



April 27, 2012

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

Re: FINRA Regulatory Notice 12-10, FINRA BrokerCheck

Dear Ms. Asquith,

This letter is submitted on behalf of the National Society of Compliance Professionals, Inc. (the “NSCP”) in response to the publication of Regulatory Notice 12-10 (the “Notice”), which requests comment on ways to facilitate and increase investor use of information through the Financial Industry Regulatory Authority, Inc.’s (“FINRA’s”) BrokerCheck program. We appreciate the opportunity to comment on this very important initiative.

The NSCP

As you may be aware, the NSCP is a non-profit membership organization with approximately 1,900 securities industry professionals dedicated to developing education initiatives and practical solutions to compliance-related issues. Our members work in the compliance areas of broker-dealers and investment adviser firms and come from firms of all sizes. To our knowledge, NSCP is the largest organization of securities industry professionals in the United States devoted exclusively to compliance.

Our remarks reflect the NSCP’s fundamental mission, which is to set the standard for excellence in the securities compliance profession. This commitment is exemplified by, among other things, the time and resources the NSCP, and the industry professionals whose volunteer services it marshals, have devoted in the past five years to the development of a voluntary certification and examination program for compliance professionals.¹

¹ Persons who complete NSCP’s certification program (CSCP) qualify for the “Certified Securities Compliance Professional” designation.

Our mission is directed at the interests of compliance programs and compliance officers. We accordingly support a regulatory scheme that: (i) promotes practices that support market integrity and the interests of investors; (ii) creates clarity as to a firm's obligations to provide a reasonable system of supervision; (iii) promotes requirements that enable compliance officers to create reasonably workable programs; and (iv) avoids requirements or mandated tasks that are more costly or less efficient in realizing a regulator's public policy objectives, thereby increasing the difficulty facing a compliance officer in the discharge of his or her duties.

Information Displayed

Since the introduction of BrokerCheck in 1988, the amount of information made available through the program has increased considerably. We strongly support the BrokerCheck program. It resulted in increased transparency for the investing public, and has increased investor confidence in the securities personnel with whom they have entrusted their accounts. BrokerCheck is also widely used within the securities industry and in legal matters to evaluate licensed personnel. While increased disclosure is generally positive, NSCP is particularly concerned with the additional disclosures and their potential impact on compliance professionals. We urge FINRA to reconsider this proposal.

Examination Scores

In our view, little is gained by having access to examination scores. In fact, publishing test scores would be potentially misleading, unfair, and is without precedent.

For most professionals in the industry, these examinations were taken at the beginning of their respective careers and, thus, are extremely weak indicators of a person's current knowledge and fitness. Certainly, a person gains far more knowledge and experience through years of practice than he or she did by studying several hours for an examination five, ten, or even twenty years ago. The notion that anyone will make a more informed decision regarding a person's competence by examining his or her performance on tests at a point in time that bears no relationship to the person's present-day abilities is questionable at best. The fact that FINRA has, quite appropriately, adopted continuing education requirements underscores that FINRA itself recognizes that historical test results, standing alone, are not a reliable measure of current regulatory knowledge or fitness. As a result, publishing test scores is likely to misinform by promoting irrelevant information.

Moreover, considering that the content of examinations is constantly updated and improved, it is highly doubtful that scores from examination-to-examination, much less from year-to-year, can or should be meaningfully compared. For example, a person that scores a 75 on the Series 7 examination in 1998 may have performed equally as well as a person that scored an 80 on the Series 7 in 1992. Whether the average person who compares these scores will be misled into believing that the scores represent a fundamental difference between the licensed individuals is unknown, but it seems clear that the risk of misinterpretation and misplaced emphasis on such information outweighs the nominal benefit such disclosure seeks to create.

In addition, there is no indication that the scores on such tests, beyond the pass-fail threshold, reliably measure a person's character or competence. FINRA has not cited a correlation between examination scores and any relevant factor of job performance.

