

**MEMO# 27822**

January 8, 2014

# **FINRA Issues Regulatory Guidance Reminding Firms of their Responsibilities Regarding IRA Rollovers**

[27822]

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TO: PENSION MEMBERS No. 1-14  
BROKER/DEALER ADVISORY COMMITTEE No. 2-14  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 1-14  
OPERATIONS COMMITTEE No. 1-14 RE: FINRA ISSUES REGULATORY GUIDANCE REMINDING  
FIRMS OF THEIR RESPONSIBILITIES REGARDING IRA ROLLOVERS

The Financial Industry Regulatory Authority (FINRA) recently issued Regulatory Notice 13-45 providing guidance regarding IRA rollovers. [\[1\]](#) The Notice was issued to remind firms of their responsibilities when (1) recommending a rollover or transfer of assets in an employer-sponsored retirement plan to an IRA, or (2) marketing IRAs and associated services. The Notice also states that the recommendation and marketing of IRA rollovers will be an examination priority for FINRA in 2014. You may recall that the U.S. Government Accountability Office (GAO) issued a report on plan rollovers in March, 2013, in which GAO concluded that the current rollover process favors distributions to IRAs. [\[2\]](#)

The Notice states that a broker-dealer's recommendation to roll over plan assets to an IRA, rather than keeping assets in a previous employer's plan or rolling such assets over to a new employer's plan, should reflect consideration of various factors, including:

The broader range of investment options available to the investor under an IRA versus an employer plan;

The fees and expenses associated with an IRA versus an employer plan;

The services provided to the investor under an IRA versus an employer plan;

The ability of the investor to take penalty-free withdrawals between ages 55 and 59½;

The level of protection from creditors and judgments applicable to IRA assets versus employer plan assets;

The impact of required minimum distributions; [3]

and

The negative tax consequences associated with rolling significantly appreciated employer stock into an IRA.

The Notice discusses the conflicts of interest that may exist in circumstances where a firm or their registered representatives recommend that an investor roll over plan assets to an IRA. In the Notice, FINRA urges broker-dealers to review their retirement services activities to access conflicts of interest and notes that firms must supervise these activities to reasonably ensure that conflicts of interest do not impair the judgment of a registered representative or another associated person about what is in the customer's interest and to ensure that they neither confuse investors nor interfere with important educational efforts. The Notice also reminds firms that NASD Rule 3010 requires broker-dealers to establish written supervisory procedures reasonably designed to ensure that their recommendations and marketing of IRA accounts and related services comply with applicable securities laws and FINRA rules and notes that NASD Rule 3012 requires firms to test and verify these procedures.

The Notice states that recommendations concerning the type of retirement account in which a customer should hold his retirement investments typically involves a recommended securities transaction and is thus subject to Rule 2111, FINRA's suitability rule. [4] Additionally, the Notice provides that FINRA Rule 2210, which governs communications with the public, applies to a broker-dealer's marketing of IRAs and related services. As a result, the guidance states that it would be false and misleading to imply that a retiree's only choice, or only sound choice, is to roll over his or her plan assets to an IRA sponsored by the broker-dealer. Finally, noting that some firms may provide educational information to plan participants regarding their retirement choices, the Notice states that firms that intend to provide educational information only should adopt measures reasonably designed to ensure that the firm and its associated persons do not make recommendations to plan participants that would trigger FINRA rule 2111.

Howard Bard  
Associate Counsel

#### **endnotes**

[1] FINRA Regulatory Notice 13-45 is available here: <https://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p418695.pdf>.

[2] See [Memorandum](#) to Pension Members No. 16-13 [27151], dated April 3, 2013. A copy of the GAO report is available here: <http://www.gao.gov/assets/660/652881.pdf>.

[3] The Internal Revenue Code's required minimum distribution rules generally require a plan participant to withdrawal a minimum amount from his or her retirement plan account annually starting with the year that he or she reaches 70 ½ years of age or, if later, the year in which he or she retires. However, if the retirement plan account is an IRA, the required minimum distributions must begin once the account holder is age 70 ½, regardless of whether he or she is retired.

[4] FINRA Rule 2111 is available here

[http://finra.complinet.com/en/display/display\\_viewall.html?rbid=2403&element\\_id=9859&print=1](http://finra.complinet.com/en/display/display_viewall.html?rbid=2403&element_id=9859&print=1). FINRA Rule 2111 generally provides that a FINRA member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile.

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