of investor protection.[63] One commenter noted that customers are not in a position to judge the merits of recruitment compensation to understand their value to the future

[41] Ameriprise, Cetera, Janney, Lax, Stifel, Sutherland, Wedbush.

[42] Advisor Group, BDA, Bischoff, Burns, Miami, NAIFA, Plexus, Sutherland.

[43] Smith Moore.

[44] Cornell.

[45] Burns, Elzweig.

[46] *See also* FINRA's responses to comments regarding privacy and anti-competitive concerns on pages 110 through 116.

[47] Abel, Advisor Group, Ameriprise, APA, BDA, Bischoff, Burns, Capstone-AG, Cetera, Commonwealth, Cutter, Edde, Elzweig, FORM, FSI, Gompert, Janney, LaBastille, Lincoln, LPL, NPB, SIPA, Smith Moore, Spartan, Stifel, Sutherland, Summit-B, Summit-E, Taylor, Taylor English, Whitehall, Wilson, Wood.

[48] Smith Moore, Sutherland, Taylor English.

[49] Advisor Group, Bischoff, Commonwealth, Spartan, Wedbush.

[50] Burns, Taylor English, Showalter.

[51] Cutter, Taylor English, Whitehall.

[52] Advisor Group, Burns, Cutter, Edde, Herskovits, Smith Moore, Summit-B, Sutherland, Taylor English, Wedbush and Whitehall.

[53] Burns, Commonwealth, Janney, Stifel, Sutherland.

[54] Janney.

[55] Abel, Ameriprise, Burns, Capstone-AG, Commonwealth, Cutter, FORM, FSI, Lincoln, LPL, Whitehall.

[56] Bischoff.

[57] FSI.

[58] Wilson.

[59] Taylor.

[60] Smith Moore.

[61] Lax.

[62] Korth.

[63] Advisor Group, BDA, Miami, Plexus, Sutherland.

of a firm or branch, and are more likely to view them all negatively.[64] Other commenters requested clarification of what is meant by disclosure of ''details'' of enhanced compensation and ''similar arrangements.''[65]

A number of commenters also noted that recruitment compensation may actually benefit investors because it may cover ACATS transfer fees, moving expenses, or new advertising materials, and allow the representative to move to a new firm with better service.[66] One commenter noted that the proposal does not consider that representatives who receive significant recruitment compensation packages are those that are in high demand and the firms that recruit them will have quality platforms and services that will benefit clients.[67]

FINRA believes the proposed rule change addresses many of the commenters' concerns by better focusing the proposal on the impact to customers when they are considering transferring assets to a representative's new firm, rather than specific amounts of recruitment compensation paid to a representative. As stated in Item A., FINRA recognizes the business rationales for offering financial incentives and transition assistance to recruit experienced representatives and seeks neither to encourage nor discourage the practice with the proposed rule change. The proposed rule change also does not intend to cast representatives in a negative light for receiving recruitment compensation when they accept a new position.

The proposed rule change would require disclosure of ranges of compensation, instead of specific amounts of compensation, and expands the disclosures to include information about the costs, fees, and portability issues that will directly impact a customer's assets. The proposed rule change is intended to provide former customers with this information, so they have a more complete picture of the factors relevant to a decision to transfer assets to a new firm and can engage in further conversations with the recruiting firm or their representative in areas of personal concern. Moreover, the proposed rule change will focus a former customer's attention on the decision to transfer assets to a new firm, and the direct and indirect impacts of such a transfer on those assets, so they are in a position to make an informed decision whether to follow their representative.

FINRA does not believe that former customers will be confused by a clear, plain English disclosure regarding a representative's recruitment compensation. However, FINRA notes that the proposed rule change amends the Notice Proposal to require disclosure of ranges of compensation, the basis for such compensation, and other important considerations that a former customer should consider when they are deciding whether to transfer assets to a new firm. The proposed rule change would require members to use the FINRA-developed disclosure template, or their own form with substantially similar content, and would include a free text section to include contextual information regarding the disclosures. In addition, members would be required to include descriptions regarding ''upfront payments'' and ''potential future payments'' to assist customers in understanding the types of payments that their representative has received or will receive from the recruiting firm.

As noted in Item A., FINRA believes the proposed rule change provides targeted and meaningful information to customers at a relatively limited cost to firms and without implying any bad faith on the part of the registered representative. The disclosures are intended to encourage customers to make further inquiry to reach an informed decision by providing a framework with some specific information to consider the impact to their accounts. In addition, FINRA believes that former customers should be given enough information to understand how their assets factor into the calculation of their representative's recruitment compensation package, and how much money is at stake in these transfers.

Privacy Concerns

Numerous commenters opposed specific disclosure of recruitment compensation because it would interfere with a representative's right to privacy.[68] Some commenters stated that the proposal threatens the financial privacy of representatives in a manner that is unfair, needlessly intrusive, and may jeopardize client relationships.[69] Others noted that it will expose personal and confidential information without any tangible benefit to the customer and should not be required absent a compelling public policy reason to do so.[70] One commenter minimized the operational and privacy concerns stating that they do not outweigh clients' best interests, and disclosures may enhance client relationships based on transparency and trust.[71]

A number of commenters stated that the proposal exposes representatives to safety risks, including, *e.g.,* identity theft, data security incidents,[72] financial fraud, kidnapping, black mail and extortion.[73] One commenter expressed concerns that disclosure of recruitment compensation will make a representative's compensation a factor when customers are considering the settlement of outstanding complaints and negotiating settlement offers.[74] Two commenters further stated that firms will be unable to protect widespread dissemination of a representative's compensation information once it is disclosed.[75] One commenter suggested including with the proposed disclosure a customer confidentiality provision with an exception for the customer to share the information with an attorney or financial professional for consulting purposes.[76] One commenter noted that the information gained by the disclosure will eventually be obtained and aggressively used by the previous firm to try to persuade clients not to follow their representatives to the new firm.[77] Two commenters warned that the proposed disclosure would expose trade secrets and destroy proprietary business formulas that have been developed by firms.[78] Another commenter stated that it threatens the confidential nature and success of firms' recruiting programs and impacts a core and currently proprietary tool that broker-dealers use to manage their business (*i.e.,* compensation of personnel) without a measurable increase in customer protection or evidence that the disclosure will impact the perceived conflicts.[79] Three commenters stated that the proposal could violate applicable state and federal privacy regulations, including the Gramm-Leach-Bliley Act and Regulation S–P, which are designed to protect the dissemination of non-public customer personal information.[80] One commenter

[64] Bischoff.
[65] Sutherland, Lax, NAIFA, Cutter, Summit-E.
[66] FORM, Lincoln, LPL, Capstone-AG.
[67] Elzweig.
[68] Ameriprise, Burns, Cetera, Gompert, Janney, Lax, Stifel, Sutherland, Wedbush, Whitehall, Wilson.
[69] FSI, Herskovits, LaBastille, Lax, Stifel.
[70] Ameriprise, BDA, Stifel.
[71] MSWM.
[72] Cetera, Janney.
[73] FSI, Janney, SIPA.
[74] SIPA.
[75] Ameriprise, Janney.
[76] Miami.
[77] Burns.
[78] Janney, Miami.
[79] Sutherland.
[80] FSI, Janney, Taylor English.

encouraged FINRA to consider the operational challenges presented by the proposal, such as non-compete agreements and the prohibitions in Regulation S–P.[81]

FINRA believes that many of the privacy concerns noted by commenters are reduced by the proposed rule change that would provide for simplified and less specific disclosure of recruitment compensation in ranges. FINRA believes that the proposed disclosure of ranges of compensation and affirmative cost and portability disclosures, collectively, strike an appropriate balance to alleviate privacy and anti-competitive concerns, while providing customers with important information upon which to base a decision to transfer assets to a new firm. FINRA does not agree with the commenters that stated that there is no benefit or significant policy reason to provide recruitment compensation disclosure to former customers of a transferring representative. FINRA believes that receiving lucrative financial incentives that are often based on the amount of assets that will transfer with a representative to a new firm or the representative's trailing 12 creates a conflict of interest when a member, directly or through that representative, attempts to induce the owners of such assets to transfer them to the new firm. The representative's interest in receiving recruitment compensation may not align with the customer's best interest as to where to maintain his or her assets. FINRA believes that the investor protection benefits of providing this important information to former customers to inform their decision whether to transfer assets to their representative's new firm outweigh any remaining privacy issues that may arise under the proposed rule change.

In addition, FINRA does not agree that the proposal to require disclosure of ranges of recruitment compensation to former customers would encourage violations of federal or state privacy regulations because it does not require the disclosure of any information related to non-public customer personal information. With respect to commenters' concerns regarding non-compete agreements and the prohibitions in Regulation S–P, FINRA notes that the proposed rule change should not impact any contractual agreement between a representative and his or her former firm or new firm and does not require members to disclose information in a manner inconsistent with Regulation S–P.[82] The proposed rule change assumes that recruiting firms and representatives will act in accordance with the contractual obligations established in employment contracts, state law, and, if applicable, the Protocol for Broker Recruiting.[83]

Anti-Competitive Consequences of the Notice Proposal

The Notice Proposal solicited comment on whether the proposal will affect business practices and competition among firms with respect to recruiting and compensation practices. Many commenters stated that a general disclosure is preferable to specific disclosure of recruitment compensation because specific disclosure may have anti-competitive consequences.[84] Two of these commenters noted that the proposal is an indirect restraint on trade and suppresses fair competition inconsistent with the requirements of a registered securities association under the Exchange Act.[85] Numerous commenters stated that the proposal may constructively operate as a restrictive covenant not to compete if representatives are essentially restrained from transitioning to a new firm because of disclosures that are applicable only to their industry, which may result in a representative remaining with a less competitive or unethical firm.[86] Two commenters noted that the proposal will dampen innovation and harm customers.[87] One commenter cautioned that the proposal could cripple the opportunities for representatives to merge and consolidate their practices and to be compensated for their expenses.[88] Another commenter disagreed and stated that competition for talented representatives will not be affected by the proposal.[89]

Three commenters noted that the proposal deepens the regulatory gap between broker-dealers and registered investment advisers and posited that it could have the result of driving representatives into the registered investment adviser business.[90] One commenter suggested that FINRA work with the Commission and the states to adopt similar disclosure requirements for registered investment advisers so that representatives who switch to an adviser firm will also be subject to the proposed disclosure requirements.[91]

FINRA believes that representatives should have the freedom to transfer firms for any business reason. The proposed rule change is not designed to obstruct representatives from moving to a situation that better suits their needs and the needs of their customers. FINRA does not believe that the proposed rule change will prevent representatives from transferring firms by simply requiring the disclosure of key information that a former customer should consider before making a decision to move his or her assets to a new firm. Further, the proposed disclosure of recruitment compensation ranges is less intrusive than the more specific requirements of the Notice Proposal and should cure many of the concerns that the proposed rule change would be anti-competitive. Based on consultation with FINRA's advisory committees and discussions with member firms, FINRA does not anticipate that industry-wide uniform disclosure of recruitment compensation of $100,000 or more for each category of recruitment compensation will have the effect of stalling representatives' movement between firms. With respect to commenters' concerns regarding the disparate treatment of registered investment advisers under the proposed rule, FINRA notes that registered investment advisers are subject to the oversight of the SEC pursuant to the Investment Advisers Act of 1940 and a disclosure regime established by the Form ADV (Uniform Application for Investment Adviser Registration).[92]

Disclosure Is Misleading to Customers Without Context

Two commenters questioned the value of the proposed disclosure without any context to explain the justification and basis for the

[81] Sutherland.

[82] *See* 17 CFR 248.15(a)(7)(i).

[83] The Protocol for Broker Recruiting (the ''Protocol'') was created in 2004 and permits departing representatives to take certain limited customer information with them to a new firm, and solicit those customers at the new firm, without the fear of legal action by their former employer. The Protocol provides that representatives of firms that have signed the Protocol can take client names, addresses, phone numbers, email addresses and account title information when they change firms, provided they leave a copy of this information, including account numbers, with their branch manager when they resign.

[84] Ameriprise, Cetera, Janney, Lax, Stifel, Sutherland, Wedbush.

[85] Cetera, Janney.

[86] Burns, Burke, Elzweig, Janney, Smith Moore, Steiner, Stifel, Taylor, Wilson.

[87] Burns, Elzweig.

[88] Capstone-AG.

[89] UBS.

[90] Ameriprise, FSI, Janney.

[91] WFA.

[92] *See* Form ADV, Section 2B, Item 5 (Additional Compensation): ''If someone who is not a client provides an economic benefit to the supervised person for providing advisory services, generally describe the arrangement. For purposes of this Item, economic benefits include sales awards and other prizes, but do not include the supervised person's regular salary. Any bonus that is based, at least in part, on the number or amount of sales, client referrals, or new accounts should be considered an economic benefit, but other regular bonuses should not.''

recruitment compensation arrangement.[93] Two other commenters stated that customers may think that the amount is a measure of the new firm's endorsement of the representative.[94] Commenters also noted that customers will not be able to fully understand a recruitment package without having a full picture of all the factors involved, including, among other things, the risks and costs of a transition,[95] personal reasons for a move,[96] lost revenues suffered during the transition and first months at a new firm, and without relative frames of reference regarding the representative's compensation, such as the size of the representative's book of business or average annual revenues.[97] Other commenters stated that customers are not experienced enough to know the right questions to ask or the proper due diligence to perform without context, including, among other things, that the arrangement may involve minimum customer asset transfer amounts or minimum revenue amounts attached to asset transfers for payments to fully vest.[98] One commenter asked whether the disclosure may be accompanied by a statement explaining the other factors considered when making the move to the new firm, such as the availability of research and market analysis.[99] Three commenters noted that there are many reasons why a representative will move firms so the financial incentives received should not call into question the motivation behind such a move or serve as an indication that the move was for any other reason than in the best interest of clients.[100]

FINRA believes it appropriate to allow a member to provide context to inform a former customer's decision-making process and enhance his or her understanding of recruitment compensation arrangements, and other considerations such as costs, fees and portability issues that may impact the customer. Therefore, FINRA plans to include on the FINRA-developed disclosure template a free text section in which a member or representative may choose to include contextual information to explain the reasoning and basis for the recruitment compensation package and information regarding costs, fees and portability issues that may impact the former customer. FINRA believes that any information that may clarify the disclosures is appropriate so long as it is not misleading.

Notice Proposal Is Too Broad

Four commenters suggested that the proposal should exclude transition assistance designed solely to help offset the costs incurred by representatives to switch firms.[101] One commenter requested that transition assistance associated with loss of insurance renewals due to vesting restrictions be excluded from the proposed disclosure requirement.[102] Two commenters questioned the need for a disclosure requirement for asset-based recruitment compensation.[103] One commenter recommended that FINRA incorporate an exception in the proposed rule for firms that do not include commission targets as part of enhanced compensation arrangements.[104] Some commenters also noted that the proposal should be narrowed to include only compensation that presents a material conflict of interest[105] or FINRA should prohibit practices deemed to have greater conflicts of interest, *e.g.,* bonuses tied to commission or revenue goals and enhanced payout arrangements.[106] One commenter stated that enhanced compensation means something different to a wirehouse representative than transition assistance for a representative in an independent broker-dealer model who employs a staff, has mortgage payments on leased commercial space, and may take three or more months to get the business up and running.[107]

FINRA believes the proposed rule change to require disclosure of recruitment compensation ranges beginning at $100,000 as applied separately to aggregate upfront payments and aggregate potential future payments would establish a threshold that would exclude many payments intended only to cover transition assistance, such as relocation and various overhead costs (*e.g.,* office equipment, new business cards and letterhead). FINRA believes amounts above that threshold, particularly those based on a representative's trailing 12, are properly included in the disclosure requirement, as they are significant enough to bear on the representative's motivation to move firms and may prompt questions by former customers based on a review of their account activity. FINRA also notes that the proposed rule change would permit members to net out any increased costs incurred directly by the registered person in connection with transferring to the member in calculating whether a threshold is met.

With respect to commenters' suggestion that asset-based recruitment compensation be excluded from the proposed rule change, FINRA does not agree. FINRA believes that asset-based recruitment packages present the same level of conflicts of interest when a member or a representative attempts to induce a former customer to transfer assets to the member because the representative's interest in asset gathering at the new firm may not align with the customer's best interest as to where to maintain those assets. As noted in Item A., most recruitment compensation packages are based, in part, on a representative's asset levels at his or her previous firm and members take these numbers into consideration when calculating recruitment compensation packages with an understanding that many of the representative's former customers will follow their representative to a new firm.

De Minimis Exception

The Notice Proposal included an exception to the disclosure requirement for recruitment compensation of less than $50,000. The proposal requested comment on whether FINRA should establish an amount different from the proposed $50,000 for a de minimis exception. One commenter supported the $50,000 de minimis proposal, asserting that it was reasonable, would significantly reduce the burden for firms that pay only true transition assistance, and would allow firms to cover a representative's out of pocket expenses in many cases without triggering disclosure.[108] Several commenters stated that $50,000 is an arbitrary and nominal threshold.[109] Some commenters stated that the proposed de minimis was too low a threshold amount to cover the substantial costs incurred by representatives who transition firms.[110] Two of these commenters suggested that the de minimis exception should be raised to

[93] MarketCounsel, Taylor English.

[94] Burns, Elzweig.

[95] Cutter, Smith Moore.

[96] Noble.

[97] Bischoff, Burns, Wedbush.

[98] Capstone-FA, Plexus.

[99] LaBastille.

[100] Janney, NAIFA, Summit-B.

[101] Commonwealth, NAIFA, Summit-B, Summit-E.

[102] Summit-E.

[103] Burns, Sutherland.

[104] Summit-E.

[105] Commonwealth, FORM, Herskovits, Lincoln, LPL, Sutherland.

[106] Wedbush.

[107] Ameriprise.

[108] HDVest.

[109] Commonwealth, Cutter, FSI, Lax, Smith Moore, Summit-B, Summit-E.

[110] Commonwealth, Lax, NAIFA, Wedbush.

$100,000 or higher.[111] Other commenters thought the $50,000 disclosure was too high and suggested a $25,000 de minimis exception.[112] Others suggested an alternative to the $50,000 de minimis amount that would require disclosure of any recruitment compensation that exceeds a certain percentage of the previous 12-month calendar year commissions.[113] One commenter asked if FINRA considered account transfer and registration costs when establishing the de minimis exception.[114] A few commenters warned that firms may restructure arrangements and use the de minimis exception as a means to avoid disclosure.[115] Two commenters ask how the de minimis exception would be calculated in cases of unspecified dollar amounts at the time of transfer, such as covering transfer costs and deferred incentives.[116]

In response to the comments, FINRA revised the proposal to include an effective de minimis exception for any recruitment compensation in an amount less than $100,000, as applied separately to aggregate upfront payments and aggregate potential future payments. In addition, the proposed rule change permits members to net out from the calculation of recruitment compensation (and total compensation for purposes of reporting to FINRA) any increased costs incurred directly by the representative in connection with transferring to the member. FINRA believes that the combination of raising the de minimis amount and allowing firms to net out costs directly incurred by a representative in a transfer addresses many of the commenters' concerns.

With respect to the comments regarding how the de minimis exception would be calculated in cases of unspecified dollar amounts at the time of transfer, such as covering transfer costs and deferred incentives, FINRA notes that the proposed rule change includes supplementary material that clarifies that the member must assume that all performance-based conditions on the compensation are met and may make reasonable assumptions about the anticipated gross revenue to which an increased payout percentage will be applied.

[111] NAIFA, Wedbush.

[112] PIABA, UBS.

[113] Commonwealth, Korth, Summit-B, Summit-E.

[114] Taylor English.

[115] Lax, Miami, Showalter.

[116] NAIFA, Taylor English.

Notice Proposal Should Be Expanded

Numerous commenters questioned why FINRA singled out recruitment compensation when it is just one piece of a total compensation package offered by a recruiting firm.[117] Such commenters noted that isolating recruitment compensation for inspection by customers is misleading because it does not present a conflict of interest significantly greater than other incentives offered in the ordinary course of business or in the form of retention bonuses and other compensation. One commenter recommended that firms report to FINRA their recruitment compensation, retention compensation and other incentives, and FINRA can determine whether a compensation package is justified.[118] One commenter noted that the proposal seemed unnecessarily limited by excluding such benefits as new territories, new titles, and new high net worth customers.[119] Another commenter suggested that FINRA require disclosure of additional gross compensation paid to the representative when it is more than 15 percentage points higher than a representative received at his or her previous firm.[120]

One commenter suggested that FINRA consider the fair dealing obligations of the representative's former firm when communicating with a representative's clients about staying with the firm because they may offer financial incentives to retain the accounts.[121] One commenter noted that many current employee contracts are full of deterrent and non-compete provisions that can also be seen as conflicts of interest.[122] In addition, one commenter noted that branch managers may be paid a bonus six to nine months after a representatives departs a firm based on the amount of assets that did not follow the representative to his or her new firm.[123] Another commenter stated that firms should be required to disclose when they terminate representative payouts thus incentivizing the representative to look for new opportunities.[124]

FINRA understands the commenters' concerns that the proposal does not require disclosure of retention bonuses and other incentive compensation to customers. With the proposed rule change, FINRA is primarily concerned with providing customers impactful information to consider when deciding whether to transfer assets to a representative's new firm. Therefore, in response to these comments, FINRA has focused more narrowly on the costs and conflicts associated with that decision by a customer. FINRA notes that incentives offered while the representative is situated at a firm do not implicate the same considerations, such as transfer costs and portability issues.

However, FINRA is interested in how compensation packages may be influencing representatives and their sales practice activities, so it is proposing a requirement that members report to FINRA at the beginning of the employment or association of a representative that has former customers if the member reasonably expects the total compensation paid to the representative by the member during the representative's first year of employment or association with the member to result in an increase over the representative's prior year compensation by the greater of 25% or $100,000. In determining total compensation, the member must include any aggregate upfront payments, aggregate potential future payments, increased payout percentages or other compensation the member reasonably expects to pay the representative during the first year of employment or association with the member. FINRA will review the proposed rule within an appropriate period after its approval and implementation to determine whether it is achieving its intended purpose and whether it is having unintended effects. As part of that review, FINRA will determine whether to eliminate the reporting requirement if the information is not useful, or expand it to other material increases in compensation, such as retention bonuses, that may result in increased risk to customers.

One commenter stated that the proposal should more clearly spell out for customers the practical and personal impacts of the potential conflicts to permit an informed decision about whether to transfer assets to the representative's new firm.[125] Another commenter suggested that investors should have answers to questions such as whether: (1) Products and services can be transferred to the new firm; (2) the investor will have to pay fees to the old or new firm to make a transition; or (3) the recruitment compensation package involves sales targets or other

[117] BDA, Bischoff, Burke, Burns, Capstone-AG, FORM, FSI, MarketCounsel, Miami, Lincoln, NAIFA, NASAA, Smith Moore, Steiner, Taylor English, WFA.

[118] Smith Moore.

[119] Plexus.

[120] Korth.

[121] WFA.

[122] Spartan.

[123] Burns.

[124] Showalter.

[125] SIFMA.

incentives that may impact their accounts.[126] The proposed rule change addresses these comments by requiring disclosure to former customers if transferring the former customer's assets to the member will result in costs to the former customer, such as account termination or account transfer fees from the former customer's current firm or account opening or maintenance fees at the member, that will not be reimbursed by the member, and if any of the former customer's assets are not transferable to the member and that the former customer may incur costs, including taxes, to liquidate and transfer those assets to the member or inactivity fees to leave those assets with the former customer's current firm. In addition, the proposed rule would require disclosure of the basis of any aggregate upfront payments and aggregate potential future payments received, or to be received, of at least $100,000 by the representative. FINRA believes such disclosure will prompt a dialogue between former customers and their representatives about the impacts the structure and magnitude of a recruitment package may have had on their accounts at the previous firm, and may have on an account at the recruiting firm if the customer decides to transfer assets.

Disclosure at First Contact With a Former Customer

The Notice Proposal required disclosure of the details of the enhanced compensation to be made orally or in writing at the time of first individualized contact by the member or representative with the former customer after the representative has terminated his or her association with the previous firm. If the disclosure was made orally, the recruiting firm also would have been required to provide the disclosure in writing to the former customer with the account transfer approval documentation. When individualized contact with that former customer had not occurred and the customer sought to transfer an account from the previous firm to a broker-dealer account assigned to the representative with the recruiting firm, the recruiting firm also would have been required to provide the disclosure in writing to the former customer with the account transfer approval documentation. The Notice Proposal asked for comment on whether the proposed rule should require written disclosure at first individualized contact in all instances, rather than allowing oral disclosure.

[126] Edward Jones.

Many commenters opposed the proposal to require oral disclosure of recruitment compensation at the time of first individualized contact by the member or the representative, contending that such a requirement is unworkable and would present significant tracking and supervisory challenges for recruiting firms.[127] One commenter supported oral disclosure at first contact in lieu of written disclosure, stating that written disclosure at first contact is not practical from a business standpoint, jeopardizes the representative's move to the new firm, delays the transfer, and is a segmented approach.[128] Two commenters requested clarification that the requirement is limited to the initial contact that relates to the former client's transfer of an account and not an announcement of the representative's new employment.[129]

The proposed rule change retains the requirement to provide oral disclosures to a former customer when a member or representative makes individualized oral contact to attempt to induce the former customer to transfer assets to the member. FINRA believes that the administrative and tracking challenges of oral disclosure asserted by commenters do not outweigh the value in providing disclosures at the time of first individualized contact because it is the point at which a customer begins the decision-making process on whether to follow a representative to a new firm. FINRA does not believe that setting up policies and procedures to supervise a registered person's communications with former customers presents an unreasonable burden to members. Members already are obligated to supervise representatives' communications with customers and have flexibility to design their supervisory systems. FINRA notes that the commenters did not provide specific data to support their contention that oral disclosure at first individualized contact would be unworkable for recruiting firms.

Under the proposed rule, FINRA would consider a phone call to a former customer announcing a representative's new position with the member to qualify as first individualized contact and an attempt to induce the former customer to transfer assets to the member even when the conversation is limited to an announcement. Therefore, the proposed disclosures must be provided orally during the phone call and must be followed by written disclosures sent within 10 business days from such oral contact or with the account transfer approval documentation, whichever is earlier.

One commenter supported written disclosure at first individualized contact, noting that disclosure may be overlooked by a customer if written disclosure is not required until the account transfer documentation.[130] Several commenters objected to the proposal to require written disclosure at first individualized contact, stating that it is impractical and interferes with the representative's ability to timely contact customers.[131] These commenters suggested instead that written disclosure be required at or prior to account opening because it gives customers an opportunity to comprehensively review the disclosure.

The proposed rule change retains the requirement to provide written disclosures at the time of first individualized contact with a former customer if such contact is in writing. FINRA believes disclosure at first individualized contact is more effective than disclosure at or prior to account opening because customers typically have already made the decision to transfer assets by that point in the process. FINRA does not believe that it is particularly burdensome to require members to include as part of a written communication to former customers a disclosure form that includes key information for the customer to consider in making a decision to transfer assets to a new firm. In addition, FINRA believes that the information required by the proposed disclosures should be accessible to the recruiting firm and the representative at the time first contact is made by the recruiting form or the representative. The proposed rule change provides that a recruiting firm may rely on the reasonable representations of the representative, supplemented by the actual knowledge of the recruiting firm, in determining whether a disclosure must be made to a former customer. If after considering the representations of the newly hired representative, the firm cannot make a determination regarding the portability of a former customer's products, the firm must advise former customers in the disclosure to ask their current firm whether any of their securities account assets will not transfer and what costs, if any, the customers will incur to liquidate and transfer such assets or

[127] Advisor Group, Cetera, Cutter, Merrill, Miami, PIABA, Showalter, Summit-B, Taylor English, WFA.

[128] Summit-E.

[129] Ameriprise, Gehring.

[130] PIABA.

[131] Commonwealth, Lax, Merrill, Summit-B, Summit-E, Taylor English, UBS, WFA.

keep them in an account with their current firm. The firm must further disclose that nontransferable securities account assets will be identified to the former customer in writing prior to, or at the time of, validation of the account transfer instructions.

The Notice Proposal also solicited comment on whether the proposal should require a representative to disclose specific amounts of recruitment compensation to any customer individually contacted by the representative regarding such transfer while the representative is still at the previous firm. Numerous commenters objected to such a requirement while the representative is still at the previous firm,[132] suggesting that it would be unworkable from an operational and supervisory standpoint,[133] unnecessary to fulfill the goals of the proposal,[134] would interfere with the representative's ability to give notice to the firm, and may violate existing statutory or contractual obligations to the firm.[135] Based on the comments, FINRA did not incorporate such a requirement in the proposed rule change. However, if FINRA finds that representatives are contacting former customers before association or employment with the new firm as a way to avoid making the disclosures required by the proposed rule, FINRA will consider future rulemaking in this area.

One-Year Disclosure Period

The Notice Proposal would have required the proposed disclosure to former customers for one year following the date the representative associates with the recruiting firm. The Notice Proposal requested comment on whether the proposal should apply a different time period. Commenters had mixed views on the issue. Three commenters supported the proposed disclosure period of one year following the date the representative associates with the recruiting firm.[136] Four commenters recommended that the disclosures should apply for the period that the representative is receiving enhanced compensation.[137] Two commenters recommended a disclosure period of 90 days from the date the representative associates with the new firm [138] and one commenter recommended 90 to 180 days from such date.[139] One commenter suggested a disclosure period of six months to one year from the date of hire because most representatives contact their clients within the first six months of employment.[140] Another commenter stated that the one-year time period is arbitrary and seems extensive based on typical transfer time.[141]

The proposed rule change retains the proposed requirement for disclosure to former customers for a period of one year following the date the representative begins employment or associates with a member. As noted in Item B., FINRA understands that most customers who transfer assets to the recruiting firm do so soon after the representative changes firms so the one-year period should be sufficient to ensure that virtually all former customers that the recruiting firm or representative attempt to induce to transfer assets to the recruiting firm receive the disclosure. FINRA is not proposing a shorter time period for the proposed disclosures because it also understands it may take some former customers longer to make a determination to transfer assets to the representative's new firm, particularly if such customer is initially hesitant about transferring assets to the new firm. FINRA believes the disclosure information is equally relevant for customers that wait some time to consider transferring assets to the new firm and that one year is a reasonable cutoff. FINRA believes the burden of compliance should diminish over the year period, consistent with early efforts to induce former customers to transfer their assets.

