

## OMB APPROVAL

OMB Number: 3235-0045  
 Estimated average burden  
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 144	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2015 - * 014 Amendment No. (req. for Amendments *)
Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/> Amendment * <input type="checkbox"/> Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/> Section 19(b)(3)(A) * <input type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires *	Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/> Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">           Proposed Rule Change to Amend Rule 2210 (Communications with the Public) to Require Hyperlink to BrokerCheck on Member Websites         </div>		
<b>Contact Information</b> Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. <div style="margin-top: 20px;">           First Name * Jeanette      Last Name * Wingler            Title * Assistant General Counsel            E-mail * jeanette.wingler@finra.org            Telephone * (202) 728-8013      Fax (202) 728-8264         </div>		
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. <div style="text-align: center; margin-top: 10px;">           (Title *)         </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div>           Date 06/04/2015            By Patrice Gliniecki            (Name *)         </div> <div style="border: 1px solid black; padding: 5px; width: 60%;">           Senior Vice President and Deputy General Counsel  <div style="border: 1px solid black; padding: 2px; text-align: center; margin-top: 10px;">             Patrice Gliniecki,           </div> </div> </div>		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	
For complete Form 19b-4 instructions please refer to the EFFF website.	
<div>Form 19b-4 Information *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
<div>Exhibit 1 - Notice of Proposed Rule Change *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
<div>Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
<div>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
<div>Exhibit 3 - Form, Report, or Questionnaire</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
<div>Exhibit 4 - Marked Copies</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
<div>Exhibit 5 - Proposed Rule Text</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
<div>Partial Amendment</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 2210 to require each of a member’s websites to include a readily apparent reference and hyperlink to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. These requirements would not apply to a member that does not provide products or services to retail investors, or to a directory or list of registered persons limited to names and contact information.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on February 12, 2014, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation 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.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

(a) Purpose

FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository (“CRD<sup>®</sup>”), the securities industry online registration and licensing database. FINRA members, their associated persons and regulators report information to the CRD system via the uniform registration forms. By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

In January 2013, FINRA filed with the SEC a proposed rule change to amend FINRA Rule 2267 (Investor Education and Protection)<sup>2</sup> to require all members to include a prominent description of and link to BrokerCheck on their websites, social media pages and any comparable Internet presence, as well as on the websites, social media pages and any comparable Internet presence relating to a member’s investment banking or securities business maintained by or on behalf of any person associated with a member.<sup>3</sup> The

---

<sup>2</sup> Subject to limited exceptions, FINRA Rule 2267(a) requires members to provide annually in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that describes BrokerCheck.

<sup>3</sup> See Securities Exchange Act Release No. 68700 (January 18, 2013), 78 FR 5542 (January 25, 2013) (Notice of Filing of SR-FINRA-2013-002). See also infra Item 5 of the filing for further discussion of the 2013 filing and prior proposals.

proposed rule change was intended to increase investor awareness and use of BrokerCheck. The Commission received 24 comment letters in response to the proposed rule change. FINRA withdrew the filing to better understand commenters' concerns regarding the challenges of implementing the proposed rule change.

Many of the comments received on the 2013 proposed rule change expressed concern with the challenges of implementing the proposal with respect to social media pages, the lack of guidance with respect to terms and phrases in the proposed amendments, and the disadvantages of using a "deep" link to BrokerCheck summary reports that would bypass the BrokerCheck homepage.<sup>4</sup> Commenters suggested that the link to BrokerCheck be required initially for member websites, where its implementation would be relatively straightforward, and that the value of the link be assessed first in that context before expanding to third party sites.

In light of commenters' concerns, FINRA has developed a revised proposal that addresses member websites. Specifically, the revised proposal would amend FINRA Rule 2210 (Communications with the Public) to require each of a member's websites to include a readily apparent reference and hyperlink to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. The proposal would not apply to a member that does not provide products or services to retail investors, or a directory or list of registered persons limited to names and contact information.

---

<sup>4</sup> The SEC also received numerous comment letters that raised issues outside the scope of the proposed rule change to FINRA Rule 2267. These comment letters focused generally on concerns regarding the current operation and display of BrokerCheck reports.

FINRA believes that the revised proposal addresses many of the commenters' concerns on the original proposal to amend Rule 2267. By incorporating the proposed rule change into the regulatory framework for communications with the public, the revised proposal would group the proposed requirement with other related standards that apply to member websites. By excluding those members that do not provide products and services to retail investors, the revised proposal is more aligned with its goal of increasing retail investor awareness and usage of BrokerCheck. FINRA also believes that the revised proposal should reduce the potential burden on members by clarifying that the requirement would not apply to directory pages limited to registered persons' names and contact information, since firms would not need to include as many links to BrokerCheck on their websites.

The revised proposal also responds to commenters' concerns with respect to communications on third-party sites that are not controlled by the member, such as social media sites, by limiting its application to websites of the member, rather than applying its requirements to third-party sites, such as social media sites, which the member does not control. The revised proposal also no longer requires a deep link to the BrokerCheck report of a member or registered person; instead, it would require a link to the BrokerCheck homepage.

FINRA will announce the implementation 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.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> 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 help protect investors by making them aware of information available on BrokerCheck by requiring links to BrokerCheck on member websites.

**4. 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. FINRA recognizes that the proposed rule change would impose burdens on members associated with implementing references and hyperlinks to BrokerCheck on their websites and to keep those references and hyperlinks current. However, FINRA believes that by limiting the application of the proposal only to a member's own websites, the revised proposal significantly reduces these implementation costs for members, while maintaining the proposal's investor protection goals.

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

---

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

## Economic Impact Assessment

### A. Regulatory Need

BrokerCheck provides investors with information on the professional background, business practices, regulatory history, and conduct of members and their associated persons. Among other things, BrokerCheck helps investors make well-informed choices about the individuals and firms with which they conduct business. FINRA believes that the need for greater investor awareness and access to BrokerCheck continues to be important to protect investors. The proposed rule change will help increase investor awareness and make it easier for investors to find BrokerCheck by requiring references and hyperlinks to BrokerCheck on member websites.

### B. Economic Impacts

#### (i) Anticipated Benefits

FINRA believes that BrokerCheck serves as a critical source of information for investors and considers BrokerCheck to be among the first resources they should turn to when choosing whether to do business with a particular firm or registered person. BrokerCheck enables investors to search for and download information on professional background and regulatory history of members and their registered persons, thereby reducing the direct and indirect costs associated with acquiring valuable information about the members and their registered persons (“search costs”).<sup>6</sup> As discussed above, the proposed rule will increase investor awareness and the likely usage of BrokerCheck.

---

<sup>6</sup> Search costs encompass the time, energy and money expended by a consumer who is researching a product or service for purchase. See, e.g., Meir G. Kohn & Steven Shavell, The Theory of Search, 9 Journal of Economic Theory 93 (1974); Simon P. Anderson & Regis Renault, Pricing, Product Diversity, and Search Costs: A Bertrand-Chamberlin-Diamond Model, 30, No. 4 The RAND Journal of Economics 719 (1999).



By making more investors aware of the information available on BrokerCheck, the proposed rule will make investors' searches for information about firms and registered persons more efficient and will help them make more informed decisions about whether to do business with a particular firm or registered person, thereby enhancing investor protection.

(ii) Anticipated Costs

The proposed rule change will impose costs on members that provide products and services to retail investors, which FINRA estimates to be approximately 2,675 members.<sup>7</sup> These members would incur costs associated with identifying the webpages that would need to be updated based upon this proposed rule and determining where to place the references and hyperlinks within these webpages, updating the required webpages, as well as testing and deploying the updated website. In addition, these members would incur costs associated with maintaining the links on their webpages and updating their policies and procedures to ensure ongoing compliance as their websites are updated or new webpages are added over time. Members would have flexibility on how best to link to BrokerCheck, which is intended to reduce costs by allowing members to choose the most cost-effective option.

Based on staff experience, FINRA estimates that on average the initial implementation costs for large members would be approximately \$2,400 per member,

---

<sup>7</sup> FINRA's estimate is based on the types of business in which members are engaged (based on information provided in response to Question 12 on Form BD). FINRA identified businesses that are associated with products and services for retail investors and estimates that approximately 2,675 members are engaged in such retail-oriented businesses.

and for mid-size and small members<sup>8</sup> the costs are estimated to be approximately \$128 per member.

These estimates are based on FINRA's assumption that large members typically have full-featured websites that dynamically generate webpages based on data and logic. The technology personnel at these members would be required to update the underlying information in order to automate the implementation of references and hyperlinks to BrokerCheck across all applicable webpages. FINRA estimates that on average it would take large members approximately 60 hours of technology staffs' time to make the required updates, which at a \$40 hourly rate would cost approximately \$2,400 per firm.<sup>9</sup> FINRA assumes that mid-size and small members typically have less complex websites, which they manage and maintain with non-technical staff. These members would use personnel in non-technical roles to accomplish the required updates to their websites. FINRA estimates that on average it would take mid-size or small members approximately eight hours of non-technical staffs' time to make the required updates, which at a \$16 hourly rate would cost approximately \$128 per member.<sup>10</sup>

---

<sup>8</sup> Based on FINRA By-Laws, Article I (Definitions), members with 150 or fewer registered representatives are classified as small, members with 151 to 499 registered representatives are classified as mid-size, and members with 500 or more registered representatives are classified as large.

<sup>9</sup> The \$40 per hour estimate is based on the high end of the compensation range for web application developers, reported on publicly available sources. For example, the total compensation, including salary, bonus and other benefits, reported for web applications developer on [payscale.com](http://www.payscale.com/research/US/Job=Web_Developer/Salary) ranges from \$33,122 to \$84,271, which on an hourly basis is approximately \$16-\$41 per hour. See [http://www.payscale.com/research/US/Job=Web\\_Developer/Salary](http://www.payscale.com/research/US/Job=Web_Developer/Salary) (accessed May 20, 2015).

<sup>10</sup> For the purpose of estimating costs for mid-size or small members, FINRA uses a \$16 hourly rate, which corresponds to the low end of the compensation range for a web application developer, as discussed above.

FINRA notes that costs associated with updating existing websites to include the required information will likely vary significantly across members depending on the scope and design of their websites, the extent to which the websites are automated (e.g., include content management systems that dynamically generate webpages) and the number of webpages that include professional profiles of the applicable registered representatives. FINRA further estimates that there are approximately 175 large members and 2,500 mid-size and small members that provide products and services to retail investors and would be required to implement references and hyperlinks to BrokerCheck on their websites. Based on its average cost estimates for large, mid-size and small members, FINRA estimates that the total implementation costs associated with this rule proposal to the membership would be approximately \$740,000.<sup>11</sup>

In addition to the initial implementation costs, members would also incur ongoing costs associated with maintaining the links on their webpages and creating and maintaining procedures and internal controls to ensure that they remain compliant with the proposed rule. However, FINRA believes that the ongoing compliance costs associated with this rule proposal would likely be minimal because, apart from standard website upkeep, “static” BrokerCheck hyperlinks and references would require minimal

---

<sup>11</sup> As discussed above, FINRA estimates that there are 175 large members that would be required to implement references and hyperlinks to BrokerCheck on their websites, and the implementation costs for these large firms would be approximately \$2,400 per firm. Thus, the total implementation costs for these large members would be approximately \$420,000 (\$2,400 x 175). Similarly, the total implementation cost for the 2,500 mid-size and small members, based on a \$128 per firm estimate, would be approximately \$320,000 (\$128 x 2,500). Hence, the total implementation cost across all members is anticipated to be about \$740,000.

(if any) additional maintenance on an ongoing basis.<sup>12</sup> FINRA will read with interest comments from members on the anticipated costs of compliance with the proposal.

### C. Alternatives

In considering how to best meet its regulatory objectives, FINRA considered several alternatives to particular features of this proposal. For example, some commenters suggested that the goals of the rule could be attained more cost effectively if FINRA were to advertise BrokerCheck and its benefits to investors more aggressively. FINRA agrees that better recognition of the benefits of BrokerCheck will serve the investing public well and is considering additional ways in which to enhance awareness. FINRA believes that the proposed rule change serves as a well-calibrated effort to reduce investor search costs and to provide investors access to critical information as they make their decision regarding whether to engage in business with a particular firm or individual.

In developing this proposal, FINRA considered requiring members to include links to BrokerCheck on third-party websites, including social media sites. Several commenters expressed concerns about this requirement. As discussed in more detail below, commenters pointed out the limitations in their ability to control the content and features of third-party websites, and the significant costs associated with complying with such a requirement. FINRA recognizes the difficulties and costs associated with including links on third-party websites, and as a result FINRA has determined at this time

---

<sup>12</sup> Ongoing costs associated with maintaining hyperlinks could be significant if the underlying hyperlinks change regularly over time. However, considering that FINRA does not anticipate changing the BrokerCheck hyperlink, costs associated with maintaining such a link are anticipated to be minimal.

to exclude the third-party website requirement and limit the application of the rule proposal to members' websites.

Finally, FINRA initially proposed that members would be required to include a deep link to BrokerCheck summary reports. These links would direct investors to the specific BrokerCheck page representing the collected information for an individual broker. Commenters noted the disadvantages of using a deep link that would bypass the BrokerCheck homepage, and speculated that there would be significant costs and operational challenges associated with including and tracking deep links. Based on these comments, FINRA has determined not to require the deep link in the proposed rule at this time.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Firms, Participants, or Others**

**Background**

In February 2012, FINRA published Regulatory Notice 12-10 seeking comment on a proposal regarding ways to facilitate and increase investor use of BrokerCheck information. A copy of the Regulatory Notice is attached as Exhibit 2a. FINRA received 71 comment letters in response to Regulatory Notice 12-10. In January 2013, FINRA filed with the SEC SR-FINRA-2013-002, a proposed rule change to amend FINRA Rule 2267 to require that members include a prominent description of and link to BrokerCheck on their websites, social media pages and any comparable Internet presence and on websites, social media pages and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a member. A copy of the 2013 Notice of Filing is attached as Exhibit 2b. On January 25, 2013, the 2013 filing was published for comment in the

Federal Register, and the SEC received 24 comment letters in response to the proposal. FINRA withdrew the filing on April 18, 2013 to assess and respond to commenters' concerns.

In light of concerns raised on the earlier proposals, in April 2014, FINRA published Regulatory Notice 14-19 ("Notice 14-19"), requesting comment on the rules as proposed therein (the "Notice 14-19 proposal"). A copy of Notice 14-19 is attached as Exhibit 2c. The comment period expired on June 16, 2014. FINRA received 22 comments in response to Notice 14-19. A list of the commenters in response to Notice 14-19 is attached as Exhibit 2d, and copies of the comment letters received in response to Notice 14-19 are attached as Exhibit 2e.<sup>13</sup> A summary of the comments and FINRA's response is provided below.

The Notice 14-19 proposal would have required a member to include a readily apparent reference and hyperlink to BrokerCheck on each firm website that is available to retail investors. It also would have required a member to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person.

The requirement to include a link to BrokerCheck where there is contact information or a professional profile of an associated person would have been subject to the following conditions:

- If the retail communication appeared on the member's website or any site that it hosted, the link would have had to appear in close proximity to the profile or contact information.

---

<sup>13</sup> See Exhibit 2d for a list of abbreviations assigned to commenters.

- If the retail communication appeared on a third-party website (such as a social media page) that permitted a hyperlink to another website, the member would have been required to either:
  - Post a hyperlink to BrokerCheck in close proximity to the profile or contact information; or
  - Post a hyperlink to the member's website, which included a readily apparent reference and hyperlink to BrokerCheck, in close proximity to the profile or contact information. The third-party website would have had to disclose that a hyperlink to BrokerCheck is available through the linked website.
- If the retail communication appeared on a third-party website that did not permit a hyperlink to another website, the member would have been required to provide the BrokerCheck web address (URL) in close proximity to the profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck.

The proposal would have excepted from these requirements:

- Electronic mail and text messages;
- A retail communication that is posted on an online interactive forum (such as a message board, Twitter feed or chat room);
- A member that does not provide products or services to retail investors; and
- A directory or list of associated persons limited to names and contact information.

Seven commenters supported the proposal.<sup>14</sup> Six commenters opposed the proposal.<sup>15</sup> Eight commenters did not expressly support or oppose the proposal, but recommended changes to, or sought clarification of, the proposal.<sup>16</sup> One commenter expressed overall opposition to FINRA and to BrokerCheck in particular.<sup>17</sup>

#### Comments Supporting Proposal

Commenters supporting the proposal stated that the benefits of the proposal outweigh its potential costs, and that the proposal would increase investors' awareness of BrokerCheck. Four commenters<sup>18</sup> supported the proposal overall, but opposed the omission of the 2013 version's requirement to include a deep link to an associated person's BrokerCheck report. These commenters stated that investors would have difficulty searching for a particular broker's BrokerCheck report on the FINRA website without a deep link, particularly where a broker has a common name, such as John Smith. One commenter recognized the difficulty of including deep links on third-party sites, but suggested that FINRA at least require deep links from pages on a member's website that include a broker's contact or profile information.<sup>19</sup> One commenter suggested that FINRA inquire of its examination staff or, alternatively, poll members firms to ascertain and compare utilization rates of the different types of online communications occurring

---

<sup>14</sup> See GSU, NASAA, ICI, PIRC, PIABA, University of Miami School of Law Investor Rights Clinic, and Teresa Vollenweider.

<sup>15</sup> See Alpine, Buckman, Farmers, First Georgetown, MSTC, and Windham.

<sup>16</sup> See Schwab, CAI, Commonwealth, FSI, Lincoln, NFP, SIFMA, and Wells Fargo.

<sup>17</sup> See Carrie Devorah.

<sup>18</sup> See NASAA, GSU, PIRC and PIABA.

<sup>19</sup> See GSU.



between a financial advisor and their clients and gear the requirements toward embedding links to BrokerCheck and deep links to individual financial advisors in those communications.<sup>20</sup>

Two commenters<sup>21</sup> opposed the exception for electronic mail. PIABA noted that including a link to BrokerCheck in an associated person's e-mail signature block would not be burdensome. PIABA also recommended that the proposal require a BrokerCheck description and hyperlink be placed in printed customer account statements. PIABA further recommended changes to BrokerCheck itself to increase the information available to investors.

#### Comments Opposing the Proposal

Six commenters opposed the proposal. All cited the potential compliance burdens associated with this proposed rule change as a principal reason not to adopt it, particularly the burdens it would impose on small members. Two commenters strongly opposed the proposal because they believe BrokerCheck presents a biased and unfavorable view of securities firms and their personnel.<sup>22</sup>

Many questioned the potential benefits the proposal would offer to investors, noting that investors may already search for information about members and their representatives, such as through Google or the FINRA website.<sup>23</sup> One commenter also noted that the proposal will require a small firm compliance officer to divert resources

---

<sup>20</sup> See NASAA.

<sup>21</sup> See NASAA and PIABA.

<sup>22</sup> See Alpine and Buckman.

<sup>23</sup> See Farmers, First Georgetown, MSTC, and Windham.

from servicing client accounts and instead use them to achieve compliance with a rule that offers little public benefits.<sup>24</sup>

Comments Recommending Changes to or Clarifications of the Proposal

A number of commenters expressed concerns with requirements to include links and disclosures on third-party websites not controlled by a member.<sup>25</sup> Commenters noted that members do not control the content, appearance, or features of third-party sites, and thus are dependent on these sites in terms of complying with the rule proposal.

Commenters pointed out that the proposal appears to be based on technology and social media site rules as they appear today, without taking into account future changes. For example, commenters stated the rules fail to explain a member's responsibilities if a third-party site revised its rules and no longer allowed links to other websites. These commenters also argued that the proposal inadequately addressed limits imposed by third-party sites. For example, although Twitter allows a single link to another site, its Profile section limits the user to 160 characters, hardly enough to include either a link to BrokerCheck, or a link to a member's website plus the additional disclosure required by the rule proposal. In addition, the requirement would preclude a member from including any other content in the Profile section.

SIFMA recommended that FINRA alter its proposal to make it more principles-based with respect to requirements applicable to third-party sites. SIFMA suggested that the rule be revised to use "should, to the extent reasonable" or similar language regarding third-party site linking and disclosure obligations instead of "must." Wells Fargo

---

<sup>24</sup> See Windham.

<sup>25</sup> See Schwab, CAI, FSI, Lincoln, SIFMA and Wells Fargo.

recommended that the proposal should relieve members of its requirements if a third-party site cannot accommodate a firm's request to include the required link or disclosures.

Commenters requested that FINRA clarify that the rule proposal does not apply to either: (i) search-engine based, text-only advertising (such as advertisements generated by Google or Bing); or (ii) other "static" web-based advertising that contains general references to the services provided by an associated person and includes a link to the person's profile page.<sup>26</sup> One commenter also requested that the proposal expressly exclude certain types of online retail communications, such as interviews, articles, reprints, award listings, biographies, sponsorships, press releases, radio replays, and advertisements that include associated persons' profiles or contact information.<sup>27</sup>

Commenters also urged FINRA to clarify when a member would be deemed to have "adopted" or become "entangled" with a third-party website, thus making it responsible for including a link to BrokerCheck on the site.<sup>28</sup> One commenter recommended that FINRA make clear in the rule language that it does not apply to a third-party site that a member has not adopted or become entangled with.<sup>29</sup>

Commenters requested that FINRA clarify the extent to which a member must include a BrokerCheck link on its own website.<sup>30</sup> For example, does a member have to

---

<sup>26</sup> See SIFMA and Wells Fargo.

<sup>27</sup> See Wells Fargo.

<sup>28</sup> See CAI and Commonwealth.

<sup>29</sup> See Commonwealth.

<sup>30</sup> See CAI, Commonwealth, Lincoln and SIFMA.

include a link on each webpage of the firm’s website, or only once on its homepage?

Also, what if a member has contact information or profiles of multiple representatives on a single webpage? Does the member have to include multiple links to BrokerCheck, or may it only include one such link?

The ICI recommended that FINRA provide members with flexibility as to where on a firm’s website a link to BrokerCheck must appear. For example, a member should be allowed to include the link on a webpage that the member reasonably determines will draw the attention of retail investors. SIFMA and the ICI also requested that FINRA clarify that members may use “buffer” screens that inform a user that they are leaving the firm’s website before the user lands on the BrokerCheck website.

Given that FINRA includes a link to BrokerCheck on its own website, one member asked whether a link to the FINRA website would meet the rule’s requirements.<sup>31</sup> This commenter noted that, if so, the rule proposal appears to be redundant, given that FINRA Rule 2210(e)(3) already requires members that indicate FINRA membership to include a link to FINRA’s website.

Two commenters recommended that the proposal only apply to webpages that provide contact or profile information for registered representatives, rather than all associated persons.<sup>32</sup>

SIFMA and Wells Fargo requested that the exception for directories be clarified. First, SIFMA sought clarification that including a link to an associated person’s profile page in a directory would not trigger the requirements to include a link to and description

---

<sup>31</sup> See NFP.

<sup>32</sup> See CAI and Lincoln.

of BrokerCheck. Second, they urged FINRA to allow more information in directories without requiring a BrokerCheck link, such as general biographical information and areas of expertise.

The ICI and SIFMA recommended that FINRA expand the exception for email and text messages to include other similar forms of messaging. This expansion would take into account future technological changes to electronic messaging.

SIFMA requested clarification that the rule proposal would not apply to mobile device “apps” or other web-based applications (such as trading platforms or OES) that provide customers with access to their accounts and other member-provided information and capabilities. SIFMA also requested that FINRA include a safe harbor for broken links that allow members time to correct any links that subsequently fail.

Commenters agreed with the revision to the prior proposal that eliminated the requirement to include a deep link to a member’s or associated person’s BrokerCheck report.<sup>33</sup> Commenters noted that the costs of including and tracking deep links in member and third-party websites would have been significant and operationally unfeasible.

Commenters reiterated opponents’ views that the proposal would impose significant costs and burdens on members.<sup>34</sup> These costs include requiring members to create and implement new written policies and procedures, and performing ongoing surveillance of firm and associated persons’ websites to ensure compliance with the rule proposal. One member noted that it has approved roughly 1,000 LinkedIn profiles, and

---

<sup>33</sup> See Schwab, CAI, Commonwealth, FSI, SIFMA and Wells Fargo.

<sup>34</sup> See CAI, FSI, Lincoln, SIFMA and Wells Fargo.

that in order to achieve compliance with the rule, the firm would have to incur 700 employee hours (or nearly 17 weeks of a full-time employee's time).<sup>35</sup>

Commenters recommended that the Chief Economist's office perform a cost-benefit analysis of the rule proposal to ensure that its benefits will exceed its costs before FINRA proceeds with the proposal. Other commenters urged that, if FINRA adopts the rule proposal, members be given at least six months to implement any required changes.<sup>36</sup>

Commenters also recommended that FINRA explore alternatives to requiring links to BrokerCheck as a means to increase investor knowledge and usage of the site.<sup>37</sup> For example, FINRA could pursue its own investor outreach program, or encourage state securities regulators to include links to BrokerCheck on their websites. FINRA could make the references to BrokerCheck on its own website more prominent and user-friendly, and improve the visual quality and clarity of BrokerCheck summary reports. FINRA could also target focus groups in order to identify possible alternative means of facilitating and increasing investor use of BrokerCheck.

#### General Comments

One commenter strongly criticized FINRA's commitment to protect investors. The commenter noted that the proposal would do little good because, in this commenter's view, it would merely present "expunged backgrounds and brokercheck historys [sic] that are, too often, fairytales."<sup>38</sup>

---

<sup>35</sup> See Lincoln.

<sup>36</sup> See ICI, SIFMA and Wells Fargo.

