



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

April 27, 2012

VIA ELECTRONIC DELIVERY

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

Re: FINRA Regulatory Notice 12-10; FINRA BrokerCheck

Dear Ms. Asquith:

Certified Financial Planner Board of Standards (“CFP Board”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Regulatory Notice 12-10 regarding BrokerCheck.

FINRA has asked for comment on methods by which it can facilitate and increase investor use of BrokerCheck.¹ Specifically, FINRA is interested in improving the type of information that is available on BrokerCheck, refining the format of the provided information and increasing investor awareness and use of BrokerCheck.

I. Background of CFP Board

CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP[®] certification. Our mission is to benefit the public by granting the CFP[®] certification and upholding it as the recognized standard of excellence for personal financial planning. We currently oversee over 65,000 CFP[®] professionals who agree on a voluntary basis to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board.

CFP[®] professionals provide services that integrate knowledge and practices across the financial

¹ BrokerCheck is a tool that has evolved since its inception, initially providing only the most basic information about current and former FINRA-registered brokerage firms and brokers, and then more substantive disclosures with the passage of amendments to FINRA Rule 8312. Information available through BrokerCheck includes limited employment history, final disciplinary actions, criminal convictions, registrations representatives hold, examinations representatives have passed and disclosure information regarding various criminal, regulatory, customer dispute, termination and financial matters for brokerage firms and brokers.

services industry. Financial planning typically covers a broad range of subject areas, including investment, income tax, education, insurance, employee benefits, retirement, and estate planning. CFP® professionals work with their clients to determine whether and how they can meet their life goals through the proper management of their financial resources.

II. SEC Study Prompts FINRA to Enhance BrokerCheck

Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act required the Securities and Exchange Commission (“SEC”) to conduct a study (the “919B Study”) to evaluate ways in which investor access to registration information about investment advisers and broker-dealers might be improved.² The SEC’s Section 919B Study, prepared by the Office of Investor Education and Advocacy,³ recognized that FINRA created BrokerCheck primarily “to help investors make informed choices about the individuals and firms with which they may wish to do business.”⁴ The 919B Study highlighted the importance of this effort, noting that selecting a broker-dealer or investment adviser is one of the most important decisions that an investor faces, therefore information to help an investor make this choice should be “easy to find, easy to use, and easy to understand.”⁵ To this end, the Staff has recommended that FINRA enhance BrokerCheck to include additional information, which is reported through the Central Registration Depository (“CRD”), and reevaluate the method and format by which such information is presented.⁶

CFP Board supports the findings of the 919B Study and agrees that BrokerCheck can be improved to better serve the needs of investors. CFP Board believes that this can be achieved specifically through reporting additional material information, increasing educational content and improving the overall format of BrokerCheck. CFP Board further believes that the full benefit of these enhancements will only be realized when such an initiative is coupled with concentrated efforts to also improve investor awareness of BrokerCheck.

III. Recommended Changes to Broker-Check

- a. Material information should be reported in BrokerCheck.

CFP Board urges FINRA to include in BrokerCheck material information to investors. Material information is any information that will assist investors in making informed choices about the individuals and firms with which they currently conduct or are considering conducting business.

² Pub. L. No. 111-203, 124 Stat. 1376 (2010).

³ The study was prepared in consultation with the Division of Investment Management, the Division of Trading and Markets, the Division of Risk, Strategy, and Financial Innovation, and the Office of the General Counsel (collectively, the “Staff”).

⁴ Study and Recommendations on Improved Investor Access to Registration Information about Investment Advisers and Broker-Dealers at 15 (2011), available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

⁵ *Id.*

⁶ *Id.*

In determining what to incorporate in BrokerCheck, FINRA should err on the side of inclusion. It is the investors' prerogative to determine what is relevant to them in identifying a financial intermediary to meet their needs and help them achieve their financial goals. We believe that additional or enhanced information in the following five areas would significantly improve the availability of material information on BrokerCheck for investors.