Who Should Receive Disclosure

The Notice Proposal would have required disclosure to any former customer with an account assigned to the representative at the previous firm who is individually contacted by the recruiting firm or representative, either orally or in writing, regarding the transfer of the securities employment (or association) of the representative to the recruiting firm; or seeks to transfer an account from the previous firm to a broker-dealer account assigned to the representative with the recruiting firm. The Notice Proposal requested comment on whether the proposal should apply to all customers recruited by the transferring representative during the year after transfer. FINRA also asked for comment on whether it should apply to any new broker-dealer account assigned to the representative with the recruiting firm opened by a former customer of the representative in addition to accounts transferring from the previous firm.

Commenters were split on who should receive the proposed disclosure of specific compensation. One set of commenters suggested that the proposal should focus on the conflict that exists when a representative asks a former customer to move to the recruiting firm, so only former customers should receive the disclosure.[142] Another set of commenters stated that all clients, including new clients at the recruiting firm, should receive the proposed disclosure.[143] One commenter stated that the proposal should be expanded beyond retail customers to include institutional customers, because their asset levels make them particularly susceptible to misconduct aimed at increasing a representative's production.[144]

The proposed rule change would apply to customers that meet the definition of a ''former customer'' under the proposed rule. This would include any customer that had a securities account assigned to a representative at the representative's previous firm and would not include a customer account that meets the definition of an institutional account pursuant to FINRA Rule 4512(c); provided, however, accounts held by any natural person would not qualify for the ''institutional account'' exception. FINRA agrees with the commenters that suggested that the proposed rule change should address the conflict that exists when a representative attempts to induce a former customer to move assets to the recruiting firm. FINRA believes that former customers that a member or representative attempts to induce to transfer assets to a new firm are most vulnerable in recruitment situations because they have already developed a trusting relationship with the representative and because their assets may be both the basis for the representative's recruitment compensation (if the representative's upfront payments and potential future payments are asset-based or production-based) and subject to potential costs and changes if the customer decides to move those assets to the recruiting firm. FINRA did not extend the application of the proposed rule to non-natural person institutional accounts because it believes that such accounts are more sophisticated in their dealings with

[132] Advisor Group, Ameriprise, Cetera, Lax, Taylor English, SIFMA, UBS, Wedbush, WFA.

[133] Ameriprise, SIFMA.

[134] Taylor English, WFA.

[135] Lax.

[136] Summit-B, UBS, WFA.

[137] Cornell, Miami, PIABA, Ruchin.

[138] Commonwealth, Sutherland.

[139] Summit-E.

[140] Wedbush.

[141] Cutter.

[142] Commonwealth, Cutter, NAIFA, Summit-B, Summit-E, Sutherland, UBS.

[143] Cornell, Miami, PIABA, Ruchin.

[144] Miami.

representatives and that the proposed disclosure would not have as significant an impact on their decision whether to transfer assets to a new firm.

Customer Affirmation

The Notice Proposal also requested comment on whether the proposed rule should include a requirement that a customer affirm receipt of the disclosure regarding recruitment compensation at or before account opening at the new firm. FINRA was interested, in particular, in the potential for such a requirement to delay the account opening process in a manner that could disadvantage customers. A majority of the commenters that responded to this request opposed a customer affirmation requirement because it would cause delays in the account opening and transfer process, create an additional layer of tracking, review and approval to members' operations, may disadvantage clients, and would impose costs and an undue burden on members.[145] Two commenters supported a requirement for written customer affirmation and suggested using a standard form in the new account paperwork that would not be overly burdensome to members.[146]

The proposed rule change does not incorporate a written customer affirmation requirement. FINRA believes that the requirements to provide disclosure at the time of first individualized contact with a former customer, to follow up in writing if such contact is oral, and to deliver the disclosures with the account transfer approval documentation when no individual contact is made, will ensure that former customers receive and have an opportunity to review the proposed disclosure before they decide to transfer assets to a new firm. At this time, FINRA does not believe that a customer affirmation is necessary to accomplish the goals of the proposed rule change, especially in light of commenters' concerns that such a requirement may delay the account opening and transfer process. FINRA will assess the effectiveness of the disclosure requirement without a customer affirmation requirement following implementation of the proposed rule. If FINRA finds that the proposed disclosures alone are not attracting the attention of customers to influence their decision-making process, then it will reconsider a customer affirmation requirement.

[145] Cetera, Janney, NAIFA, Taylor English, Wedbush.

[146] Cornell, Summit-E.

Economic Impacts of the Notice Proposal

The Notice Proposal requested comments on the economic impact and expected beneficial results of the proposed rule. Specifically, FINRA asked for comment on what direct costs for the recruiting firm will result from the rule, and what indirect costs will arise for the recruiting firm or its transferring persons. Three commenters stated that the proposal will generate significant administrative challenges and implementation costs for firms and representatives, including additional paperwork and forms, tracking mechanisms, training, and new policies and procedures.[147] Two commenters stated that there will be initial implementation costs, but they are warranted to elevate industry standards and provide better information to clients before they transfer their accounts to a new firm.[148] One commenter stated that the disclosure can be included with new account documentation so it will not delay the account transfer process or impose significant costs on firms.[149] One commenter suggested that FINRA should conduct a cost-benefit analysis of the proposal that assesses the impact not only on customers, but also the attendant impact on representatives, firms, and restraints on trade.[150] Two commenters asked whether the proposal would include an obligation to disclose modifications to recruitment compensation packages with an updated disclosure to former customers who have already transferred assets to the recruiting firm.[151]

Despite a request for quantitative comments, the commenters that stated that the proposal will generate significant administrative challenges and implementation costs did not provide specific costs or empirical data upon which to base their assertions. FINRA has given careful consideration to the economic impacts of the proposed rule change. It has considered the comments to the Notice Proposal, as well as feedback from its advisory committees, other industry members and the public. Based on the input received, FINRA does not believe that the proposed rule change will result in unsupportable administrative and implementation challenges for members. As with most rule changes, the proposed rule change would likely require updates to members' systems and procedures; however, FINRA believes the burden of such updates are outweighed by the significant benefit to retail investors in receiving key information relevant to a decision to transfer their assets to a new firm and the benefit to FINRA's risk-based examination process by receiving information related to significant increases in a representative's compensation in the first year at a recruiting firm.

As discussed in Item B., FINRA has made several changes to the Notice Proposal that will assist members and reduce the burdens of compliance: Among other things, the proposed rule change includes a $100,000 de minimis exception that applies separately to aggregate upfront payments and aggregate potential future payments, allows members to net out costs paid to a representative as reimbursement for direct costs incurred by a representative in a move, includes a FINRA-developed disclosure template, and allows disclosure of recruitment compensation ranges instead of specific amounts to protect the privacy of transferring representatives. In addition, members may rely on the reasonable representations of a representative regarding the cost and portability disclosures and, although such disclosures must be affirmative as they relate to each former customer's assets, the disclosures do not have to be specific as to the amount of costs or products that will not transfer.

With respect to the commenters' question regarding disclosure of modifications to a representative's recruitment compensation package, FINRA is not aware that recruitment packages typically are modified after a recruited representative has associated with the recruiting firm. To the extent that practice occurs and is not designed to circumvent the requirements of the proposed rule, the proposed rule change would not require any such modifications to be disclosed to customers that have already transferred their accounts. FINRA notes that the proposed rule is focused on a former customer's decision to transfer assets to the recruiting firm. A modification to the recruitment package cannot affect the decisions of customers that have already transferred assets (unless they have additional assets that could still be transferred). However, FINRA cautions that any aspects of the recruitment package that were agreed upon prior to the representative associating with the recruiting firm—including any modifications that would take effect at a later date—would be considered either upfront or potential future payments for

[147] Advisor Group, Summit-E, Sutherland.

[148] Edward Jones, UBS.

[149] Cornell.

[150] Janney.

[151] Cetera, Taylor English.

the purposes of the disclosure obligation.

Small Firms Concerns

The Notice Proposal solicited comment on whether the impacts of the proposal with respect to changes in business practices and recruiting efforts differentially will affect small or specialized broker-dealers. Six commenters stated that compliance with the proposal will be more difficult for small firms with limited operational resources and supervisory personnel and will make recruiting efforts more challenging.[152]

In crafting the proposed rule change, FINRA considered its potential impacts on small firms and specialized broker-dealers. The proposed rule change provides for disclosure of recruitment compensation in ranges only for amounts of $100,000 or more, as applied to two separate categories of recruitment compensation. Based on input from members, including independent broker-dealers and small firms, FINRA believes that the $100,000 thresholds as applied separately to aggregate upfront payments and aggregate potential future payments for purposes of disclosure to former customers and the greater of 25% or $100,000 over the representative's prior year's compensation for purposes of reporting total compensation to FINRA will exclude most small firms and specialized broker-dealers from the proposed rule because such firms are not likely to offer recruitment compensation or total compensation packages that meet the proposed thresholds, particularly when, as permitted under the proposed rule, direct costs incurred by the representative in connection with the transfer are netted out from the calculation.[153] FINRA believes that, to the extent that a small firm or specialized broker-dealer does pay the significant levels of recruitment compensation captured by the proposed rule change, their customers should similarly be provided the disclosure that will facilitate an informed decision as to whether to transfer assets to the representative's new firm. FINRA also is proposing disclosure to former customers via a FINRA-developed template that would save all members, small and large, from the resources, administration and costs related to developing a disclosure form that would meet the requirements of the proposed rule.

[152] Cetera, Gompert, Janney, Plexus, Summit-E, Whitehall.

[153] *See* proposed FINRA Rule 2243.04.

Alternatives Suggested

One commenter recommended that FINRA adopt a rule that would prohibit recruitment compensation over $100,000 to level the recruiting playing field among all members and eliminate potential or perceived conflicts of interest.[154] Another commenter suggested that the disclosure should be given by the firm the representative is leaving and should be provided to all clients of the departing representative at the time of his or her resignation.[155] A few commenters believed that placing the burden on firms to enhance their supervisory structure and develop comprehensive policies and procedures related to conflicts identification and disclosure would better serve the industry and investors.[156] One commenter suggested that FINRA allow members to make their own business decisions and determine what is competitive and profitable for them regarding recruitment practices.[157] Another commenter suggested amending the proposal to require the member to disclose compensation paid by its non-member affiliates to a transferring representative to avoid a loophole for dual-hatted representatives.[158] One commenter asked FINRA to evaluate whether the proposed rule should apply to all client-facing professionals (investment bankers, institutional sales representatives, financial planners, sales traders) who receive recruitment compensation.[159] Two commenters stated that recruiting firms should be required to send clients a FINRA-drafted pamphlet that flags issues related to transitions, so clients can make their own determination as to what information they consider important in evaluating whether they should follow their representative to a new firm.[160]

As detailed in Item B., FINRA has considered numerous alternatives suggested by the commenters to the Notice Proposal but believes that the proposed rule change strikes an appropriate balance to increase transparency with respect to recruitment practices without creating unnecessary costs or burdens on members and their representatives. As to these commenters' suggestions, FINRA does not believe it appropriate to regulate the amount of recruitment compensation paid to representatives; rather, the proposed rule change seeks to provide disclosure related to compensation incentives to the extent it may impact a retail investor's decision whether to follow his or her representative to a new firm. FINRA believes the recruiting firm that is paying representatives recruitment compensation in amounts that meet the proposed thresholds is in the best position to provide the required disclosures. FINRA encouraged members in its *Report on Conflicts of Interest* to enhance their supervision of representative's activity around the time of compensation thresholds;[161] however, the primary focus of the proposed rule change is to provide retail investors with important cost information and transparency of conflicts related to the decision whether to transfer assets to a representative's new firm. FINRA also notes that the proposed rule change would require disclosure of recruitment compensation paid by non-member affiliates to the extent those amounts, when combined with any recruitment compensation paid by the recruiting member, exceed the $100,000 thresholds for each category of recruitment compensation. The proposed rule change would apply to recruitment compensation paid to any registered person; however, FINRA notes that investment bankers and other types of registered persons not involved in retail sales are unlikely to have retail customers whose assets might be induced to transfer.

Finally, FINRA believes the more specific disclosure that would be required under the proposed rule change will appreciably benefit retail customers more than a general pamphlet that sets out considerations without providing the actual information related to those considerations. FINRA will continue to evaluate alternatives based on the comments received on the revised proposal.

Implementation and Requests To Delay Rulemaking

Some commenters expressed concerns regarding the implementation of the proposal. Five commenters noted that due to the nature of some enhanced compensation arrangements (*e.g.,* deferred incentives or modifications to a package) it will be difficult to calculate dollar amounts at the time of transfer.[162] Two commenters requested guidance on how recruitment

[154] Wedbush.

[155] Oppenheimer.

[156] FSI, Janney, NASAA.

[157] Midwestern.

[158] Gehring.

[159] Janney.

[160] Burns, Miami.

[161] *Report on Conflicts of Interest,* FINRA, October 2013, available at, *http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf.*

[162] Ameriprise, NAIFA, Summit-B, Sutherland, Taylor English.

compensation should be calculated and disclosed, by group or individual, where bonuses are given to a group of brokers and assistants who move to a new firm together.[163] One commenter requested that FINRA allow adequate time for implementation.[164] Another commenter suggested limiting the application of the rule to those hired after the rule goes into effect.[165]

One commenter suggested that it would be prudent for FINRA to assemble a working group to collect qualitative information related to the use of recruitment compensation in the industry to make a well-informed decision about how best to proceed in order to achieve its intended goals.[166] One commenter noted that the proposal should consider FINRA's proposal in *Regulatory Notice* 10–54 (Disclosure of Services, Conflicts and Duties) and Section 919 of the Dodd-Frank Act,[167] which grants permissive authority to the SEC to engage in rulemaking with respect to compensation practices, because a comprehensive review of the required disclosure regime for broker-dealers would result in a more thoughtful, consistent and effective set of disclosures that would be most likely to benefit investors.[168] Another commenter suggested that FINRA integrate the proposal with the pre-engagement disclosures contemplated in *Regulatory Notice* 10–54.[169] Two commenters recommended that FINRA delay further regulatory action until the conflicts initiative is completed.[170] Finally, one commenter noted that FINRA should do a global conflicts assessment not limited to this isolated and singular conflict.[171]

FINRA believes that members are in a position to calculate recruitment compensation for purposes of the proposed disclosure requirement at the time a representative or the member attempts to induce a former customer of the representative to transfer assets to the representatives' new firm. FINRA notes that the representative will already be associated with or employed by the member, so all compensation arrangements between the representative and the member should be clear and agreed to by all parties. The proposed rule change also provides guidance with respect to calculating recruitment compensation and total compensation for the purpose of the proposed disclosure and reporting requirements, respectively: members must assume that all performance-based conditions on the representative's compensation are met, may make reasonable assumptions about the anticipated gross revenue to which an increased payout percentage will be applied and may net out any increased costs incurred directly by the registered person in connection with transferring to the member. With respect to a transfer of a group, or team, of representatives and staff, FINRA believes that members can make a reasonable determination regarding the application of recruitment compensation to each individual that transferred to the firm to make the required disclosures. FINRA will consider further guidance regarding application of the proposed rule change as issues arise.

FINRA understands the commenters' suggestions to delay rulemaking and incorporate the proposed rule change into other ongoing efforts related to conflicts of interest. However, FINRA believes that the proposed rule change should move forward at this time, as it is narrowly focused on a retail investor's important decision whether to transfer assets to a new firm, rather than conflicts associated with compensation practices more broadly. FINRA believes that former customers should begin receiving the proposed disclosures as soon as practicable so that they are fully informed before making a decision to transfer assets to a representative's new firm. FINRA will consider how the proposed rule change fits within the larger scheme of conflicts of interest regulations as the timetables on such other proposals progress. In addition, FINRA will establish a reasonable implementation period for the proposed rule change to provide members with sufficient time to update their internal systems and policies.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2014–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–010 and should be submitted on or before April 18, 2014.

[163] Cetera, LaBastille.

[164] Advisor Group.

[165] Gehring.

[166] FSI.

[167] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010).

[168] Sutherland.

[169] FSI.

[170] Advisor Group, FSI.

[171] Janney.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[172]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06895 Filed 3–27–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71784; File No. SR–BX–2014–014]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Clearly Erroneous Rule

March 24, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 18, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions.

The text of the proposed rule change is available from BX's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions. Portions of Rule 11890, explained in further detail below, are currently operating as a pilot program set to expire on April 8, 2014.[3] The Exchange proposes to extend the pilot program to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan''), including any extensions to the pilot period for the Plan.[4]

On September 10, 2010, the Commission approved, for a pilot period, a proposed rule change to Rule 11890 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The Exchange also adopted additional changes to Rule 11890 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11890,[6] and in 2013, adopted a provision designed to address the operation of the Plan.[7]

The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Plan.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[8] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Although the Limit Up-Limit Down Plan is operational, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. Thus, the Exchange believes that the protections of the Rule 11890 should continue while the industry gains further experience operating the Plan. The Exchange also believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. Thus, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[172] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 70542 (Sept. 27, 2013), 78 FR 61427 (Oct. 3, 2013) (SR–BX–2013–053).

[4] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[5] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (September 16, 2010).

[6] *Id.*

[7] Securities Exchange Act Release No. 68818 (Feb. 1, 2013), 78 FR 9100 (Feb. 7, 2013) (SR–BX–2013–010); *see also* Rule 11890(g).

[8] 15 U.S.C. 78f(b)(5).