

VIA ELECTRONIC MAIL

June 12, 2014

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

**Re: Regulatory Notice 14-19: Request for Comment on a Revised Proposal to Require a
Hyperlink to BrokerCheck in Online Retail Communications With the Public**

Dear Ms. Asquith:

On April 30, 2014 the Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 14-19,¹ seeking comment on a revised proposal to require a hyperlink to BrokerCheck in firms' online retail communications with the public. This revised proposal includes changes made in response to comments provided on a prior proposed rule change filed with the SEC to amend FINRA Rule 2267 (Investor Education and Protection).² The prior filing would have required all firms to include a prominent description of and link to BrokerCheck on their websites, social media pages, and any comparable internet presence. The revised proposal would require firms to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors. The revised proposal also requires firms to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person.

The Financial Services Institute³ (FSI) appreciates the opportunity to comment on this Regulatory Notice. FSI provided comments in response to the prior rule filing which highlighted many of the operational challenges involved with implementing the proposed BrokerCheck link requirements.⁴ In particular, FSI's comments discussed the difficulty of including the required prominent description and outbound hyperlinks for social media sites. Requiring unique URL addresses, or "deep links," to the BrokerCheck summary reports for each associated person appearing on a member website would have been extremely challenging or impossible to implement. FSI applauds FINRA for

¹ FINRA Regulatory Notice 14-19 (Apr. 2014), available at <http://www.finra.org/Industry/Regulation/Notices/2014/P496867>.

² Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection), SR-FINRA-2013-002, 78 Fed. Reg. 5542 (January 25, 2013).

³ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

⁴ See Letter from David T. Bellaire, Esq., SR-FINRA-2013-02, available at <http://www.sec.gov/comments/sr-finra-2013-002/finra2013002-14.pdf>.

responding to commenters by withdrawing the requirement and requesting comment on a revised proposal through this Regulatory Notice. This revised proposal addresses the most significant challenges with the prior proposed rule change by removing the “deep link” requirement. However, many challenges still remain, including the requirements related to third-party websites. While FINRA’s goals with the requirements related to third-party websites are laudable, many aspects of these requirements may not be feasible, and it is unclear whether they will actually increase traffic and awareness of BrokerCheck. We expand on these concerns 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.⁵ 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.⁶ 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 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.

⁵ Cerulli Associates at <http://www.cerulli.com/>.

⁶ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

Comments

FSI appreciates the opportunity to submit comments on this revised proposal. While we support many of the changes made by FINRA in response to comments, FSI and its members believe that operational challenges still exist with respect to the revised proposal. We provide our comments below:

- **Does the revised proposal address the operational concerns raised by the initial proposal, particularly with respect to the proposed requirements for third-party websites?** FINRA has effectively addressed some of the concerns with respect to third-party websites. For example, the original proposal would have applied to websites that firms and advisors had no direct control over, such as online directories. Removing the requirement that websites include a deep link has substantially reduced the likely operational difficulties to implement the revised proposal's requirements.

However, several challenges remain with respect to third-party websites, specifically social media websites. Firms will incur significant costs and operational burdens to implement the requirements and monitor for compliance. Automated solutions for implementing the BrokerCheck link to all advisor social media accounts do not currently exist and would be very expensive for firms to create. As a result, the BrokerCheck link will require firms to create new written materials and policies with respect to the required BrokerCheck link. Upon distributing the new materials and policies to their advisors, firms will also be required to ensure that advisors have properly added the BrokerCheck link to their websites and social media accounts and that these links work correctly. Firms' employees will need to conduct spot-checks and engage in other surveillance efforts in order to ensure compliance. As new social media platforms emerge and are adopted by advisors and investors, compliance departments will be required to amend their materials and spend additional resources to achieve compliance with the requirements. While FINRA has provided helpful guidance with respect to the locations on existing social media sites where the BrokerCheck link can be placed, future social media platforms utilized by the public and advisors may not have room for the BrokerCheck link or may require additional guidance from FINRA. In addition, existing social media platforms may change the fields and locations where FINRA has suggested the required link to BrokerCheck appear. As discussed in a later section of this comment letter, more effective and efficient alternatives exist for enhancing investor awareness, education, and utilization of BrokerCheck. As a result, FSI believes the requirement to include a prominent description and link to BrokerCheck should be eliminated for third-party websites, and specifically for social media.

