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Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2015-022 (Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public))

Dear Mr. Fields:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing related to amending FINRA Rule 2210 to require each of a member’s websites to include a readily apparent reference and hyperlink to BrokerCheck[®] on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. These proposed requirements would not apply to a member that does not provide products or services to retail investors, or to a directory or list of registered persons limited to names and contact information.

The Commission published the proposed rule change for public comment in the Federal Register on July 13, 2015.¹ The Commission received nine comment letters directed to the rule filing.² Two commenters supported the proposal as

¹ See Securities Exchange Act Release No. 75377 (July 7, 2015), 80 FR 40092 (July 13, 2015) (Notice of Filing of File No. SR-FINRA-2015-022).

² See Letter from David Neuman, Israels Neuman PLC, to Brent J. Fields, Secretary, SEC, dated July 29, 2015 (“Neuman”); letter from Robert C. Port, Gaslowitz Frankel LLC, to Brent J. Fields, Secretary, SEC, dated August 1, 2015 (“Gaslowitz”); letter from Sutherland, Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers, to Brent J. Fields, Secretary, SEC, dated August 3, 2015 (“Committee of Annuity Insurers”); letter from Dorothy Donohue, Deputy General Counsel–Securities Regulation, Investment Company Institute, to Brent J. Fields, Secretary, SEC, dated August 3, 2015 (“ICI”); letter from Melissa MacGregor, Managing Director and Associate

providing meaningful information to investors regarding their investment professionals and increasing investor awareness of BrokerCheck.³ Six commenters generally supported the proposal but suggested changes or guidance related to the proposal.⁴ The following are FINRA's responses, by topic, to the commenters' material concerns.

“Deep Link” Requirement

As noted in the rule filing, an earlier version of the proposal included a requirement for members' websites to include deep links to BrokerCheck summary reports that would bypass the BrokerCheck homepage. Two commenters did not support the omission of the deep link requirement, noting that the deep link would take investors directly to the report of an individual representative or member.⁵ However, FINRA determined not to require deep links to a member's or a registered person's BrokerCheck report at this time, but instead to require a link to the BrokerCheck homepage. As stated in the rule filing, most investors should be able to find information concerning particular members or registered representatives without difficulty given the ease of operation of the BrokerCheck search feature. In addition, while the proposed rule does not require deep links, it also does not prohibit members from establishing deep links to the member or an individual representative's BrokerCheck pages.

Expanding the Proposal's Scope

General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, SEC, dated August 3, 2015 (“SIFMA”); letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute, to Brent J. Fields, Secretary, SEC, dated August 3, 2015 (“FSI”); letter from Elissa Germaine, Supervising Attorney, and Jill Gross, Director, Pace Investor Rights Clinic at Pace University School of Law, to Brent J. Fields, Secretary, SEC, dated August 3, 2015 (“PIRC”); letter from William Beatty, President and Washington Securities Administrator, North American Securities Administrators Association, Inc., to Brent J. Fields, Secretary, SEC, dated August 3, 2015 (“NASAA”); and letter from Joseph C. Peiffer, President, Public Investors Arbitration Bar Association, to Brent J. Fields, Secretary, SEC, dated August 3, 2015 (“PIABA”).

³ See ICI and Gaslowitz.

⁴ See Neuman, NASAA, PIRC, FSI, SIFMA and PIABA.

⁵ See NASAA and PIRC.

The proposal would require a readily apparent reference and hyperlink to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. Some commenters supported expanding the proposal to require a reference and hyperlink to BrokerCheck in members' and registered persons' emails to customers.⁶ Neuman supported expanding the proposal to require a reference and hyperlink to BrokerCheck in customer statements.

FINRA has not proposed requiring a reference and hyperlink to BrokerCheck in each email sent by a member or registered person to a customer or in customer statements. At this time, FINRA believes that such a requirement would be overly burdensome and require significant system and operational changes, without commensurate benefits.

As noted in the rule filing, earlier versions of the proposal required a reference and hyperlink to BrokerCheck if a retail communication appeared on a third-party website. Some commenters supported expanding the current proposal to require a readily apparent reference and hyperlink to BrokerCheck if the retail communication appears on a third-party website over which the member has control.⁷ As noted in the rule filing, FINRA recognizes the difficulties and costs associated with including links on third-party websites, and as a result FINRA has determined at this time to exclude the third-party website requirement and limit the application of the proposed rule to members' websites.

FINRA will continue to monitor investors' awareness and use of BrokerCheck and consider whether to pursue further rulemaking.