NSCP is unaware of any other professions and industries that have embraced the notion that specific scores on entrance or qualification tests are reliable indicators of character or competence. Notably, neither the medical profession nor the legal profession—the hallmarks of which are experience, integrity and personalized professional advice—have published the professional examination scores of doctors and lawyers in aid of protecting patients and clients. The reasons for not doing so, i.e., that such information has no credible bearing on the experience, integrity or skill of a doctor or lawyer, apply with equal force to the evaluation of the experience, integrity or skill of a FINRA licensed individual.

For these reasons, the publication of examination scores creates the substantial risk that people will gain a false sense of security, and of the relative competence, integrity, professionalism or judgment of licensed individuals. It could also lead people to abdicate their own responsibility of making a properly informed choice about a licensed individual. Encouraging reliance on potentially misleading and largely irrelevant test scores serves neither the interests of investors nor the industry.

For many years, FINRA licensed personnel have taken examinations with the understanding that only they, their firm's registration department, and perhaps their supervisors will be privy to the examination scores. It is also misleading to publish exam scores when they took the exams with the understanding that all they needed to achieve was a passing score, and not the highest score possible. That understanding would certainly have affected the level of preparation of many, if not most. To change these historic practices and publish examination scores decades after the fact is not only categorically unfair, but in the cases of those individuals with relatively low test scores, would also unjustifiably penalize them for the rest of their careers, a consequence that should not be taken lightly.

Faced with the risk of potential adverse consequences flowing from the publication of low test scores, some people may be discouraged from taking additional examinations to earn additional licenses and designations. Consequently, in a profession that values and encourages compliance, continuing education and self-improvement, the publication of scores could have a chilling effect on the advancement of the industry's foundation.

If scores are to be provided, the NSCP strongly encourages FINRA, at the very least, to prominently display a warning that there is no demonstrated correlation between test scores and the person's experience, integrity or performance. This disclosure would be an important safeguard to protect unwary investors from placing undue reliance on the information.

Educational Backgrounds

For many of the same reasons, disclosure of a person's educational background may also be misleading to investors. There are many exceptional compliance professionals who do not have a college diploma. Conversely, a compliance professional with multiple post-secondary degrees

from prestigious universities and post-graduate institutions may nevertheless be unfit for the job. In short, experience, track record, reputation and solid personal interactions should be the benchmarks for the evaluation of a compliance professional. It is experience, integrity, work ethic and devotion, rather than a person's educational background (or test scores), that are the more relevant indicators of a compliance professional's aptitude and fitness to serve.

Commercial Use

FINRA has also proposed providing information about licensed persons to certain companies for commercial use. The NSCP strongly opposes this proposal.

Before sharing information with anyone, for-profit or not, there are certain issues that must be addressed. FINRA is aware of the challenges related to identity theft and maintaining privacy among industry professionals. Any time information is transported from one location to another, or from one party to another, the risks of security and information breaches increase dramatically. While the information contained in BrokerCheck is not necessarily confidential, if the information ends up in the wrong hands, certain unintended and unforeseeable consequences could emerge. Once FINRA has "sold" the information, it could lose control over its use. For example, for-profit companies could organize and sort the data provided by FINRA to "rank" licensed individuals based on meaningless, or at best, questionable measures. As a result, investors could be misled by statistically meaningless distinctions.

BrokerCheck is easy to access, and is widely used, by investors. As a result, neither investors nor licensed individuals nor firms stand to gain anything meaningful or valuable if the same information already accessible through BrokerCheck is sold by FINRA to commercial vendors. The potential for abuse and misuse of this information by commercial vendors and the risk of investor exploitation outweigh any benefits from selling BrokerCheck information to unregulated third parties whose motives and incentives may not be aligned with brokers, firms or customers.

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Thank you for your attention to these comments. The NSCP appreciates the opportunity to submit comments in response to the Notice and would welcome the opportunity to answer any follow-up questions FINRA has on this submission. Questions regarding the foregoing should be directed to the undersigned at 860.672.0843.

Very truly yours,



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