- **Should FINRA retain the deep link requirement to provide investors with direct access to a firm's or associated person's BrokerCheck report summary?** The requirement that firms and associated persons include a "deep link" to a BrokerCheck summary report on websites and certain third-party websites would be extremely difficult or impossible to implement from an operational and logistical perspective. Firms would need to specifically ensure that every associated person's deep link worked correctly. In addition, because many independent financial advisors operate businesses that employ associated persons, a webpage with biographical information for their staff would need to include a deep link for each associated person. As independent financial advisors experience turnover in these positions, constantly updating these deep links would be extremely challenging and

burdensome. Furthermore, it is not clear that the costs of requiring deep links for every associated person with biographical information on a website would be as beneficial as investors navigating to the BrokerCheck website first. Investors will become more comfortable with BrokerCheck and gain additional awareness and familiarity with FINRA's investor education efforts if sent to FINRA's website first rather than directly to the BrokerCheck summary report. If the investor later wants to review the BrokerCheck summary report of a different broker or is seeking additional education materials that FINRA has made available, familiarity with FINRA and the BrokerCheck website will facilitate this process more effectively than the deep link.

- **Will the revised proposal increase investor use and awareness of BrokerCheck?**
Although FINRA's goals are laudable, it is unclear whether the revised proposal will in fact increase investor use and awareness of BrokerCheck. Although FINRA judiciously included information on where firms and advisors would be able to post a hyperlink to BrokerCheck on certain third-party websites (e.g. Facebook, LinkedIn, Youtube, etc.) the link will appear in areas of those sites that remain relatively unnoticed due to their design. The issue is magnified as more internet traffic moves to mobile platforms. Websites and social media sites continue to change and optimize the design and user experience of their platforms for mobile users, and the locations on these platforms that FINRA has recommended BrokerCheck links be placed will continue to become less prominent on mobile sites. FSI is skeptical that requiring BrokerCheck links on websites, and especially on social media sites, will in fact increase traffic and investor awareness of BrokerCheck. If FINRA elects to continue with this proposal, FSI suggests a cost-benefit analysis and retrospective review be conducted on the issue of BrokerCheck traffic and investor awareness after implementation of the new requirements. The analysis should consider the costs firms and advisors incur with respect to the requirements, whether increases to BrokerCheck's web traffic occurred, whether the increase was justified by the costs incurred by firms and advisors, and whether more cost-efficient alternatives exist for achieving the same goals.
- **What are the direct and indirect costs of the proposed rule to firms, including the cost associated with monitoring retail communications of associated persons across different channels?** Firms will experience costs and challenges to implement these requirements, particularly if the requirements extend to social media sites. While firms are unlikely to experience significant costs in order to implement these requirements for individual websites, firms will have to dedicate time and resources to ensure that advisors have accurately included the prominent description and link to social media accounts. This burden will be on-going as new advisors join firms and as advisors adopt new technologies and social media platforms to communicate with their clients and promote their businesses. As discussed earlier, the BrokerCheck link will require firms to create new written materials and policies with respect to the required BrokerCheck link. For social media, firms will also need to conduct spot-checks and other procedures in order to ensure compliance. As new social media platforms emerge and are adopted by advisors and investors, compliance departments will be required to amend their materials and spend additional resources to achieve compliance with the requirements.
- **Are there alternative approaches FINRA should consider to accomplish this goal? If so, what are those alternatives and why could they be better suited?** As stated previously, FSI believes FINRA should conduct a cost-benefit analysis to determine whether adding the

proposed link to BrokerCheck in the designated locations will in fact increase traffic to the site. In addition, there are several possible alternatives that FINRA should consider to improve the use and investor awareness of BrokerCheck. Firms are already required to include a link to FINRA's website on their own websites; however the proposed rule would require a separate link and description to BrokerCheck be added. This is likely to confuse investors, and investors are likely to only select one of these links. As a result, it may be more prudent to include text conveying that investors who navigate to the FINRA website can learn more about their advisor through FINRA's BrokerCheck tool. In addition, FINRA's homepage should have a larger graphic and more prominent placement of BrokerCheck. Although FINRA recently added a tool to its homepage to search BrokerCheck, it is relatively small, not prominently displayed, and can be easily overlooked due to its current location. Additional efforts to make BrokerCheck more prominent and centralized on FINRA's homepage will promote increased investor education and use of BrokerCheck. Finally, FINRA can improve the visual quality and clarity of BrokerCheck summary reports. Currently, the reports are difficult to navigate when investors are seeking information regarding the background of an investment professional. Revamping the format and organization of these reports to make them easier to read will be a tremendous benefit to investors and will increase usage because investors will find the reports more useful. We recommend FINRA focus group test the reports and the BrokerCheck web site to gain important insight into the investor experience and informational needs.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA on this and other important regulatory efforts.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" and a stylized "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel