



June 16, 2014

By Email (pubcom@finra.org)

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

**Re: FINRA Regulatory Notice 14-19
Request for Comments on Revised Proposal to Require Hyperlinks to BrokerCheck
in Online Retail Communications with the Public**

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide this letter in response to a proposed rule change by the Financial Industry Regulatory Authority (“FINRA”) to amend FINRA Rule 2210 (Communications With the Public). Subject to the issues and concerns discussed below, SIFMA supports the goals of the proposed rule change and appreciates FINRA’s continuing efforts to evaluate and improve the BrokerCheck public disclosure system.

The Initial Proposal to Amend Rule 2267

The proposal revises a prior proposed rule change filed by FINRA with the Securities and Exchange Commission (“SEC”) in January 2013 that would have amended FINRA Rule 2267 (Investor Education and Protection) and would have required member firms to “include a prominent description of and link to BrokerCheck” on their “websites, social media pages and any comparable internet presence.”²

The SEC received 24 comment letters in connection with the proposed amendments to Rule 2267. SIFMA provided its comments on February 15, 2013. Among the primary concerns raised by SIFMA in its February 2013 letter were: (i) the proposal’s requirement to place BrokerCheck links

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

² SR-FINRA-2013-002 (January 4, 2013).

on internet sites not under the control of the member firm, and (ii) the costs, burdens and necessity of requiring “direct” links to individual BrokerCheck records for registered persons.

The Current Proposal to Amend Rule 2210

The proposed rule change would require FINRA member firms to “include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors,” and, subject to certain conditions and exceptions, to include such references and hyperlinks in “online retail communications that include a professional profile of, or contact information for, an associated person.” The rule proposal contains conditions for references and hyperlinks appearing in online retail communications on websites that either: (i) are hosted by the firm, (ii) hosted by a third-party website that permits hyperlinks to other websites, or (iii) third-party websites that do not permit hyperlinks to other websites. The proposal would also except from the rule’s requirements: (i) email and text messages, (ii) retail communications posted to an online interactive forum (e.g., Twitter feeds), (iii) communications by member firms that do not provide products or services to retail investors, or (iv) directories or lists of associated persons to names and contact information.

SIFMA appreciates FINRA’s consideration of the concerns raised by several industry participants in connection with the initial proposal to amend Rule 2267. SIFMA reiterates its previously expressed view that the goal of investor protection is furthered by improved access to accurate and relevant information about broker dealers and their registered employees. However, in an attempt to find ways to “facilitate and increase investor use of BrokerCheck”³ the proposed rule’s imposition of mandatory content and linking requirements on third-party sites not controlled by member firms continues to raise necessity and feasibility concerns. Specifically, with respect to the current proposal, SIFMA believes that the following issues require revisions and/or clarifications prior to the rule’s implementation:

Space Constraints Within Third-Party Social Media Sites, BrokerCheck Links and Placement

The proposal recognizes the multiplicity of venues for communications through social media. Proposed Rule 2210(d)(8)(B)(ii)-(iii) sets forth a “close proximity” standard for the inclusion of the “readily apparent reference and hyperlink” to BrokerCheck and provides instructions for where the required links should appear depending on whether or not the third-party platform permits hyperlinks to other websites.

As SIFMA previously observed in its comments to the initial proposal, unlike their own internet websites, member firms do not control the content, appearance, or features of third-party social media internet platforms. Because third-party social media platforms are part of a rapidly changing communications environment, prescriptive rules regarding placement and content are likely to become increasingly difficult to comply with as those platforms evolve. This area, therefore, is more suited to a principles-based approach to rulemaking. Thus, as an initial matter, as it relates to third-party websites, the proposed rule’s use of the prescriptive term “must” (as in “a member must include a readily apparent reference and hyperlink...” in subsection (8)(B)(ii) and (iii)) should be replaced with a permissive, principles-based term or phrase such as “should, to the

³ See Regulatory Notice 12-10 (February 2012).

extent reasonable.” Utilizing a principals-based approach and making the proposed rule permissive rather than mandatory would provide firms with sufficient flexibility to achieve FINRA’s stated goal (increased investor use of BrokerCheck) while recognizing the inherent constraints and fluidity of the internet and the multitude of third-party social media platforms. In short, to the extent any prescriptive requirements are contained within the final rule, those requirements should apply only to a firm’s own website.