<sup>37</sup> See Schwab, CAI, and FSI.

<sup>38</sup> See Carrie Devorah.

Response to Comments

As discussed above, many of the comments either opposing the proposal in full, or recommending changes to the proposal, concerned requirements in the Notice 14-19 proposal that would have required members to include links to BrokerCheck on third-party websites, such as social media sites. FINRA believes it has addressed these concerns by revising the current proposal to limit its applicability to a member's own website. FINRA however will further consider the commenters' concerns regarding links on third-party websites and determine whether to pursue separate rulemaking addressing such links.

Under the current version, each of a member's websites must include a readily apparent reference and link to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. The current version provides exceptions from these requirements for: (i) a member that does not provide products or services to retail investors; and (ii) a directory or list of registered persons limited to names and contact information. The current version would not require a member to include a link to BrokerCheck from any third-party website, such as a social media site.

FINRA does not agree that it is necessary at this time to reinstate a requirement to include a deep link to a member's or a registered person's BrokerCheck report. A deep link requirement could potentially increase website maintenance costs, and FINRA is not proposing to require such links at this time. Most investors should be able to find

information concerning particular members or registered representatives without difficulty given the ease of operation of the BrokerCheck search feature.

FINRA also does not believe it is necessary or appropriate to require links to BrokerCheck on each email sent by a member or registered person. FINRA believes that such a requirement would be overly burdensome and require significant system changes, without commensurate benefit. However, FINRA has removed the express exception for emails and text messages as unnecessary, since the proposal by its terms only applies to a member's own website. For the same reason, FINRA has removed the prior exception for retail communications posted on online interactive forums.

FINRA does not agree with comments that BrokerCheck presents a biased and unfavorable view of securities firms and their personnel, or that it omits important information to which investors should have access. FINRA has carefully considered the need to provide investors with information necessary to make informed choices about the individuals and members with which they conduct business. Moreover, FINRA is required by statute to establish and maintain a system for collecting and retaining registration information, including disciplinary actions, regulatory, judicial and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.<sup>39</sup> FINRA believes that it is important that investors have access to this information to help them make informed decisions when selecting a broker-dealer or registered person with whom to do business. FINRA regularly assesses the BrokerCheck program and may consider the inclusion of additional information in BrokerCheck at a later time.

---

<sup>39</sup> See 15 U.S.C. § 78o-3(i).



FINRA does not agree that the proposal should allow more information in directories of registered persons without requiring a BrokerCheck link, such as biographical information or areas of expertise. This kind of information is precisely the content that should trigger a link to BrokerCheck, since its intent is to generate investor interest in a particular registered representative.

FINRA believes it has answered commenters' questions concerning the scope of the proposed link requirements. In this regard, a member is required to include a link to BrokerCheck only on webpages that are either the initial page that the member intends to be viewed by retail investors, or pages that include profile information about registered persons that conduct business with retail investors. Links are not required on every webpage of a member's website. If a webpage includes profile information about multiple registered persons, only one link to BrokerCheck is required. In response to comments received to the Notice 14-19 proposal, FINRA has revised the rule as proposed in Notice 14-19 to require a link to BrokerCheck on webpages that provide profile information about registered persons, rather than webpages that provide profile information about any associated person. Members also may use "buffer" screens or interstitial exiting site pages to inform investors that they are leaving the member website prior to connecting to BrokerCheck, although there is no requirement to do so.

In addition, members have flexibility on how best to link to BrokerCheck, as long as the reference and link to BrokerCheck are readily apparent. For example, members have expressed interest in using "widgets" as a way to link to BrokerCheck. Use of widgets would meet to the proposal's requirements, as long as the link and reference to BrokerCheck are readily apparent.

FINRA does not agree that the proposal is redundant given that FINRA includes a link to BrokerCheck on the FINRA website. FINRA believes that the proposal will increase awareness of BrokerCheck and believes that more investors will use BrokerCheck after it is implemented.

FINRA also does not believe it is necessary or appropriate to create an exception from the proposal for mobile device applications. To the extent that a web-based application merely provides access to a customer's account information and does not contain profile information about a registered representative that conducts business with retail investors, the proposed requirements would not apply. However, if a customer uses his or her mobile device to access a webpage that contains profile information about a registered representative that conducts business with retail investors, FINRA believes it is important for the customer to be made aware of BrokerCheck, irrespective of whether the investor used a mobile device or a desktop or laptop computer to view such a webpage.

FINRA has considered the potential costs and benefits of the Notice 14-19 proposal and, accordingly, revised the proposal to reduce its potential costs while maintaining the proposal's investor protection goals. FINRA also has proposed to allow members at least six months to comply with the proposed rule change. FINRA appreciates the suggestions to explore alternatives to increase investor knowledge and usage of BrokerCheck. While such suggestions are beyond the scope of this proposal, FINRA intends to continue to consider ways to increase investor knowledge and usage of BrokerCheck.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>40</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. FINRA Regulatory Notice 12-10 (February 2012).

Exhibit 2b. Securities Exchange Act Release No. 68700 (January 18, 2013), 78 FR 5542 (January 25, 2013) (Notice of Filing of SR-FINRA-2013-002).

Exhibit 2c. FINRA Regulatory Notice 14-19 (April 2014)

Exhibit 2d. List of comments received in response to FINRA Regulatory Notice 14-19.

---

<sup>40</sup>

15 U.S.C. 78s(b)(2).

Exhibit 2e. Copies of comments received in response to FINRA Regulatory Notice 14-19.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2015-014)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , 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 amend FINRA Rule 2210 to require each of a member’s websites to include a readily apparent reference and hyperlink to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. These requirements would not apply to a member that does not provide products or services to retail investors, or to a directory or list of registered persons limited to names and contact information.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository ("CRD<sup>®</sup>"), the securities industry online registration and licensing database. FINRA members, their associated persons and regulators report information to the CRD system via the uniform registration forms. By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

In January 2013, FINRA filed with the SEC a proposed rule change to amend FINRA Rule 2267 (Investor Education and Protection)<sup>3</sup> to require all members to include a prominent description of and link to BrokerCheck on their websites, social media pages and any comparable Internet presence, as well as on the websites, social media pages and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a member.<sup>4</sup> The proposed rule change was intended to increase investor awareness and use of BrokerCheck. The Commission received 24 comment letters in response to the proposed rule change. FINRA withdrew the filing to better understand commenters' concerns regarding the challenges of implementing the proposed rule change.

Many of the comments received on the 2013 proposed rule change expressed concern with the challenges of implementing the proposal with respect to social media pages, the lack of guidance with respect to terms and phrases in the proposed amendments, and the disadvantages of using a "deep" link to BrokerCheck summary reports that would bypass the BrokerCheck homepage.<sup>5</sup> Commenters suggested that the link to BrokerCheck be required initially for member websites, where its implementation

---

<sup>3</sup> Subject to limited exceptions, FINRA Rule 2267(a) requires members to provide annually in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that describes BrokerCheck.

<sup>4</sup> See Securities Exchange Act Release No. 68700 (January 18, 2013), 78 FR 5542 (January 25, 2013) (Notice of Filing of SR-FINRA-2013-002). See also infra Item II.C. of the filing for further discussion of the 2013 filing and prior proposals.

<sup>5</sup> The SEC also received numerous comment letters that raised issues outside the scope of the proposed rule change to FINRA Rule 2267. These comment letters focused generally on concerns regarding the current operation and display of BrokerCheck reports.

would be relatively straightforward, and that the value of the link be assessed first in that context before expanding to third party sites.

In light of commenters' concerns, FINRA has developed a revised proposal that addresses member websites. Specifically, the revised proposal would amend FINRA Rule 2210 (Communications with the Public) to require each of a member's websites to include a readily apparent reference and hyperlink to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. The proposal would not apply to a member that does not provide products or services to retail investors, or a directory or list of registered persons limited to names and contact information.

FINRA believes that the revised proposal addresses many of the commenters' concerns on the original proposal to amend Rule 2267. By incorporating the proposed rule change into the regulatory framework for communications with the public, the revised proposal would group the proposed requirement with other related standards that apply to member websites. By excluding those members that do not provide products and services to retail investors, the revised proposal is more aligned with its goal of increasing retail investor awareness and usage of BrokerCheck. FINRA also believes that the revised proposal should reduce the potential burden on members by clarifying that the requirement would not apply to directory pages limited to registered persons' names and contact information, since firms would not need to include as many links to BrokerCheck on their websites.



The revised proposal also responds to commenters' concerns with respect to communications on third-party sites that are not controlled by the member, such as social media sites, by limiting its application to websites of the member, rather than applying its requirements to third-party sites, such as social media sites, which the member does not control. The revised proposal also no longer requires a deep link to the BrokerCheck report of a member or registered person; instead, it would require a link to the BrokerCheck homepage.

FINRA will announce the implementation 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,<sup>6</sup> 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 help protect investors by making them aware of information available on BrokerCheck by requiring links to BrokerCheck on member websites.

### 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

---

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

Act. FINRA recognizes that the proposed rule change would impose burdens on members associated with implementing references and hyperlinks to BrokerCheck on their websites and to keep those references and hyperlinks current. However, FINRA believes that by limiting the application of the proposal only to a member's own websites, the revised proposal significantly reduces these implementation costs for members, while maintaining the proposal's investor protection goals.

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

#### Economic Impact Assessment

##### A. Regulatory Need

BrokerCheck provides investors with information on the professional background, business practices, regulatory history, and conduct of members and their associated persons. Among other things, BrokerCheck helps investors make well-informed choices about the individuals and firms with which they conduct business. FINRA believes that the need for greater investor awareness and access to BrokerCheck continues to be important to protect investors. The proposed rule change will help increase investor awareness and make it easier for investors to find BrokerCheck by requiring references and hyperlinks to BrokerCheck on member websites.

B. Economic Impacts

(i) Anticipated Benefits

FINRA believes that BrokerCheck serves as a critical source of information for investors and considers BrokerCheck to be among the first resources they should turn to when choosing whether to do business with a particular firm or registered person. BrokerCheck enables investors to search for and download information on professional background and regulatory history of members and their registered persons, thereby reducing the direct and indirect costs associated with acquiring valuable information about the members and their registered persons (“search costs”).<sup>7</sup> As discussed above, the proposed rule will increase investor awareness and the likely usage of BrokerCheck. By making more investors aware of the information available on BrokerCheck, the proposed rule will make investors’ searches for information about firms and registered persons more efficient and will help them make more informed decisions about whether to do business with a particular firm or registered person, thereby enhancing investor protection.

(ii) Anticipated Costs

The proposed rule change will impose costs on members that provide products and services to retail investors, which FINRA estimates to be approximately 2,675

---

<sup>7</sup> Search costs encompass the time, energy and money expended by a consumer who is researching a product or service for purchase. See, e.g., Meir G. Kohn & Steven Shavell, The Theory of Search, 9 Journal of Economic Theory 93 (1974); Simon P. Anderson & Regis Renault, Pricing, Product Diversity, and Search Costs: A Bertrand-Chamberlin-Diamond Model, 30, No. 4 The RAND Journal of Economics 719 (1999).

members.<sup>8</sup> These members would incur costs associated with identifying the webpages that would need to be updated based upon this proposed rule and determining where to place the references and hyperlinks within these webpages, updating the required webpages, as well as testing and deploying the updated website. In addition, these members would incur costs associated with maintaining the links on their webpages and updating their policies and procedures to ensure ongoing compliance as their websites are updated or new webpages are added over time. Members would have flexibility on how best to link to BrokerCheck, which is intended to reduce costs by allowing members to choose the most cost-effective option.

Based on staff experience, FINRA estimates that on average the initial implementation costs for large members would be approximately \$2,400 per member, and for mid-size and small members<sup>9</sup> the costs are estimated to be approximately \$128 per member.

These estimates are based on FINRA's assumption that large members typically have full-featured websites that dynamically generate webpages based on data and logic. The technology personnel at these members would be required to update the underlying information in order to automate the implementation of references and hyperlinks to BrokerCheck across all applicable webpages. FINRA estimates that on average it would

---

<sup>8</sup> FINRA's estimate is based on the types of business in which members are engaged (based on information provided in response to Question 12 on Form BD). FINRA identified businesses that are associated with products and services for retail investors and estimates that approximately 2,675 members are engaged in such retail-oriented businesses.

<sup>9</sup> Based on FINRA By-Laws, Article I (Definitions), members with 150 or fewer registered representatives are classified as small, members with 151 to 499 registered representatives are classified as mid-size, and members with 500 or more registered representatives are classified as large.

take large members approximately 60 hours of technology staffs' time to make the required updates, which at a \$40 hourly rate would cost approximately \$2,400 per firm.<sup>10</sup> FINRA assumes that mid-size and small members typically have less complex websites, which they manage and maintain with non-technical staff. These members would use personnel in non-technical roles to accomplish the required updates to their websites. FINRA estimates that on average it would take mid-size or small members approximately eight hours of non-technical staffs' time to make the required updates, which at a \$16 hourly rate would cost approximately \$128 per member.<sup>11</sup>

FINRA notes that costs associated with updating existing websites to include the required information will likely vary significantly across members depending on the scope and design of their websites, the extent to which the websites are automated (e.g., include content management systems that dynamically generate webpages) and the number of webpages that include professional profiles of the applicable registered representatives. FINRA further estimates that there are approximately 175 large members and 2,500 mid-size and small members that provide products and services to retail investors and would be required to implement references and hyperlinks to BrokerCheck on their websites. Based on its average cost estimates for large, mid-size

---

<sup>10</sup> The \$40 per hour estimate is based on the high end of the compensation range for web application developers, reported on publicly available sources. For example, the total compensation, including salary, bonus and other benefits, reported for web applications developer on [payscale.com](http://www.payscale.com/research/US/Job=Web_Developer/Salary) ranges from \$33,122 to \$84,271, which on an hourly basis is approximately \$16-\$41 per hour. See [http://www.payscale.com/research/US/Job=Web\\_Developer/Salary](http://www.payscale.com/research/US/Job=Web_Developer/Salary) (accessed May 20, 2015).

<sup>11</sup> For the purpose of estimating costs for mid-size or small members, FINRA uses a \$16 hourly rate, which corresponds to the low end of the compensation range for a web application developer, as discussed above.

and small members, FINRA estimates that the total implementation costs associated with this rule proposal to the membership would be approximately \$740,000.<sup>12</sup>

In addition to the initial implementation costs, members would also incur ongoing costs associated with maintaining the links on their webpages and creating and maintaining procedures and internal controls to ensure that they remain compliant with the proposed rule. However, FINRA believes that the ongoing compliance costs associated with this rule proposal would likely be minimal because, apart from standard website upkeep, “static” BrokerCheck hyperlinks and references would require minimal (if any) additional maintenance on an ongoing basis.<sup>13</sup> FINRA will read with interest comments from members on the anticipated costs of compliance with the proposal.

### C. Alternatives

In considering how to best meet its regulatory objectives, FINRA considered several alternatives to particular features of this proposal. For example, some commenters suggested that the goals of the rule could be attained more cost effectively if FINRA were to advertise BrokerCheck and its benefits to investors more aggressively. FINRA agrees that better recognition of the benefits of BrokerCheck will serve the

---

<sup>12</sup> As discussed above, FINRA estimates that there are 175 large members that would be required to implement references and hyperlinks to BrokerCheck on their websites, and the implementation costs for these large firms would be approximately \$2,400 per firm. Thus, the total implementation costs for these large members would be approximately \$420,000 (\$2,400 x 175). Similarly, the total implementation cost for the 2,500 mid-size and small members, based on a \$128 per firm estimate, would be approximately \$320,000 (\$128 x 2,500). Hence, the total implementation cost across all members is anticipated to be about \$740,000.

<sup>13</sup> Ongoing costs associated with maintaining hyperlinks could be significant if the underlying hyperlinks change regularly over time. However, considering that FINRA does not anticipate changing the BrokerCheck hyperlink, costs associated with maintaining such a link are anticipated to be minimal.

investing public well and is considering additional ways in which to enhance awareness. FINRA believes that the proposed rule change serves as a well-calibrated effort to reduce investor search costs and to provide investors access to critical information as they make their decision regarding whether to engage in business with a particular firm or individual.

In developing this proposal, FINRA considered requiring members to include links to BrokerCheck on third-party websites, including social media sites. Several commenters expressed concerns about this requirement. As discussed in more detail below, commenters pointed out the limitations in their ability to control the content and features of third-party websites, and the significant costs associated with complying with such a requirement. FINRA recognizes the difficulties and costs associated with including links on third-party websites, and as a result FINRA has determined at this time to exclude the third-party website requirement and limit the application of the rule proposal to members' websites.

Finally, FINRA initially proposed that members would be required to include a deep link to BrokerCheck summary reports. These links would direct investors to the specific BrokerCheck page representing the collected information for an individual broker. Commenters noted the disadvantages of using a deep link that would bypass the BrokerCheck homepage, and speculated that there would be significant costs and operational challenges associated with including and tracking deep links. Based on these comments, FINRA has determined not to require the deep link in the proposed rule at this time.

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

Background

In February 2012, FINRA published Regulatory Notice 12-10 seeking comment on a proposal regarding ways to facilitate and increase investor use of BrokerCheck information. A copy of the Regulatory Notice is attached as Exhibit 2a. FINRA received 71 comment letters in response to Regulatory Notice 12-10. In January 2013, FINRA filed with the SEC SR-FINRA-2013-002, a proposed rule change to amend FINRA Rule 2267 to require that members include a prominent description of and link to BrokerCheck on their websites, social media pages and any comparable Internet presence and on websites, social media pages and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a member. A copy of the 2013 Notice of Filing is attached as Exhibit 2b. On January 25, 2013, the 2013 filing was published for comment in the Federal Register, and the SEC received 24 comment letters in response to the proposal. FINRA withdrew the filing on April 18, 2013 to assess and respond to commenters' concerns.

In light of concerns raised on the earlier proposals, in April 2014, FINRA published Regulatory Notice 14-19 ("Notice 14-19"), requesting comment on the rules as proposed therein (the "Notice 14-19 proposal"). A copy of Notice 14-19 is attached as Exhibit 2c. The comment period expired on June 16, 2014. FINRA received 22 comments in response to Notice 14-19. A list of the commenters in response to Notice 14-19 is attached as Exhibit 2d, and copies of the comment letters received in response to



Notice 14-19 are attached as Exhibit 2e.<sup>14</sup> A summary of the comments and FINRA's response is provided below.

The Notice 14-19 proposal would have required a member to include a readily apparent reference and hyperlink to BrokerCheck on each firm website that is available to retail investors. It also would have required a member to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person.

The requirement to include a link to BrokerCheck where there is contact information or a professional profile of an associated person would have been subject to the following conditions:

- If the retail communication appeared on the member's website or any site that it hosted, the link would have had to appear in close proximity to the profile or contact information.
- If the retail communication appeared on a third-party website (such as a social media page) that permitted a hyperlink to another website, the member would have been required to either:
  - Post a hyperlink to BrokerCheck in close proximity to the profile or contact information; or
  - Post a hyperlink to the member's website, which included a readily apparent reference and hyperlink to BrokerCheck, in close proximity to the profile or contact information. The third-party

---

<sup>14</sup> See Exhibit 2d for a list of abbreviations assigned to commenters.

website would have had to disclose that a hyperlink to BrokerCheck is available through the linked website.

- If the retail communication appeared on a third-party website that did not permit a hyperlink to another website, the member would have been required to provide the BrokerCheck web address (URL) in close proximity to the profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck.

The proposal would have excepted from these requirements:

- Electronic mail and text messages;
- A retail communication that is posted on an online interactive forum (such as a message board, Twitter feed or chat room);
- A member that does not provide products or services to retail investors; and
- A directory or list of associated persons limited to names and contact information.

Seven commenters supported the proposal.<sup>15</sup> Six commenters opposed the proposal.<sup>16</sup> Eight commenters did not expressly support or oppose the proposal, but

---

<sup>15</sup> See GSU, NASAA, ICI, PIRC, PIABA, University of Miami School of Law Investor Rights Clinic, and Teresa Vollenweider.

<sup>16</sup> See Alpine, Buckman, Farmers, First Georgetown, MSTC, and Windham.

recommended changes to, or sought clarification of, the proposal.<sup>17</sup> One commenter expressed overall opposition to FINRA and to BrokerCheck in particular.<sup>18</sup>

#### Comments Supporting Proposal

Commenters supporting the proposal stated that the benefits of the proposal outweigh its potential costs, and that the proposal would increase investors' awareness of BrokerCheck. Four commenters<sup>19</sup> supported the proposal overall, but opposed the omission of the 2013 version's requirement to include a deep link to an associated person's BrokerCheck report. These commenters stated that investors would have difficulty searching for a particular broker's BrokerCheck report on the FINRA website without a deep link, particularly where a broker has a common name, such as John Smith. One commenter recognized the difficulty of including deep links on third-party sites, but suggested that FINRA at least require deep links from pages on a member's website that include a broker's contact or profile information.<sup>20</sup> One commenter suggested that FINRA inquire of its examination staff or, alternatively, poll members firms to ascertain and compare utilization rates of the different types of online communications occurring between a financial advisor and their clients and gear the requirements toward embedding links to BrokerCheck and deep links to individual financial advisors in those communications.<sup>21</sup>

---

<sup>17</sup> See Schwab, CAI, Commonwealth, FSI, Lincoln, NFP, SIFMA, and Wells Fargo.

<sup>18</sup> See Carrie Devorah.

<sup>19</sup> See NASAA, GSU, PIRC and PIABA.

<sup>20</sup> See GSU.

<sup>21</sup> See NASAA.

Two commenters<sup>22</sup> opposed the exception for electronic mail. PIABA noted that including a link to BrokerCheck in an associated person's e-mail signature block would not be burdensome. PIABA also recommended that the proposal require a BrokerCheck description and hyperlink be placed in printed customer account statements. PIABA further recommended changes to BrokerCheck itself to increase the information available to investors.

#### Comments Opposing the Proposal

Six commenters opposed the proposal. All cited the potential compliance burdens associated with this proposed rule change as a principal reason not to adopt it, particularly the burdens it would impose on small members. Two commenters strongly opposed the proposal because they believe BrokerCheck presents a biased and unfavorable view of securities firms and their personnel.<sup>23</sup>

Many questioned the potential benefits the proposal would offer to investors, noting that investors may already search for information about members and their representatives, such as through Google or the FINRA website.<sup>24</sup> One commenter also noted that the proposal will require a small firm compliance officer to divert resources from servicing client accounts and instead use them to achieve compliance with a rule that offers little public benefits.<sup>25</sup>

---

<sup>22</sup> See NASAA and PIABA.

<sup>23</sup> See Alpine and Buckman.

<sup>24</sup> See Farmers, First Georgetown, MSTC, and Windham.

<sup>25</sup> See Windham.

Comments Recommending Changes to or Clarifications of the Proposal

A number of commenters expressed concerns with requirements to include links and disclosures on third-party websites not controlled by a member.<sup>26</sup> Commenters noted that members do not control the content, appearance, or features of third-party sites, and thus are dependent on these sites in terms of complying with the rule proposal.

Commenters pointed out that the proposal appears to be based on technology and social media site rules as they appear today, without taking into account future changes. For example, commenters stated the rules fail to explain a member's responsibilities if a third-party site revised its rules and no longer allowed links to other websites. These commenters also argued that the proposal inadequately addressed limits imposed by third-party sites. For example, although Twitter allows a single link to another site, its Profile section limits the user to 160 characters, hardly enough to include either a link to BrokerCheck, or a link to a member's website plus the additional disclosure required by the rule proposal. In addition, the requirement would preclude a member from including any other content in the Profile section.

SIFMA recommended that FINRA alter its proposal to make it more principles-based with respect to requirements applicable to third-party sites. SIFMA suggested that the rule be revised to use "should, to the extent reasonable" or similar language regarding third-party site linking and disclosure obligations instead of "must." Wells Fargo recommended that the proposal should relieve members of its requirements if a third-party site cannot accommodate a firm's request to include the required link or disclosures.

---

<sup>26</sup> See Schwab, CAI, FSI, Lincoln, SIFMA and Wells Fargo.

Commenters requested that FINRA clarify that the rule proposal does not apply to either: (i) search-engine based, text-only advertising (such as advertisements generated by Google or Bing); or (ii) other “static” web-based advertising that contains general references to the services provided by an associated person and includes a link to the person’s profile page.<sup>27</sup> One commenter also requested that the proposal expressly exclude certain types of online retail communications, such as interviews, articles, reprints, award listings, biographies, sponsorships, press releases, radio replays, and advertisements that include associated persons’ profiles or contact information.<sup>28</sup>

Commenters also urged FINRA to clarify when a member would be deemed to have “adopted” or become “entangled” with a third-party website, thus making it responsible for including a link to BrokerCheck on the site.<sup>29</sup> One commenter recommended that FINRA make clear in the rule language that it does not apply to a third-party site that a member has not adopted or become entangled with.<sup>30</sup>

Commenters requested that FINRA clarify the extent to which a member must include a BrokerCheck link on its own website.<sup>31</sup> For example, does a member have to include a link on each webpage of the firm’s website, or only once on its homepage? Also, what if a member has contact information or profiles of multiple representatives on

---

<sup>27</sup> See SIFMA and Wells Fargo.

<sup>28</sup> See Wells Fargo.

<sup>29</sup> See CAI and Commonwealth.

<sup>30</sup> See Commonwealth.

<sup>31</sup> See CAI, Commonwealth, Lincoln and SIFMA.

a single webpage? Does the member have to include multiple links to BrokerCheck, or may it only include one such link?

