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Member FINRA/SIPC

June 16, 2014

Via e-mail: *pubcom@finra.org*

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

RE: Regulatory Notice 14-19: BrokerCheck – FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications with the Public

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the proposal by the Financial Industry Regulatory Authority (“FINRA”) to amend FINRA Rule 2210 *Communications with the Public*, as set forth in Regulatory Notice 14-19 (“the Proposal”).¹ The Proposal would require member firms to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public. This includes each website of the firm that is available to retail investors and third-party sites containing a professional profile of, or contact information for, an associated person, subject to specific conditions and exceptions.

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,146 full-service financial advisors in branch offices in all 50 states and 3,350 licensed financial specialists in

¹ Regulatory Notice 14-19, FINRA Requests Comment on Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications with the Public, 4, (April 2014), <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p496867.pdf>

6,610 retail bank branches in 39 states.² WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services retail investors need to pursue these goals.

WFA has previously filed public comments in response to FINRA’s efforts to amend FINRA Rule 2267-*Investor Education and Protection*, which would have required member firms “to include a prominent description of and link to FINRA BrokerCheck” on firm “websites, social media pages and any comparable Internet presence.”³ In that letter, WFA asked FINRA to reconsider its requirement to place a link to BrokerCheck on third-party websites due to space and format limitations. Furthermore, WFA proposed that FINRA require a link on third-party websites to the firm’s website, where a link to BrokerCheck would be included. In addition, WFA asked FINRA to eliminate the requirement to link directly to the individual representative’s BrokerCheck page and instead require a link to the BrokerCheck homepage to provide investors with important context. Finally, WFA urged FINRA to address redundant and confusing presentation of disclosure events in the BrokerCheck profile prior to adopting a requirement to link to BrokerCheck.⁴

WFA applauds FINRA for considering commenters’ concerns, and particularly for its efforts to add more flexibility in displaying the BrokerCheck link and for eliminating the requirement of a “deep link” to a broker’s BrokerCheck page.⁵ Nonetheless, WFA believes the Proposal’s scope should be refined to balance its potential benefits with the burdens resulting from firms’ efforts to comply. Furthermore, WFA believes additional clarity is required to address the feasibility of disclosures on third-party sites which do not permit a hyperlink or have format or character limitations.

I. FINRA Should Clarify the Scope of Retail Communications on a Third-Party Site.

The Proposal would require a member firm to include a readily apparent reference and hyperlink to BrokerCheck in *any* online retail communication that includes a professional profile of, or contact information for, an associated person. The Proposal also discusses conditions for

² WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC (“WFAFN”) and First Clearing, LLC (“FCC”), which provides clearing services to 76 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all brokerage operations.

³ See Correspondence from Robert J. McCarthy to Elizabeth M. Murphy regarding Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection), SR-FINRA-2013-002, dated February 15, 2013. <http://www.sec.gov/comments/sr-finra-2013-002/finra2013002-16.pdf>; See also SR-FINRA-2013-002. http://www.knowledgemosaic.com/gateway/finra/rule_filings/SR-FINRA-2013-002-1.pdf

⁴ WFA remains concerned that the confusing and redundant format of BrokerCheck disclosure events will undermine FINRA’s purpose to provide investors relevant information and once again urges FINRA to address these issues prior to instituting a final BrokerCheck disclosure requirement.

⁵ Notice, 2.

including the reference where the retail communication appears on a third-party site. Specifically, if the third-party site permits a hyperlink, the member firm should post a hyperlink to BrokerCheck in close proximity to the profile or contact information. Alternatively, the member firm should post a hyperlink to the member's website, which includes a readily apparent reference and hyperlink to BrokerCheck, and inform the reader on the third-party site that BrokerCheck is available through the linked website.

WFA believes the scope of online retail communications potentially covered by the Proposal is too broad. There are many forms of content posted on a third-party site that could include the professional profile of, or contact information for, an associated person. For example, interviews, articles and reprints, award listings (*e.g.*, Barron's, Registered Representative, Five Star), biographies, sponsorships, press releases, radio replays and advertisements are all forms of retail communication that may include the professional profiles of, or contact information for, an associated person, when posted to a third-party's website.

Nevertheless, these types of communications generally do not promote specific products or services and thus do not present the same risks that may be present in other online profile or contact pages. Similarly, advertisements posted on a third-party's site that merely function as a link to a site of the member firm or registered representative should be excluded, as the product or service being promoted is contained on the firm webpage as opposed to the advertisement. Furthermore, the firm website would include the BrokerCheck link. Accordingly, WFA believes that the aforementioned forms of online retail communication should be excluded from the BrokerCheck link requirement.

II. FINRA Should Clarify the Directory Listing Exception.

The Proposal sets forth an exception for "a directory or list of associated persons limited to names and contact information."⁶ The Proposal explains this exception is "intended to apply both to directories that appear on a member's website, as well as third-party website directories in which the firm or associated person was involved with the website's content."⁷ At the same time, FINRA notes that a firm can "adopt" or "become entangled with the creation of" a third-party website's content, subjecting the communication to the requirements of Rule 2210.⁸ WFA believes the scope of the directory listing exception should be expanded.