Information Available on BrokerCheck

Some commenters supported expanding the information available on BrokerCheck to include all information that is available through the Central Registration Depository ("CRD[®]") system.⁸ The purpose of the proposal is to require members to include a reference and hyperlink to BrokerCheck on member websites, and does not address the information available through BrokerCheck. Accordingly, FINRA believes that the commenters' requests to expand the information publicly available on BrokerCheck to be outside the scope of this proposal. FINRA regularly

⁶ See NASAA, PIRC and Neuman.

⁷ See NASAA, PIRC and PIABA.

⁸ See PIRC, Neuman and PIABA.

assesses the BrokerCheck program and may consider inclusion of additional information in BrokerCheck at a later time.

SIFMA requested that any guidance provided by FINRA in relation to the proposal include a succinct reiteration of what information is and is not disclosed through BrokerCheck for use by members in responding to any customer inquiries caused by the reference and hyperlink to BrokerCheck on their websites. FINRA notes that it provides readily available information on its website regarding the scope of information disclosed through BrokerCheck for use by members and investors.⁹

Application of the Proposal to Some Websites

Some commenters requested guidance on the application of the proposal to websites operated by independent contractor registered representatives.¹⁰ FINRA expects member firms to supervise and review for compliance websites operated by registered representatives that promote the member's business and, for purposes of Rule 2210, views such websites to be websites of the member firm. Accordingly, the proposed rule change would apply to a website operated by a registered representative that is promoting the business of the member (*i.e.*, the hyperlink and reference would be required on the initial webpage that is intended to be viewed by retail investors and any other webpages with a professional profile). Conversely, the proposed rule would not apply to a website operated by a registered representative that is not promoting the business of the member.

With respect to multi-faceted financial institutions, some commenters requested confirmation that the proposal would require a reference and hyperlink to BrokerCheck on the affiliated broker-dealer's main webpage, not on the enterprise-level homepage or other webpages that reference the affiliated broker-dealer.¹¹ Because Rule 2210 applies to the communications of members, FINRA agrees that, in the case of a website of a multi-faceted financial institution, the requirements of the proposed rule would apply to the affiliated broker-dealer's main webpage and not to the enterprise-level homepage. The proposed rule requires the reference and hyperlink to be included on the initial webpage that the member intends to be viewed by retail investors, but gives members flexibility as to the location so long as the reference and link are readily apparent.

⁹ See, e.g., "About BrokerCheck Reports" available at <http://www.finra.org/investors/about-brokercheck-reports>.

¹⁰ See FSI and SIFMA.

¹¹ See Committee of Annuity Insurers and SIFMA.

SIFMA requested clarification as to whether the proposal would require a reference and hyperlink to BrokerCheck only on the main webpage of the member's website and not on the main webpage of any "micro-sites" or other similar websites maintained by the member. FINRA understands micro-sites to generally include smaller purpose websites operated by members that are frequently related to marketing campaigns. FINRA further understands that micro-sites commonly are meant to function as a discrete presence within an existing member website or to complement an offline activity. Because micro-sites may be viewed as being part of the member's main website or may serve to direct investors to the member's main website, when the micro-site acts solely as a conduit to the member's main website that includes a readily apparent reference and hyperlink to BrokerCheck, then FINRA generally would not require a separate hyperlink and reference to BrokerCheck to be included on the micro-site. Otherwise, the proposed rule would require a separate hyperlink and reference to BrokerCheck to be included on the initial webpage of the micro-site that the member intends to be viewed by retail investors. Because the facts and circumstances of micro-site arrangements may vary, FINRA can address interpretive questions about particular types of arrangements as needed.

Some commenters requested guidance on the application of the proposal to third-party websites that contain the professional profiles of registered representatives who engage in networking or similar relationships with the third party (*e.g.*, websites of credit unions that are not FINRA members).¹² As discussed above, FINRA is not proposing to require the hyperlink and reference to BrokerCheck on third-party websites. Accordingly, the proposed rule would not apply to third-party websites that contain the professional profiles of registered representatives who engage in networking or similar relationships with the third party.

Committee of Annuity Insurers requested guidance on the application of the proposal to the websites of branch offices and their personnel. While acknowledging that requiring a reference and hyperlink to BrokerCheck on the main webpage of a branch office's website may be helpful, the commenter requested guidance on whether the proposal would require a reference and hyperlink to BrokerCheck on: (1) additional webpages of a branch office's website; and (2) all webpages where a branch office registered person's profile information appears.

If a separate retail website has been established for a branch office or branch office personnel, then such a website would be treated as being a separate website of the member, and the rule would apply accordingly (*i.e.*, that the hyperlink and reference would be required on the initial webpage that the member intends to be viewed by retail investors). On the other hand, if only a sub-page of the member's website was established for branch office or branch office personnel, then such a website would not be treated as being a separate website of the member and the rule

¹² See FSI and SIFMA.

would apply accordingly (*i.e.*, that the hyperlink and reference would not be required on the initial webpage for that branch office since it would already appear on the initial webpage of the member that the member intends to be viewed by retail investors).