The ICI recommended that FINRA provide members with flexibility as to where on a firm's website a link to BrokerCheck must appear. For example, a member should be allowed to include the link on a webpage that the member reasonably determines will draw the attention of retail investors. SIFMA and the ICI also requested that FINRA clarify that members may use "buffer" screens that inform a user that they are leaving the firm's website before the user lands on the BrokerCheck website.

Given that FINRA includes a link to BrokerCheck on its own website, one member asked whether a link to the FINRA website would meet the rule's requirements.<sup>32</sup> This commenter noted that, if so, the rule proposal appears to be redundant, given that FINRA Rule 2210(e)(3) already requires members that indicate FINRA membership to include a link to FINRA's website.

Two commenters recommended that the proposal only apply to webpages that provide contact or profile information for registered representatives, rather than all associated persons.<sup>33</sup>

SIFMA and Wells Fargo requested that the exception for directories be clarified. First, SIFMA sought clarification that including a link to an associated person's profile page in a directory would not trigger the requirements to include a link to and description of BrokerCheck. Second, they urged FINRA to allow more information in directories

---

<sup>32</sup> See NFP.

<sup>33</sup> See CAI and Lincoln.

without requiring a BrokerCheck link, such as general biographical information and areas of expertise.

The ICI and SIFMA recommended that FINRA expand the exception for email and text messages to include other similar forms of messaging. This expansion would take into account future technological changes to electronic messaging.

SIFMA requested clarification that the rule proposal would not apply to mobile device “apps” or other web-based applications (such as trading platforms or OES) that provide customers with access to their accounts and other member-provided information and capabilities. SIFMA also requested that FINRA include a safe harbor for broken links that allow members time to correct any links that subsequently fail.

Commenters agreed with the revision to the prior proposal that eliminated the requirement to include a deep link to a member’s or associated person’s BrokerCheck report.<sup>34</sup> Commenters noted that the costs of including and tracking deep links in member and third-party websites would have been significant and operationally unfeasible.

Commenters reiterated opponents’ views that the proposal would impose significant costs and burdens on members.<sup>35</sup> These costs include requiring members to create and implement new written policies and procedures, and performing ongoing surveillance of firm and associated persons’ websites to ensure compliance with the rule proposal. One member noted that it has approved roughly 1,000 LinkedIn profiles, and

---

<sup>34</sup> See Schwab, CAI, Commonwealth, FSI, SIFMA and Wells Fargo.

<sup>35</sup> See CAI, FSI, Lincoln, SIFMA and Wells Fargo.



that in order to achieve compliance with the rule, the firm would have to incur 700 employee hours (or nearly 17 weeks of a full-time employee's time).<sup>36</sup>

Commenters recommended that the Chief Economist's office perform a cost-benefit analysis of the rule proposal to ensure that its benefits will exceed its costs before FINRA proceeds with the proposal. Other commenters urged that, if FINRA adopts the rule proposal, members be given at least six months to implement any required changes.<sup>37</sup>

Commenters also recommended that FINRA explore alternatives to requiring links to BrokerCheck as a means to increase investor knowledge and usage of the site.<sup>38</sup> For example, FINRA could pursue its own investor outreach program, or encourage state securities regulators to include links to BrokerCheck on their websites. FINRA could make the references to BrokerCheck on its own website more prominent and user-friendly, and improve the visual quality and clarity of BrokerCheck summary reports. FINRA could also target focus groups in order to identify possible alternative means of facilitating and increasing investor use of BrokerCheck.

#### General Comments

One commenter strongly criticized FINRA's commitment to protect investors. The commenter noted that the proposal would do little good because, in this commenter's view, it would merely present "expunged backgrounds and brokercheck historys [sic] that are, too often, fairytales."<sup>39</sup>

---

<sup>36</sup> See Lincoln.

<sup>37</sup> See ICI, SIFMA and Wells Fargo.

<sup>38</sup> See Schwab, CAI, and FSI.

<sup>39</sup> See Carrie Devorah.

Response to Comments

As discussed above, many of the comments either opposing the proposal in full, or recommending changes to the proposal, concerned requirements in the Notice 14-19 proposal that would have required members to include links to BrokerCheck on third-party websites, such as social media sites. FINRA believes it has addressed these concerns by revising the current proposal to limit its applicability to a member's own website. FINRA however will further consider the commenters' concerns regarding links on third-party websites and determine whether to pursue separate rulemaking addressing such links.

Under the current version, each of a member's websites must include a readily apparent reference and link to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. The current version provides exceptions from these requirements for: (i) a member that does not provide products or services to retail investors; and (ii) a directory or list of registered persons limited to names and contact information. The current version would not require a member to include a link to BrokerCheck from any third-party website, such as a social media site.

FINRA does not agree that it is necessary at this time to reinstate a requirement to include a deep link to a member's or a registered person's BrokerCheck report. A deep link requirement could potentially increase website maintenance costs, and FINRA is not proposing to require such links at this time. Most investors should be able to find

information concerning particular members or registered representatives without difficulty given the ease of operation of the BrokerCheck search feature.

FINRA also does not believe it is necessary or appropriate to require links to BrokerCheck on each email sent by a member or registered person. FINRA believes that such a requirement would be overly burdensome and require significant system changes, without commensurate benefit. However, FINRA has removed the express exception for emails and text messages as unnecessary, since the proposal by its terms only applies to a member's own website. For the same reason, FINRA has removed the prior exception for retail communications posted on online interactive forums.

FINRA does not agree with comments that BrokerCheck presents a biased and unfavorable view of securities firms and their personnel, or that it omits important information to which investors should have access. FINRA has carefully considered the need to provide investors with information necessary to make informed choices about the individuals and members with which they conduct business. Moreover, FINRA is required by statute to establish and maintain a system for collecting and retaining registration information, including disciplinary actions, regulatory, judicial and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.<sup>40</sup> FINRA believes that it is important that investors have access to this information to help them make informed decisions when selecting a broker-dealer or registered person with whom to do business. FINRA regularly assesses the BrokerCheck program and may consider the inclusion of additional information in BrokerCheck at a later time.

---

<sup>40</sup> See 15 U.S.C. § 78o-3(i).

FINRA does not agree that the proposal should allow more information in directories of registered persons without requiring a BrokerCheck link, such as biographical information or areas of expertise. This kind of information is precisely the content that should trigger a link to BrokerCheck, since its intent is to generate investor interest in a particular registered representative.

FINRA believes it has answered commenters' questions concerning the scope of the proposed link requirements. In this regard, a member is required to include a link to BrokerCheck only on webpages that are either the initial page that the member intends to be viewed by retail investors, or pages that include profile information about registered persons that conduct business with retail investors. Links are not required on every webpage of a member's website. If a webpage includes profile information about multiple registered persons, only one link to BrokerCheck is required. In response to comments received to the Notice 14-19 proposal, FINRA has revised the rule as proposed in Notice 14-19 to require a link to BrokerCheck on webpages that provide profile information about registered persons, rather than webpages that provide profile information about any associated person. Members also may use "buffer" screens or interstitial exiting site pages to inform investors that they are leaving the member website prior to connecting to BrokerCheck, although there is no requirement to do so.

In addition, members have flexibility on how best to link to BrokerCheck, as long as the reference and link to BrokerCheck are readily apparent. For example, members have expressed interest in using "widgets" as a way to link to BrokerCheck. Use of widgets would meet to the proposal's requirements, as long as the link and reference to BrokerCheck are readily apparent.

FINRA does not agree that the proposal is redundant given that FINRA includes a link to BrokerCheck on the FINRA website. FINRA believes that the proposal will increase awareness of BrokerCheck and believes that more investors will use BrokerCheck after it is implemented.

FINRA also does not believe it is necessary or appropriate to create an exception from the proposal for mobile device applications. To the extent that a web-based application merely provides access to a customer's account information and does not contain profile information about a registered representative that conducts business with retail investors, the proposed requirements would not apply. However, if a customer uses his or her mobile device to access a webpage that contains profile information about a registered representative that conducts business with retail investors, FINRA believes it is important for the customer to be made aware of BrokerCheck, irrespective of whether the investor used a mobile device or a desktop or laptop computer to view such a webpage.

FINRA has considered the potential costs and benefits of the Notice 14-19 proposal and, accordingly, revised the proposal to reduce its potential costs while maintaining the proposal's investor protection goals. FINRA also has proposed to allow members at least six months to comply with the proposed rule change. FINRA appreciates the suggestions to explore alternatives to increase investor knowledge and usage of BrokerCheck. While such suggestions are beyond the scope of this proposal, FINRA intends to continue to consider ways to increase investor knowledge and usage of BrokerCheck.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-014 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2015-014. This file number should be included on the subject line if e-mail 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 website (<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 website 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 a.m. and 3 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-2015-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

Robert W. Errett

Deputy Secretary

---

<sup>41</sup> 17 CFR 200.30-3(a)(12).

# Regulatory Notice

# 12-10

## FINRA BrokerCheck®

### FINRA Requests Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information

**Comment Period Expires: April 6, 2012**

#### Executive Summary

FINRA requests comment on ways to facilitate and increase investor use of BrokerCheck information. Specifically, FINRA requests comment on potential changes to the information disclosed through BrokerCheck, the format in which the information is presented and strategies to increase investor awareness of BrokerCheck.

Questions concerning this *Notice* should be directed to:

- ▶ Richard E. Pullano, Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or
- ▶ John D. Nachmann, Assistant Chief Counsel, Registration and Disclosure, at (240) 386-4816.

#### Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by April 6, 2012.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to [pubcom@finra.org](mailto:pubcom@finra.org); or
- ▶ Mailing comments in hard copy to:  
 Marcia E. Asquith  
 Office of the Corporate Secretary  
 FINRA  
 1735 K Street, NW  
 Washington, DC 20006-1506

## February 2012

#### Notice Type

- ▶ Request for Comment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management

#### Key Topics

- ▶ BrokerCheck
- ▶ Central Registration Depository

#### Referenced Rules & Notices

- ▶ FINRA Rule 2267
- ▶ FINRA Rule 8312
- ▶ SEA Section 15A



To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.<sup>1</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).<sup>2</sup>

## Background & Discussion

FINRA established the BrokerCheck program (then known as the Public Disclosure Program) in 1988 to provide investors and the general public with information on the professional background, business practices and conduct of FINRA member firms and their associated persons. Through BrokerCheck, FINRA releases to the public information reported on uniform registration forms to the Central Registration Depository (CRD®).<sup>3</sup> Among other things, BrokerCheck helps investors make informed choices about the individuals and firms with which they currently conduct or are considering conducting business.

Since establishing BrokerCheck, FINRA has regularly assessed the scope and utility of the information it provides to the public and, as a result, has made numerous changes to improve the program. These changes have made BrokerCheck easier to access by expanding the available methods of requesting information through the program. For instance, initially the public could only request information via U.S. mail or facsimile. FINRA subsequently added the ability to submit requests via a toll-free telephone number and thereafter through email. Now, BrokerCheck reports are available instantly online at [www.finra.org/brokercheck](http://www.finra.org/brokercheck). FINRA also has increased the amount of information available through the program. At first, limited employment history, final disciplinary actions and criminal convictions were available. The information currently available to investors, pursuant to FINRA Rule 8312, includes registrations brokers hold and the examinations they have passed, and disclosure information regarding various criminal, regulatory, customer dispute, termination and financial matters on current and former FINRA-registered brokerage firms and brokers.<sup>4</sup>

Until recently, BrokerCheck was the only regulator-provided comprehensive, online tool that enabled investors to check the backgrounds of financial service industry professionals. In 2010, the SEC expanded the Investment Adviser Public Disclosure (IAPD) database—which had previously only included information on investment adviser firms—to include information on investment adviser representatives.<sup>5</sup> Although BrokerCheck and IAPD have

many similarities, there are differences in the information available, the presentation format and the manner in which individuals may obtain information from the systems. With regard to this last difference, FINRA, through BrokerCheck's Terms & Conditions, prohibits an individual from using BrokerCheck information for anything other than that individual's own personal or professional use. In addition, any voluminous requests or attempts to bypass FINRA software or hardware designed to block such requests is prohibited. In contrast, the SEC does not place any such limitations on an individual's use of IAPD information or the ability to obtain voluminous information through automated data collection tools (*e.g.*, "screen scrapers"),<sup>6</sup> provided the methods do not detrimentally affect the system's performance.

In January 2011, SEC staff released a [study](#) and recommendations on improving investor access to investment adviser and broker-dealer registration information, as required by Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>7</sup> In the study, SEC staff makes the following three near-term recommendations to improve investor access to registration information through BrokerCheck:

- ▶ unify search returns for BrokerCheck and the IAPD databases;
- ▶ add the ability to search BrokerCheck by ZIP Code or other indicator of location; and
- ▶ add educational content to BrokerCheck, including links and definitions of terms that may be unfamiliar to investors.

The Dodd-Frank Act mandates that these recommendations be implemented within 18 months after completion of the study, and FINRA will put them into effect before the July 2012 deadline.

In addition to the near-term recommendations mentioned above, the study includes an intermediate-term recommendation (to be addressed after the 18-month implementation period). Specifically, SEC staff recommends that FINRA continue to analyze the feasibility and advisability of expanding BrokerCheck to include additional information available in the CRD system (*e.g.*, the reason for and comments related to a broker's termination, scores on industry qualification exams, formerly reportable information), as well as the method and format of publishing BrokerCheck content. SEC staff notes that investor input could be valuable in this context.<sup>8</sup>

Based on the study's intermediate-term recommendation and FINRA's belief that regular evaluation of the BrokerCheck program is an important part of its statutory obligation to make information available to the public, FINRA has initiated a thorough review of its BrokerCheck program. The goal of this review is to determine how to facilitate and increase investor use of BrokerCheck information.<sup>9</sup> As a first step, FINRA recently engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program. With this *Notice*, FINRA is seeking further input from interested parties, including investors who currently use or who may use BrokerCheck, on how FINRA can best achieve its goal.

## Request for Comment

FINRA welcomes comments from all interested parties. Among other things, FINRA is interested in comments on the following:

### Information Displayed

As mentioned above, the amount of information available through BrokerCheck has significantly increased since its introduction. With respect to brokers, BrokerCheck currently provides registration and employment history; industry examinations the broker has passed; other business activities the broker is engaged in; and information pertaining to criminal, regulatory action, civil judicial, customer complaint, termination and financial events.

The information, which is collected by FINRA and used for registration and regulatory purposes, is available for 10 years after the broker has left the securities industry and, in those cases where a broker has been involved in certain disclosure events, the information is available permanently.<sup>10</sup>

Information on brokerage firms provided through BrokerCheck includes locations; ownership; registrations; types of business; clearing, introducing and industry arrangements; affiliates; and disclosure information similar to that provided for brokers. Information pertaining to brokerage firms is available in BrokerCheck permanently.

- ▶ Should changes be made to the categories of CRD system information that are displayed through BrokerCheck or the time frames for which such information is displayed? If so, what information should be added or deleted from BrokerCheck and how long should the information be available in BrokerCheck?
- ▶ Would it be beneficial for investors if FINRA included links to other websites (*e.g.*, websites maintained by financial industry regulators or organizations that provide investor education) in BrokerCheck reports? If so, what types of links would be most helpful?
- ▶ Should a broker's educational background and/or professional designations (*e.g.*, Chartered Financial Consultant, Chartered Financial Analyst) be available in BrokerCheck?
- ▶ What terms or phrases used in BrokerCheck reports are most difficult for public users to understand? What educational or other material should FINRA provide to help public users?

### Report Design, Format and Content

In response to a search request, BrokerCheck initially provides a user with a summary report for the requested broker or brokerage firm. For brokers, this summary report provides basic information regarding qualifications, registration and employment history, and existence of disclosure events. With respect to brokerage firms, the summary report contains information pertaining to location, profile, history, operations and the existence of disclosure events. Users have the option of requesting a detailed BrokerCheck report, which provides additional information about the broker or brokerage firm.

- ▶ What changes, if any, should be made to the design, format or content of the BrokerCheck summary report and/or the full detailed report?
- ▶ Would it be helpful to include in the summary report a concise summary of a broker's or brokerage firm's disclosure events (for example, a matrix setting forth the number and types of disclosure events), if any? If so, what would be the best format for the summary? What information should it contain?

### Investor Awareness of BrokerCheck

During focus groups with investors, the consensus among participants was that investors should use BrokerCheck when considering whether to work with a new broker or brokerage firm. These participants stated that it was important for BrokerCheck to be more widely known among investors.

- ▶ How can FINRA best increase investor awareness of BrokerCheck?
- ▶ Should FINRA make basic BrokerCheck information (*e.g.*, registration status, employing firm, employment location) available in such a way that would enable an investor to enter a broker's name in an Internet search engine, see the basic information in the search results, and be directed to BrokerCheck for more detailed information?
- ▶ Should changes be made to FINRA Rule 2267 to further increase investor awareness of BrokerCheck?<sup>11</sup> If so, should such changes involve the items of information disclosed, the frequency and/or manner of distribution of information, and/or the member firms covered by the rule? Should any other changes be made?

### Commercial Use

Some for-profit companies have established, or are contemplating establishing, websites or services that enable users to verify or obtain information about financial industry professionals (including brokers). These companies' products and services likely would be targeted to fulfilling the needs of businesses and individual (*i.e.*, retail) investors.

- ▶ Should FINRA provide BrokerCheck information to for-profit companies for commercial use? What are some of the benefits/concerns of such action? If FINRA were to provide BrokerCheck information to such companies, what conditions or limitations on use should FINRA consider imposing?

## Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration) and Form U6 (Uniform Disciplinary Action Reporting Form).
4. In 2006, Congress amended SEA Section 15A(i) to, among other things, expand the methods by which BrokerCheck information is available and the amount of information provided. Pub. L. No. 109-209, 120 Stat. 1317 (2006).
5. IAPD, which FINRA operates under contract with the SEC, has been in operation since 2001.
6. A screen scraper is software that “automatically extracts data from HTML pages or other documents that are normally viewed interactively by the user.” *See* [PC Magazine Encyclopedia](#).
7. Pub. L. No. 111-203, 124 Stat. 1376 (2010).
8. Specifically, SEC staff states that investor input could help determine whether investors would find the disclosure of additional information through BrokerCheck useful and whether to revise the format of the BrokerCheck or IAPD websites.
9. A 2009 study found that only 15 percent of respondents claimed that they had checked a financial advisor’s background with a state or federal regulator. *See* Applied Research & Consulting LLC, [Financial Capability in the United States \(2009\)](#).
10. For a description of information that is available permanently in BrokerCheck, *see* [Regulatory Notices 09-66](#) (November 2009) and [10-34](#) (July 2010).
11. FINRA Rule 2267 (Investor Education and Protection) requires FINRA member firms to annually provide in writing to each of their customers the BrokerCheck telephone number and website address, as well as a notification of the availability of an investor brochure that includes information describing BrokerCheck. Pursuant to the rule, a member firm whose contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member firm and thereafter does not carry customer accounts or hold customer funds and securities may provide the information at or prior to the time of the customer’s initial purchase rather than on an annual basis. Also, any member firm that does not have customers or is a party to a carrying agreement where the carrying firm member provides the BrokerCheck information described above is exempt from the requirements of the rule.

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68700; File No. SR-FINRA-2013-002)

January 18, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 7, 2013, 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 amend FINRA Rule 2267 (Investor Education and Protection) to require that members include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their websites, social media pages and any comparable Internet presence and on websites, social media pages and any comparable Internet presence relating to a member’s investment banking or securities business maintained by or on behalf of any person associated with a member.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA-member firms and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository ("CRD<sup>®</sup>"), the securities industry online registration and licensing database. FINRA-member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms. By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

In January 2011, Commission staff released its Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers ("Study"),<sup>3</sup> in furtherance of Section 919B of the Dodd-Frank Act. The Study contains four recommendations for improving investor access to registration information through

---

<sup>3</sup> The Study is available online at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

BrokerCheck and the Commission's Investment Adviser Public Disclosure ("IAPD") database. In May 2012, FINRA implemented the Study's three "near-term" recommendations.<sup>4</sup> FINRA is currently working on the Study's "intermediate-term" recommendation, which involves analyzing the feasibility and advisability of expanding the information available through BrokerCheck, as well as the method and format that BrokerCheck information is displayed.

In light of the Study's "intermediate-term" recommendation and FINRA's belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation to make information available to the public,<sup>5</sup> FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program.

Participants in the focus groups were asked questions about a variety of topics, including the financial markets, working with a broker or investment adviser, and the BrokerCheck program. Many of the participants stated that they had been unaware of the existence of BrokerCheck prior to their participation in the focus groups.<sup>6</sup> After learning about BrokerCheck,

---

<sup>4</sup> These recommendations are to unify search returns for BrokerCheck and IAPD, add the ability to search BrokerCheck by ZIP code, and increase the educational content on BrokerCheck.

<sup>5</sup> See Section 15A(i) of the Act. 15 U.S.C. 78o-3(i). Since establishing BrokerCheck, FINRA has regularly assessed the scope and utility of the information it provides to the public and, as a result, has made numerous changes to improve the program.

<sup>6</sup> This is consistent with a 2009 study that found that only 15 percent of respondents said that they had checked a financial advisor's background with a state or federal regulator. See Financial Capability in the United States (FINRA Investor Education Foundation, Dec. 1, 2009), available at <http://www.finrafoundation.org/web/groups/foundation/@foundation/documents/foundation/p120536.pdf>.



the consensus among focus group participants was that investors should use BrokerCheck when considering whether to work with a new investment professional or firm and that it therefore was important for BrokerCheck to be more widely known among investors. Based on the focus group results and the comments received in response to Regulatory Notice 12-10, FINRA is proposing to amend Rule 2267.<sup>7</sup>

Subject to limited exceptions, FINRA Rule 2267(a) currently requires members to annually provide in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that includes information describing BrokerCheck.<sup>8</sup> To further increase investor awareness and use of BrokerCheck, the proposed rule change would amend Rule 2267 to require all members to include a prominent description of and link to BrokerCheck, as prescribed by FINRA, on their websites, social media pages and any comparable Internet presence, as well as on the websites, social media pages and any comparable Internet presence relating to the firm's investment banking or securities business maintained by or on behalf of any person associated with a member.

To ensure consistency and help with the implementation of the proposed rule change, FINRA would provide members with the text description and web address format for the link to BrokerCheck. The web address provided by FINRA, which would include a firm's or

---

<sup>7</sup> FINRA continues to consider other comments regarding changes to BrokerCheck that were submitted in response to Regulatory Notice 12-10.

<sup>8</sup> Any member whose contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member and thereafter does not carry customer accounts or hold customer funds and securities may furnish a customer with such information at or prior to the time of the customer's initial purchase, in lieu of once every calendar year. Any member that does not have customers or is a party to a carrying agreement where the carrying firm member furnishes a customer with such information is exempt from the requirements of FINRA Rule 2267(a).

individual's CRD number, would be specific to each member or associated person. The link would take the user to BrokerCheck's search results screen for the subject firm or individual, which displays basic information, such as CRD number, SEC number (for firms), registration status, and employing firm (for individuals). Once the investor completes the challenge-response test (used to make it more difficult for an automated application to collect BrokerCheck information) and agrees to BrokerCheck's terms and conditions, the investor will be able to obtain a detailed BrokerCheck report on the subject firm or individual.

FINRA believes that the proposed change will increase investor use of BrokerCheck because the link provided on a firm's or individual's website will take investors to that firm's or individual's specific BrokerCheck search results screen rather than the BrokerCheck homepage. Thus, investors will not be required to enter the name of the firm or individual they are searching for or to select the correct broker or firm from the search results.

To further help with implementation of the proposed rule change, FINRA will provide in the Regulatory Notice announcing the effective date of the proposed rule change guidance regarding the prominence and placement of the BrokerCheck description and link.

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,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to

---

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

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 would increase investor awareness and use of BrokerCheck, thereby helping investors make informed choices about the individuals and firms with which they conduct business. Specifically, FINRA believes that the proposed description of BrokerCheck will alert investors to the existence of the program and the link to the subject firm or individual will make BrokerCheck even easier to use as a research tool.

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.

FINRA believes that the proposed rule change will enhance investor protection by increasing the public's awareness and use of BrokerCheck. FINRA expects that the inclusion of a prominent description of BrokerCheck on a firm's or associated person's website will increase the public's awareness of the program by alerting investors to the existence of BrokerCheck while they are researching a firm or broker. FINRA believes that the proposal will not result in a significant burden on members or associated persons. In this regard, although FINRA has not found any independent estimates relating to the cost of adding a link to a website, FINRA anticipates that the costs to comply with the proposed rule change to members and associated persons will be limited, particularly for those firms that will make the changes with a content management system,<sup>10</sup> and will not significantly burden small firms. In addition, FINRA will

---

<sup>10</sup> In general, a content management system is a software application that is used to manage text, images, audio and video content for a website. FINRA recognizes that some firms may not use a content management system and therefore may incur additional development costs depending on how their websites are configured.

provide firms with the specific links (in a user-friendly URL format) to be added to their websites, thereby helping to contain the costs associated with the proposal.

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

The proposed rule change was published for comment by FINRA in Regulatory Notice 12-10 (February 2012). A copy of the Regulatory Notice is attached as Exhibit 2a.<sup>11</sup> The comment period expired on April 27, 2012. FINRA received 71 comment letters in response to the Regulatory Notice. A list of the comment letters received in response to the Regulatory Notice is attached as Exhibit 2b.<sup>12</sup> Eleven of the 71 comment letters received addressed proposed changes to Rule 2267.<sup>13</sup> Of these 11 comment letters, 10 were in favor of an increase in the communication by firms to their customers about the existence of BrokerCheck and one was opposed.

