# PUBLICATION

## New Requirements for Broker Recruitment

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**Background:**

On December 16, 2015, the Financial Industry Regulatory Authority (FINRA) proposed Rule 2273 requiring brokers who move to a new firm to send an "educational communication" to customers they want to take with them, informing the customers about the costs and other implications of transferring accounts to the representative's new firm, and suggesting questions a customer may want to ask to make an informed decision. On March 23, 2016, Rule 2273 was approved by the United States Securities and Exchange Commission (SEC). In Regulatory Notice 16-18, FINRA announced that Rule 2273 will be effective on November 11, 2016.

**Summary:**

Representatives who switch firms often contact former customers and emphasize the benefits the customers would experience if they followed the representative to his or her new firm. In doing so, representatives often stress the benefit to customers of maintaining their relationship with the representative. While FINRA acknowledges that a former customer's confidence in and prior experience with a representative may be one of the customer's most important considerations in determining whether to transfer assets to the new firm, FINRA is also concerned that customers may not be aware of other important factors that should be considered in making the decision whether to transfer assets, including direct costs that may be incurred. Addressing this concern, Rule 2273 requires the new firm to deliver an educational communication to customers that provides a more complete picture of the potential implications of a decision to transfer assets by highlighting key considerations in transferring assets to the new firm, and the direct and indirect impacts of such a transfer. The intent of Rule 2273 is to encourage retail investors to consider all relevant factors when deciding whether to transfer their assets.

**Requirements:**

***(1) The Educational Communication:***

Rule 2273 requires firms to provide a transferring representative's former customers with a concise, plain-English document that highlights the potential implications of transferring assets. The two-page educational communication prepared by FINRA is available here. The educational communication focuses on important considerations for a former customer who is contemplating transferring assets to an account assigned to his or her former representative at the representative's new firm. It highlights the following potential implications of transferring assets to the new firm: (1) whether financial incentives received by the representative may create a conflict of interest; (2) that some assets may not be directly transferrable to the new firm and as a result the customer may incur costs to liquidate and move those assets or account maintenance fees to leave them with his or her current firm; (3) potential costs related to transferring assets to the new firm, including differences in the pricing structure and fees imposed by the customer's current firm and the new firm; and (4) differences in products and services between the customer's current firm and the new firm.

***(2) Requirement to Deliver Educational Communication:***

A broad range of communications from the new, recruiting firm or its registered representative constitute individualized contact, which triggers the requirement to deliver the educational communication. These communications include, but are not limited to, oral or written communications by the transferring representative: (1) informing the former customer that he or she is now associated with a new firm, which would include customer communications permitted under the Protocol for Broker Recruiting (Protocol); (2) suggesting that the former customer consider transferring his or her assets or account to the new firm; (3) informing the former customer that the new firm may offer better or different products or services; and (4) discussing with the former customer the fee or pricing structure of the new firm. Notably, the term "former customer" means any customer that had a securities account assigned to a registered person at the representative's previous firm; however, does not include "institutional accounts" as defined by FINRA Rule 4512(c); provided however, that accounts held by a natural person do not qualify for the institutional accounts exception.

***(3) Timing and Means of Delivery:***

The communication must be delivered when the new firm, directly or through a representative, individually contacts a former customer of that representative to transfer assets or when a former customer of the representative, absent individual contact, transfers assets to an account assigned, or to be assigned, to the representative at the new firm. If the individualized contact is in writing, the educational communication must accompany the written communication. If the contact is by electronic communication, the new firm may hyperlink directly to the educational communication. If the contact is oral, the new firm or the representative must notify the former customer orally that an educational communication that includes important considerations in deciding whether to transfer assets to the member will be provided not later than three business days after the contact. If the former customer seeks to transfer assets to an account assigned, or to be assigned, to the representative at the new firm, but no individualized contact with the former customer by the representative or new firm occurs before the former customer seeks to transfer assets, the new firm must deliver the educational communication to the former customer with the account transfer approval documentation. The educational communication requirement applies for a period of three months following the date that the representative begins employment or associates with the new firm.

If you have any questions regarding these issues or any other securities related issues, please contact any of the attorneys in Baker Donelson's Broker-Dealer/Registered Investment Adviser group.