- Terminations. CFP Board urges FINRA to disclose the reasons and comments related to a termination of a registered representative from a broker-dealer firm because the information may be relevant to the investor's choice of a registered representative. CFP Board believes that terminations related to regulatory, criminal or financial misconduct are relevant, and the specific reasons for the terminations should be included on BrokerCheck. Some commenters have noted that termination information will unfairly bias an investor against a particular registered representative. We believe that the potential for bias is outweighed by the investor's right to know this information and determine its importance in his or her decision to engage a registered representative. Moreover, even if it biases a particular registered representative, it is unlikely to create a bias against the entire firm.
- Customer Complaints, Criminal Misconduct and Disciplinary Information. CFP Board urges FINRA to include customer complaints in BrokerCheck. We believe that the frequency and type of customer complaints are relevant in an investor's decision to choose or stay with a particular registered representative. Customer complaints can give investors valuable insight into issues that arise with a particular registered representative or firm. They can also help investors identify where there are patterns of grievances. Such disclosures empower customers to report misconduct and incentivize registered representatives and firms to properly manage customer relations.

Certain information related to criminal misconduct and disciplinary history is currently available on BrokerCheck, but is not easily accessible. BrokerCheck currently includes information related to a registered representative or firm's criminal and disciplinary history pursuant to FINRA Rule 8312(b)(2)(A). This information, which includes criminal charges, pending regulatory investigations, arbitrations and bankruptcies, is particularly significant to an investor's decision about a financial professional, but it is not featured in a manner that is consistent with its importance to investors. Most of these events are reported through Form U4 because they are critical in an employer's decision to hire an individual. This same information is equally important to an investor, in their decision to employ a registered representative. As described in more detail in Part III.b. below, this type of information should be quickly and easily available to investors on the summary report for both representatives and firms.

- Educational Background. Educational background information of the registered representative should be made available on BrokerCheck because it is directly material to

an investor's assessment of a registered representative. Some commenters have expressed concern that investors may be unfairly biased against registered representatives without college or graduate degrees. However, educational background is important information related to a prospective registered representative's overall qualifications and is a key factor in an investor's determination as to whether a particular registered representative is well-suited for them.

While educational background (schools attended, degrees received and dates of graduation) is material information for evaluating the overall qualifications of a registered representative, specific test scores on FINRA examinations provide an unnecessary level of detail and need not be disclosed on BrokerCheck. There is no evidence to suggest that there is any correlation between higher scores and the qualifications or ethics of a registered representative. Further, there is no precedent to support the disclosure of tests scores in other professional industries.

- Professional Licenses and Legal Standard of Care. Information regarding licenses should be prominently available to investors on BrokerCheck. The 919B Study noted that investors often do not know whether they are searching for an investment adviser or a broker-dealer.⁷ To help assure that investors are able to locate information about their financial professional, even if they don't know the specific license the financial professional holds, the Staff recommended that results in BrokerCheck and Investment Adviser Public Disclosure ("IAPD") be unified. To avoid investor confusion, the unified search results should clearly identify whether the financial professional is a registered representative or investment adviser and what each license means. This should include the qualifications, services provided, and standards of conduct associated with each license.
- Certifications and Designations. CFP Board also urges FINRA to include the certifications and designations held by their registered representatives on BrokerCheck. Including certifications and designations on BrokerCheck would offer investors centralized access to information material to their choice of registered representative. Professional certifications and/or designations can be indicators of a registered representative's specialty, specific training, qualifications for the job, and ethical obligations. While some are reliable indicators of competency and ethical standards, such as the CERTIFIED FINANCIAL PLANNERTM certification⁸, many are virtually

⁷ Supra note 4 at 37.

⁸ To attain the CFP[®] certification, an individual must have a bachelors degree, must complete a comprehensive financial planning curriculum approved by CFP Board, pass the rigorous 10-hour CFP[®] Certification Exam, have two to three years of relevant work experience; and pass the Fitness Standards for Candidates and Registrants and a background check. After individuals earn the CFP[®] certification, they are subject to continuing education requirements and enforcement actions for violation of CFP Board's *Standards of Professional Conduct*.

worthless.⁹ Given the wide range in rigor behind certifications and designations and understandable consumer confusion surrounding them, certifications and designations convey very little information unless they are accompanied by an explanation of the requirements, obligations and enforcement associated with the certification or designation. One way to provide meaningful information is to link to FINRA's "Understanding Professional Designations" web page, which identifies and defines designations. FINRA could also consider linking the certifications or designations listed in BrokerCheck back to the relevant body's web page so investors can further investigate the merits of any given certification or designation and whether it serves their needs.

- Consumer Educational Information. CFP Board urges FINRA to improve the consumer educational content on BrokerCheck to allow investors to better understand the information provided. In the 919B Study, the Staff recommended that educational content be added to BrokerCheck, "including links and definitions of terms that may be unfamiliar to investors."¹⁰ CFP Board supports the Staff's recommendation that BrokerCheck should be enhanced by including definitional material. Currently, when a glossary term is used, BrokerCheck provides a link from the term that takes the investor to the BrokerCheck Glossary page. The investor then has to search through the Glossary to find the relevant term. We recommend that glossary terms used in BrokerCheck be defined using the "hover" text feature so investors can more readily understand what they are reading.

BrokerCheck should also link to relevant information found elsewhere on the FINRA website, IAPD, and external industry websites, whenever applicable. Through such links, FINRA can help investors utilize tools already in place by other organizations. For example, CFP Board has a financial planner search function,¹¹ which allows investors to search for and do background research on CFP[®] professionals. CFP Board's financial planner search contains information related to CFP[®] professional's certification status, location, specialty, fee structure and enforcement or disciplinary actions.

A link on BrokerCheck to CFP Board's financial planner search would provide an investor the opportunity to determine if the registered representative of a broker-dealer is also a CERTIFIED FINANCIAL PLANNER[™] who is qualified to provide comprehensive financial advice and obligated to provide advice under a fiduciary standard of conduct.

⁹ The FINRA website has over 100 certifications and designations listed. See FINRA, Understanding Professional Designations, available at <http://apps.finra.org/DataDirectory/1/prodesignations.aspx>. Unlike the CERTIFIED FINANCIAL PLANNER[™] certification, many of these designations can be earned by attending a weekend course, have minimal or no education, examination, or continuing education requirements, have no code of professional conduct, and/or have no investigative or enforcement mechanisms to enforce its obligations.

¹⁰ *Supra* note 3 at 6.

¹¹ Find a CERTIFIED FINANCIAL PLANNER, [™] available at <http://www.cfp.net/find/EnhancedSearch.aspx>

- b. The report summary should be displayed in a user-friendly format.

CFP Board recommends that FINRA simplify the report summary and use a layered approach to display relevant information. When investors look up a representative or firm on BrokerCheck, they are taken to a report summary. The current report summary format is difficult to understand and does not provide all the substantive information that is most relevant to investors. The display page for the report summary has multiple fonts, unaligned columns and inconsistent formatting. Implementing a simplified design and using links to improve access to content would help make the report summary a tool that is more user-friendly and therefore a more effective resource. To present information in a more user-friendly and clear manner, FINRA can consider presenting the report summary in a chart format with each cell addressing one of the following issues:

- Basic demographic information including name, address and phone number of current employer;
- employment history;
- regulatory licenses (broker-dealer and investment adviser registrations);
- professional certifications and designations;
- broker qualifications;
- investment adviser registration status;
- educational background;
- customer complaints; and
- termination events.

Each topic could then be linked to more detailed information on that issue. This would allow the investor to easily find specific information material to the investor's decision regarding a particular representative or firm.

This layered approach provides investors with a quick snapshot of the registered representative or firm they are investigating with the opportunity to learn more about any particular issue that may be of interest. It can highlight positive attributes of a registered representative, such as educational background and professional certifications and designations, and raise red flags where applicable.

The internet is becoming an increasingly competitive space where businesses are vying for user time and attention. CFP Board urges FINRA to consider this when redesigning the report summary. Even with improved content, investors will not be able to use BrokerCheck effectively unless it is designed with investors' needs in mind. CFP Board recommends that the amended report summary be tested in focus groups to confirm improved usability and to identify areas for further improvement.

IV. Investor Awareness Should Be a Key Focus for Successful Implementation of an Improved BrokerCheck

BrokerCheck can only be an effective investor education tool if investors are aware of it and use it. As noted in FINRA's request for comments, a study conducted by FINRA in 2009 found that only 15% of respondents claimed they had checked a financial advisor's background with a state or federal regulator.¹² This indicates that most investors are not aware of or do not use BrokerCheck. Even if substantial enhancements are made with respect to the content and usability of BrokerCheck, the system will not be an effective tool for investor protection unless accompanied by changes that will increase investor awareness of BrokerCheck.

CFP Board urges FINRA to adopt requirements designed to increase awareness and use of BrokerCheck by amending FINRA Rule 2267. Rule 2267 currently requires FINRA member firms to annually provide in writing to each of their customers the BrokerCheck telephone number and website address.¹³ The current rule only applies to member firms and the annual requirement may be delivered by mail or electronically. This does not present BrokerCheck information to the investor at a time and in a way that is useful or meaningful. As the 919B Study correctly recognized, selecting a financial professional – whether it is a registered representative, investment adviser representative or a financial planner qualified to provide comprehensive and integrated financial advice – is the most important decision an investor makes. To be most effective, BrokerCheck information must be made available to prospective clients of financial services professionals prior to their engagement.

CFP Board believes the following amendments to Rule 2267 would increase investor awareness of this important tool and encourage its regular use – both prior to engagement and during the course of the relationship. First, we suggest that disclosure requirements apply to both registered representatives and member firms. Second, we recommend that registered representatives and member firms be required to prominently display links to BrokerCheck on materials that are readily available to both potential and current customers. Specifically, links to BrokerCheck should be included on business cards, advertising materials, e-mail signature blocks, all correspondence with client and websites.

Increased exposure, coupled with the improved content recommendations above, will increase investors' awareness of BrokerCheck and their likelihood to use it as a meaningful resource.

V. Commercial Use of BrokerCheck Could Increase Investor Protection

Commercial use of BrokerCheck information could benefit the public, if properly overseen. Currently, BrokerCheck's Terms and Conditions prevent individuals from using BrokerCheck

¹² FINRA Notice citing Applied Research & Consulting LLC, Financial Capability in the United States (2009). *Regulatory Notice 12-10* (Feb. 2012) (FINRA Requests Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information).

¹³ FINRA Rule 2267 (Investor Education and Protection).

for anything other than their own personal or professional use. FINRA is contemplating providing BrokerCheck information to for-profit companies for commercial use. Specifically, FINRA notes that some for-profit companies are interested in receiving BrokerCheck information to populate existing and contemplated websites, which would allow users to verify or obtain information about financial industry professionals, including brokers. CFP Board supports expanded access to BrokerCheck information but with some guidelines designed to ensure that the data is being used to increase investor education and protection.

The relationship between FINRA and potential commercial users could be governed by a user agreement that would place restrictions on the commercial use of BrokerCheck information consistent with certain goals. For example, the agreement could provide, among other things, that the data may only be used towards the end for which it was originally collected – to increase market and consumer protection. FINRA may want to establish guidelines designed to promote the availability of the data to the public, and place certain limitations that would guard against excessive profit making from the use of this data. The goal in creating such guidelines would be to promote innovative commercial use of the data while maintaining some level of access to the general public.

We would also urge that FINRA not profit from making BrokerCheck information commercially available. We suggest that any revenues collected by FINRA, in excess of expenses, be earmarked for initiatives that directly increase investor awareness of BrokerCheck.

If subject to appropriate guidelines that are consistent with the initial purpose behind the collection and dissemination of BrokerCheck information, the commercial use of BrokerCheck information could facilitate independent research and analysis of the financial services industry and thereby help to increase consumer access to BrokerCheck information. If commercial users add BrokerCheck information to their websites – particularly in easily accessible, user-friendly, formats – there is an increased likelihood that investors will be exposed to the information. Further, commercial users such as finance experts, industry specialists and other similar groups can help create useful reference tools for investors and alert the market to positive and negative trends in the broker-dealer industry. Academics may have a particular interest in accessing BrokerCheck information for research that could assist investors and the industry. Such benefits merit the consideration of expanding access to BrokerCheck information subject to appropriate guidelines.

VI. Conclusion

BrokerCheck is an important tool which allows investors to research and evaluate a financial adviser or firm that will be best suited to meet their needs and help them reach their financial goals. The 919B Study provided guidance and recommendations to FINRA for improving both the content and usability of BrokerCheck. CFP Board strongly supports the 919B Study's guidance and FINRA's initiative to improve BrokerCheck and urges FINRA to give serious consideration to our proposed recommendations.

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CFP Board appreciates the opportunity to respond to FINRA's request for comments for the enhancement of BrokerCheck. If you should have any questions regarding this comment letter or CFP Board, please contact Marilyn Mohrman-Gillis, Managing Director, Public Policy and Communications, at (202) 379-2235, or visit CFP Board's Web site at www.CFP.net.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin R. Keller". The signature is fluid and cursive, with the first name "Kevin" being the most prominent part.

Kevin R. Keller, CAE

Chief Executive Officer