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# FINRA Proposed Rule Would Mandate Disclosure of 'Shelf Space' Payments

*By Joshua Horn – 05/16/2011*

Member firms have often had arrangements with the mutual fund industry pursuant to which broker-dealers have shared revenue with mutual funds where a member firm's client invested with a particular mutual fund company upon the recommendation of the member firm; this practice is commonly known as "shelf space" payments.

Shelf space payments have long been controversial in the industry because they were generally undisclosed, resulting in litigation against member firms. In an effort to address this perceived problem, the Financial Industry Regulatory Authority recently filed with the Securities and Exchange Commission a proposed rule change that would make the disclosure of such shelf space payments mandatory on the part of member firms.

Although information regarding shelf space payments is currently disclosed in mutual fund prospectuses and related documents and

certain member firms similarly disclose this information, the proposed rule makes disclosure a mandatory burden on member firms. The public can comment on this proposed rule up until May 31.

Under the proposed rule, FINRA would require member firms to prominently disclose information detailing that they receive cash compensation in exchange for recommending that their clients invest in certain mutual funds and that this compensation may impact the recommendation. In addition, FINRA would require that broker-dealers provide prominent references to both web pages and toll free telephone numbers that customers can contact for additional information regarding shelf space arrangements.

From FINRA's perspective, this new rule would represent additional disclosures of potential conflicts of interest that may arise from the sale of mutual funds. The industry has taken a converse position that such exposures would conflict with other rules and be confusing to investors.

In the end, this proposed rule was in all likelihood the result of consumer complaints that they were being steered to particular investments that may or may not be suitable only because their broker-dealer had a financial interest to do so.

Some may claim that this proposed rule is inconsistent with the recommended uniform fiduciary duty standard that emanated from Dodd-Frank. Considering the status of the promulgation of that standard, others may view this proposed rule as an intermediate step in that direction because we are a long way from any uniform

fiduciary duty becoming a reality, if ever. In other words, it will supplement and be consistent with any uniform fiduciary duty standard contemplated under Dodd-Frank because it will require the disclosure of one potential conflict of interest where Dodd-Frank will require the disclosure of conflicts of interest regarding all investments.

If the Dodd-Frank uniform fiduciary duty standard is ever adopted, FINRA can simply revisit this proposed rule and determine if further amendment is required. Assuming that this proposed rule becomes reality, broker-dealers will be on their way to having to comply with the types of disclosure that would be covered by a uniform fiduciary duty standard. Either way, shelf space arrangements will no longer be a secret and customers will be able to make informed decisions regarding potential investments recommendations from their broker-dealers.

([Joshua Horn](#) is a partner and co-chair of the Securities Industry Practice at Fox Rothschild in Philadelphia).