



Consumer Federation of America

April 27, 2012

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

**Re: Regulatory Notice 12-10
Increasing Investor Use of BrokerCheck Information**

Dear Ms. Asquith:

I am writing on behalf of the Consumer Federation of America¹ in response to FINRA's request for comment regarding methods to improve the utility of BrokerCheck for investors and to increase investor use of BrokerCheck information. BrokerCheck has made great strides since it was first established in 1988 both with regard to the content of the reports and with regard to ease of access for investors. However, many investors remain ignorant of this valuable resource. By focusing on how to improve the content, format, and promotion to the public of BrokerCheck, this initiative has the potential to significantly improve investors' ability to make an informed decision among investment professionals. We appreciate the opportunity to provide input on this important topic.

Introduction

At a time when investment decisions have become both more complex and more important to Americans' financial well-being, most investors investing outside a workplace retirement plan choose to do so through some sort of financial intermediary, such as a broker-dealer, investment adviser, or financial planner. Moreover, research has shown that many such investors will rely very heavily if not exclusively on the recommendations they receive from these financial professionals, making the selection of whom to rely on for recommendations among the most important investment decisions most people will ever make. With this in mind, investor education materials on the topic typically warn investors to exercise care in making that selection and to take the time to carefully check out any firm or individual with whom they are considering working.

¹ Consumer Federation of America (CFA) is a nonprofit association of approximately 280 national, state and local pro-consumer organizations founded in 1968 to advance the consumer interest through research, advocacy and education.

The following are among the key questions investors are typically advised to consider with regard to the firm and the individual provider with whom they are considering working:

- What services do they offer?
- Are they appropriately licensed and registered to offer those services?
- What qualifications or special expertise do they have?
- Are there red flags in their employment or disciplinary record that could suggest a history of abusive sales practices or even fraud?
- How are they compensated?
- Are they subject to conflicts of interest that could bias their recommendations? What is the nature and magnitude of any such conflicts?
- What is their legal obligation to the customer?
- How and how much can you expect to pay?

For a number of these issues (e.g., licensing, registration, work history and disciplinary record), BrokerCheck as it is currently conceived is a valuable tool that can provide investors with the background they need. For BrokerCheck to provide the full range of information deemed by most experts to be essential, however, it would have to be expanded to include a pre-engagement disclosure requirement comparable to Form ADV for investment advisers. We applaud FINRA for taking steps in that direction with its 2010 concept release² and recognize that this initiative is on hold while the Securities and Exchange Commission (SEC) considers whether and how to move forward with fiduciary rulemaking. Ultimately, however, we believe the most beneficial change FINRA could make to BrokerCheck would come from incorporation of such a document, since it would ensure that investors get the information they need in an easily comparable format without having to know what questions to ask or where to go to seek out that information.

In the interim, the short-term recommendations by the SEC in its Section 919B Study and the middle-term changes being considered by FINRA in this concept release should result in significant improvements to the system. CFA strongly supports all three of the short-term recommendations made by the SEC staff:

- **Unifying search returns for BrokerCheck and the IAPD database** will address a major disconnect between how the current system is configured and how investors actually select investment service providers. While some investors may shop exclusively for a broker or an investment adviser, many do not. Indeed, research shows that most investors do not understand the differences between the two and cannot distinguish between them even after the differences are explained. The current system makes it reasonably easy to move back and forth between the two databases where individuals or firms have information in both systems, but it is less clear for individuals with information in just one of the databases. For example, entering the name of an investment adviser representative who is not dually registered in BrokerCheck produces a No Results Found message rather than a referral to IAPD, let alone the actual IAPD

² FINRA Regulatory Notice 10-54, Disclosure of Services, Conflicts and Duties.

report an investor would receive with unified search returns. Although that issue is addressed in the BrokerCheck FAQ, not every investor will know to turn to the FAW. An unsophisticated investor who is not familiar with the systems may misinterpret those results and conclude that the individual is not appropriately registered. Unifying the search returns will address that problem. Moreover, if as we have suggested, a pre-engagement disclosure form is adopted for brokers that is roughly comparable to Form ADV, that would address the concern raised by SIFMA that there will be significant discrepancies between the types and quantity of information provided in the two databases. In the meantime, this and other discrepancies between the two disclosure regimes could be addressed through some form of explanatory text or disclosure.