The proposed rule requires the hyperlink and reference on any webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. Accordingly, the hyperlink and reference would be required for all webpages where a branch office registered person's profile information appears. This requirement would apply to webpages of the member's website and any webpages on a branch office's website. As noted in the rule filing, if a webpage includes profile information about multiple registered persons, only one link to BrokerCheck is required on the webpage.

Appearance and Location of Readily Apparent Reference and Hyperlink to BrokerCheck

Some commenters requested guidance regarding implementing the proposal's requirement to include a readily apparent reference to BrokerCheck. Committee of Annuity Insurers requested that FINRA confirm that the proposed rule's requirement to include a readily apparent reference to BrokerCheck does not mandate any accompanying disclosure. SIFMA requested confirmation that FINRA would consider a hyperlink to BrokerCheck in a webpage's footer or language such as "check the background of an investment professional" to satisfy the proposed rule's requirement. FSI requested guidance on including the required readily apparent reference and hyperlink to BrokerCheck in a webpage's footer.

FINRA anticipates that the required readily apparent reference to BrokerCheck would be brief (*e.g.*, "use BrokerCheck to research this firm" or "use BrokerCheck to research this investment professional"). As noted below, FINRA anticipates making optional BrokerCheck-related icons or similar resources available to members.

With respect to what constitutes a readily apparent reference and hyperlink, FINRA is unable to provide specific guidance regarding this term given the wide variety of webpages maintained by members. However, FINRA generally does not believe that including the required reference and hyperlink to BrokerCheck in a footer would satisfy the "readily apparent" standard. Members should adopt the perspective of a reasonable retail investor when making this determination. Some of the factors that members should consider include: (1) placement (*i.e.*, whether the reference and hyperlink are visible as soon as a person lands on the website or only after significant scrolling; if scrolling is required, whether it is clear that further information is available below the screen that is being viewed; the type of information that is in close proximity to the description and hyperlink; and whether the BrokerCheck reference and hyperlink are set out separately or buried in a long paragraph); (2) font size (*i.e.*, whether the font size of the description and hyperlink are similar to the font

size of other information on the page); and (3) font color (*i.e.*, whether the font color of the description and hyperlink contrasts or blends in with the website's background). Although not an exhaustive list, these factors should help members and individuals determine whether the reference and hyperlink to BrokerCheck is readily apparent.

SIFMA requested that FINRA confirm that for members that choose to include the required hyperlink to BrokerCheck through an icon or button similar to that used by FINRA, such use would be a permissible use of any associated trademark or other intellectual property owned by FINRA. FINRA anticipates making BrokerCheck-related icons or similar resources available to members as one option for complying with the proposed rule. FINRA notes that the use of any such icons or similar resources by members would be subject to FINRA's terms and conditions for use.

SIFMA requested that FINRA provide guidance on the placement of the required readily apparent reference and hyperlink to BrokerCheck on member websites that are optimized for mobile devices. FINRA recognizes that screen appearances may vary among mobile devices. Accordingly, FINRA does not intend to mandate specific placement of the required readily apparent reference and hyperlink to BrokerCheck on member websites that are optimized for mobile devices. Rather, members have flexibility as to the location of the reference and link on websites that are optimized for mobile devices so long as they are readily apparent.

SIFMA requested that FINRA provide a limited "safe harbor" for hyperlinks to BrokerCheck that are broken as a result of script or programming issues that would permit reasonable times for members to respond to any link maintenance issues. While FINRA believes that including the required link to BrokerCheck should be a straightforward process, it also understands that the link occasionally may fail. FINRA does not believe the relief requested by the commenter is necessary or warranted at this time. Instead, as with its other rules, FINRA would consider all of the facts and circumstances (*e.g.*, technical, human error, *etc.*) surrounding any such failures. FINRA expects that members would address any such occurrences expeditiously.

Implementation Period

FSI requested a 12 month implementation period to provide adequate time to bring members' websites, including websites of independent contractor registered representatives, into compliance with the proposed rule. While FINRA believes that the implementation costs of the current proposal are significantly lower than for the prior proposals, FINRA recognizes that members would be required to identify the webpages that would need to be updated based upon the proposed rule, determine where to place the references and hyperlinks within these webpages, and test and deploy the updated website. FINRA will consider the need for systems and operational changes in establishing an effective date for the proposed rule change.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing. If you have any questions, please contact me at (202) 728-8013, email: jeanette.wingler@finra.org. The fax number of the Office of General Counsel is (202) 728-8264.

Best regards,

/s/ Jeanette Wingler

Jeanette Wingler
Assistant General Counsel