

BrokerCheck

FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public

Comment Period Expires: June 16, 2014

Executive Summary

FINRA seeks comment on a revised proposal to require a hyperlink to BrokerCheck in firms' online retail communications with the public. The revised proposal includes changes made in response to comments on a prior proposal to amend FINRA Rule 2267 (Investor Education and Protection). The revised proposal would require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors. In addition, it would require a firm 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, subject to specified conditions and exceptions, including exceptions for electronic mail and text messages.

The proposed rule is available as Attachment A at www.finra.org/notices/14-19.

Questions concerning this *Notice* should be directed to:

- ▶ Joseph Savage, Vice President, Regulatory Policy, at (240) 386-4534;
- ▶ Richard E. Pullano, Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821 (regarding BrokerCheck); or
- ▶ Erika Lazar, Assistant General Counsel, Office of General Counsel, at (202) 728-8013.

April 2014

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management
- ▶ Systems
- ▶ Technology

Key Topics

- ▶ BrokerCheck®
- ▶ Central Registration Depository (CRD®)
- ▶ Social Media
- ▶ Uniform Registration Forms

Referenced Rules & Notices

- ▶ Regulatory Notice 10-06
- ▶ Regulatory Notice 11-39
- ▶ Regulatory Notice 12-10
- ▶ FINRA Rule 2210
- ▶ FINRA Rule 2267

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by June 16, 2014.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

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

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.¹

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).²

Background & Discussion

A. Initial Proposal

In January 2013, FINRA filed with the SEC a proposed rule change to amend FINRA Rule 2267 (Investor Education and Protection)³ to require all firms to include a prominent description of and link to BrokerCheck on their websites, social media pages and any comparable Internet presence (the initial proposal).⁴ The requirement also applied to the websites, social media pages and any comparable Internet presence relating to a firm's investment banking or securities business maintained by or on behalf of any person associated with a firm. The proposed rule change was intended to increase investor awareness and use of BrokerCheck.⁵ The SEC received 24 comment letters in response to the proposed rule change, some of which raised operational issues. The most common concerns involved the challenges of implementing the proposed rule change with respect to social media pages and the use of a "deep" link to BrokerCheck summary reports specific to each member firm or associated person.⁶ FINRA withdrew the filing to assess and respond to commenters' concerns.

B. Revised Proposal

In light of the concerns with the initial proposal, FINRA requests comment on a revised proposal that incorporates the proposed BrokerCheck link requirement into FINRA's regulatory framework for communications with the public in FINRA Rule 2210 (Communications With the Public). Specifically, the revised proposal would adopt FINRA Rule 2210(d)(8)(A) to require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors.

In addition, proposed FINRA Rule 2210(d)(8)(B) would require a firm to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications that include a professional profile of, or contact information for, an associated person, subject to the following conditions:⁷

- ▶ If the retail communication appears on the firm's website or any site that it hosts, the hyperlink to BrokerCheck must appear in close proximity to the profile or contact information.
- ▶ If the retail communication appears on a third-party website that permits a hyperlink to another website, the firm must either (1) post a hyperlink to BrokerCheck in close proximity to the profile or contact information; or (2) post a hyperlink to the firm's website, which includes a readily apparent reference and hyperlink to BrokerCheck, in close proximity to the profile or contact information, and include in the third-party website communication disclosure that informs the reader that a hyperlink to BrokerCheck is available through the linked website.
- ▶ If the retail communication appears on a third-party website that does not permit a hyperlink to another website, the firm must provide the BrokerCheck web address (uniform resource locator (URL)) in close proximity to the profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck.

Proposed FINRA Rule 2210(d)(8)(C) would except from the proposed requirements:

- ▶ electronic mail or text messages;
- ▶ a retail communication that is posted on an online interactive electronic forum (such as a message board, Twitter feed or chat room);⁸
- ▶ a member firm that does not provide products or services to retail investors; or
- ▶ a directory or list of associated persons limited to names and contact information.⁹

FINRA does not treat third-party communications as a firm's or its associated persons' communications under FINRA Rule 2210 unless the firm or its associated persons have adopted or become entangled with the communication.¹⁰ Accordingly, the disclosure requirements of proposed FINRA Rule 2210(d)(8) would not apply to independent third-party websites that provide contact or profile information about a firm or its associated persons if the firm and its associated persons have not adopted the website and have no involvement with its content.¹¹

FINRA believes the proposed amendments to FINRA Rule 2210 address many of the commenters' concerns on the original proposal. By incorporating the proposed rule change into the regulatory framework for communications with the public, the revised proposal clarifies the operation of the proposed requirements. In this regard, FINRA has issued guidance related to FINRA Rule 2210 that addresses the rule's application to social media pages, blogs and other online communications with the public.¹² In addition, the revised proposal clarifies that a hyperlink to BrokerCheck be included only on websites of the firm that are available to retail investors, rather than on all of its social media pages and proprietary sites that limit access to institutional investors.

