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April 27, 2012

RE: RN 12-10, FINRA BrokerCheck®

Integrated Management Solutions USA LLC (“IMS”) is pleased to comment on Regulatory Notice 12-10 (“RN 12-10”), FINRA’s request for comments on facilitating and increasing investor use of BrokerCheck® by changing the information available through BrokerCheck®. If changes are implemented, this would result in an amendment to Rule 8312, FINRA BrokerCheck® Disclosure (“Rule 8312”). By way of background, IMS is one of the largest providers of financial accounting and compliance consultants to the securities industry, representing broker-dealers, investment advisers, hedge funds and commodity firms.

In January, 2011, as mandated by the Dodd-Frank Act, the SEC released a study and recommendations to improve investor access to information concerning broker-dealers and investment advisers (the “Study”). As a result, FINRA is now soliciting comments on three near-term recommendations set forth in the Study, as well as other intermediate-term recommendations for possible implementation 18 months after the January 2011 release date of the Study.

IMS lauds the SEC and FINRA in their efforts to promote responsible disclosure on BrokerCheck®. The public disclosure of pertinent information is always ideal. Not all of the proposals emanating from the Study or in RN 12-10, however, meet their stated goals. Unquestionably, the format of pertinent information should be improved. Irrelevant or misleading information should not be disclosed. But, perhaps above all, any disclosed information should be balanced by respect for the privacy of the people and the organizations

subject to such disclosures. It is critical that any disclosed information be accurate and current. Only meeting these criteria will make BrokerCheck® a relevant tool for investors.

### Broker Licenses and other Designations

Currently, BrokerCheck® only discloses licenses a broker<sup>1</sup> currently holds. BrokerCheck® does not include other eligible designations as part of the registration record. We suggest that BrokerCheck® also include all licenses and certifications recognized by regulators (federal and state) for broker-dealer and investment adviser registration purposes. BrokerCheck® should include licenses obtained by waiver or through grandfathering, as well as the following five professional designations contained in Form U4:

- Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards Inc. ;
- Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
- Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association; and
- Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

Disclosing all registered licenses, regardless of how obtained, and professional designations is, ironically, currently mandated by Rule 8312(b)(2)(B), which authorizes disclosure of “currently approved registrations.” Obviously, if a person could add to the roster of his or her licenses any for which he or she is already qualified by simply checking a box on Form U4, anyone reading their BrokerCheck® record should also have that information. For example, the BrokerCheck® record of one the authors of this letter indicates that he has passed three Principal/Supervisory Exams, two General Industry/Product Exams, and one State Securities Law Exam. Not reflected in that same record is the fact that he is licensed as an Investment Banker and as an Operations Professional unless one drills down into the record and finds that the person is licensed in those capacities. FINRA should implement its own rules fully so that

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<sup>1</sup> We note that BrokerCheck® uses the term “broker” to describe individual registrants. This is a misnomer, since many individual registrants do not function as brokers, e.g., financial and operations principals, proprietary traders or operations professionals. In our letter, we continue to use the term “broker” to describe any currently or previously registered individual.

disclosure of pertinent facts is as complete as possible. Additionally, it will also satisfy the first of the near-term recommendations made in the Study that unifying search returns for BrokerCheck® and IAPD<sup>2</sup> databases will promote investor access to registration information. We discuss below which features of each database ought to be retained under a unified search system.

### Educational Background

RN 12-10 requests comment on whether a broker's educational background should be added to BrokerCheck®. We fail to see how such information is of any relevance to a broker's professional competency or ethics. Once an individual is professionally licensed, where he or she went to school and what educational degrees, if any, such person holds does not predict how effective such a person will be in meeting his or her obligations to both customers and the firm where registered. Nor would such information serve as an indicator that the broker would perform ethically towards his or her customers or in compliance with regulatory rules.

The investing public knows, as a matter of general knowledge, that broker-dealers and other industry professionals must be licensed with the appropriate regulators. If a particular inquirer views information on a broker's educational background as a significant consideration, that customer is likely to ask the broker about it, or run a web search, regardless of what appears on BrokerCheck®. In most situations, a professional's work experience, registrations and disciplinary information (discussed below) are far more relevant in determining whether to retain a particular professional. Cluttering up the information provided by BrokerCheck® is of no value to anyone, including investors and potential investors, and may, instead, prove overwhelming and, therefore, useless. Moreover, it suggests to an inquirer that FINRA has verified the accuracy of the disclosures, which would burden FINRA unnecessarily if FINRA decided that it needed to do so.

### Scores on Industry Qualification Exams

FINRA has requested comment on the advisability of including a broker's scores on industry qualification exams on BrokerCheck®<sup>3</sup>. Many of the concerns we raised in this

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<sup>2</sup> Investment Adviser Public Disclosure.

<sup>3</sup> This is an intermediate-term recommendation in the Study.

comment letter concerning disclosure of a broker's educational background are even more compelling here. Once again, test scores on tests that may have been taken many years ago are of no relevance to a broker's professional competency or ethics. These tests act as "gatekeepers" and certify that an individual has demonstrated, according to the test parameters, a level of competency allowing initial registration and the authority to engage in certain designated activities. But such tests are only one step in the process of registration because additional barriers exist, such as regulator background checks through fingerprints and the usual employer due diligence on new hires.

What is even more bizarre about this suggestion is that it undercuts the very approval given by FINRA and other recognized test providers, who have already certified the test scores as a measure of competency to register or be awarded a particular professional designation.<sup>4</sup> Disclosure of test scores in BrokerCheck® would be misleading to the public for many reasons. Currently registered brokers, who took those tests knowing the minimum score needed to "pass," took that passing number into consideration when studying. Investors may not fully understand the subject matter of all of the sections of the particular test, and providing a lot of technical detail and/or explanations becomes confusing and overwhelming. Not all tests given by the regulators test every subject possible and even for those topics actually covered on a particular exam, do so in varying detail from test to test. A particular broker may simply have lucked out in taking an exam that had questions on topics he or she had prepared more thoroughly. The age of the test scores also limit their utility. FINRA should accept the limited purpose such tests serve and save the use of scores for an office football pool.<sup>5</sup>

#### Disclosure of Disciplinary Information

Properly explained, disclosure of disciplinary information is certainly useful information for an investor, prospective investor or any other inquirer<sup>6</sup> to know. Sadly, this is the most

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<sup>4</sup> The actual scores may be of some relevance to an individual who has failed a particular exam in assessing what additional subjects to study or in deciding whether to sit for that particular exam again.

<sup>5</sup> For the sake of full disclosure, we note that one of the authors of this letter had a passing score of 101 on one particular examination. We do not know what, if any, relevance that score has.

<sup>6</sup> We note that FINRA seems particularly concerned only with investor awareness of BrokerCheck®. We are aware that there are many other types of users who inquire regularly regarding individuals and broker-dealers. In addition, we are somewhat surprised that FINRA

confusing section of the current BrokerCheck® report. It would be of great benefit to the industry, and concomitantly, to investors, if FINRA took this opportunity to make this section clearer and more accurate.

For example, a single “offense” may be the subject of several charges by federal, state and/or regulatory authorities. Each is separately listed on BrokerCheck® with no explanation that the allegations arose out of a single set of circumstances. Moreover, the allegations may have been brought in one year, but not “resolved” until, generally, a year or two later, but there are reports in which each stage, by each regulator, is separately listed, making it appear that the broker and/or his or her firm committed separate, multiple offenses. No distinction is made for operational violations, that tend to be of a more technical nature, and conduct that may violate legal, ethical and/or regulatory norms.

Even more egregious is the inclusion of customer complaints within 30 days of filing. Many complaints are dismissed after an internal investigation; others are settled; even more languish in arbitration. But until a “final” resolution, these complaints appear on BrokerCheck®, regardless of merit. Generally, on advice of counsel, brokers refrain (or are required to refrain) from stating and/or explaining their own positions on what happened while a matter is pending, with the unfortunate result that only one side of the story is “told” in a publicly available document. A similar situation arises when a Wells Letter (actually, a Notice) is sent; it appears on the broker’s BrokerCheck® report until resolved, and then, even if resolved favorably to the broker. At the very least, FINRA should include a statement on BrokerCheck® that these matters are pending and not a final determination or resolution of the merits.

It is also very difficult to correct any information that appears on BrokerCheck®, particularly with respect to disciplinary actions. One of the authors of this letter, while still actively practicing law, represented a broker in a state disciplinary action that also involved that broker’s firm and several other brokers of the firm. This is an individual with many years in the industry who holds many licenses, and until the event described below, had no disciplinary history; this remains the only reportable event on his record. A settlement agreement was very

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has chosen to exclude data regarding broker-dealers and individuals who have not been or are not currently registered with FINRA itself even though FINRA maintains data regarding these firms and individuals in its Central Registration Depository. Surely, any inquirer should be able to find out information about any securities industry registered participant, not just ones that are FINRA registrants.

carefully drafted, over several months, for this particular broker because his situation was factually different in several significant aspects from those of the other respondents. In fact, all the other respondents had settled either two or three years earlier because of these differences. What was negotiated more intensely than any other provision of the settlement agreement was how the money (a deliberately negotiated nominal amount, far less than any other respondent had paid) to be paid to the complainant was to be characterized. Contrary to the express language in the settlement agreement, the state regulator, in reporting the settlement to FINRA, checked a box that incorrectly described the payment, among other errors. When the broker saw the errors, after they appeared on BrokerCheck®, he asked the state regulator to correct the entries; the regulator refused. He then called FINRA informally, and asked what he could do to get the record corrected. At the end of the day, given how long the matter had dragged on, the overall, favorable result and the need to get on with his professional and personal life, he provided an explanation of his view of the settlement that now appears in the “summary” section of the BrokerCheck® report rather than continuing to fight with the state regulator. But the incorrect report remains, with no guidance to investors as to how to interpret the information displayed.

We suggest that FINRA clearly identify all the allegations that arise out of a single set of circumstances, even if that activity is the subject of investigation by various authorities. Once the matter gets resolved, the resolution(s) should appear as a continuation of the same section as the original description. The current format muddles the disclosure. Allegations of technical violations should be separated from other types of allegations. FINRA should create a panel that reviews claims of errors in BrokerCheck® reports. Inaccurate information hurts everyone. These problems also impugn FINRA’s credibility, which all constituencies should be able to rely on for the disclosure of accurate, succinct and timely information. Shouldn’t FINRA “in the conduct of its business, ... observe high standards of commercial honor and just and equitable principles of trade,” following the standard to which its members must comply as described by FINRA Rule 2010? The data contained in BrokerCheck® should not be so convoluted that even experienced legal professionals have difficulty understanding what the data means.

### How Long Should Information Remain on BrokerCheck®?

Currently, a broker's employment history appears on BrokerCheck® for a period of ten years. That time frame should also govern the disciplinary history for technical compliance violations, e.g., trade reporting errors, Know Your Customer violations, etc. Conduct that, after appropriate proceedings and a final determination, is determined to constitute a more serious violation and/or the reporting of a bankruptcy or other insolvency proceeding should remain as part of the broker's BrokerCheck® report. Pending investigations (e.g., customer arbitration, Wells Notice, etc.) should be clearly characterized as such. If dismissed, they should be removed from the BrokerCheck® report.

### Printing BrokerCheck® Reports

Unless one has certain advanced software, it is not currently possible to print a BrokerCheck® Report to a computer in PDF format. Instead, BrokerCheck® displays an intimidating message that includes: "This PostScript file was created from an encrypted PDF file. Redistilling encrypted PDF is not permitted...No PDF file produced." While such encryption might protect against automated data collection tools (e.g., "screen scrapers"), it does make the inquiry process a bit difficult for inquirers who wish to store the results of their inquiries.

### Additional Information

RN 12-10 also requests comment on two other near-term recommendations: whether investors should be able to search BrokerCheck® by zip code and whether BrokerCheck® should add explanatory material and links to other websites. Zip code information could be a way of identifying local brokers, particularly in under-served areas. However, providing the broker's contact information, such as an email address or a telephone number, together with the zip code, might prove more helpful.

Definitions of technical terms by FINRA would be helpful. So would a general link to both the SEC's and FINRA's websites on investor education. Links to other websites might be confusing and raise questions of endorsement and/or adoption. Those types of links could even prove counter-productive if they contain inaccurate or out-of-date information; does FINRA

intend to monitor such third-party links on a regular basis? Surely, FINRA time and resources could be better spent.

### Intermediate-Term Recommendations

RN 12-10 also raises certain intermediate-term recommendations for the expansion of BrokerCheck®. Examples provided in RN 12-10 include the reason for and comments related to a broker's termination, scores on industry qualification exams (discussed, negatively, above), and formerly reportable information. Broker's termination issues should be left between the firm and the broker. Many considerations lead to a termination, including, among others, firm politics and animosity between a registrant and his or her broker-dealer. These underlying, silent factors do not lend themselves to easy summary and can easily be misinterpreted. BrokerCheck® should not be turned into an indictment or the airing of dirty linen. Nor is there likely uniformity in such explanations<sup>7</sup>. Future employers have the greatest need for such information and they have other means to obtain it. If such grounds include unethical or illegal conduct, that would appear in the disciplinary report section; investors or other inquirers would have the information without making BrokerCheck® unwieldy, and therefore, unusable. As to formerly reportable information, let proverbial sleeping dogs lie.

### Commercialization

Our experience has shown that commercial enterprises are well-suited to provide information to the general public. In fact, we know they do very well in providing information as it becomes available in standard databases that are managed by others. For example, EDGAR, which is available on the website of the Securities and Exchange Commission, contains data submitted primarily by its registrants. These commercial enterprises<sup>8</sup> make filings available almost simultaneously with their submission to EDGAR. They are able to provide this information to inquirers based upon a list of specific registrants that the inquirers provide in advance to the commercial enterprises. That type of service, for example, is valuable. We

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<sup>7</sup> Often, broker-dealers are vindictive in the remarks they post with the Central Registration Depository. When that happens, it is not helpful to the veracity or reliability of BrokerCheck® that in at least one state, the broker-dealer posting such information is virtually immune from claims against it relating to misinformation.

<sup>8</sup> See, for example, [www.freedgar.com](http://www.freedgar.com).

would not expect BrokerCheck® to provide virtually simultaneous updates, but commercial enterprises likely would if they received access to data as it was filed or amended. If an inquirer would like automatic updates of a particular individual or broker-dealer, he or she should be able to obtain that information just like the inquirer could with respect to an issuer. We would hope that if the data is available to commercial enterprises, those enterprises maintain such data accurately.

### Conclusion

We hope that FINRA uses this mandate under Dodd-Frank to make BrokerCheck® a more useful, timely and accurate database. Doing so would benefit all of FINRA's constituents, including the investing public.

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Thank you for the opportunity to comment on RN 12-10. Should you have any further questions, feel free to call Howard Spindel at 212-897-1688 or Cassondra Joseph at 212-897-1687, or by e-mail at [hspindel@intman.com](mailto:hspindel@intman.com) or [cjoseph@intman.com](mailto:cjoseph@intman.com), respectively.

Very truly yours,

A handwritten signature in black ink, appearing to be 'H Spindel', with a stylized, somewhat abstract form.

Howard Spindel  
Senior Managing Director

A handwritten signature in blue ink, appearing to be 'Cassondra E. Joseph', with a fluid, cursive style.

Cassondra E. Joseph  
Managing Director