Several commenters expressed the view that firms should include a link to BrokerCheck on their websites to help increase investor awareness of the program.<sup>14</sup> Some of these commenters also suggested that firms be required to include the BrokerCheck website address in various other locations such as public communications, new account documents, and monthly statements.<sup>15</sup>

---

<sup>11</sup> The Commission notes that Exhibit 2a is attached to the filing, not to this Notice.

<sup>12</sup> The Commission notes that Exhibit 2b is attached to the filing, not to this Notice. All references to the commenters under this Item are to the commenters as listed in Exhibit 2b.

<sup>13</sup> ARM, CFA, CFP, Davis, Dickenson, Dorsey, Foresters, Kelly, McCracken, PIRC, and Podolak.

<sup>14</sup> CFA, CFP, Davis, Foresters, Kelly, McCracken, and PIRC.

<sup>15</sup> ARM, CFA, CFP, PIRC, and Podolak.

FINRA appreciates the commenters' suggestions on additional ways to increase investor awareness of BrokerCheck and will consider them in the future. When considering the commenters' suggestions, FINRA will examine, among other things, whether the inclusion of the BrokerCheck website address on materials such as public communications, new account documents, and monthly statements would materially increase investor awareness or use of BrokerCheck, as well as the potential additional costs that the suggested changes would impose on members and their associated persons.

One commenter suggested that no changes be made to Rule 2267.<sup>16</sup> As previously mentioned, FINRA believes that the proposed rule change will benefit investors by increasing the awareness and use of BrokerCheck.

### 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:

---

<sup>16</sup> Dorsey.

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-002 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2013-002. This file number should be included on the subject line if e-mail 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 website (<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 website 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-2013-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>17</sup> 17 CFR 200.30-3(a)(12).

# Regulatory Notice

# 14-19

## BrokerCheck

### FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public

**Comment Period Expires: June 16, 2014**

#### Executive Summary

FINRA seeks comment on a revised proposal to require a hyperlink to BrokerCheck in firms' online retail communications with the public. The revised proposal includes changes made in response to comments on a prior proposal to amend FINRA Rule 2267 (Investor Education and Protection). The revised proposal would require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors. In addition, it would require a firm to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person, subject to specified conditions and exceptions, including exceptions for electronic mail and text messages.

The proposed rule is available as Attachment A at [www.finra.org/notices/14-19](http://www.finra.org/notices/14-19).

Questions concerning this *Notice* should be directed to:

- ▶ Joseph Savage, Vice President, Regulatory Policy, at (240) 386-4534;
- ▶ Richard E. Pullano, Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821 (regarding BrokerCheck); or
- ▶ Erika Lazar, Assistant General Counsel, Office of General Counsel, at (202) 728-8013.

#### April 2014

##### Notice Type

- ▶ Request for Comment

##### Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management
- ▶ Systems
- ▶ Technology

##### Key Topics

- ▶ BrokerCheck®
- ▶ Central Registration Depository (CRD®)
- ▶ Social Media
- ▶ Uniform Registration Forms

##### Referenced Rules & Notices

- ▶ Regulatory Notice 10-06
- ▶ Regulatory Notice 11-39
- ▶ Regulatory Notice 12-10
- ▶ FINRA Rule 2210
- ▶ FINRA Rule 2267



## Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by June 16, 2014.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to [pubcom@finra.org](mailto:pubcom@finra.org); or
- ▶ Mailing comments in hard copy to:  
Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.<sup>1</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).<sup>2</sup>

## Background & Discussion

### A. Initial Proposal

In January 2013, FINRA filed with the SEC a proposed rule change to amend FINRA Rule 2267 (Investor Education and Protection)<sup>3</sup> to require all firms to include a prominent description of and link to BrokerCheck on their websites, social media pages and any comparable Internet presence (the initial proposal).<sup>4</sup> The requirement also applied to the websites, social media pages and any comparable Internet presence relating to a firm's investment banking or securities business maintained by or on behalf of any person associated with a firm. The proposed rule change was intended to increase investor awareness and use of BrokerCheck.<sup>5</sup> The SEC received 24 comment letters in response to the proposed rule change, some of which raised operational issues. The most common concerns involved the challenges of implementing the proposed rule change with respect to social media pages and the use of a "deep" link to BrokerCheck summary reports specific to each member firm or associated person.<sup>6</sup> FINRA withdrew the filing to assess and respond to commenters' concerns.

## B. Revised Proposal

In light of the concerns with the initial proposal, FINRA requests comment on a revised proposal that incorporates the proposed BrokerCheck link requirement into FINRA's regulatory framework for communications with the public in FINRA Rule 2210 (Communications With the Public). Specifically, the revised proposal would adopt FINRA Rule 2210(d)(8)(A) to require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors.

In addition, proposed FINRA Rule 2210(d)(8)(B) would require a firm to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications that include a professional profile of, or contact information for, an associated person, subject to the following conditions:<sup>7</sup>

- ▶ If the retail communication appears on the firm's website or any site that it hosts, the hyperlink to BrokerCheck must appear in close proximity to the profile or contact information.
- ▶ If the retail communication appears on a third-party website that permits a hyperlink to another website, the firm must either (1) post a hyperlink to BrokerCheck in close proximity to the profile or contact information; or (2) post a hyperlink to the firm's website, which includes a readily apparent reference and hyperlink to BrokerCheck, in close proximity to the profile or contact information, and include in the third-party website communication disclosure that informs the reader that a hyperlink to BrokerCheck is available through the linked website.
- ▶ If the retail communication appears on a third-party website that does not permit a hyperlink to another website, the firm must provide the BrokerCheck web address (uniform resource locator (URL)) in close proximity to the profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck.

Proposed FINRA Rule 2210(d)(8)(C) would except from the proposed requirements:

- ▶ electronic mail or text messages;
- ▶ a retail communication that is posted on an online interactive electronic forum (such as a message board, Twitter feed or chat room);<sup>8</sup>
- ▶ a member firm that does not provide products or services to retail investors; or
- ▶ a directory or list of associated persons limited to names and contact information.<sup>9</sup>

FINRA does not treat third-party communications as a firm's or its associated persons' communications under FINRA Rule 2210 unless the firm or its associated persons have adopted or become entangled with the communication.<sup>10</sup> Accordingly, the disclosure requirements of proposed FINRA Rule 2210(d)(8) would not apply to independent third-party websites that provide contact or profile information about a firm or its associated persons if the firm and its associated persons have not adopted the website and have no involvement with its content.<sup>11</sup>

FINRA believes the proposed amendments to FINRA Rule 2210 address many of the commenters' concerns on the original proposal. By incorporating the proposed rule change into the regulatory framework for communications with the public, the revised proposal clarifies the operation of the proposed requirements. In this regard, FINRA has issued guidance related to FINRA Rule 2210 that addresses the rule's application to social media pages, blogs and other online communications with the public.<sup>12</sup> In addition, the revised proposal clarifies that a hyperlink to BrokerCheck be included only on websites of the firm that are available to retail investors, rather than on all of its social media pages and proprietary sites that limit access to institutional investors.

As detailed above, the revised proposal provides flexibility with respect to online retail communications on third-party websites that are not controlled by the firm, such as social media sites, by providing firms with options to address the restrictions and limitations of such websites.<sup>13</sup> In addition, the exceptions in the revised proposal provide clarity regarding the application of the proposed rule. The revised proposal eliminates the requirement for a deep link to a firm's or associated person's BrokerCheck report summary page.

FINRA believes that the revised approach will increase investor awareness of BrokerCheck, while addressing the operational concerns the initial proposal raised.

To assist firms in assessing the impact of the revised proposal, FINRA reviewed a selection of popular social media sites and conducted trials to determine how firms could implement the proposed requirements for third-party websites. Based on this review, FINRA determined that firms would be able to post a hyperlink to BrokerCheck or a hyperlink to the firm's website in close proximity to an associated person's profile or contact information on:<sup>14</sup>

- ▶ **Facebook:** in the "About" section of the Profile page;
- ▶ **LinkedIn:** in the "Background Summary" section (individuals);
- ▶ **YouTube:** in the "About" section of the Profile page; and
- ▶ **Pinterest:** in the "About" section of the Profile page.

With respect to Twitter, FINRA understands that due to character limitations along with the inability to include hyperlinks in a user's profile, the inclusion of a hyperlink to BrokerCheck or a hyperlink to the firm's website is not feasible. For sites with such restrictions, firms would be required to provide the BrokerCheck URL in close proximity to an associated person's profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck. On Twitter, the BrokerCheck web address would be required in the "About" section of an associated person's Profile page.

FINRA requests comment on all aspects of the revised proposal, including any potential costs and burdens that the revised proposal could impose on firms. FINRA particularly requests comment concerning the following issues:

- ▶ Does the revised proposal address the operational concerns raised by the initial proposal, particularly with respect to the proposed requirements for third-party websites? Why or why not?
- ▶ Should FINRA retain the deep link requirement to provide investors with direct access to a firm's or associated person's BrokerCheck report summary?<sup>15</sup>
- ▶ Will the revised proposal increase investor use and awareness of BrokerCheck?
- ▶ What are the direct and indirect costs of the proposed rule to firms, including the cost associated with monitoring retail communications of associated persons across different channels? FINRA welcomes estimates of these costs to firms.
- ▶ Are there alternative approaches FINRA should consider to accomplish this goal? If so, what are those alternatives and why could they be better suited?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

## Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See* [NTM 03-73](#) (November 2003) (Online Availability of Comments) for more information.
2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. Subject to limited exceptions, FINRA Rule 2267(a) requires member firms to provide annually in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that describes BrokerCheck.
4. *See* Securities Exchange Act Release No. 68700 (January 18, 2013), 78 FR 5542 (January 25, 2013) (Notice of Filing of SR-FINRA-2013-002).
5. *See also* [Regulatory Notice 12-10](#) (February 2012).
6. A BrokerCheck report summary page displays the firm's or person's CRD number, SEC number (for firms), registration status and employing firm (for individuals).
7. FINRA Rule 2210(a)(5) defines a "retail communication" as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. Rule 2210(a)(6) defines a "retail investor" as any person other than an institutional investor (as defined in Rule 2210(a)(4)), regardless of whether the person has an account with a member.
8. FINRA notes, however, that the proposed requirements would apply to static content on a site that hosts an online interactive forum (such as a profile page).
9. This exception for directories that are limited to the names and contact information of associated persons is intended to apply both to directories that appear on a member's website, as well as third-party website directories in which the firm or associated person was involved with the website's content.
10. *See* [Regulatory Notice 11-39](#) (August 2011), Question 4.
11. For example, a firm would not be required to ensure that an independent third-party website that provides ratings or customer reviews about broker-dealers includes a hyperlink to BrokerCheck if the firm and its associated persons have not adopted the website or become entangled with the creation of the website's content. Similarly, the requirements of proposed FINRA Rule 2210(d)(8) would not apply to online directories that aggregate and assemble service industry information based on publicly available data without any involvement of a firm or its associated persons.
12. *See* [Regulatory Notice 11-39](#) (August 2011) and [Regulatory Notice 10-06](#) (January 2010).
13. FINRA notes that, consistent with social media guidance published by FINRA in relation to FINRA Rule 2210, the revised proposal would not apply to personal social media sites or a biography on a website that is outside the scope of an associated person's relationship with a member firm.

14. If the hyperlink is to the firm's website, the firm also must include disclosure that informs the reader that a hyperlink to BrokerCheck is available through the linked website.
15. FINRA notes that a deep link can be created by adding a firm's or individual's CRD number to the end of the appropriate web address format (Designated URL). For example, the deep link for the individual with CRD number 1234 is [www.brokercheck.finra.org/Individual/1234](http://www.brokercheck.finra.org/Individual/1234).

**Exhibit 2d**

**Alphabetical List of Written Comments  
Regulatory Notice 14-19**

1. Alpine Securities (June 16, 2014)
2. David T. Bellaire, Esq., Financial Services Institute (June 12, 2014)
3. Melissa Callison, Charles Schwab & Co., Inc. (June 16, 2014)
4. CJ Croll, Elissa Germain, Jill I. Gross, PIRC (June 16, 2014)
5. Brendan Daly, Commonwealth Financial Network (June 16, 2014)
6. Susanne Denby, NFP Securities, Inc. (June 13, 2014)
7. Carrie Devorah (June 13, 2014)
8. Dorothy Donohue, Investment Company Institute (June 16, 2014)
9. Scott Eichorn, Jesse LeVine, University of Miami School of Law (June 16, 2014)
10. Andrew Heath, Buckman, Buckman & Reid (June 3, 2014)
11. Clifford Kirsch, Eric Arnold, Sutherland Asbill & Brennan LLP (June 16, 2014)
12. Steve Klein, Farmers Insurance (June 13, 2014)
13. Matthew J. Kuntz, Midwestern Securities Trading Company, LLC (May 21, 2014)
14. Melissa MacGregor, SIFMA (June 16, 2014)
15. Robert T. Mann, First Georgetown Securities, Inc. (May 16, 2014)
16. Robert J. McCarthy, Wells Fargo Advisors, LLC (June 4, 2014)
17. Paul D. Mendelsohn, Windham Financial Services, Inc. (June 4, 2014)
18. Joseph C. Peiffer, PIABA (June 16, 2014)
19. Mark Russell, Lincoln Financial Group (June 16, 2014)
20. Andrea Seidt, NASAA (June 20, 2014)
21. Patricia Uceda, Nicole Iannarone, Georgia State University (June 13, 2014)
22. Terry Vollenweider (June 10, 2014)





June 16, 2014

Via: email ([pubcom@finra.org](mailto:pubcom@finra.org))  
and Overnight Courier

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

RE: **Objection to Proposal to Amend and Add Subsection (d)(8)(B) to Rule 2210 –  
Requiring Hyperlinks to BrokerCheck**

Dear Ms. Asquith:

Alpine Securities Corporation (“Alpine”) strongly opposes the currently-proposed revisions to FINRA Rule 2210 (Communications with the Public), which would require the addition of BrokerCheck hyperlinks to a broker-dealer’s proprietary website and on third-party webpages as well. A similar proposed rule change last year, which would have required BrokerCheck hyperlinks, was withdrawn by the SEC in April 2013.

Although this year’s proposal addresses some of the concerns regarding last year’s proposal, the same fundamental problems remain. Obviously, the most fundamental objective of this type of proposal should be to assure that investors and the public can obtain an accurate, unbiased perception of a firm and its personnel. It is also important that the implementation and maintenance burden resulting from the additional regulatory requirements can be justified on a cost-benefit basis.

**THE NEW PROPOSAL DOES NOT MEET THESE STANDARDS.** Instead, the most likely result will be a biased and unfavorable view of securities firms and their personnel coupled with the additional expenses of implementation and maintenance of the additional features on multiple webpages.

Some of the comment letters from last year’s proposal discussed problems with BrokerCheck – including that it is difficult for a lay person to understand to use BrokerCheck and correctly understand the information. BrokerCheck tends to lead to a negatively biased viewpoint of the firms and their personnel. As anyone who has looked over any BrokerCheck reports knows, the feature that tends to evoke the most immediate interest is the tabulation of so-called “disclosure events” or “regulatory events,” which sets forth prior violations of FINRA rules (whether proven or alleged but settled) and other information (such as personal bankruptcies or inadvertent recordkeeping violations). These events often go back decades, including information about individuals who left the firm years ago, or before a change in ownership or the segment of the securities industry. Many disclosure events do not even involve any allegations of harm to investors or intentional misconduct. Also, the reports frequently



include matters that were settled without admitting wrongdoing to avoid the time and expense required to defend against the charges

**Another major reason we oppose these new requirement is that the burdens and expenses of compliance are proportionately much higher for small firms such as ours and the correspondent firms for which we perform clearing services, including expenses to correct unfavorable perceptions – such as might arise from reporting events that occurred years earlier or did not involve any harm to investors.**

Unfortunately, our concerns about greater negative impact on small firms are supported by a number of news releases and industry reports in recent years in which large broker-dealers are given a pass for the same conduct or compliance weaknesses that result in substantial penalties for small firms. Even more concerning are government and regulatory actions in recent years that appear to have the objective of choking off the resources and ability of small broker-dealers to even remain in business.

**For the foregoing reasons, Alpine strongly opposes the proposal to require hyperlinks to BrokerCheck as proposed.**

Very truly yours,

ALPINE SECURITIES CORPORATION



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS  
AND INDEPENDENT FINANCIAL ADVISORS

Financial Services Institute

607 14th Street NW, Suite 750

Washington, D.C. 20005

888 373-1840 | [financialservices.org](http://financialservices.org)

## VIA ELECTRONIC MAIL

June 12, 2014

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 14-19: Request for Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public**

Dear Ms. Asquith:

On April 30, 2014 the Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 14-19,<sup>1</sup> seeking comment on a revised proposal to require a hyperlink to BrokerCheck in firms' online retail communications with the public. This revised proposal includes changes made in response to comments provided on a prior proposed rule change filed with the SEC to amend FINRA Rule 2267 (Investor Education and Protection).<sup>2</sup> The prior filing would have required all firms to include a prominent description of and link to BrokerCheck on their websites, social media pages, and any comparable internet presence. The revised proposal would require firms to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors. The revised proposal also requires firms to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person.

The Financial Services Institute<sup>3</sup> (FSI) appreciates the opportunity to comment on this Regulatory Notice. FSI provided comments in response to the prior rule filing which highlighted many of the operational challenges involved with implementing the proposed BrokerCheck link requirements.<sup>4</sup> In particular, FSI's comments discussed the difficulty of including the required prominent description and outbound hyperlinks for social media sites. Requiring unique URL addresses, or "deep links," to the BrokerCheck summary reports for each associated person appearing on a member website would have been extremely challenging or impossible to implement. FSI applauds FINRA for

<sup>1</sup> FINRA Regulatory Notice 14-19 (Apr. 2014), available at <http://www.finra.org/Industry/Regulation/Notices/2014/P496867>.

<sup>2</sup> Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection), SR-FINRA-2013-002, 78 Fed. Reg. 5542 (January 25, 2013).

<sup>3</sup> The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

<sup>4</sup> See Letter from David T. Bellaire, Esq., SR-FINRA-2013-02, available at <http://www.sec.gov/comments/sr-finra-2013-002/finra2013002-14.pdf>.



responding to commenters by withdrawing the requirement and requesting comment on a revised proposal through this Regulatory Notice. This revised proposal addresses the most significant challenges with the prior proposed rule change by removing the "deep link" requirement. However, many challenges still remain, including the requirements related to third-party websites. While FINRA's goals with the requirements related to third-party websites are laudable, many aspects of these requirements may not be feasible, and it is unclear whether they will actually increase traffic and awareness of BrokerCheck. We expand on these concerns below.

#### Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.<sup>5</sup> These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically "main street America" – it is, in fact, almost part of the "charter" of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.<sup>6</sup> Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

---

<sup>5</sup> Cerulli Associates at <http://www.cerulli.com/>

<sup>6</sup> These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisers.

Comments

FSI appreciates the opportunity to submit comments on this revised proposal. While we support many of the changes made by FINRA in response to comments, FSI and its members believe that operational challenges still exist with respect to the revised proposal. We provide our comments below:

- **Does the revised proposal address the operational concerns raised by the initial proposal, particularly with respect to the proposed requirements for third-party websites?** FINRA has effectively addressed some of the concerns with respect to third-party websites. For example, the original proposal would have applied to websites that firms and advisors had no direct control over, such as online directories. Removing the requirement that websites include a deep link has substantially reduced the likely operational difficulties to implement the revised proposal's requirements.

However, several challenges remain with respect to third-party websites, specifically social media websites. Firms will incur significant costs and operational burdens to implement the requirements and monitor for compliance. Automated solutions for implementing the BrokerCheck link to all advisor social media accounts do not currently exist and would be very expensive for firms to create. As a result, the BrokerCheck link will require firms to create new written materials and policies with respect to the required BrokerCheck link. Upon distributing the new materials and policies to their advisors, firms will also be required to ensure that advisors have properly added the BrokerCheck link to their websites and social media accounts and that these links work correctly. Firms' employees will need to conduct spot-checks and engage in other surveillance efforts in order to ensure compliance. As new social media platforms emerge and are adopted by advisors and investors, compliance departments will be required to amend their materials and spend additional resources to achieve compliance with the requirements. While FINRA has provided helpful guidance with respect to the locations on existing social media sites where the BrokerCheck link can be placed, future social media platforms utilized by the public and advisors may not have room for the BrokerCheck link or may require additional guidance from FINRA. In addition, existing social media platforms may change the fields and locations where FINRA has suggested the required link to BrokerCheck appear. As discussed in a later section of this comment letter, more effective and efficient alternatives exist for enhancing investor awareness, education, and utilization of BrokerCheck. As a result, FSI believes the requirement to include a prominent description and link to BrokerCheck should be eliminated for third-party websites, and specifically for social media.

- **Should FINRA retain the deep link requirement to provide investors with direct access to a firm's or associated person's BrokerCheck report summary?** The requirement that firms and associated persons include a "deep link" to a BrokerCheck summary report on websites and certain third-party websites would be extremely difficult or impossible to implement from an operational and logistical perspective. Firms would need to specifically ensure that every associated person's deep link worked correctly. In addition, because many independent financial advisors operate businesses that employ associated persons, a webpage with biographical information for their staff would need to include a deep link for each associated person. As independent financial advisors experience turnover in these positions, constantly updating these deep links would be extremely challenging and



burdensome. Furthermore, it is not clear that the costs of requiring deep links for every associated person with biographical information on a website would be as beneficial as investors navigating to the BrokerCheck website first. Investors will become more comfortable with BrokerCheck and gain additional awareness and familiarity with FINRA's investor education efforts if sent to FINRA's website first rather than directly to the BrokerCheck summary report. If the investor later wants to review the BrokerCheck summary report of a different broker or is seeking additional education materials that FINRA has made available, familiarity with FINRA and the BrokerCheck website will facilitate this process more effectively than the deep link.

- **Will the revised proposal increase investor use and awareness of BrokerCheck?**

Although FINRA's goals are laudable, it is unclear whether the revised proposal will in fact increase investor use and awareness of BrokerCheck. Although FINRA judiciously included information on where firms and advisors would be able to post a hyperlink to BrokerCheck on certain third-party websites (e.g. Facebook, LinkedIn, Youtube, etc.) the link will appear in areas of those sites that remain relatively unnoticed due to their design. The issue is magnified as more internet traffic moves to mobile platforms. Websites and social media sites continue to change and optimize the design and user experience of their platforms for mobile users, and the locations on these platforms that FINRA has recommended BrokerCheck links be placed will continue to become less prominent on mobile sites. FSI is skeptical that requiring BrokerCheck links on websites, and especially on social media sites, will in fact increase traffic and investor awareness of BrokerCheck. If FINRA elects to continue with this proposal, FSI suggests a cost-benefit analysis and retrospective review be conducted on the issue of BrokerCheck traffic and investor awareness after implementation of the new requirements. The analysis should consider the costs firms and advisors incur with respect to the requirements, whether increases to BrokerCheck's web traffic occurred, whether the increase was justified by the costs incurred by firms and advisors, and whether more cost-efficient alternatives exist for achieving the same goals.

- **What are the direct and indirect costs of the proposed rule to firms, including the cost associated with monitoring retail communications of associated persons across different channels?** Firms will experience costs and challenges to implement these requirements, particularly if the requirements extend to social media sites. While firms are unlikely to experience significant costs in order to implement these requirements for individual websites, firms will have to dedicate time and resources to ensure that advisors have accurately included the prominent description and link to social media accounts. This burden will be on-going as new advisors join firms and as advisors adopt new technologies and social media platforms to communicate with their clients and promote their businesses. As discussed earlier, the BrokerCheck link will require firms to create new written materials and policies with respect to the required BrokerCheck link. For social media, firms will also need to conduct spot-checks and other procedures in order to ensure compliance. As new social media platforms emerge and are adopted by advisors and investors, compliance departments will be required to amend their materials and spend additional resources to achieve compliance with the requirements.

- **Are there alternative approaches FINRA should consider to accomplish this goal? If so, what are those alternatives and why could they be better suited?** As stated previously, FSI believes FINRA should conduct a cost-benefit analysis to determine whether adding the

proposed link to BrokerCheck in the designated locations will in fact increase traffic to the site. In addition, there are several possible alternatives that FINRA should consider to improve the use and investor awareness of BrokerCheck. Firms are already required to include a link to FINRA's website on their own websites; however the proposed rule would require a separate link and description to BrokerCheck be added. This is likely to confuse investors, and investors are likely to only select one of these links. As a result, it may be more prudent to include text conveying that investors who navigate to the FINRA website can learn more about their advisor through FINRA's BrokerCheck tool. In addition, FINRA's homepage should have a larger graphic and more prominent placement of BrokerCheck. Although FINRA recently added a tool to its homepage to search BrokerCheck, it is relatively small, not prominently displayed, and can be easily overlooked due to its current location. Additional efforts to make BrokerCheck more prominent and centralized on FINRA's homepage will promote increased investor education and use of BrokerCheck. Finally, FINRA can improve the visual quality and clarity of BrokerCheck summary reports. Currently, the reports are difficult to navigate when investors are seeking information regarding the background of an investment professional. Revamping the format and organization of these reports to make them easier to read will be a tremendous benefit to investors and will increase usage because investors will find the reports more useful. We recommend FINRA focus group test the reports and the BrokerCheck web site to gain important insight into the investor experience and informational needs.

#### Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Bellaire'.