As detailed above, the revised proposal provides flexibility with respect to online retail communications on third-party websites that are not controlled by the firm, such as social media sites, by providing firms with options to address the restrictions and limitations of such websites.¹³ In addition, the exceptions in the revised proposal provide clarity regarding the application of the proposed rule. The revised proposal eliminates the requirement for a deep link to a firm's or associated person's BrokerCheck report summary page.

FINRA believes that the revised approach will increase investor awareness of BrokerCheck, while addressing the operational concerns the initial proposal raised.

To assist firms in assessing the impact of the revised proposal, FINRA reviewed a selection of popular social media sites and conducted trials to determine how firms could implement the proposed requirements for third-party websites. Based on this review, FINRA determined that firms would be able to post a hyperlink to BrokerCheck or a hyperlink to the firm's website in close proximity to an associated person's profile or contact information on:¹⁴

- ▶ **Facebook:** in the "About" section of the Profile page;
- ▶ **LinkedIn:** in the "Background Summary" section (individuals);
- ▶ **YouTube:** in the "About" section of the Profile page; and
- ▶ **Pinterest:** in the "About" section of the Profile page.

With respect to Twitter, FINRA understands that due to character limitations along with the inability to include hyperlinks in a user's profile, the inclusion of a hyperlink to BrokerCheck or a hyperlink to the firm's website is not feasible. For sites with such restrictions, firms would be required to provide the BrokerCheck URL in close proximity to an associated person's profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck. On Twitter, the BrokerCheck web address would be required in the "About" section of an associated person's Profile page.

FINRA requests comment on all aspects of the revised proposal, including any potential costs and burdens that the revised proposal could impose on firms. FINRA particularly requests comment concerning the following issues:

- ▶ Does the revised proposal address the operational concerns raised by the initial proposal, particularly with respect to the proposed requirements for third-party websites? Why or why not?
- ▶ Should FINRA retain the deep link requirement to provide investors with direct access to a firm's or associated person's BrokerCheck report summary?¹⁵
- ▶ Will the revised proposal increase investor use and awareness of BrokerCheck?
- ▶ 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? FINRA welcomes estimates of these costs to firms.
- ▶ Are there alternative approaches FINRA should consider to accomplish this goal? If so, what are those alternatives and why could they be better suited?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NTM 03-73* (November 2003) (Online Availability of Comments) for more information.
2. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
3. Subject to limited exceptions, FINRA Rule 2267(a) requires member firms to provide annually in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that describes BrokerCheck.
4. See Securities Exchange Act Release No. 68700 (January 18, 2013), 78 FR 5542 (January 25, 2013) (Notice of Filing of SR-FINRA-2013-002).
5. See also *Regulatory Notice 12-10* (February 2012).
6. A BrokerCheck report summary page displays the firm's or person's CRD number, SEC number (for firms), registration status and employing firm (for individuals).
7. FINRA Rule 2210(a)(5) defines a "retail communication" as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. Rule 2210(a)(6) defines a "retail investor" as any person other than an institutional investor (as defined in Rule 2210(a)(4)), regardless of whether the person has an account with a member.
8. FINRA notes, however, that the proposed requirements would apply to static content on a site that hosts an online interactive forum (such as a profile page).
9. This exception for directories that are limited to the names and contact information of associated persons 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.
10. See *Regulatory Notice 11-39* (August 2011), Question 4.
11. For example, a firm would not be required to ensure that an independent third-party website that provides ratings or customer reviews about broker-dealers includes a hyperlink to BrokerCheck if the firm and its associated persons have not adopted the website or become entangled with the creation of the website's content. Similarly, the requirements of proposed FINRA Rule 2210(d)(8) would not apply to online directories that aggregate and assemble service industry information based on publicly available data without any involvement of a firm or its associated persons.
12. See *Regulatory Notice 11-39* (August 2011) and *Regulatory Notice 10-06* (January 2010).
13. FINRA notes that, consistent with social media guidance published by FINRA in relation to FINRA Rule 2210, the revised proposal would not apply to personal social media sites or a biography on a website that is outside the scope of an associated person's relationship with a member firm.

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14. If the hyperlink is to the firm's website, the firm also must include disclosure that informs the reader that a hyperlink to BrokerCheck is available through the linked website.
15. FINRA notes that a deep link can be created by adding a firm's or individual's CRD number to the end of the appropriate web address format (Designated URL). For example, the deep link for the individual with CRD number 1234 is www.brokercheck.finra.org/Individual/1234.