



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

April 27, 2012

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

RE: FINRA RN 12-10: Request Comment on Ways to Facilitate and
Increase Investor Use of BrokerCheck Information

Dear Ms. Murphy:

The Financial Industry Regulatory Authority (FINRA) recently published Regulatory Notice 12-10 (RN 12-10)¹ which requested comment on ways to increase investor use of information contained in the BrokerCheck system. FINRA published RN 12-10 in response to an SEC staff study required under Section 919B of the Dodd-Frank Act. The SEC staff study concluded with a series recommendations regarding improving investor access to the registration information contained in the BrokerCheck system. These recommendations were: (1) unify search returns for BrokerCheck and the IAPD databases; (2) add the ability to search BrokerCheck by ZIP Code or other indicator of location; (3) add educational content to BrokerCheck, including links and definitions of terms that may be unfamiliar to investors; and (4) analyze the viability of expanding BrokerCheck to include additional information available in the CRD system (which could include the reason for and comments related to a broker's termination, scores on industry qualification exams) as well as improving the format in which the information is published.

The Financial Services Institute² (FSI) welcomes the opportunity to comment on the Proposed Rule. While we support the move to promote greater awareness and use of the information contained in the BrokerCheck system, we have significant concerns

¹ Available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125621.pdf>.

² The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisers in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 100 independent broker-dealers and more than 35,000 independent financial advisers, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

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regarding potential abuse of the information contained in the system. Our comments are outlined in detail 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.³ 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.⁴ 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

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

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.

Comments

As noted above, FSI welcomes the opportunity to comment on this issue. We have significant concerns regarding the potential abuse of information. We outline these concerns in detail below.

Under the current system, investors can use BrokerCheck to access information concerning the registration and employment history of brokers, as well as information regarding criminal and regulatory actions, customer complaints, and termination events. With respect to expanding the type of information that is currently available we urge FINRA to consider the following:

- Disclosing Examination Scores – We urge FINRA to refrain from disclosing qualification examination scores. Disclosure of such information has the potential to unfairly stigmatize those individuals that have lower scores. As an initial matter there is no evidence suggesting that higher exam scores are correlated with better performance or being more qualified to act as a broker-dealer. In fact, given that all one must do to become a registered representative is pass a given qualification examination, many individuals simply aim for a score high enough to pass, rather than the highest score possible. Takers of the qualification examinations also believed that their actual results would remain confidential. Knowledge that the exam scores would one day be made public would certainly have served as an encouragement to obtain high scores. It is patently unfair to change these disclosure rules retroactively.

Furthermore, as examinations are not standardized there is the potential for disparity in difficulty across exams, and the public is not aware of the examination administration process. Additionally, because examinations are administered only in English, examination scores may reflect negatively on individuals whose first language is not English based solely on language difficulties rather than on actual financial skills. Finally, including examination scores from several years ago will fail to accurately reflect the knowledge and skills that have been developed by registered representatives through years of work experience. Therefore, older examination scores would be even less relevant and more misleading.

The end result of providing investors with access to scores on qualification examinations would therefore be to unfairly stigmatize certain registered representatives while failing to provide investors with meaningful, useful information. For these reasons we urge FINRA to refrain from disclosing this type of information.

- Allegations of Criminal Conduct – As is the case with qualification examination scores, disclosure of unsubstantiated allegations of criminal conduct can unjustifiably harm a registered representative’s reputation. Such allegations may be the result of an abuse of our legal system and, therefore, not a reflection of the financial adviser’s character. As a result, we urge FINRA to restrict access to mere allegations of criminal conduct.
- Customer Complaints – In addition to the risks of disclosing allegations of criminal conduct, disclosure of unsubstantiated customer complaints would have a similar effect. Until greater certainty regarding the veracity customer complaints can be obtained, FINRA should not release information regarding customer complaints to the public through the BrokerCheck system.

While FSI supports greater investor access to information, it is important that FINRA provide useful information that can assist investors in making good decisions. Providing investors with access to test scores, unsubstantiated allegations of criminal conduct, and unconfirmed customer complaints can leave investors with an incorrect perception regarding broker-dealers and registered representatives. We, therefore, urge FINRA to refrain from disclosing such information through BrokerCheck.

Conclusion

We remain committed to constructive engagement in the regulatory process and welcome the opportunity to work with the SEC and FINRA to enhance investor protection and broker-dealer compliance efforts.

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

Respectfully submitted,



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General Counsel and Director of Government Affairs