- **Adding a ZIP code or other location search function** will also significantly improve the functionality of BrokerCheck for individuals who are just beginning their search for a broker or adviser. We have examined the arguments put forward by SIFMA in its comment letter for delaying this step, and we do not find them persuasive. SIFMA suggests that a wealth of information is already available through standard Internet search. In fact, however, it can be extremely difficult to get a reasonably comprehensive listing of the brokers, investment advisers and financial planners offering investment services to retail customers in a particular community. In both print and online “yellow pages” listings, investment service providers are listed under a variety of headings, with some listed only under one or two headings and others listed even under headings that do not appear to match their business model. An unsophisticated investor attempting to find their way through this maze is likely to end up confused and frustrated or with only a partial list of candidates based on the heading they happened to use in initiating their search. Moreover, in our experience these listings, and Internet listings in particular, are likely to include individuals who are incorrectly categorized as well as out of date information.³ Adding a location search function to BrokerCheck, when combined with unified search returns for BrokerCheck and IAPD, would greatly reduce that problem. SIFMA also suggests that there may be privacy concerns for brokers who are required to list their home address as a branch office. We don’t have access to the data that would allow us to determine how extensive an issue this is (i.e., how many brokers list their home as a branch office but don’t actually conduct business with the public out of their home or publicize that contact information). If this home address information is already provided in BrokerCheck, it is not clear to us how adding a ZIP code search function would increase the privacy risk for these individuals. If the information is not currently provided in BrokerCheck, there is no reason that adding a ZIP code search function would have to change that. Whatever the case, it ought to be possible to address any legitimate privacy concerns through other means.⁴ Finally, SIFMA expresses concern that adding a ZIP code search function could lead to abuse by encouraging third parties to extract data from BrokerCheck for sale to investors. As discussed in greater detail below,

³ CFA conducted initial work on a (never published) “mystery shopper” survey in the late summer and early fall of 2010 using listings from an online yellow pages service. We found that a large percentage of the listings were incorrectly categorized or included out of date information. As a result, they were not useful in narrowing down a population of investment service providers in a particular town or city.

⁴ For example, it might be possible to exclude any such home offices not actually used for conducting business with the public from the ZIP code search where there is an official office location outside the home that is used for that purpose.

we believe increasing the channels through which investors receive this information – and allowing for innovation in how the information is presented – is one of the most effective tools FINRA has at its disposal to increase investor use of BrokerCheck information when selecting an investment services provider. We therefore consider this a benefit of, rather than a problem with, the proposal to add a ZIP code search function.

- **Adding educational content** to BrokerCheck can help investors to better understand the disclosures and their relevance to the selection process. Because FINRA asks specific questions about this in the concept release, we provide our views on the appropriate content and presentation of that material below.

Our detailed comments on the issues addressed in the Request for Comment follow.

Information Displayed

On the topics that it currently covers, BrokerCheck generally provides a good quantity and mix of information.⁵ If anything, the reports for brokerage firms include too much rather than too little information.⁶ That said, there are tweaks to the content that we believe would be beneficial. As a guidepost for what additional currently available information could be added to BrokerCheck, FINRA would do well to look to its own educational materials on selecting an investment professional. To the degree that there is information that FINRA believes it is appropriate for investors to evaluate that could easily be incorporated into the current BrokerCheck configuration, we encourage you to add that information.

Information on educational background and professional designations would clearly fit within this category. If FINRA decides to include information on professional designations in BrokerCheck, it should consider revamping its current Professional Designation Database to make it more user-friendly. In addition, any designations listed in a report could include a direct link to a description of that particular designation so that investors would not have to seek it out on a long list of credentials. That would make it easier for investors to evaluate the significance of a particular designation.

Adding educational content could greatly enhance investors' ability to use and understand the information contained in BrokerCheck. One way to approach that would be for FINRA to develop a document for prominent display on the BrokerCheck home page on how to get the most out of the database when selecting an investment professional. For each category of information provided in BrokerCheck (e.g., registration, licenses, employment history, disciplinary record), the document could explain why that information is relevant to the selection process and how the investor can best evaluate that information. In addition to displaying the explanatory document on the BrokerCheck home page, FINRA could link to relevant sections of

⁵ As discussed above, we believe the content of BrokerCheck would benefit greatly from the additional of a pre-engagement disclosure requirement for brokers comparable to Form ADV for investment advisers. For the purposes of this discussion, however, we are focusing on BrokerCheck as currently configured, consistent with the existing disclosure requirements for brokers.

⁶ We discuss that issue in greater detail under Report Design, Format and Content.

the document from headings in the BrokerCheck report, or alternatively display the relevant content as hover text when the cursor hovers over a particular report heading.

FINRA already has a good base text for providing this content in its own investor education materials. Although that educational information is currently available through a tab on the BrokerCheck home page, it is not terribly prominent.⁷ And it is not directly incorporated into BrokerCheck in a way that puts relevant information at the investor's fingertips as they are preparing to launch a search or reading a particular BrokerCheck report. By customizing the information to the investor's immediate experience, our suggested approach offers greater potential benefit in our view than more generic "how to" information. That said, nothing about this approach would preclude FINRA from also linking to other relevant investor education material, which we support so long as that material is free from any particular product or provider bias. The SEC, state securities regulators, and other independent investor education organizations are likely to be the best source of such information.

Report Design, Format and Content

CFA supports continued use of a two-tiered approach in which investors initially receive a summary report that includes one-click access to a more detailed report. In general, we think the overall presentation of the summary report is appropriate and that the highlighted bars directing the eye to questions about the availability of more detailed information are useful. We are not experts in graphic presentation of information, however, and would defer to experts in this area on the best way to present the information visually. Our own reaction was that the access "button" for the detailed report could be made more prominent if, for example, it were placed directly next to the broker's name, rather than at the far right of the screen.

We also believe investors would benefit from some additional information about disciplinary events on the summary report. The yes/no indicator of additional information is useful, but it doesn't distinguish between an individual with numerous regulatory actions, arbitration awards, and customer complaints and the individual with a single event unrelated to their activities as a broker-dealer. A brief description of the number and types of events might be useful in providing that distinction. In presenting this information, it might be appropriate to distinguish between types of regulatory actions along something like the following lines: regulatory actions and non-regulatory events; sales practice violations and more technical violations; court awards, arbitration awards, and customer complaints; and events not directly related to practice as a broker. If FINRA were to adopt our suggested approach of incorporating investor education material as a link or hover text with the report, this could further assist the investor to draw reasonable conclusions based on the information presented.

The need for summary information on disciplinary events is particularly urgent with regard to reports for broker-dealer firms. The mass of undifferentiated information presented for a large, full-service firm is likely to be impenetrable for the vast majority of users. Dividing the information into categories (along the general lines suggested in the previous paragraph for individuals) based on the nature of the event, grouping all related complaints into a single entry, and eliminating duplicative reporting could make the information easier to digest. Even with this

⁷ In evaluating the website, we didn't notice it until we specifically looked to see if it was there.

more user-friendly presentation of the information, however, we are concerned that many investors will not know how to assess the information provided. As discussed in greater detail below, this is an area where we believe commercial and other third-party users may be able to provide significant added value, by digesting the information and presenting it in a format that enables investors to make reasonable comparisons among firms.

Investor Awareness of BrokerCheck

While use of BrokerCheck has grown significantly over the years, we suspect that many if not most investors are not aware of the availability of this resource. A variety of relatively simple steps could help to increase awareness:

- Brokers could be required to provide information on how to access BrokerCheck prominently in appropriate locations on their company websites, on new account documents, and on monthly account statements. When information is provided to investors electronically, they could be required to include a direct link to BrokerCheck. This would help to ensure that investors are reminded of the existence of the database at appropriate times and in appropriate contexts.
- Given widespread use of the Internet as a research tool, significant expanded use would likely be achieved if basic BrokerCheck information popped up prominently in a standard Internet search on a broker's or brokerage firm's name. It wouldn't be necessary to include much more than the broker name, firm name, location, and a link to BrokerCheck, along with a note that further information on licensing and registration status, employment history, and disciplinary record is available through BrokerCheck.
- State securities divisions could be encouraged to provide access to the BrokerCheck/IAPD search results on their website. A quick (and far from scientific) review of several state websites indicated that, if this information is currently available on state securities division websites, it is not always readily apparent where to find it or how to conduct a search.
- FINRA could conduct periodic media campaigns to encourage personal finance writers to publicize the availability of BrokerCheck and to encourage investors to make use of the database when selecting an investment professional.

Commercial Use

If the goal is to promote informed investor decision-making by expanding access to the data contained in BrokerCheck (as opposed to simply increasing use of BrokerCheck itself) then permitting third parties to access BrokerCheck data for repackaging and distribution to investors could contribute significantly to that goal. While some of the third parties interested in using the data would likely be for-profit companies, others such as personal finance writers and not-for-profit services might also be interested in using the data.⁸ This has the potential to promote new

⁸ For example, we can imagine that *Consumer Reports*, some of the major personal finance magazines, and even local newspapers might be interested in using the data as part of some sort of guide to brokers and advisers.

and innovative approaches to presenting the information, which could be extremely beneficial in enhancing both the use and the usefulness of the data. For example, as noted above, the third party might come up with a way to present firm-level disciplinary information in a way that allows for a more meaningful comparison across firms than is possible using just the raw data.

This is consistent with administration policy to promote “smart disclosure.” As outlined in a September 8, 2011 memorandum from Office of Management and Budget Administrator Cass R. Sunstein to heads of executive departments and agencies, “the term ‘smart disclosure’ refers to the timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions.” The memorandum specifically notes as a leading benefit of smart disclosure that it “enables third parties to analyze, repack, and reuse information to build tools that help individual consumers to make more informed choices in the marketplace ... These tools can ... help individuals search efficiently based on very specific criteria that would be burdensome and time-consuming to extract from traditional print disclosures.” While FINRA is not bound by this policy, and BrokerCheck is in and of itself a form of “smart disclosure,” we believe additional benefits can be achieved by expanding this concept further and allowing third-party access to the data for further distribution.

We are frankly surprised by the strong industry opposition that has greeted this proposal. Good brokers and advisers only stand to benefit from broader availability of information that helps investors to weed out the bad apples. Similar types of data have been used to good effect in other markets. Perhaps most comparable are Internet sites that combine car crash test, reliability, and fuel economy data to assist consumers shopping for an automobile to identify vehicles with certain characteristics. In the financial services arena, organizations like Morningstar, Lipper and Yahoo! Finance have shown how private services can add value when presenting information, much of which is taken from public sources. To the degree that there are concerns about possible misuse or misrepresentation of the information, FINRA should be able to address any such concerns by applying appropriate limitations on use of the information. While such concerns can and should shape FINRA’s approach to providing third parties with access to the data, they do not in our view justify foregoing or even delaying this initiative.

Conclusion

CFA applauds FINRA for undertaking this timely evaluation of its BrokerCheck system. We believe the suggestions we have offered can help to enhance investor use of this valuable tool and thereby promote better informed decision-making when it comes to the all-important task of selecting an investment services provider. Please feel free to contact us if we can offer any assistance in achieving this worthwhile goal.

Respectfully submitted,



Barbara Roper
Director of Investor Protection