Some third-party directories go beyond "names and contact information" to permit the firm or associated person to provide additional relevant information.⁹ For example, the Certified Financial Planner Directory permits the firm or associated person to add elements, such as minimum asset level, specialties and compensation methods. Therefore, WFA believes FINRA should consider extending the directory exception to include such pertinent information. In addition to making the directory listing exception broader, FINRA should clarify that member

⁶Proposed FINRA Rule 2210(d)(8)(C)(iv). *See* Attachment A to Notice 14-19.

⁷ Notice, FN 9.

⁸ *Id.* at FN 11.

⁹ Proposed FINRA Rule 2210(d)(8)(C)(iv). *See* Attachment A to Notice 14-19.

firms may provide asset levels, specialties, compensation methods and comparable information to a directory.

III. There Are Operational Challenges Associated with Posting to Some Third-Party Sites.

The Proposal would require retail communications containing a profile of, or contact information for, an associated person posted on a third-party site to include a hyperlink to BrokerCheck either directly or via the member firm's site. Alternatively, where the third-party site does not permit hyperlinks, the Proposal would require a reference to BrokerCheck's URL and "to the extent feasible", language indicating that information concerning the associated person is available through BrokerCheck.¹⁰

Although the Proposal contemplates the scenario where a third-party site does not have the capability to include a hyperlink, it gives inadequate consideration to space and character limitations presented by certain third-party sites. Some sites do not have free-form fields to facilitate the inclusion of either a hyperlink or the BrokerCheck URL and introductory language. Additionally, some sites strictly limit the number of characters available on the profile page, making it unduly burdensome to include approximately 110 additional characters to reference BrokerCheck.¹¹

For example, the Proposal suggests for Twitter accounts that member firms include the introductory language and URL to BrokerCheck in the "About" section.¹² The "About" section, however, is limited to 160 characters. A member firm could either include the introductory language and URL, taking up 110 of the 160 characters, or the member firm could note "a hyperlink to BrokerCheck is available through the linked website," referring to the firm's site under the "link" space, which would take up 66 of the 160 characters. Under either scenario, by taking up approximately 40-68% of the available space in the "About" section, the Proposal's requirements unreasonably constrict a member firm's ability to include other pertinent information in that field. WFA believes FINRA should clarify that firms need not include the URL and description if doing so would take up more than 25% of available characters in the field.

Moreover, FINRA should add language to the Proposal to relieve firms of the BrokerCheck requirements where the firm has made a reasonable attempt, including documentation thereof, to add the BrokerCheck URL or hyperlink to a third-party site and the third-party cannot accommodate the firm's request.

IV. The Proposal Will Be Burdensome and Time Consuming to Implement.

WFA expects its efforts to comply with the Proposal will be resource intensive. As noted above, the scope of material potentially covered by the requirement could be voluminous if it

¹⁰ Proposed FINRA Rule 2210(d)(8)(B)(ii)-(iii). See Attachment A to Notice 14-19.

¹¹ This character count is based on the following phrase: "Information concerning the broker is available at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/>".

¹² Notice, 5.

encompasses such retail communications as online advertisements, interviews and award listings. Furthermore, if the Proposal will apply retrospectively, the labor and resources required to conduct the review will be vastly more than those for a prospective only requirement.¹³

In the past year alone, WFA approved approximately 3,000 web related items; a review of that one year's worth of approvals would take at a minimum six months. Under an unbounded retrospective requirement, firms could be required to review tens of thousands of prior online retail communications to determine if they are subject to the rule, employing substantial resources and taking years to complete. Whether the rule applies retrospectively or only prospectively, firms will incur substantial surveillance costs, particularly if the scope of the rule remains as broad as stated in the Proposal.

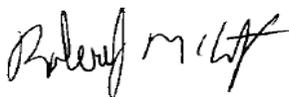
In addition, the Proposal does not address FINRA's anticipated timeline to implement the amended rule. WFA requests that FINRA provide at least six months to implement the Proposal. Additional time may be required to comply with a retrospective review requirement.

WFA applauds FINRA for seeking to enhance investor protection, but urges FINRA to balance the potential benefits derived from making BrokerCheck more accessible to investors with the burdens imposed on member firms to comply.

Conclusion

WFA appreciates the opportunity to respond to FINRA's Proposal. The foregoing comments will help FINRA develop a final rule which balances its investor protection aims with the cost of compliance. If you would like to further discuss this issue, please contact the undersigned at robert.j.mccarthy@wellsfargoadvisors.com or 314-955-2156.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

CC: Stephen R. Bard
Director of Communications Compliance

¹³ It is worth noting that FINRA took a prospective only approach when it issued the new Communications with the Public rules in Regulatory Notice 12-29: Communications with the Public-SEC Approves New Rules Governing Communications with the Public. See Regulatory Notice 13-03: Communications with the Public-FINRA Provides Guidance on New Rules Governing Communications with the Public.