David T. Bellaire, Esq.  
Executive Vice President & General Counsel



June 16, 2014

BY EMAIL To ([pubcom@finra.org](mailto:pubcom@finra.org))

Marcia E. Asquith  
Office of Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 14-19  
BrokerCheck

Dear Ms. Asquith,

Charles Schwab & Co., Inc. ("Schwab") appreciates the opportunity to comment on FINRA's revised proposal to require a hyperlink to BrokerCheck in online retail Communications With the Public.

Schwab supports helping investors make informed choices about the firms and individuals with whom they do business. We believe the latest proposal addresses many key operational issues that warranted address in the original proposal and appreciate the additional opportunity to comment on the revised approach.

Although many of the primary operational considerations have been addressed, concerns remain on the hyperlinking for sites not controlled by firms as linking protocols on sites vary widely, are not subject to broker-dealer control and may change with little or no notice to the broker-dealer. In many instances, it may not be possible to add a hyperlink, BrokerCheck URL or deep link because of layout, space constraints and limited technology capabilities.

Schwab appreciates the reviews and trials conducted by FINRA on how BrokerCheck could be applied on several social media sites including Facebook, LinkedIn, YouTube, Twitter and Pinterest, but point out their research is only relevant based on the time period and scope in which it was conducted. As third-party social media websites continue to evolve, and in some cases be leveraged by other technologies including mobile, FINRA's prescriptive direction may not be implementable under different scenarios. Schwab continues to advocate for a more generalized approach to the requirements including the ability to have "optional locations" on the social media websites noted.

As addressed in Schwab's February 15, 2013 comment letter, the "deep" link requirement was overly broad, and we agree with FINRA's decision to exclude it in the proposal. This will be operationally more feasible and practical considering the complexities for both firms and FINRA to make available and maintain the thousands of live links made available on hundreds of social



Marcia E. Asquith

June 16, 2014

Page 2 of 2

media websites daily. Linking to the summary report is effective to meet the stated goals of investor elucidation and provide FINRA with an ongoing opportunity to revise the landing page to appropriately call out the availability of additional information once the public enters the BrokerCheck site.

Schwab is committed to investor education and protection and feels strongly that FINRA continue to explore opportunities to revise guidance pertaining to social media sites in a nimble and practical manner, as technologies continue to evolve. This effort may assist in ensuring consistent application of the rules and socialization of current positions that FINRA staff has taken with respect to specific trends and issues, enabling member firms to uniformly apply the information to their activities, which helps investors make informed choices about the firms and individuals with whom they do business. There are potentially a number of other ways to achieve FINRA's objective of increasing investor awareness of BrokerCheck including encouraging FINRA to use more common business approaches such as developing an awareness campaign using common media forms such as television, print and online advertising.

Schwab thanks the Staff for their consideration and acknowledges FINRA's continued efforts in investor education and protection. We welcome any further discussions or questions.

Very truly yours,



Melissa Callison

Vice President, Communications Compliance

Charles Schwab & Co., Inc.

(415) 667-1266



**Faculty Supervisors**

DAVID N. DORFMAN  
MARGARET M. FLINT  
ROBIN FRANKEL  
ELISSA GERMAINE  
JILL GROSS  
VANESSA MERTON  
JASON PARKIN

**JOHN JAY LEGAL SERVICES, INC.**

PACE UNIVERSITY SCHOOL OF LAW  
80 NORTH BROADWAY  
WHITE PLAINS, NY 10603  
TEL 914-422-4333  
FAX 914-422-4391  
JJLS@LAW.PACE.EDU

**Executive Director**

MARGARET M. FLINT

**Clinic Administrator**

ROBERT WALKER

**Staff**

IRIS MERCADO

June 16, 2014

**VIA ELECTRONIC SUBMISSION**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1506

**Re: FINRA Regulatory Notice 14-19, Request for Comments on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications with the Public**

Dear Ms. Asquith:

The Investor Rights Clinic at Pace Law School ("PIRC"),<sup>1</sup> operating through John Jay Legal Services, Inc., welcomes the opportunity to comment on the revised proposal to require a hyperlink to BrokerCheck in online retail communications with the public. PIRC generally supports the revised proposal; however, PIRC opposes the omission of the deep link requirement, which would directly link investors to the summary reports of specific member firms and associated persons. The hyperlink requirement is consistent with FINRA's goals of investor protection and market integrity, as it will educate investors about BrokerCheck and facilitate its use.

**I. PIRC Supports the Hyperlink Requirement**

FINRA introduced BrokerCheck in 1988 to make information on broker-dealers and their associated persons readily available to the public. However, PIRC remains concerned about the public's lack of awareness of BrokerCheck. PIRC represents unsophisticated investors of modest means, who are often older and have difficulty navigating the Internet. Easy, direct access to the information included in BrokerCheck is the best way to ensure that these investors have access to the information necessary to make informed decisions about their current or

---

<sup>1</sup> PIRC opened in 1997 as the nation's first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, *SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors- Levitt Responds to Concerns Voiced At Town Meetings* (Nov. 12, 1997), available at <http://www.sec.gov/news/digest/1997/dig111297.pdf>.

potential brokers. FINRA's 2013 proposed rule change – requiring deep links on websites, social media sites, and other comparable Internet presences, as well as a description of BrokerCheck in a prominent location – would help facilitate this access.<sup>2</sup> The proposed rule change was filed with the Securities and Exchange Commission, then subsequently withdrawn after the negative comments from the industry. The industry's major concerns with the proposed rule change include potential compliance difficulties due to the amount of online communication and limitations created by third-party controlled sites, the costs of maintaining the pages, and the deep link requirement.

The revised FINRA proposal directly addresses these concerns. First, it eliminates the ambiguity of the original proposal by applying it only to "online retail communications" and by addressing situations where implementation could be difficult on third-party sites (such as Twitter, which has a character restriction). The proposal resolves the latter concern by requiring the link and description only to the extent feasible and by giving instructions on where to place it. Second, while firms expressed concerns with the cost of implementation, including a link on various webpages appears to be of minimal cost to both large and small firms.

## **II. PIRC Opposes the Omission of the Deep Link Requirement**

The proposed rule attempts to address the third concern, the deep link requirement, by eliminating it. This omission, however, is a step too far. The deep link requirement is the logical extension of the proposed rule, which would benefit investors by making access as easy and accurate as possible, with minimal costs to firms.

Without the deep link requirement, investors, after linking to BrokerCheck, would be required to determine which name, among many, is correct. For example, a search for "John Smith" on BrokerCheck turns up 221 results, ten of whom are within 25 miles of White Plains, New York. Having the deep link requirement linking directly to the broker's name eliminates these extra steps and ensures a more accurate result for investors. Investors who are not computer savvy would be required to navigate the difficult construction of BrokerCheck. PIRC often represents this type of investor, and it is imperative that BrokerCheck is easy to use so that every investor can be protected. For this reason, omitting the deep link requirement is inappropriate.

---

<sup>2</sup> See Securities Exchange Act Release No. 68700 (Jan. 18, 2013), 78 FR 5542 (Jan. 5, 2013) (Notice of Filing of SR-FINRA-2013-002).

For the foregoing reasons, PIRC generally supports the revised hyperlink proposal, but opposes the omission of a deep link hyperlink in online retail communications with the public. PIRC believes that BrokerCheck should be easily accessible to individual investors, and the revised proposal requirement works toward meeting this goal.

Respectively submitted,

CJ Croll  
Student Intern, PIRC

Elissa Germaine  
Supervising Attorney, PIRC

Jill I. Gross  
Director, PIRC



VIA ELECTRONIC MAIL

June 16, 2014

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

RE: Regulatory Notice 14-19, Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications with the Public

Dear Ms. Asquith:

In its Regulatory Notice 14-19, the Financial Industry Regulatory Authority, Inc. ("FINRA") solicited comments regarding a proposal to amend Rule 2210 (Communications with the Public, hereinafter "Proposed Rule").

Commonwealth Financial Network<sup>®</sup> ("Commonwealth") is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,600 registered representatives ("RRs") who are independent contractors conducting business in all 50 states. Virtually all of Commonwealth's RR's maintain an Internet presence, whether on a website, social media page, or other comparable presence.

Commonwealth appreciates the opportunity to comment on the proposal. Although we believe that the revised proposal is an improvement and addresses most of the operational concerns raised by the initial proposal, we urge FINRA to further clarify the language in the Proposed Rule. We applaud FINRA for removing the "deep link" requirement because it posed many technical challenges to firms that far outweighed any perceived benefits to investors.

#### **Enhancements to the Proposed Rule**

Commonwealth suggests that FINRA add explicit language to the Proposed Rule that excludes third-party sites not adopted by the member or with which the member has not become "entangled." The rule should explicitly state the position that FINRA has taken in previous Regulatory Notices 10-06 and 11-39—that third-party sites not "adopted" by the member are not retail communications by the member.

In addition, FINRA should change the Proposed Rule so that it does not require the BrokerCheck hyperlink to appear both on the homepage of the member's site and in close proximity to the associate person's profile. Furthermore, FINRA should clarify the Proposed Rule and allow

29 Sawyer Road  
Waltham, MA 02453-3483  
800.237.0081  
781.398.9972 fax

110 West A Street,  
Suite 1800  
San Diego, CA 92101-3706  
877.347.1982  
619.471.9701 fax

**commonwealth.com** Member FINRA/SIPC

members to display only one BrokerCheck hyperlink per webpage, even if multiple associated persons are listed on the same webpage.

**Conclusion**

Commonwealth believes that the Proposed Rule will increase investor awareness and use of BrokerCheck. The revised proposal is much more workable than the original, but there is still room for improvement.

If you have any questions regarding our comments or concerns, please contact me at 781.736.0700.

Sincerely,  
Commonwealth Financial Network

/s/ Brendan Daly  
Legal and Compliance Counsel

# NFP Securities, Inc.

FINRA / SIPC / Registered Investment Adviser

June 13, 2014

Marcia E. Asquith  
Senior Vice President and Corporate Secretary  
1735 K Street, NW  
Washington DC 20006-1500

Re: Proposed Rule FINRA Rule 2267

Dear Ms. Asquith,

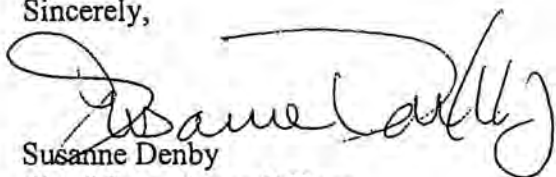
NFP Securities, Inc. (NFPSI) appreciates the opportunity to submit the following comments in connection with proposed Rule 2267. While we support the intent behind the proposal to require a hyperlink to BrokerCheck in firms' online retail communications with the public, we seek clarification regarding the intended implementation.

We believe it is an industry standard to indicate FINRA membership in a member firm's online retail communications and to provide a hyperlink to the FINRA home page in accordance with FINRA 2210 (e)(3) and NTM-07-47. FINRA 2210 (e)(3) states that if a member indicates their FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws, that the member must provide a hyperlink to FINRA's internet home page, [www.finra.org](http://www.finra.org), in close proximity to the member's indication of FINRA membership. The rule also indicates that a member is not required to provide more than one such hyperlink to FINRA on the member's website. The NTM-07-47 "hyperlink requirement" indicates further that a member firm and persons associated with a member that refer to FINRA membership must hyperlink to the [www.finra.org](http://www.finra.org) home page.

Currently, the [www.finra.org](http://www.finra.org) homepage contains a prominent link to BrokerCheck. Given the prominence of BrokerCheck on the home page of the FINRA website, NFPSI respectfully submits that a requirement to provide a separate hyperlink to BrokerCheck would be redundant for firms who indicate their FINRA membership and conform to FINRA 2210 (e)(3) and NTM-07-47. NFPSI suggests amending proposed Rule 2267 to provide that the hyperlink to [www.finra.org](http://www.finra.org) is sufficient to meet the BrokerCheck requirement.

Thank you again for the opportunity to comment. Should you have any questions, please contact the undersigned.

Sincerely,



Susanne Denby  
Chief Compliance Officer



Attention:  
Marcia Asquith [pubcom@finra.org](mailto:pubcom@finra.org)  
Office of the Corporate Secretary, FINRA  
1735 K Street, NW  
Washington DC 20006-15-6

# **PROPOSED AMENDMENTS TO FINRA RULE 2210**

**FINRA COMMENT ON A REVISED PROPOSAL  
TO REQUIRE A HYPERLINK TO BROKERCHECK  
IN ONLINE RETAIL COMMUNICATIONS WITH THE PUBLIC  
BROKERCHECK**

© Carrie Devorah  
[carriedev@gmail.com](mailto:carriedev@gmail.com)  
(562) 688 2883

FINRA Has Permission To Publish My Comment. Any and All Other Entities Seeking To Publish This  
Comment Must Receive Permission First

© Carrie Devorah

[carriedev@gmail.com](mailto:carriedev@gmail.com)

(562) 688 2883

FINRA Has Permission To Publish My Comment. Any and All Other Entities Seeking To Publish This Comment Must Receive Permission First

FINRA is seeking proposed amendments to FINRA Rule 2210. The Comments are to address a revised proposal "to require a hyperlink to brokercheck in online retail communications with the public.

I rubbed my eyes in astonishment and then, again, before asking myself, "Why?" and "How?" followed with "you've got to be kidding." Hyperlink industry websites to expunged backgrounds and brokercheck historys that are, too often, fairytales? This is about as good as the joke "Did you hear the one about the board that voted to "amendments to its supervision rule that would require member firms to investigate the backgrounds of financial advisers applying for Finra registration" (<http://www.investmentnews.com/article/20140424/FREE/140429948#>)

The proposed rule addresses eliminating the requirement for a deep hyperlink to FINRA brokercheck to a firm "that are available to retail investors, rather than on all of its social media pages and proprietary sites that limit access to institutional investors" on all social media "pages, blogs and other online communications with the public" pages that are not controlled by FINRA.

That FINRA "believes the revised approach will increase investor awareness of Brokercheck, while addressing the operational concerns the initial proposal raised."

The problem isn't social networking. The Problem is FINRA's brokercheck summaries which are Expunged so often it is a Citizen complaint in Congress by the Industry, seeking absolution. Expungement is to have been reserved for Special Exceptions. It is abused and used as often as the Industry actors change shoes, socks and underwear. It is as if Expungement has become a Fashion Accessory in FINRA conducted arbitrations. Yawn, I think I will get an Expungement today and then, rinse and repeat, the bad behaviours that got the industry person socked with the Arbitration to begin with.

If you get to know FINRA as I have you learn more about the smokes and mirrors of the "organization" that "merged" from the union of the NASD and NYSE. I use "scare quotes" for a reason. Run investor run.

Checking out some details before penning this, my final version of my comment, I read down the right side river of entities FINRA has fined. Excuse me while I pick myself off the floor from laughing and get serious to make some very frightening points that bely the fraud of FINRA doing anything in the name of consumer protection.



© Carrie Devorah

[carriedev@gmail.com](mailto:carriedev@gmail.com)

(562) 688 2883

FINRA Has Permission To Publish My Comment. Any and All Other Entities Seeking To Publish This Comment Must Receive Permission First

Check out the top of the FINRA website. It goes "w""w""w""dot""FINRA""dot""O-R-G. ORG is the distinction for a charity that has been sanctioned by the IRS for tax benefits based upon a Mission Statement the entity has filed with the IRS for approval. FINRA's wouldn't surprise you to read, talks about Investors protection and industry integrity.

I smell a barnyard coming.

No where does the IRS sanction anyone to "fine" bad actors. So where is it this faux authority FINRA presents to the public comes from. It is not from the IRS. The IRS confirms that FINRA is a non-profit. No, not a government agency, but a non-profit that is categorized as a business league. Sort of says it in a nutshell right there doesn't it. INVESTOR RUN!!!

Better question is how does a business league arrange that all customers of the Business League members submit to Arbitration and to Arbitrations in FINRA, which does promotes FINRA gets almost 100% of the Arbitration business for investors. Yes, keywords and Adsense do work magic, don't they.

All of the above makes the conversation of hyperlinks moot. The premise of honesty is dispelled with deceit is part of the foundation of an organization. Random poll of attorneys who represent Investors in FINRA arbitrations? They don't know FINRA is a non profit business league. Random poll of attorneys NOT in the investment industry. Most never even heard of FINRA nor do most people, investors by choice or by pension plans or other.

So, tell me about this Investor Education Mission FINRA pitched successfully to the IRS? Each of the 4 entities, the (dot) ORGs FINRA has as non profits show ten's of millions in their declared bottom lines. That said, if people don't know who FINRA is maybe this business league has to step up its game or lose its NON profit status because Investor protection is not part of it.

The proposed hyperlinks, FINRA is asking for Comments about are from the websites of Industry "actors" (aka broker-dealers, advisors and entities) to FINRA's Brokercheck, summaries. But somewhere between 1+1 is missing the rest of the equation that brings a sum total to 3. The "1" that is missing is the most important quotient an average investor has no chance of learning- who is that person the investor gave their life savings over to. FINRA plucks that "1" out. It is called expungement.

© Carrie Devorah

[carriedev@gmail.com](mailto:carriedev@gmail.com)

(562) 688 2883

FINRA Has Permission To Publish My Comment. Any and All Other Entities Seeking To Publish This Comment Must Receive Permission First

All the hyperlinks in the world from the Industry person/entities page doing add up to a hill of beans when the Investor is barred from learning how many times the person the investor just gave their life savings too has scrubbed their history lily white. The average thief doesn't get away with the entitlement of a new start. Even cats don't have it so good, in that cats only have 9 lives. PIABA reported that one advisor had over 35 fresh starts out of 40 complaints launched against them. FINRA brokercheck histories deceive investors.

All of FINRA's "reviewed a selection of popular social media sites and conducted trials to determine how firms could implement the proposed requirements for third party websites." FINRA writes "based on this review.... Determined that firms would be able to post a hyperlink to Brokercheck or a hyperlink to the firms' website in close proximity to an associated person profile or contact information on "facebook, linkedin, youtube, pinterest, twitter" is of one benefit, to the Industry entities and individuals, opening up opportunities to meet, and maybe scam, more people sooner/faster.

An advisor who robs a client- call it what you will- churning an account, taking commissions instead of fees, stealing a clients' identity to delay financial hacking being discovered- its all the same. It's robbery. Yet a financial advisor or entity that robs a customer will be offered the blackmark on the financial advisor or entity cleansed from the Broker Summary while, if this was an inner city dad stealing bread to put food on his children's dinner table, this parent would go to jail to serve time, impacting that person's ability to get a job or vote.

Brokercheck relies on self-reporting, premise of which is the people being reported against are honest. Bad assumption. John Taft, president of RBC, testifying on Capitol Hill on behalf of SIFMA was blunt stating his clients may be successful in business but not in the market. Bernie Madoff flew under the radar of being reported. Who is going to know to tell if a financial industry representative got served or not? FINRA isn't counting and no-one is being allowed to get the exact names, numbers and cases going to arbitration. FINRA is a private business, a non profit listed as a business league. Business leagues for industry have no motivation to keep things online where data can be hacked, expunged only when it has no meaningful investor protection or regulatory value. Once information is expunged from the CRD system, it is permanently deleted and thus no longer available to the investing public, regulators or prospective broker-dealer employers." Recent case in Europe against GOOGLE raised public outcry against Bad Information being online the man wanted removed. Albeit 15 years earlier. Consumer want to know who their money is going to.

© Carrie Devorah

[carriedev@gmail.com](mailto:carriedev@gmail.com)

(562) 688 2883

FINRA Has Permission To Publish My Comment. Any and All Other Entities Seeking To Publish This Comment Must Receive Permission First

BrokerCheck says it aggregated professional background information on approximately 1.3 million current and former FINRA-registered brokers and 17,400 current and former FINRA-registered brokerage firms. Information in CRD is obtained through forms that brokers, brokerage firms and regulators complete as part of the securities industry registration and licensing process. How would anyone know the veracity of that statement in that NO Arbitration conducted by FINRA is cross recorded in a Government data base unless a Case escaped FINRA oversight in to the Civil Courts, either to Vacate or to Collect on a FINRA award.

No, if I knew an advisor was arrested for Petty Theft, I would not work with him. That is my decision to make, with full disclosure. No full disclosure? That means the advisor knew they have something to hide.

The FINRA site says, "The information about investment adviser firms and representatives made available through BrokerCheck is derived from the Securities and Exchange Commission's Investment Adviser Public Disclosure (IAPD) database. IAPD features professional background information on approximately 441,000 current and former investment adviser representatives and 45,700 current and former investment adviser firms and that "BrokerCheck information is drawn from filings by regulators, firms and investment professionals. It includes current licensing status and history, employment history and, if any, reported regulatory, customer dispute, criminal and other matters. It should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual."

When one follows one matter case managed by FINRA, one can document FINRA's warranty is not truthful. Promoting to the investing public Brokerchecks is tantamount to the airbrushing and stretching scandal of Kate Winslet to make the actress and models look thinner, better and younger. Its fraud. FINRA's Brokercheck is deception where the fox is in charge of the henhouse.

FINRA does not vet out lawyers arguing industry people before arbitration panels. FINRA doesn't even vet out Arbitration panelists to assure they are compliant with local laws lawyers, arbitrators must adhere to. FINRA case managers state they are overworked with too many cases. Well, well ,well, quoting Angelina Jolie in her role as Malificent.... Maybe its time to do away with expungement, replace ALL cases expunged from Industry actor backgrounds, link Investors directly to the U4's, U5's, Civil

© Carrie Devorah

[carriedev@gmail.com](mailto:carriedev@gmail.com)

(562) 688 2883

FINRA Has Permission To Publish My Comment. Any and All Other Entities Seeking To Publish This Comment Must Receive Permission First

Actions for and against Industry parties, study to see who the attorneys are in these matters.

Do your own random poll. Ask a dozen people on the streets if they know what FINRA is or if they have heard of FINRA. Ask the person being questioned if they invest too. You will be shocked at the answers received. Ask the Investor what they would do if they had a need to sue their broker/advisor. Ask them where they would go. Then tell the investor, they have no choice of where to resolve their dispute, that its been made for them. Ask the investors if they were told by an entity fronting the SEC, if they would question the authenticity of that entity- would the investor believe that firm telling them the firm's forum is where their dispute must be resolved. Would the investor know of other places to settle their disputes? Ask them, then, how they would feel knowing there are other options for resolution forums that are qualified to handle the dispute but they the investor is barred from using that forum because, pretty much all financial firms make the investor go to this one entity, the entity that writes the rules along with publishing the bios of the persons' the investors are suing.

Thinking about using Industry people to coordinate any or all of the above? Don't go there. This is gonna be one by the people for the people- getting rid of FINRA and its Industry bias. I see a theme show for American Greed comin'

Oh, yeah... and that business about FINRA fining its members? Hello, isn't that oversite of the FCC or the FTC or the DOJ or another government alphabet soup?





1401 H Street, NW, Washington, DC 20005 2148, USA  
202/326 5800 www.ici.org

June 16, 2014

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: BrokerCheck,  
FINRA Notice 14-19 (April 2014)

Dear Ms. Asquith:

The Investment Company Institute<sup>1</sup> appreciates the opportunity to comment on FINRA's proposed amendment to Rule 2210 (the "Rule") related to BrokerCheck.<sup>2</sup> The Institute supports investors receiving meaningful information regarding their investment professionals, and FINRA's efforts to increase investor awareness of the information available through BrokerCheck. We support the Proposal, which seeks to achieve this objective without imposing undue burdens on FINRA members, with the two specific recommended changes described below.

In January 2013, FINRA proposed to amend Rule 2267 (Investor Education and Protection) to require, among other things, that members include a prominent description of and hyperlink to

---

<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$16.8 trillion and serve more than 90 million shareholders.

<sup>2</sup> See *FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public*, FINRA Notice 14-19 (April 2014) (the "Proposal"). FINRA's BrokerCheck provides the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. BrokerCheck is meant to help investors make informed choices about the individuals with whom and firms with which they may wish to conduct business.

Marcia E. Asquith

June 16, 2014

Page 2

BrokerCheck on their websites, social media pages, and any comparable Internet presence.<sup>3</sup> The Institute, along with many other commenters, opposed the 2013 Proposal.<sup>4</sup> In April 2013, FINRA withdrew the 2013 Proposal<sup>5</sup> in order to assess and respond to commenters' concerns.<sup>6</sup>

The current Proposal would require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each website that is available to retail investors and in online retail communications that include a professional profile of, or contact information for, an associated person. These new requirements would be subject to specified conditions and exceptions.<sup>7</sup>

The current Proposal is far superior to the 2013 Proposal, reflecting FINRA's thoughtful consideration of the comments it received. Most importantly, the Proposal is more sensible in its scope and application to social media and other electronic communications, and as a result will be significantly easier for members to understand and implement. For example, consistent with FINRA's interest in increasing awareness and use of BrokerCheck among retail investors, proposed Rule 2210(d)(8)(A) relates only to each website<sup>8</sup> of a member that is "available to retail investors"; proposed Rule 2210(d)(8)(B) relates only to "online retail communication[s]"; and proposed Rule 2210(d)(8)(C)(iii) provides an exception to referring and hyperlinking to BrokerCheck for members that do not "provide products or services to retail investors." FINRA's changes largely mitigate our concerns about the 2013 Proposal.

Notwithstanding our overall support for the Proposal, there are two issues that we recommend that FINRA address before submitting the Rule amendment to the Securities and Exchange Commission for approval. The first relates to proposed Rule 2210(d)(8)(A), which states that "[a] member must include a readily apparent reference and hyperlink to BrokerCheck on each website of the member that is available to retail investors." (Emphasis added.) While we appreciate that the Proposal

---

<sup>3</sup> See *Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection)*, SEC Release No. 34-68700 (Jan. 18, 2013), 78 Fed. Regis. 5542 (Jan. 25, 2013) (the "2013 Proposal").

<sup>4</sup> The Institute opposed the 2013 Proposal primarily due to concerns that, as drafted, it may have adversely impacted FINRA members' continued use of social media. See Letter from Tamara K. Salmon, Senior Associate Counsel, the Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Feb. 15, 2013), available at [www.ici.org/pdf/27020.pdf](http://www.ici.org/pdf/27020.pdf).

<sup>5</sup> See *Notice of Withdrawal of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection)*, SEC Release No. 34-69440 (Apr. 24, 2013), 78 Fed. Regis. 25331 (Apr. 30, 2013).

<sup>6</sup> See the Proposal.

<sup>7</sup> See proposed Rule 2210(d)(8).

<sup>8</sup> We note with approval that proposed Rule 2210(d)(8)(A) is limited to firms' websites. In contrast to the 2013 Proposal, we believe that this provision strikes the right balance in increasing retail investors' awareness of BrokerCheck by requiring placement of the reference and hyperlink on each firm's website, without burdening other firm-specific forms of electronic retail communications (e.g., mobile applications).

Marcia E. Asquith

June 16, 2014

Page 3

makes clear that a single reference and hyperlink to BrokerCheck would suffice,<sup>9</sup> it is unclear *where* the required reference and hyperlink to BrokerCheck should appear. A website may contain a number of entrypoints for retail investors, who may not view the same pages. Additionally, it is common for websites of broker-dealers that act as underwriters and distributors of registered investment company securities to direct their visitors by category (e.g., “U.S. investors,” “individual investors,” “institutional investors,” and “investment professionals”) to different locations on the websites, which has the effect of limiting the portions of the websites that are targeted to and designed for retail investors. Including the reference and hyperlink to BrokerCheck once on a website, in the location where retail investors are most likely to see it, would be consistent with both the text and the spirit of the Proposal.

Given the variety of website designs in the industry, we do not believe that FINRA should dictate a specific location for the reference and hyperlink. Instead, FINRA should provide each member with the flexibility to choose the webpage that it reasonably determines will reach retail investors. FINRA could accomplish this by (i) replacing the words “available to” in Rule 2210(d)(8)(A) with “intended for” and (ii) clarifying in any accompanying Regulatory Notice or otherwise that a member should include the reference and hyperlink to BrokerCheck on a webpage that the member reasonably determines will draw the attention of retail investors.<sup>10</sup>

Our second recommendation relates to proposed Rule 2210(d)(8)(C)(i), which provides an exception to referring and hyperlinking to BrokerCheck for electronic mail or text messages. We strongly support this exception, which implicitly recognizes that requiring a reference and hyperlink in these communications would be overly burdensome and adversely affect their use. Consistent with this policy judgment, we recommend that FINRA expand this exception to include other similar forms of communication that may emerge in the future. Therefore, we recommend that FINRA revise proposed Rule 2210(d)(8)(C)(i) to include “electronic email, text messages, or other similar forms of messaging.”

Finally, if and when a final Rule amendment is approved, we request that firms be given a reasonable amount of time to implement these new requirements (we think that at least six months from the time of approval would be appropriate). Even with the Proposal’s more sensible scope, it will

---

<sup>9</sup> Additionally, we see nothing in proposed Rule 2210(d)(8) that would preclude a firm from utilizing “buffer screens” (i.e., screens that indicate to viewers that they are being transferred to a website not maintained or controlled by the firm). Firms often use buffer screens to state that they do not warrant or endorse the information contained on the third party’s website. We expect that firms would want to do so with regard to BrokerCheck. In addition, members may wish to indicate through the buffer screen (or as part of the “readily apparent reference” to BrokerCheck) that questions that investors may have about BrokerCheck or its contents could be directed to FINRA. (In this regard, we note that adoption of this proposed Rule amendment likely will increase use of BrokerCheck.) Notwithstanding the terms of the proposed amendment, we request that FINRA clarify in any accompanying Regulatory Notice or otherwise that a member may utilize buffer screens in this way.

<sup>10</sup> Cf. Rule 482(b)(5) under the Securities Act of 1933 (which permits legibility requirements for required disclosures in advertisements delivered through an electronic medium to be satisfied by presenting the statements “in any manner reasonably calculated to draw investor attention to them”).

Marcia E. Asquith

June 16, 2014

Page 4

take firms time to evaluate their websites and other online retail communications and determine how best to implement the new requirements.

• • • • •

We appreciate the opportunity to provide comments on the Proposal. If you have any questions, please contact me at (202) 218-3563, Bob Grohowski at (202) 371-5430, or Matthew Thornton at (202) 371-5406.

Sincerely,

/s/ Dorothy Donohue  
Acting General Counsel





Miami Law Innocence Clinic  
3000 Biscayne Blvd., Suite 100  
Miami, FL 33137

Phone: 305-284-8115  
Fax: 305-284-9368

June 16, 2014

Via Electronic Filing

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: RN 14-19 (Proposed Change to Adopt FINRA Rule 2210(d)(8)(A),  
Requiring FINRA Member Firms to Include Readily Apparent Reference  
and Hyperlink to BrokerCheck on Each Website of Firms Available to  
Retail Investors)

Dear Ms. Asquith:

The University of Miami School of Law Investor Rights Clinic (the "IRC") is submitting this comment letter regarding the proposed rule change ("Proposed Rule") discussed in Regulatory Notice 14-19 ("RN 14-19"), which would require firms to include a readily apparent reference and hyperlink to FINRA BrokerCheck® ("BrokerCheck") on each website of the firm that is available to retail investors.<sup>1</sup> The Proposed Rule not only benefits investors, but firms, brokers, and the industry as a whole. The IRC supports the Proposed Rule for several reasons.

FINRA's BrokerCheck is an invaluable asset to investors. FINRA Rules mandate that all brokers working for member firms accurately maintain a record of "licenses held, employment history and, if any, reported regulatory, customer dispute, criminal and other matters."<sup>2</sup> This information is available to the public through BrokerCheck.

The Proposed Rule would greatly help novice and unsophisticated investors make good decisions when selecting a broker. A majority of the IRC's clients are unaware of BrokerCheck at the time they invest. Investors may not know they have the ability to learn the employment history and any previous disputes with clients. This information enables investors to make an informed decision when selecting a broker and firm.

---

<sup>1</sup> The IRC is a clinical program in which students provide representation to individuals of modest means who have suffered investment losses as a result of broker misconduct but, due to the size of their claim, cannot find legal representation. Under attorney supervision, law students provide legal assistance and advice to investors.

<sup>2</sup> <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/>



Miami Law Innocence Clinic      Phone 305-284-8115  
3000 Biscayne Blvd., Suite 100      Fax 305-284-9368  
Miami, FL 33137

Posting a hyperlink on firm websites increases the likelihood that investors will not only utilize FINRA's BrokerCheck service but also FINRA's website. The news releases, investor alerts, and publications offering investor education are more likely to be utilized if BrokerCheck and FINRA became a part of member firms' websites.

The costs of implementing hyperlinks into firm websites is minimal compared to the benefits investors and member firms will receive. Incorporating hyperlinks does not require firms to make significant changes to its sites and greatly helps investors make well-informed decisions. Furthermore, the Proposed Rule is not requiring firms to generate additional information to the public. BrokerCheck is already public information that investors can readily access through FINRA's website.

In fact, the Proposed Rule may help firms hire good brokers and effectively manage risk. If a firm is required to post a BrokerCheck hyperlink on its site, that firm may be more inclined to ensure that its brokers do not have disclosures and are of the utmost professional integrity. Investors with better access to BrokerCheck may be more likely to open accounts with firms who employ brokers and clean records.

In sum, the Proposed Rule would offer many benefits to investors, firms, and the industry as a whole. The costs of implementing the Proposed Rule are minimal in comparison to the benefits. Thank you for the opportunity to comment on this proposal.

Respectfully submitted,

/s/

Scott Eichhorn

*Practitioner-in-Residence, Investor Rights Clinic*

Jesse LeVine

*Legal Intern, Investor Rights Clinic*



Page 107 of 144  
**Buckman, Buckman & Reid, Inc.**  
*Securities Broker/Dealer*

Management and Staff of Buckman, Buckman & Reid, Inc. respectfully submit the following in strong opposition to the newly revised proposal to require a hyperlink to BrokerCheck in firms' online retail communications with the public, etc., as set forth in Regulatory Notice 14-19.

We have examined the available descriptive information carefully, and the primary reasons for our objection stem from the following concerns:

- 1) **Lack of Fairness to Registered Representatives.** The BrokerCheck system is neither completely accurate, nor completely fair to registered representatives. As FINRA well knows, there are many unscrupulous investors out in the marketplace who will stop at nothing to extort money from brokers or their employer firms. For example, a complete denial by an arbitration panel of false and unfounded claims against a registered representative will nonetheless result in the arbitration remaining on the BrokerCheck record, unless the broker undergoes and pays for a separate, time consuming and costly expungement process. This is patently unfair, and arguably a violation of the RR's due process rights. Equally problematic in terms of fairness to the RRs is the circumstance where a firm involved may elect to settle merely because of litigation expenses (not even risks – the risk could be very low or even zero, but the firm may settle for a small amount to reduce overall costs/exposure, etc. without any regard for the effect such settlement would have on the individual broker's record or reputation). These and other situations combine to seriously distort the records of many registered representatives. The basic disclosure premise of the FINRA requirement is faulty and wrong.
- 2) **Questionable Benefit to Investing Public.** The investing public is already generally familiar with the BrokerCheck system offered on FINRA's website, as are their legal and financial representatives. The "in-your-face" aspect of the current proposal is unwarranted and unnecessary, considering its limited net benefits, if any, and the considerable costs of implementation and ongoing supervision by member firms.
- 3) **Initial and Ongoing Supervisory Costs; Regulatory Burdens.** In order to implement this new regime, firms will have to arrange for changes to their own websites, their internal procedures for sending out applicable "communications with the public", and their review processes for registered representative's participation in any approved social media site (e.g.: LinkedIn, etc.). This increased regulatory burden could involve substantial time, effort, and expense in checking on the compliance status of such sites, and for what? Unfair treatment of brokers, and limited/no real benefit to investors?

Buckman, Buckman & Reid strongly opposes the implementation of this hyperlink requirement by FINRA, due to the lack of fairness to the brokers, lack of corresponding benefits to the investing public, and undue burdens and costs imposed on member firms, as set forth above.

*Andrew Heath*  
*Chief Compliance Officer*  
*Buckman, Buckman & Reid, Inc.*

June 3, 2014

SUTHERLAND

SUTHERLAND ASBILL & BRENNAN LLP  
700 Sixth Street, NW, Suite 700  
Washington, DC 20001-3980  
202 383 0100 Fax 202 837 3593  
[www.sutherland.com](http://www.sutherland.com)

June 16, 2014

**VIA ELECTRONIC MAIL**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 14-19 BrokerCheck: FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public**

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),<sup>1</sup> in response to Regulatory Notice 14-19, *FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public* (the "Notice") issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on April 30, 2014.<sup>2</sup>

The Notice revises an earlier FINRA rule proposal<sup>3</sup> to amend FINRA Rule 2267 (Investor Education and Protection), that FINRA proposed in January 2013 and then withdrew in April 2013.<sup>4</sup> Under the revised rule proposal (the "Revised Rule Proposal") set forth in the

---

<sup>1</sup> The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

<sup>2</sup> FINRA Regulatory Notice 14-19, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p496867.pdf>.

<sup>3</sup> See Securities and Exchange Commission Release No. 34-68700 (Jan. 18, 2013), available at <http://www.sec.gov/rules/sro/finra/2013/34-68700.pdf>.

<sup>4</sup> See Securities and Exchange Commission Release No. 34-69440 (April 24, 2013), available at <http://www.sec.gov/rules/sro/finra/2013/34-69440.pdf>.

Ms. Asquith  
June 16, 2014  
Page 2

Notice, FINRA would amend FINRA Rule 2210 (Communications With the Public) to require a firm (1) to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors, and (2) to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person, subject to specified conditions and exceptions.

## **COMMITTEE COMMENTS**

The Committee appreciates the opportunity to submit its comments in response to the Notice. The Committee supports the larger goal of facilitating and increasing investor use of BrokerCheck information, however, as described more fully below, the Committee is concerned that the Revised Rule Proposal presents operational difficulties (especially with respect to the supervision of third party websites) and, as a result, alternative means to increase investor awareness should be explored. If the rule does advance, certain aspects need clarification.

Before we provide comment on the Revised Rule Proposal, we note our belief that the Revised Rule Proposal reflects several positive modifications in response to certain comments that were received in connection with the original rule filing. In particular, we note that the Committee supports FINRA's decision to eliminate the requirement for a deep link to a firm's or an associated person's BrokerCheck report summary page. The operational difficulties and expenses associated with embedding a deep link to an individualized BrokerCheck page would be very high, and in our opinion the added benefit to investor awareness of BrokerCheck would be minimal.

Our comments on the Revised Rule Proposal follow:

**Explore Alternatives.** Given the significant operational burdens the rule imposes on firms, the Committee questions whether the Revised Rule Proposal is the most effective way of increasing investor use and awareness of BrokerCheck. The Committee believes that FINRA should conduct targeted focus groups in order to identify possible alternative means of facilitating and increasing investor use of BrokerCheck. Such efforts would benefit from the active participation of FINRA's Chief Economist's Office. We believe that this effort would allow FINRA to refine the Revised Rule Proposal around the actual practices and patterns of investors, which would more accurately increase investor use and awareness of BrokerCheck.

We understand that FINRA may have conducted initial focus group outreach in connection with the original proposal. However, the rulemaking does not provide a great deal of detail about the manner in which such outreach was conducted or the types of alternatives explored at that time. In particular, the Committee believes that the impact on increasing



Ms. Asquith  
June 16, 2014  
Page 3

investor awareness of BrokerCheck by providing references and links to BrokerCheck be compared to other types of general education efforts.<sup>5</sup>

In addition, as another alternative FINRA might explore, the Committee recommends that FINRA initiate a dialogue with state securities regulators, with the goal of including a readily apparent and accessible hyperlink to BrokerCheck on the website of each state securities regulator. In sampling the websites of several state securities regulators, the Committee noted that certain states did not include any hyperlink to BrokerCheck, while others included outdated information about BrokerCheck or buried the hyperlink to BrokerCheck deep within the regulator's website (e.g., several clicks removed from the regulator's homepage). Since certain investors may look to their state's securities regulator for information concerning broker-dealers with whom they do business, the Committee recommends that FINRA explore options to make BrokerCheck more prominently featured on the websites of state security regulators before implementing any requirements on the websites of FINRA member firms.

Finally, while inclusion of a BrokerCheck hyperlink would be helpful to those investors who are actively seeking such information, the Committee questions whether omnipresent links to BrokerCheck as called for by the Revised Rule Proposal may lead to investors "tuning out" the references in a manner similar to other consumer experiences associated with the routine use of the internet (e.g., requiring agreement with the "terms of use" of a website).

**Third-Party Websites.** The requirements imposed with respect to third-party websites could prove to be unmanageable. It is not at all clear how a firm will determine whether it and its associated persons may be viewed to have "adopted" a third-party website. Further, reviewing the required textual disclosures (as opposed to the presence of the required hyperlink to the firm's website) in a third party website will be a significant supervisory and resource challenge. We believe that the requirement to include the additional textual language related to the BrokerCheck information being available at the firm's website creates additional burdens that are not justified by the costs, particularly given the obligation for the BrokerCheck link to be "readily apparent" on the firm's website.

### **Requested Clarifications**

The Committee requests that FINRA clarify the Revised Rule Proposal as described below:

**Meaning of "Website of the Member" in Context of Subsidiary Broker-Dealer.** The Committee requests that FINRA clarify what constitutes a "website of the member," as used in proposed FINRA Rule 2210(d)(8)(A). More specifically, the Committee urges FINRA to clarify how a "website of the member" should be interpreted in the context of a subsidiary broker-dealer's relationship with its parent insurance company. Oftentimes, when a subsidiary broker-dealer sells variable annuities products on behalf of its parent insurance company, the broker-

---

<sup>5</sup> As one example of such general education efforts, the Committee notes with favor the recent publication of an investor alert from the SEC's Office of Investor Education and Advocacy, "Check out Your Financial Professional" (June 11, 2014), which is available here: [http://www.sec.gov/oiea/investor-alerts-bulletins/ia\\_checkfinpro.html](http://www.sec.gov/oiea/investor-alerts-bulletins/ia_checkfinpro.html).



Ms. Asquith  
June 16, 2014  
Page 4

dealer will not maintain its own independent website. Although the subsidiary broker-dealer may be referenced, directly or indirectly, on the insurance company's website in connection with the variable products being offered by the insurance company, the Committee believes that the mere reference to a subsidiary broker-dealer on an insurance company's website should not make it a "website of the member" under the terms of proposed FINRA Rule 2210(d)(8)(A). Consequently, our understanding is that the requirements of FINRA Rule 2210(d)(8)(A) would not apply to a subsidiary broker-dealer that does not maintain its own independent website. The Committee requests confirmation that this understanding is correct.

Furthermore, where a subsidiary broker-dealer does maintain its own website, we request clarification that the requirement to include a hyperlink to "each website" of the firm does not mean that it must appear on every single webpage *within* the firm's website. Rather, it would be required only on the firm's main webpage (e.g., its "homepage").

**Sites that Identify Multiple Representatives.** The Committee requests that FINRA clarify whether online retail communication that includes the professional profile or contact information for multiple associated persons would also require multiple hyperlinks to BrokerCheck under FINRA Rule 2210(d)(8)(B). For instance, if a firm releases online retail communication through LinkedIn and includes the contact information for two of its associated persons, the Committee believes that a single hyperlink to BrokerCheck would satisfy the requirements of FINRA Rule 2210(d)(8)(B). Investor awareness of BrokerCheck would not be significantly advanced by including multiple hyperlinks on the same piece of retail communication. The Committee requests confirmation that this understanding is correct.

**Application of Rule to "Associated Persons" v. "Registered Representatives."** FINRA should limit the requirement in proposed FINRA Rule 2210(d)(8)(B) to the registered representatives of a FINRA member firm. Extending that requirement to all "associated persons" would seem to provide no or limited benefit to investors.

## CONCLUSION

The Committee appreciates the opportunity to comment on this Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052, [clifford.kirsch@sutherland.com](mailto:clifford.kirsch@sutherland.com)) or Eric Arnold (202.383.0741, [eric.arnold@sutherland.com](mailto:eric.arnold@sutherland.com)) if you have any questions regarding this letter.

Ms. Asquith  
June 16, 2014  
Page 5

Respectfully submitted,

**SUTHERLAND ASBILL & BRENNAN LLP**

BY: Clifford Kirsch *FAA*  
Clifford Kirsch

BY: Eric Arnold  
Eric Arnold

**FOR THE COMMITTEE OF ANNUITY INSURERS**



**Appendix A**

**THE COMMITTEE OF ANNUITY INSURERS**

AIG Life & Retirement  
Allianz Life  
Allstate Financial  
Athene USA  
AXA Equitable Life Insurance Company  
Fidelity Investments Life Insurance Company  
Genworth Financial  
Global Atlantic Life and Annuity Companies  
Great American Life Insurance Co.  
Guardian Insurance & Annuity Co., Inc.  
Jackson National Life Insurance Company  
John Hancock Life Insurance Company  
Life Insurance Company of the Southwest  
Lincoln Financial Group  
MassMutual Financial Group  
Metropolitan Life Insurance Company  
Nationwide Life Insurance Companies  
New York Life Insurance Company  
Northwestern Mutual Life Insurance Company  
Ohio National Financial Services  
Pacific Life Insurance Company  
Protective Life Insurance Company  
Prudential Insurance Company of America  
Symetra Financial Corporation  
The Transamerica companies  
TIAA-CREF  
USAA Life Insurance Company  
Voya Financial, Inc.



June 4, 2014

Via email: [pubcom@finra.org](mailto:pubcom@finra.org)

Ms. Marcia E. Asquith  
Senior Vice President and Corporate Secretary  
1735 K Street, NW  
Washington DC 20006-1500

Re: Regulatory Notice 14-19 Broker Check- Request for Comments

Dear Ms. Asquith,

Pursuant to FINRA's request for comments on a revised proposal to require a hyperlink to BrokerCheck in online retail communications with the public, Farmers Financial Solutions, LLC offers the following comments:

The public has multiple options of checking the integrity of professionals, either by going directly to [www.finra.org](http://www.finra.org), clicking on the already imbedded hyperlink on firms' websites, or by using search engines such as Google. The first link posted by Google search under FINRA Home page is BrokerCheck. The information currently provided and available to investors allows them to make informed decisions regarding individual Registered Representatives background.

Adding embedded links simply adds programming costs and is not likely to increase investor use or awareness of BrokerCheck. Furthermore, most firms already include a hyperlink to the FINRA website where BrokerCheck is actively and prominently promoted.

To add an additional reference and hyperlink, as proposed by FINRA would be redundant. In the case of multiple associated persons in joint online retail communications, with professional profiles and contact information, it would be repetitive to have hyperlinks for each associated person.

As always, we appreciate the opportunity to comment and believe that FINRA should not pursue this proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Klein".

Steve Klein  
VP, Chief Compliance Officer  
Farmers Financial Solutions, LLC

Our firm strives to stay ahead of the regulatory curve as many other firms do as well. We have already taken steps to comply with this proposed rule and prepared to take more if necessary. Our understanding and the message from FINRA the last several years has been that of taking a risk based approach. Does any member firm or examiner feel this is really an area of risk that needs attention? I do not think in the grand scheme this makes any difference. We live in the age of technology where information is available seconds or minutes right after it happened. Clients can search and find information on their current financial professional or proposed professionals they could work with in their area very easily via BrokerCheck, social media, etc. I feel at times we have too much information available to make decisions and analysis paralysis sets in. Please do not move forward with this as there are other areas and risks present that need the time and attention of the member firms and FINRA.

***Matthew J. Kuntz, CAMS, MBA***  
**Chief Compliance Officer & Financial Advisor**  
Midwestern Securities Trading Company, LLC  
235 Everett Street  
East Peoria, IL 61611  
P 309 699 6786  
P 800 732 8601  
F 309 699 7498

Grow & Protect with MSTC™  
[www.midwesternsecurities.com](http://www.midwesternsecurities.com)





June 16, 2014

By Email (pubcom@finra.org)

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 14-19  
Request for Comments on Revised Proposal to Require Hyperlinks to BrokerCheck  
in Online Retail Communications with the Public**

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide this letter in response to a proposed rule change by the Financial Industry Regulatory Authority (“FINRA”) to amend FINRA Rule 2210 (Communications With the Public). Subject to the issues and concerns discussed below, SIFMA supports the goals of the proposed rule change and appreciates FINRA’s continuing efforts to evaluate and improve the BrokerCheck public disclosure system.

***The Initial Proposal to Amend Rule 2267***

The proposal revises a prior proposed rule change filed by FINRA with the Securities and Exchange Commission (“SEC”) in January 2013 that would have amended FINRA Rule 2267 (Investor Education and Protection) and would have required member firms to “include a prominent description of and link to BrokerCheck” on their “websites, social media pages and any comparable internet presence.”<sup>2</sup>

The SEC received 24 comment letters in connection with the proposed amendments to Rule 2267. SIFMA provided its comments on February 15, 2013. Among the primary concerns raised by SIFMA in its February 2013 letter were: (i) the proposal’s requirement to place BrokerCheck links

---

<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> SR-FINRA-2013-002 (January 4, 2013).

on internet sites not under the control of the member firm, and (ii) the costs, burdens and necessity of requiring “direct” links to individual BrokerCheck records for registered persons.

### ***The Current Proposal to Amend Rule 2210***

The proposed rule change would require FINRA member firms to “include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors,” and, subject to certain conditions and exceptions, to include such references and hyperlinks in “online retail communications that include a professional profile of, or contact information for, an associated person.” The rule proposal contains conditions for references and hyperlinks appearing in online retail communications on websites that either: (i) are hosted by the firm, (ii) hosted by a third-party website that permits hyperlinks to other websites, or (iii) third-party websites that do not permit hyperlinks to other websites. The proposal would also except from the rule’s requirements: (i) email and text messages, (ii) retail communications posted to an online interactive forum (e.g., Twitter feeds), (iii) communications by member firms that do not provide products or services to retail investors, or (iv) directories or lists of associated persons to names and contact information.

SIFMA appreciates FINRA’s consideration of the concerns raised by several industry participants in connection with the initial proposal to amend Rule 2267. SIFMA reiterates its previously expressed view that the goal of investor protection is furthered by improved access to accurate and relevant information about broker dealers and their registered employees. However, in an attempt to find ways to “facilitate and increase investor use of BrokerCheck”<sup>3</sup> the proposed rule’s imposition of mandatory content and linking requirements on third-party sites not controlled by member firms continues to raise necessity and feasibility concerns. Specifically, with respect to the current proposal, SIFMA believes that the following issues require revisions and/or clarifications prior to the rule’s implementation:

### ***Space Constraints Within Third-Party Social Media Sites, BrokerCheck Links and Placement***

The proposal recognizes the multiplicity of venues for communications through social media. Proposed Rule 2210(d)(8)(B)(ii)-(iii) sets forth a “close proximity” standard for the inclusion of the “readily apparent reference and hyperlink” to BrokerCheck and provides instructions for where the required links should appear depending on whether or not the third-party platform permits hyperlinks to other websites.

As SIFMA previously observed in its comments to the initial proposal, unlike their own internet websites, member firms do not control the content, appearance, or features of third-party social media internet platforms. Because third-party social media platforms are part of a rapidly changing communications environment, prescriptive rules regarding placement and content are likely to become increasingly difficult to comply with as those platforms evolve. This area, therefore, is more suited to a principles-based approach to rulemaking. Thus, as an initial matter, as it relates to third-party websites, the proposed rule’s use of the prescriptive term “must” (as in “a member must include a readily apparent reference and hyperlink...” in subsection (8)(B)(ii) and (iii) should be replaced with a permissive, principles-based term or phrase such as “should, to the

<sup>3</sup> See Regulatory Notice 12-10 (February 2012).

extent reasonable.” Utilizing a principals-based approach and making the proposed rule permissive rather than mandatory would provide firms with sufficient flexibility to achieve FINRA’s stated goal (increased investor use of BrokerCheck) while recognizing the inherent constraints and fluidity of the internet and the multitude of third-party social media platforms. In short, to the extent any prescriptive requirements are contained within the final rule, those requirements should apply only to a firm’s own website.

Further, space constraints within third-party social media sites may make the inclusion of both a “reference” and hyperlink difficult or impossible to comply with without crowding out of the profile page the essential information the firm or its associated person wishes to convey in using the platform. For example, a member firm may devote considerable effort and expense to creating a branded custom header within Twitter. That custom header may or may not include text, but the platform does not permit embedded hyperlinks within those profile headers. In addition, on the main profile page, only one link to an external site is permitted. Most firms, quite appropriately, would prefer to utilize the “link” space to post a link to their firm’s primary homepage. However, the rule as written would potentially require the firm to use that link space for a link to BrokerCheck since, technically, a link to a third-party website is permitted, *unless* the firm also includes in the third-party social media website “a disclosure that informs the reader that a hyperlink to BrokerCheck is available” through the link to the firm’s homepage.<sup>4</sup>

In addition, space constraints within the platforms themselves makes prescriptive requirements inapt. For example, Twitter currently restricts profile descriptions to 160 characters,<sup>5</sup> including spaces. Simply including a phrase within the profile page that parrots the proposed rule and says “a hyperlink to BrokerCheck is available through the linked website” takes up 66 spaces of the available character/space limitation, or over 39% of the available space. Additionally, other sites may restrict profile information or “links” information to either hyperlinks or free-text, which again places functional limits on what can and cannot be posted to the site.

The inherent difficulties of creating requirements for content on platforms not controlled by member firms strongly favors eliminating mandatory requirements that links and references to BrokerCheck be included within sites on those third-party platforms. The proposal should therefore be modified to eliminate the prescriptive “must” within subsections (8)(B)(ii) and (iii) and replace that language with more flexible language such as “should, to the extent reasonable.”

Adding more appropriate flexibility to the third-party website provisions makes sense in that in nearly all cases firms provide links to the primary home pages on these social media platforms. These homepages, as noted, will contain the required hyperlinks and references to BrokerCheck. SIFMA notes that the firm homepage requirement alone will likely greatly expand investor awareness and use of BrokerCheck from its present state. Because the fundamental purpose of the proposal will be met through these links on proprietary pages, firms should not be unduly constrained in their use of social media where technological limitations run up against restrictive usage and content requirements.

<sup>4</sup> See subsections (B)(ii) and (iii) of the proposed rule

<sup>5</sup> Based on a review of the Twitter platform settings on May 31, 2014.



### ***The Proposal Should Expressly Permit Buffer Screens***

FINRA utilizes “buffer screens” when it links to third-party content on from its proprietary internet pages.<sup>6</sup> The proposal should expressly permit firms to use buffer screens when linking viewers to BrokerCheck. Buffer screens are typically used (as FINRA does) to indicate to viewers that they are being transferred to a website not maintained or controlled by the member and that the member does not warrant or endorse any of the information contained on the third party’s site.

Modifying the proposal to expressly permit the use of buffer pages makes clear to users that BrokerCheck is a FINRA-maintained site, could also allow for an additional brief description of BrokerCheck and the information available at the site, and could allow firms to direct questions about BrokerCheck to FINRA. The proposal should expressly permit this commonly-used internet protocol.

### ***Advertising***

The proposed rule would require a “readily apparent reference and hyperlink to BrokerCheck in online retail communications that include a professional profile of, or contact information for, an associated person... [.]” Under current Rule 2210, “online retail communication[s]” could potentially include an array of online advertising in addition to marketing or other communications through firm-controlled websites and third-party social media websites. FINRA should either except from the rule, or clarify through appropriate guidance, that the requirement to include a reference and hyperlink to BrokerCheck will not apply to either (i) search-engine based, text-only advertising, or (ii) other “static” web-based advertising that contains general references to the services provided by an associated person and includes a hyperlink to a profile page for that associated person. The requested exception for “static” web-based advertising would only apply so long as the hyperlinked profile page contains the requisite references and hyperlinks to BrokerCheck.

Regarding search-based advertising, search engine providers (Google, Yahoo, Bing, etc.) allow advertisers to advertise next to relevant search results. These advertisements are typically text-constrained and include a hyperlink to the advertiser’s website. To the extent a firm or associated person utilizes search-based advertising for the associated person where the content of the advertisement contains a hyperlink to the associated person’s firm’s website (which would contain the required hyperlink to BrokerCheck) or profile page (which would also contain the required hyperlink) such advertising should be excepted from the proposed rule.

Similarly, web-based advertising includes display advertising and other static-content advertising that typically contains a link to the firm or associated person sponsored website or profile page. For some types of this advertising, space or format constraints may render the inclusion of specific

---

<sup>6</sup> For example, investors seeking additional information on SIPC protection are directed to SIPC’s website through a “buffer screen” (<http://apps.finra.org/exitpage/1/exitpage.aspx?url=http://www.sipc.org/news-and-media/brochures>) that advises viewers that “You Are Now Leaving the FINRA.org Website[.] FINRA.org does not endorse this site, its sponsors, or any of the policies, activities, products, or services offered on the site or by any advertiser on the site. If you are not redirected in 5 seconds, please use this link: <http://www.sipc.org/news-and-media/brochures> Thank you for your interest in FINRA.org.”

BrokerCheck references and hyperlinks unworkable. For these advertisements, FINRA should confirm that they will be treated the same as other retail communications appearing on third-party websites as set forth in the proposal and that the inclusion of a hyperlink to the profile page or firm website (containing the requisite links to BrokerCheck) will satisfy the rule's requirements.

In addition, as with third-party social media sites discussed above, many of these advertisements are space-constrained, making prescriptive content requirements difficult to comply with and still maintain the effectiveness and utility of the advertisement itself. In other words, the proposal should not be construed as requiring content that will, effectively, crowd-out other advertising content. Thus, as suggested above, prescriptive "musts" within the proposal should be replaced with a principals-based approach wherever possible.

### ***Directory Listings***

The proposal's exception for "director[ies] or list[s] of associated persons limited to names and contact information" applies to directories that appear either on a member's website or on third-party websites in which the firm or associated person was involved in the website's content.<sup>7</sup> The proposal also makes clear that for third-party directories where the firm or associated person is not involved with its content, the disclosure requirements would not apply unless the firm or its associated persons "adopt[] or become entangled with the communication."

SIFMA supports this modification of the initial proposal in that it clarifies, for example, that a page maintained on a behalf of a group or team of associated persons would not require separate links next to each member of the group's contact information so long as any linked individual profile page contains the required hyperlink to BrokerCheck. Notwithstanding, additional clarification by FINRA is needed to confirm SIFMA's understanding that the mere inclusion of a link within a directory to the member or associated person's profile page does not trigger an obligation to include the BrokerCheck link and description within the directory listing itself.

However, the limitation within the exception granted in proposed Rule 2210(d)(8)(c)(iv) to directories "limited to names and contact information" is unclear and potentially overly restrictive. Many directory listings include useful general biographic or professional information such as years of service or experience, areas of specialty, or assets under management. The inclusion of this type of professional information allows customers and potential customers to more easily identify representatives with skill sets or experience that they may find useful. Because of the content and space constraints of most member-maintained directories, this additional information related is usually presented generically. For example, relevant experience is often described using such terms as "investments", "retirement planning", "wealth management" or other similar terms. The exception for directory listings should therefore be expanded to include general biographical information and areas of expertise.

### ***Other Issues Requiring Confirmation and/or Clarification***

SIFMA notes that the proposal could be further clarified to confirm some of its members' understandings related to the following:

---

<sup>7</sup> Regulatory Notice 14-19 at p. 3 and footnote 11.



- *BrokerCheck Links and Firm Sub-Pages*: As FINRA is aware, a firm's internet presence is comprised of not just static homepages and profile pages, but also many sub-pages related to particular products or services offered by the firm. SIFMA interprets the proposal to require the reference to and hyperlink to BrokerCheck on only the member's home page and on any associated person's "home" profile page, as opposed to all possible URLs or pages maintained by the member.
- *Exceptions for Email and Text Messaging*: SIFMA believes that the terms "electronic mail" and "text messages" as used in the proposal are terms of convenience and that the exception for such communications would equally apply to any future similar messaging capabilities or modes of communication.
- *The Proposal's Applicability to User-Downloaded Apps or Websites*: Many SIFMA member-firm customers are able to download mobile "apps" or other web-based applications (such as a trading platform or OES) that provide access to their accounts and other firm-provided information and capabilities. SIFMA does not consider these applications to be "website[s]" of their respective members and does not believe that the proposal applies to those applications.
- *The Proposal Should Include a Safe-Harbor for Broken Links*: Often, script or programming issues arise with member websites and the proposal should grant firms an appropriate "safe harbor" for links to BrokerCheck that are "broken" that would permit reasonable times to respond to any link maintenance issues.

### ***Comments on the Specific Questions Presented***

Regarding some of the specific comments solicited in Regulatory Notice 14-19, SIFMA offers the following observations:

- *Does the revised proposal address the operational concerns raised by the initial proposal, particularly with respect to the proposed requirements for third-party websites? Why or why not?*

SIFMA believes that many of the concerns identified in connection with the initial proposal have been carefully evaluated and address in this proposal. Communication through the internet continues to evolve, and given the variation, complexities, and rapid rates of change in the medium, SIFMA encourages FINRA to revisit often the issues identified in the proposals and to seek input from member firms in order to develop and promulgate any additional necessary guidance.

- *Should FINRA retain the deep link requirement to provide investors with direct access to a firm's or associated person's BrokerCheck report summary?*

No. For the reasons described in detail in SIFMA's February 2013 letter, the "deep" link requirement in the initial proposal was overly burdensome. Further, the current proposal recognizes the effectiveness of what is, essentially, the one-click-away disclosure model that SIFMA advocated for in its February 2013 letter.

- *Will the revised proposal increase investor use and awareness of BrokerCheck?*

Yes. However, SIFMA continues to believe that the manner in which information is displayed within BrokerCheck should be revised in the interest of fairness and clarity. These concerns were initially presented in SIFMA's April 2012 comments to Regulatory Notice 12-10 (Request for Comments on Ways to Facilitate and Increase Use of BrokerCheck Information), and were reiterated in its comments to the initial proposal. SIFMA is hopeful that efforts to evaluate the suggestions made in response to Notice 12-10 continue and that FINRA will engage in a more detailed dialog concerning those suggestions in the near future.

Further, SIFMA requests that FINRA carefully consider how it will effectively handle any issues surrounding the increased use of BrokerCheck. For example, when responding to questions about BrokerCheck and the information contained therein, SIFMA believes that FINRA staff should be appropriately trained and supervised.

- *What are the direct and indirect costs of the proposed rule to firms, including the cost associated with monitoring retail communications of associated persons across different channels? FINRA welcomes estimates of these costs to firms.*

SIFMA's membership includes firms of all sizes, and the costs of implementation will vary from firm to firm depending on their business model and infrastructure. Because the costs of implementing the rule could be significant for firms with large retail business operations, SIFMA requests that firms be given at least six months to implement any required changes post-approval.

If you have any questions or require further information, please contact me at 202-962-7385, [mmacgregor@sifma.org](mailto:mmacgregor@sifma.org), or our counsel, Mark D. Knoll, Bressler, Amery & Ross, P.C., at 212-510-6901, [mknoll@bressler.com](mailto:mknoll@bressler.com).

Very truly yours,

/Melissa MacGregor/

Melissa MacGregor  
Managing Director and  
Associate General Counsel

cc: Robert L. D. Colby, Chief Legal Officer, FINRA (by email)  
Thomas Selman, Executive Vice President, Regulatory Policy, FINRA (by email)  
Mark D. Knoll, Esq., Bressler, Amery & Ross (by email)

Page 123 of 144  
**FIRST GEORGETOWN SECURITIES, INC.**  
INVESTMENT BROKERS



May 12, 2014

Joseph Savage  
FINRA  
9509 Key West Ave.  
Rockville, MD. 20850

Dear Mr. Savage:

I oppose the proposed requirement that firms post a hyperlink to BrokerCheck on their web sites. It seems unnecessary and seems to imply or suggests that there is a likelihood that a representative may have misbehaved in some way. The public already has many ways of checking on the integrity of professionals in our industry. This would also be yet another task that a small firm like mine must implement and pay for. Thank you for considering my point of view.

Sincerely,

Robert T. Mann  
President, First Georgetown Securities, Inc.



*Established 1975*



Wells Fargo Advisors, LLC  
1735 K Street, NW  
Washington, DC 20006-1506  
Attention: FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
Attention: FINRA

June 16, 2014

**Via e-mail: [pubcom@finra.org](mailto:pubcom@finra.org)**

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: Regulatory Notice 14-19: BrokerCheck – FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications with the Public**

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the proposal by the Financial Industry Regulatory Authority (“FINRA”) to amend FINRA Rule 2210 *Communications with the Public*, as set forth in Regulatory Notice 14-19 (“the Proposal”).<sup>1</sup> The Proposal would require member firms to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public. This includes each website of the firm that is available to retail investors and third-party sites containing a professional profile of, or contact information for, an associated person, subject to specific conditions and exceptions.

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,146 full-service financial advisors in branch offices in all 50 states and 3,350 licensed financial specialists in

---

<sup>1</sup> Regulatory Notice 14-19, FINRA Requests Comment on Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications with the Public, 4, (April 2014), <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p496867.pdf>



6,610 retail bank branches in 39 states.<sup>2</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services retail investors need to pursue these goals.

WFA has previously filed public comments in response to FINRA’s efforts to amend FINRA Rule 2267-*Investor Education and Protection*, which would have required member firms “to include a prominent description of and link to FINRA BrokerCheck” on firm “websites, social media pages and any comparable Internet presence.”<sup>3</sup> In that letter, WFA asked FINRA to reconsider its requirement to place a link to BrokerCheck on third-party websites due to space and format limitations. Furthermore, WFA proposed that FINRA require a link on third-party websites to the firm’s website, where a link to BrokerCheck would be included. In addition, WFA asked FINRA to eliminate the requirement to link directly to the individual representative’s BrokerCheck page and instead require a link to the BrokerCheck homepage to provide investors with important context. Finally, WFA urged FINRA to address redundant and confusing presentation of disclosure events in the BrokerCheck profile prior to adopting a requirement to link to BrokerCheck.<sup>4</sup>

WFA applauds FINRA for considering commenters’ concerns, and particularly for its efforts to add more flexibility in displaying the BrokerCheck link and for eliminating the requirement of a “deep link” to a broker’s BrokerCheck page.<sup>5</sup> Nonetheless, WFA believes the Proposal’s scope should be refined to balance its potential benefits with the burdens resulting from firms’ efforts to comply. Furthermore, WFA believes additional clarity is required to address the feasibility of disclosures on third-party sites which do not permit a hyperlink or have format or character limitations.

## **I. FINRA Should Clarify the Scope of Retail Communications on a Third-Party Site.**

The Proposal would require a member firm to include a readily apparent reference and hyperlink to BrokerCheck in *any* online retail communication that includes a professional profile of, or contact information for, an associated person. The Proposal also discusses conditions for

<sup>2</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC (“WFAFN”) and First Clearing, LLC (“FCC”), which provides clearing services to 76 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all brokerage operations.

<sup>3</sup> See Correspondence from Robert J. McCarthy to Elizabeth M. Murphy regarding Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection), SR-FINRA-2013-002, dated February 15, 2013. <http://www.sec.gov/comments/sr-finra-2013-002/finra2013002-16.pdf>, See also SR-FINRA-2013-002. [http://www.knowledgemosaic.com/gateway/finra/rule\\_filings/SR-FINRA-2013-002-1.pdf](http://www.knowledgemosaic.com/gateway/finra/rule_filings/SR-FINRA-2013-002-1.pdf)

<sup>4</sup> WFA remains concerned that the confusing and redundant format of BrokerCheck disclosure events will undermine FINRA’s purpose to provide investors relevant information and once again urges FINRA to address these issues prior to instituting a final BrokerCheck disclosure requirement.

<sup>5</sup> Notice, 2.

including the reference where the retail communication appears on a third-party site. Specifically, if the third-party site permits a hyperlink, the member firm should post a hyperlink to BrokerCheck in close proximity to the profile or contact information. Alternatively, the member firm should post a hyperlink to the member's website, which includes a readily apparent reference and hyperlink to BrokerCheck, and inform the reader on the third-party site that BrokerCheck is available through the linked website.

WFA believes the scope of online retail communications potentially covered by the Proposal is too broad. There are many forms of content posted on a third-party site that could include the professional profile of, or contact information for, an associated person. For example, interviews, articles and reprints, award listings (e.g., Barron's, Registered Representative, Five Star), biographies, sponsorships, press releases, radio replays and advertisements are all forms of retail communication that may include the professional profiles of, or contact information for, an associated person, when posted to a third-party's website.

Nevertheless, these types of communications generally do not promote specific products or services and thus do not present the same risks that may be present in other online profile or contact pages. Similarly, advertisements posted on a third-party's site that merely function as a link to a site of the member firm or registered representative should be excluded, as the product or service being promoted is contained on the firm webpage as opposed to the advertisement. Furthermore, the firm website would include the BrokerCheck link. Accordingly, WFA believes that the aforementioned forms of online retail communication should be excluded from the BrokerCheck link requirement.

## **II. FINRA Should Clarify the Directory Listing Exception.**

The Proposal sets forth an exception for "a directory or list of associated persons limited to names and contact information."<sup>6</sup> The Proposal explains this exception is "intended to apply both to directories that appear on a member's website, as well as third-party website directories in which the firm or associated person was involved with the website's content."<sup>7</sup> At the same time, FINRA notes that a firm can "adopt" or "become entangled with the creation of" a third-party website's content, subjecting the communication to the requirements of Rule 2210.<sup>8</sup> WFA believes the scope of the directory listing exception should be expanded.

Some third-party directories go beyond "names and contact information" to permit the firm or associated person to provide additional relevant information.<sup>9</sup> For example, the Certified Financial Planner Directory permits the firm or associated person to add elements, such as minimum asset level, specialties and compensation methods. Therefore, WFA believes FINRA should consider extending the directory exception to include such pertinent information. In addition to making the directory listing exception broader, FINRA should clarify that member

<sup>6</sup>Proposed FINRA Rule 2210(d)(8)(C)(iv). See Attachment A to Notice 14-19.

<sup>7</sup>Notice, FN 9.

<sup>8</sup>*Id.* at FN 11.

<sup>9</sup>Proposed FINRA Rule 2210(d)(8)(C)(iv). See Attachment A to Notice 14-19.

firms may provide asset levels, specialties, compensation methods and comparable information to a directory.

### **III. There Are Operational Challenges Associated with Posting to Some Third-Party Sites.**

The Proposal would require retail communications containing a profile of, or contact information for, an associated person posted on a third-party site to include a hyperlink to BrokerCheck either directly or via the member firm's site. Alternatively, where the third-party site does not permit hyperlinks, the Proposal would require a reference to BrokerCheck's URL and "to the extent feasible", language indicating that information concerning the associated person is available through BrokerCheck.<sup>10</sup>

Although the Proposal contemplates the scenario where a third-party site does not have the capability to include a hyperlink, it gives inadequate consideration to space and character limitations presented by certain third-party sites. Some sites do not have free-form fields to facilitate the inclusion of either a hyperlink or the BrokerCheck URL and introductory language. Additionally, some sites strictly limit the number of characters available on the profile page, making it unduly burdensome to include approximately 110 additional characters to reference BrokerCheck.<sup>11</sup>

For example, the Proposal suggests for Twitter accounts that member firms include the introductory language and URL to BrokerCheck in the "About" section.<sup>12</sup> The "About" section, however, is limited to 160 characters. A member firm could either include the introductory language and URL, taking up 110 of the 160 characters, or the member firm could note "a hyperlink to BrokerCheck is available through the linked website," referring to the firm's site under the "link" space, which would take up 66 of the 160 characters. Under either scenario, by taking up approximately 40-68% of the available space in the "About" section, the Proposal's requirements unreasonably constrict a member firm's ability to include other pertinent information in that field. WFA believes FINRA should clarify that firms need not include the URL and description if doing so would take up more than 25% of available characters in the field.

Moreover, FINRA should add language to the Proposal to relieve firms of the BrokerCheck requirements where the firm has made a reasonable attempt, including documentation thereof, to add the BrokerCheck URL or hyperlink to a third-party site and the third-party cannot accommodate the firm's request.

### **IV. The Proposal Will Be Burdensome and Time Consuming to Implement.**

WFA expects its efforts to comply with the Proposal will be resource intensive. As noted above, the scope of material potentially covered by the requirement could be voluminous if it

---

<sup>10</sup> Proposed FINRA Rule 2210(d)(8)(B)(ii)-(iii). See Attachment A to Notice 14-19.

<sup>11</sup> This character count is based on the following phrase: "Information concerning the broker is available at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/>".

<sup>12</sup> Notice, 5.

Marcia E. Asquith  
June 16, 2014  
Page 5 of 5

encompasses such retail communications as online advertisements, interviews and award listings. Furthermore, if the Proposal will apply retrospectively, the labor and resources required to conduct the review will be vastly more than those for a prospective only requirement.<sup>13</sup>

In the past year alone, WFA approved approximately 3,000 web related items, a review of that one year's worth of approvals would take at a minimum six months. Under an unbounded retrospective requirement, firms could be required to review tens of thousands of prior online retail communications to determine if they are subject to the rule, employing substantial resources and taking years to complete. Whether the rule applies retrospectively or only prospectively, firms will incur substantial surveillance costs, particularly if the scope of the rule remains as broad as stated in the Proposal.

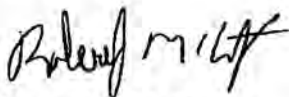
In addition, the Proposal does not address FINRA's anticipated timeline to implement the amended rule. WFA requests that FINRA provide at least six months to implement the Proposal. Additional time may be required to comply with a retrospective review requirement.

WFA applauds FINRA for seeking to enhance investor protection, but urges FINRA to balance the potential benefits derived from making BrokerCheck more accessible to investors with the burdens imposed on member firms to comply.

## Conclusion

WFA appreciates the opportunity to respond to FINRA's Proposal. The foregoing comments will help FINRA develop a final rule which balances its investor protection aims with the cost of compliance. If you would like to further discuss this issue, please contact the undersigned at [robert.j.mccarthy@wellsfargoadvisors.com](mailto:robert.j.mccarthy@wellsfargoadvisors.com) or 314-955-2156.

Sincerely,



Robert J. McCarthy  
Director of Regulatory Policy

CC: Stephen R. Bard  
Director of Communications Compliance

---

<sup>13</sup> It is worth noting that FINRA took a prospective only approach when it issued the new Communications with the Public rules in Regulatory Notice 12-29: Communications with the Public-SEC Approves New Rules Governing Communications with the Public. See Regulatory Notice 13-03: Communications with the Public-FINRA Provides Guidance on New Rules Governing Communications with the Public.



As Chief Compliance Officer for a small firm with 2 other brokers, we started in 1993 with a 37 page compliance manual that has now grown to over 600 pages and it is virtually impossible to keep up with, despite our requirement to keep up with it. Every layer you create makes maintaining our broker-dealer into the future more and more difficult and less and less likely. While our firm has nothing to fear from putting a broker check link on our website or electronic communication, each new rule makes compliance more and more difficult for a small firm and can easily lead to unintended violations, when we have to deal with a 1000+ page FINRA Rulebook. The compliance burden gives me, as Chief Compliance Officer, Supervisor, Broker and Investment Advisor very little time to concentrate on our clients real needs and focus on my real job of properly handling our customer's investments. If brokers and their supervisors have to many complaints and/or arbitrations, FINRA should deal with this issue through its oversight responsibility, not by layering additional compliance costs on its members. The only survivors here are going to be the large firms that have the resources to deal with this current regulatory environment. The more unnecessary rules you create, the less time brokers and their supervisors have to focus on the real compliance issues of providing the proper investment structure that meets their clients financial needs and objectives. Isn't that really what our industry and compliance should be all about. The more bogged down in detail FINRA gets, the more it is going to miss the real threats out there to investor's well-being. That is why none of the recent scandals have surprised me, because you have spent so much time creating new rules that make little difference to the investing public and too little time looking at uncovering the real risks within our industry. We would like to know why the Investment Advisors Act, which we also operate under, is just a couple of pages and so simple, while our Introducing Broker-Dealer rules so detailed and complex. Are our jobs and responsibilities to our client's really that different.

Sincerely,

Paul D. Mendelsohn – President  
Windham Financial Services, Inc.  
Member FINRA, SIPC, MSRB  
608 Hills Point Road  
Charlotte, VT 05445  
Tel: 800-735-2790  
Tel: 802-425-7755  
Fax: 802-329-2275  
e-mail: [paulm@windhamfinancial.com](mailto:paulm@windhamfinancial.com)

This message may contain confidential and/or legally privileged information and is intended for use by the indicated addressee. If you are not the individual or entity to which it is addressed, note that any review, disclosure, copying, retransmission or other use is strictly prohibited. If you received this message in error, please notify the sender immediately and delete the material from your system. This transmission is for informational purposes only, and is not intended as an offer or solicitation for the purchase or sale of any financial instrument or as an official confirmation of any transaction. Under no circumstances should orders to buy or sell securities be transmitted via e-mail. As always, past performance is no guarantee of future results.

## Public Investors Arbitration Bar Association

June 16, 2014

### 2014 Officers

**Jason Doss**  
*President*

**Joseph C. Peiffer**  
*Executive Vice-President/  
President-Elect*

**Jeffrey R. Sonn**  
*Secretary*

**William A. Jacobson**  
*Treasurer*

### 2014 Directors

**Hugh D. Berkson**  
*Ohio*

**Lisa A. Catalano**  
*New York*

**Jason Doss**  
*Georgia*

**Samuel B. Edwards**  
*Texas*

**Richard S. Frankowski**  
*Alabama*

**Glenn S. Gitomer**  
*Pennsylvania*

**Scott C. Ilgenfritz**  
*Florida*

**William A. Jacobson**  
*New York*

**Marnie C. Lambert**  
*Ohio*

**Richard A. Lewins**  
*Texas*

**Angela H. Magary**  
*Massachusetts*

**Peter J. Mougey**  
*Florida*

**Joseph C. Peiffer**  
*Louisiana*

**Jeffrey R. Sonn**  
*Florida*

**Andrew J. Stoltmann**  
*Illinois*

**Robin S. Ringo**  
*Executive Director*

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: Regulatory Notice 14-19 – Proposed Rule Change to Amend  
FINRA Rule 2210 (Communications with the Public)**

Dear Ms. Asquith,

I write on behalf of the Public Investors Arbitration Bar Association (“PIABA”). PIABA is an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in FINRA rules relating to both investor protection and disclosure.

PIABA was generally in favor of FINRA’s previous effort to require its membership to provide links between their communications to the public and the BrokerCheck system as proposed in SR-FINRA-2013-002. While that proposal was withdrawn, PIABA continues to support FINRA’s efforts to make BrokerCheck more accessible for investors. FINRA has long recognized the importance of BrokerCheck as a source of critical information for the public investor. The system has continued to evolve since its inception in 1988, and its present iteration allows anyone with an internet connection to access FINRA’s BrokerCheck reports instantly through FINRA’s website, demonstrating FINRA’s commitment to ensuring free access to information critical to the investing public.

The need for access to the BrokerCheck system continues to be of critical importance. In 2009, a study of financial capability in the U.S. found that only 15% of survey respondents claimed to have checked a financial advisor’s background with a state or federal regulator. *See* Regulatory Notice 12-10, footnote 9. A 2012 update to that study indicates that 50% of the survey respondents had consulted with a financial professional. More specifically, 29% of the respondents said that they consulted a financial professional regarding “savings or investments.” *See Financial Capability in the United States, Report of Findings from the 2012 National Financial Capability Study*.

Marcia F. Asquith, Secretary  
June 16, 2014  
Page 2

sponsored by FINRA Investor Education Foundation.<sup>1</sup> Of particular concern, the 2012 study also revealed that financial literacy had slipped between 2009 and 2012. On average, respondents answered three of five questions regarding fundamental concepts of economics and finance correctly in 2009, but only 2.9 questions correctly in 2012. Thus, the need to ensure that investors have ready and easy-to-use tools to ensure that their financial advisor is qualified to provide advice is more important than ever.

The former, and now withdrawn, recommendation that FINRA rule 2267 be modified to require disclosure in writing of the general BrokerCheck telephone number and website once per year has been modified in the current proposal to modify Rule 2210, governing communications with the public. Generally speaking, PIABA believes that the amendments to Rule 2210 proposed in Regulatory Notice 14-19 would improve public access to investment advisor and broker-dealer registration information. A September 2013 study by the PEW Internet and American Life Project concluded that 86% of Americans use the Internet, with 70% of American adults using a high speed connection to access the Net. As the Internet matures and access becomes more prevalent, it becomes increasingly likely that a public investor will look at a member firm's or associated person's website or social media page for information. By requiring a prominent, uniform text description (which could be drafted by FINRA) and hyperlinks to not only BrokerCheck but a page specific to that member or associated person, FINRA will greatly improve public use of BrokerCheck. By natural extension, it will also improve public access to and use of FINRA's other investor tools on its [www.finra.org/investors](http://www.finra.org/investors) webpages.

FINRA's proposed changes to Rule 2210 show that FINRA listened carefully to the comments and criticisms the industry offered in response to SR-FINRA-2013-002. While those comments often decried the lack of specificity regarding how and where to place the requisite link to BrokerCheck, PIABA believes that the current proposal is sufficiently specific to provide guidance, but also provides the flexibility needed to allow member firms to utilize a reasonable design strategy designed to place the link where a public investor is likely to notice and utilize it. The current proposal also makes clear exactly which sorts of communications require the link and which do not. While PIABA believes that the list of communications that require the link should be expanded, as discussed below, the clarification removes any doubt regarding where and when the link must be provided. Similarly, the broad language simply requiring a "readily apparent reference and hyperlink to BrokerCheck" allows flexibility in the language used to effect the reference and link.

PIABA strongly encourages FINRA to require the use of "deep links" by which the link would direct the investor to the associated person's BrokerCheck report without any further input from the investor, as would be required if the link simply directed the investor to BrokerCheck and then required that they navigate through to the individual BrokerCheck report. PIABA also strongly encourages the link to be directed to the Web version of the

---

<sup>1</sup> A copy of the study is available at [http://www.usfinancialcapability.org/downloads/NFCS\\_2012\\_Report\\_Natl\\_Findings.pdf](http://www.usfinancialcapability.org/downloads/NFCS_2012_Report_Natl_Findings.pdf)



Marcia F. Asquith, Secretary  
June 16, 2014  
Page 3

report instead of a PDF file. In short, PIABA suggests that the process be as streamlined as possible to direct the public investor to the BrokerCheck data with no opportunities to get lost, redirected or distracted along the way.

PIABA is concerned that the limitations set forth in Rule 2210(d)(8)(C) are too restrictive. The exclusion of electronic mail is particularly puzzling. Professional email messages always carry a signature block with relevant contact information and disclaimers. There is no reason a link to BrokerCheck could not be included in that signature block. Similarly, if contact information is provided in an online interactive electronic forum, there is no reason a link (or reference to) BrokerCheck could and should not be included. If the concern is that a link included in an online forum would be long and unwieldy and therefore confusing, the problem can be cured using any one of a number of services that will shorten a link to as few as 21 characters including the "[http://](#)" protocol header.

The proposed changes to Rule 2110 address online communications alone. PIABA strongly encourages FINRA to consider requiring the BrokerCheck description and hyperlink be placed on printed customer account statements as well. Compliance with this requirement would be no more difficult or expensive than including the information within online communications. Including the information on monthly statements is substantially likely to promote investor use of BrokerCheck and can serve no harm to member firms or their associated persons.

In addition to the issues addressed above, PIABA urges FINRA to consider what information is provided in the BrokerCheck reports. We ask that FINRA improve the BrokerCheck system and thereby improve investor education and financial literacy in the following ways:

1. PIABA encourages FINRA to harmonize the information available on BrokerCheck with information available from state regulatory websites, such as Florida's. The additional information provided may include a broker's educational background and professional designations.
2. PIABA requests that FINRA eliminate the artificial time limits on what information must be disclosed on BrokerCheck. Lapse of time should not take critical information away from the investing public.
3. PIABA asks that FINRA consider making BrokerCheck information available to for-profit companies who may make the information more accessible, or offer comparative reports concerning different member firms or associated person. So long as FINRA continues to support a free basic level of service through BrokerCheck, PIABA supports the idea of private companies who may enhance public education through data analysis services.
4. In addition to making BrokerCheck more accessible, investors should have easier access to information about fees paid by the customer to the financial institution. The easiest and most effective way to do this would

Marcia E. Asquith, Secretary

June 16, 2014

Page 4

be requiring investment institutions to prominently display the amount of fees charged on the first page of customer account statements. PIABA believes that to be most effective, this fee disclosure should include both the dollar amount of fees charged for that statement time period and year to date, and the annual percentage fee charged with respect to both the net asset value of the account and as a percentage of the net gains and losses for the account. These figures may serve as a basic "red flag" for potential misconduct in the account.

PIABA appreciates and supports FINRA's commitment to investor protection. We recognize that FINRA has continued to improve BrokerCheck and other investor educational resources on its website. We hope that the improvement to Rule 2110 will result in more public investors obtaining the benefit of discovering and accessing those resources. Thank you for giving us the opportunity to comment and share our input.

Very truly yours,



Joseph C. Peiffer

PIABA

Executive Vice-President/President-Elect



June 16, 2014

**VIA ELECTRONIC MAIL**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Response to Regulatory Notice 14-19 on proposal to include BrokerCheck References on Electronic Communication**

Dear Ms. Asquith:

We are submitting this letter on behalf of Lincoln Financial Advisors Corp. ("LFA", CRD#3978) and Lincoln Financial Securities Corp. ("LFS", CRD#3870), each a broker-dealer affiliated with Lincoln National Corporation, in response to Regulatory Notice 14-19, *FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public* (the "Notice") issued on April 30, 2014. The Notice proposes amending FINRA Rule 2210(d)(8)(B) (the "Proposal") to require a firm and its associated persons to post a 'readily apparent reference and hyperlink' to BrokerCheck on both websites and personal profiles on certain social media sites.

We appreciate the opportunity to submit comments in response to the Notice. While both LFA and LFS understand the aim of enhancing investors' use of BrokerCheck, the Proposal creates a significant burden on each firm to ensure full adoption on each of its associated websites and social media outlets. The operational costs associated with embedding a generic link to the BrokerCheck website would be very high. Even a generic reference to BrokerCheck would create a significant drain to our staffing resources for the desired benefit of the Notice, and we urge you to revise the tenets of the Notice.

**SPECIFIC COMMENTS**

Our comments on the Proposal center around concerns related to the following topics:

**Operational Cost.** The firm currently has reviewed and monitors more than 400 websites for its retail representatives between the two broker-dealers. Additionally, each broker-dealer allows its representatives to maintain a profile on LinkedIn subsequent to review by broker-dealer principals. To date, LFA has approved roughly 700 LinkedIn profiles, and LFS has approved more than 300. In order to achieve compliance with the

Notice, the firms would need to contact each website host and all individuals with approved profiles to inform them of the requirement, and ensure (through evidence of re-approval) that each website and profile complies. With an estimate of between 15-30 minutes per site on average needed for training, review and evidence of approval, the estimated review time needed to ensure full compliance with existing sites/profiles would total up to 700 hours, or nearly 17 weeks of a full-time employee's time, for the initial transition. This does not take into account time for new associated persons and websites, or any additional time if the firm chooses in the future to allow additional venues for social media hosting.

**Location of an associated person's record.** Because of the amended Proposal, any link to BrokerCheck's main site would require the user to know the full name of the registered representative and/or the full name of the firm. For instance, the firm has a limited number of individuals with common names, and there are a number of firms with names similar to LFA or LFS. Therefore, in order for effective use of the site as the Notice proposes, there would need to be not only a link to the BrokerCheck site, but also some standard language to be developed on appropriate methods to search on the site. This may cause an increase to the time and resources needed to successfully implement this requirement.

**Responsibility for implementation on third-party websites.** The Proposal does not clarify how a firm must manage the link for sites that may appear on a "third party" website. Many sites intended to help customers find representatives may provide information well beyond the name/address that is listed among the Notice's exceptions. Should the Proposal extend to these location-type service sites, the resource cost to the compliance departments implementing and reviewing this update will increase significantly.

Based on these concerns, we believe that other strategies should be explored to help increase the visibility of BrokerCheck to the investing public. We trust that the goal for increasing investor awareness of the availability of BrokerCheck can be accomplished within the other types of general education efforts (such as "know your customer" communications).

## **ADDITIONAL CONSIDERATIONS**

Beyond our comments, we also request that FINRA consider further clarifying the Proposal as described below:

**Limitation of the rule concerning associated persons who may not deal directly with the investing public.** FINRA should consider limiting the requirement in the Proposal away from associated persons who do not interact with the public on behalf of a FINRA member firm. We believe that extending the Proposal's requirement to all "associated persons", including home office personnel or administrative staff with little to no contact with retail customers, would offer a limited benefit to investors for the resources required for implementation of the Proposal.



**Sites that identify multiple representatives.** We request that FINRA clarify whether online retail communication that includes a site or profile which includes multiple associated persons would also require multiple hyperlinks to BrokerCheck under FINRA Rule 2210(d)(8)(B). We believe in this instance that a single hyperlink to BrokerCheck would satisfy the requirements of the Proposal when there are multiple associated persons referenced in certain retail communications, but we request confirmation of this premise within the rule.

We appreciate the opportunity to comment on this Notice. Please do not hesitate to contact me by phone at 860-466-3325 or by email at [Mark.Russell@lfg.com](mailto:Mark.Russell@lfg.com) if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink that reads "Mark Russell". The signature is fluid and cursive, with the first name "Mark" and last name "Russell" clearly distinguishable.

Mark Russell  
Head of Advertising Compliance, Lincoln Financial Group





**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

750 First Street N.E., Suite 1140  
Washington, D.C. 20002  
202/737-0900  
Fax: 202/783-3571  
[www.nasaa.org](http://www.nasaa.org)

June 20, 2014

*Submitted electronically to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 14-19 FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public.**

Dear Ms. Asquith,

On behalf of the North American Securities Administrators Association (NASAA),<sup>1</sup> I hereby submit the following comments in support of the revised proposal as described in Financial Industry Regulatory Authority's (FINRA) Regulatory Notice 14-19 Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications with the Public ("the revised proposal"). NASAA strongly shares FINRA's desire to stimulate greater investor awareness and access to information critical to making informed investment decisions.<sup>2</sup>

When it comes to selecting financial advisors that will assist or directly make investment decisions for investors, FINRA's BrokerCheck system is the largest public information repository of securities professionals nationwide, a critical but, unfortunately underutilized, resource. As a 2009 study found, only 15% of people check a financial advisor's background before engaging that advisor's services.<sup>3</sup> FINRA is absolutely right to seek increased investor

<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

<sup>2</sup> See Letter from Rex Staples, General Counsel, North American Securities Administrators Association, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Re: Release Number 34-60462; File Number SR-FINRA-2009-50 (September 8, 2009) (available at [http://www.nasaa.org/wp-content/uploads/2011/07/24BrokerCheck\\_090809.pdf](http://www.nasaa.org/wp-content/uploads/2011/07/24BrokerCheck_090809.pdf)); Letter from Ralph A. Lambiase, President, North American Securities Administrators Association, to Barbara Sweeney, NASD, RE: NASD Notice to Members 03-76 – Request for Comment, Enhanced Access to BrokerCheck (January 9, 2004) (available at [http://www.nasaa.org/wp-content/uploads/2011/07/73BrokerCheckDelivery\\_37996-42199.pdf](http://www.nasaa.org/wp-content/uploads/2011/07/73BrokerCheckDelivery_37996-42199.pdf)).

<sup>3</sup> See Applied Research & Consulting LLC, Financial Capability in the United States, at 46 (December 1, 2009), <http://www.finrafoundation.org/web/groups/foundation/@foundation/documents/foundation/pl20536.pdf>. NASAA notes that financial advisor is not a defined term under the federal securities laws, but for purposes of this analysis, equates the term with broker-dealer representative or associated person of a broker-dealer.

Marcia E. Asquith  
June 20, 2014  
Page 2 of 3

use of this resource and NASAA believes the steps proposed in the original proposal would have gone far to accomplish that goal.<sup>4</sup> NASAA was very excited about the transformative impact that direct hyperlinks and, specifically, individualized deep links<sup>5</sup> would have in automatically, effortlessly connecting investors with the specific information they need in the BrokerCheck system.<sup>6</sup> NASAA is disappointed that FINRA's revised proposal eliminates the most effective component originally advanced, i.e., direct BrokerCheck hyperlinks/deep links to individual broker records, as well as excludes e-mail correspondence from the rule.<sup>7</sup> There is no question that those components would be significantly more effective than "readily apparent references" to the BrokerCheck system in increasing investors' real-time, day-to-day exposure to financial advisor information.

Should this proposal move forward to the Securities and Exchange Commission rulemaking process, NASAA will advocate for reinstatement of the deep link component in the final rule, as well as the elimination of the exception for e-mail. Moving forward, NASAA would also be interested in expansion of the rule beyond websites geared toward retail investors and online communications that include a professional profile like LinkedIn.<sup>8</sup> More and more investors are communicating online with their financial advisors in this digital age. While NASAA understands and supports FINRA's effort to avoid unworkable disclosure burdens involving third party websites or services over which member firms have no control, NASAA would urge FINRA to maximize BrokerCheck's visibility in areas where the firm or its financial advisors do exert control. Firms and their financial advisors control e-mail correspondence and most social media exchanges with investor clients.

In regards to FINRA's requests for empirical or other factual data, NASAA would suggest that FINRA inquire of its examination staff or, alternatively, poll member firms to ascertain and compare utilization rates of the different types of online communications occurring between a financial advisor and their clients to figure out which applications would have the most bang for the buck. FINRA examination teams are in member firm offices every day reviewing client communications and should have a strong, first-hand understanding of what the most popular online communication modes are. The final rule should be geared toward embedding direct links to BrokerCheck and deep links to individual financial advisors in those communications.

---

<sup>4</sup> See Letter from A. Heath Abshire, President, North American Securities Administrators Association, to Elizabeth M. Murphy, Secretary, Securities & Exchange Commission, Re: Release No. 34-68700 SR-FINRA-2013-002 (February 15, 2013).

<sup>5</sup> A "deep link" refers to a BrokerCheck link that directs the user directly to the BrokerCheck summary reports specific to a member firm or associated person. Such a BrokerCheck web address would include a firm's or individual's CRD number and would be specific to each member or associated person. The link would take the user to BrokerCheck's search results screen for the subject firm or individual.

<sup>6</sup> See SEC Release 34-68700; File No. SR-FINRA-2013-022 (January 18, 2013), 78 Fed. Reg. 5542 (January 25, 2013).

<sup>7</sup> NASAA notes that e-mail correspondence was not addressed in the electronic communications included in the original proposal.

<sup>8</sup> FINRA noted that the revised proposal clarifies that a hyperlink to BrokerCheck should be included only on websites of the firms that are available to retail investors, rather than on all of its social media pages and proprietary sites that limit access to institutional investors.

Marcia E. Asquith  
June 20, 2014  
Page 3 of 3

Once again, NASAA appreciates the opportunity to comment as well as FINRA's effort to improve investor awareness and access to important BrokerCheck information. Should you have any questions about NASAA's comments, please feel free to contact Joseph Brady (jb@nasaa.org), General Counsel, or A. Valerie Mirko (vm@nasaa.org), Deputy General Counsel, via email or at (202) 737-0900.

Sincerely,

A handwritten signature in black ink that reads "Andrea Seidt". The signature is written in a cursive, flowing style.

Andrea Seidt  
NASAA President  
Ohio Securities Commissioner



**Mailing Address:**  
P.O. Box 4037  
Atlanta, GA 30302-4037

**In Person:**  
140 Decatur Street, Suite 326  
Atlanta, GA 30303

Phone 404-413-9270  
Fax 404-413-9272  
Web law.gsu.edu



June 13, 2014

**VIA EMAIL TO [PUBCOM@FINRA.ORG](mailto:PUBCOM@FINRA.ORG)**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: Regulatory Notice 14-19  
Comments on Proposed Changes to FINRA Rule 2210

Dear Ms. Asquith:

Thank you for the opportunity to comment on Regulatory Notice 14-19. The Georgia State University College of Law Investor Advocacy Clinic is dedicated to protecting the interests of consumer investors. Because the proposed changes to FINRA Rule 2210 will increase investor awareness of BrokerCheck, and thus encourage investors to learn more about their investment professionals, we submit this comment in support of the rule. While we support the proposal generally, FINRA's goal of protecting investors and increasing their awareness of BrokerCheck would be better served if a deep link to each associated person's personal report summary were required on each professional profile page on a firm's website.

The proposed changes to Rule 2210 will ensure that investors are aware of BrokerCheck by requiring firms to include a readily apparent reference and hyperlink to BrokerCheck on each web page of the firm that is available to retail investors, as well as each online retail communication with the public that includes a professional profile of, or contact information for, an associated person.

The revised proposal addresses the operational concerns raised by the initial proposal and will increase investor use and awareness of BrokerCheck. Many times investors are not aware of BrokerCheck until they are already embroiled in a dispute. By ensuring that the link is prominently displayed on the firm's website as well as the associated person's profile, investors will be made aware of BrokerCheck as they are conducting preliminary research on an investment professional.

The burden on broker-dealers will be minimal; links are very basic functions of web pages and do not take up much space, nor do they require advanced skills to implement. This is a very efficient and effective way to ensure that investors are aware of BrokerCheck. As of June

13, 2014, none of the comments received from firms opposing the proposal provide any data on the actual or estimated costs of implementing the proposal, only statements that it would be burdensome. After initial implementation and training, however, the burden to firms would be insubstantial, especially as compared to the benefit that investors would receive from increased access to BrokerCheck.

In response to the question posed in Regulatory Notice 14-19, FINRA should also require that each professional profile of an associated person on the firm's website provide a link to the associated person's personal report summary page. This would not be overly burdensome because it would not require deep links to be posted on third-party social media websites, only on the professional profile of the associated person on the website provided by the firm. Additionally, it would provide direct access to the associated person's BrokerCheck report summary, so that the investor could make a fully-informed decision about who they are choosing to work with.

Although the proposed changes to Rule 2210 provide investors with information necessary to choose an investment professional, the information included within BrokerCheck should go further. FINRA should increase the information displayed on BrokerCheck to be more in line with the information provided by state securities regulators. Investors may not realize that they can access information about brokers from their home states that is not available on BrokerCheck. In many cases, investors wrongly believe that BrokerCheck contains all existing information pertaining to an associated person or entity. While adding a BrokerCheck link to firms' and associated persons' sites improves investors' access to important information, unless BrokerCheck is expanded to include all available information, investors may not be aware of all pertinent facts and may incorrectly conclude that BrokerCheck contains all available information.

We fully support the proposed changes to FINRA Rule 2210, and strongly suggest that FINRA require a direct link to each associated person's personal report summary page on their professional profile. Additionally, in order to ensure investor awareness we believe that more information should be available through BrokerCheck.

Best regards,



Patricia Uceda  
Student Intern



Nicole Iannarone  
Assistant Clinical Professor  
Georgia Bar No. 382510

It is imperative that all firms that touch people's hard-earned money be required to include a prominent (not buried) description and link to BrokerCheck on their websites, social media pages and any comparable internet presence. So-called financial advisors (stockbrokers/registered reps/sales reps) should be required to point out this link to their clients and demonstrate how to use the BrokerCheck site. What's the big deal? What's there to hide? Why the secrecy? If the firm and its employees truly are trustworthy and truly have integrity, then there should be no reason to be against placing a prominent description and link to BrokerCheck on a firm's websites, social media sites and any comparable internet presence nor should they have any problem with pointing out the description and link to their clients/customers and even demonstrating how to use BrokerCheck.

Maybe those other than securities attorneys, stockbrokers/registered reps (pseudo financial advisors), broker/dealer firms and conned investors will finally learn of the existence of BrokerCheck. Maybe investors--the people that FINRA is supposed to be protecting--will finally be exposed to BrokerCheck. Why has it been kept a secret from investors? Has FINRA ever done a survey/study to find out how many investors know that BrokerCheck even exists? If you have a great product (not that BrokerCheck is great, it's mediocre and incomplete but it's about all there is), you can't hide that product in your basement. You have to tell people about it, you have to promote it. Does FINRA know how to promote it? If not, then hire a marketing firm to do it for you so that you can do what you say you do--protect investors--truly protect investors.

If firms are complaining of cost, that doesn't fly. Placing a description and link on a website doesn't take much at all--maybe 10-20 minutes of work by a webmaster, and if FINRA provides the exact information for the description and the link, it would take less time. It's a heck of a lot easier than throwing brochures away and changing artwork and printing more brochures. Now if the firms try to be sneaky and hide or bury the link, then that could cost more. I, however, think that the word "prominent" is the opposite of the words "hide" or "bury" as does Webster's dictionary.

Teresa Vollenweider--an ordinary person



## EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

### Text of Proposed Changes to FINRA Rule 2210

\* \* \* \* \*

## 2200. COMMUNICATIONS AND DISCLOSURES

\* \* \* \* \*

### 2210. Communications with the Public

(a) through (c) No Change.

#### (d) Content Standards

(1) through (7) No Change.

#### **(8) BrokerCheck**

(A) Each of a member's websites must include a readily apparent reference and hyperlink to BrokerCheck on:

(i) the initial webpage that the member intends to be viewed by retail investors; and

(ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors.

(B) The requirements of subparagraph (A) shall not apply to:

(i) a member that does not provide products or services to retail investors; and

(ii) a directory or list of registered persons limited to names and contact information.

**(~~8~~9) Prospectuses Filed with the SEC**

Prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC and free writing prospectuses that are exempt from filing with the SEC are not subject to the standards of this paragraph (d); provided, however, that the standards of this paragraph (d) shall apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

(e) through (g) No Change.

\* \* \* \* \*