Further, space constraints within third-party social media sites may make the inclusion of both a “reference” and hyperlink difficult or impossible to comply with without crowding out of the profile page the essential information the firm or its associated person wishes to convey in using the platform. For example, a member firm may devote considerable effort and expense to creating a branded custom header within Twitter. That custom header may or may not include text, but the platform does not permit embedded hyperlinks within those profile headers. In addition, on the main profile page, only one link to an external site is permitted. Most firms, quite appropriately, would prefer to utilize the “link” space to post a link to their firm’s primary homepage. However, the rule as written would potentially require the firm to use that link space for a link to BrokerCheck since, technically, a link to a third-party website is permitted, *unless* the firm also includes in the third-party social media website “a disclosure that informs the reader that a hyperlink to BrokerCheck is available” through the link to the firm’s homepage.⁴

In addition, space constraints within the platforms themselves makes prescriptive requirements inapt. For example, Twitter currently restricts profile descriptions to 160 characters,⁵ including spaces. Simply including a phrase within the profile page that parrots the proposed rule and says “a hyperlink to BrokerCheck is available through the linked website” takes up 66 spaces of the available character/space limitation, or over 39% of the available space. Additionally, other sites may restrict profile information or “links” information to either hyperlinks or free-text, which again places functional limits on what can and cannot be posted to the site.

The inherent difficulties of creating requirements for content on platforms not controlled by member firms strongly favors eliminating mandatory requirements that links and references to BrokerCheck be included within sites on those third-party platforms. The proposal should therefore be modified to eliminate the prescriptive “must” within subsections (8)(B)(ii) and (iii) and replace that language with more flexible language such as “should, to the extent reasonable.”

Adding more appropriate flexibility to the third-party website provisions makes sense in that in nearly all cases firms provide links to the primary home pages on these social media platforms. These homepages, as noted, will contain the required hyperlinks and references to BrokerCheck. SIFMA notes that the firm homepage requirement alone will likely greatly expand investor awareness and use of BrokerCheck from its present state. Because the fundamental purpose of the proposal will be met through these links on proprietary pages, firms should not be unduly constrained in their use of social media where technological limitations run up against restrictive usage and content requirements.

⁴ See subsections (B)(ii) and (iii) of the proposed rule

⁵ Based on a review of the Twitter platform settings on May 31, 2014.

The Proposal Should Expressly Permit Buffer Screens

FINRA utilizes “buffer screens” when it links to third-party content on from its proprietary internet pages.⁶ The proposal should expressly permit firms to use buffer screens when linking viewers to BrokerCheck. Buffer screens are typically used (as FINRA does) to indicate to viewers that they are being transferred to a website not maintained or controlled by the member and that the member does not warrant or endorse any of the information contained on the third party’s site.

Modifying the proposal to expressly permit the use of buffer pages makes clear to users that BrokerCheck is a FINRA-maintained site, could also allow for an additional brief description of BrokerCheck and the information available at the site, and could allow firms to direct questions about BrokerCheck to FINRA. The proposal should expressly permit this commonly-used internet protocol.

Advertising

The proposed rule would require 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...[.]” Under current Rule 2210, “online retail communication[s]” could potentially include an array of online advertising in addition to marketing or other communications through firm-controlled websites and third-party social media websites. FINRA should either except from the rule, or clarify through appropriate guidance, that the requirement to include a reference and hyperlink to BrokerCheck will not apply to either (i) search-engine based, text-only advertising, or (ii) other “static” web-based advertising that contains general references to the services provided by an associated person and includes a hyperlink to a profile page for that associated person. The requested exception for “static” web-based advertising would only apply so long as the hyperlinked profile page contains the requisite references and hyperlinks to BrokerCheck.

Regarding search-based advertising, search engine providers (Google, Yahoo, Bing, etc.) allow advertisers to advertise next to relevant search results. These advertisements are typically text-constrained and include a hyperlink to the advertiser’s website. To the extent a firm or associated person utilizes search-based advertising for the associated person where the content of the advertisement contains a hyperlink to the associated person’s firm’s website (which would contain the required hyperlink to BrokerCheck) or profile page (which would also contain the required hyperlink) such advertising should be excepted from the proposed rule.

Similarly, web-based advertising includes display advertising and other static-content advertising that typically contains a link to the firm or associated person sponsored website or profile page. For some types of this advertising, space or format constraints may render the inclusion of specific

⁶ For example, investors seeking additional information on SIPC protection are directed to SIPC’s website through a “buffer screen” (<http://apps.finra.org/exitpage/1/exitpage.aspx?url=http://www.sipc.org/news-and-media/brochures>) that advises viewers that “You Are Now Leaving the FINRA.org Website[.] FINRA.org does not endorse this site, its sponsors, or any of the policies, activities, products, or services offered on the site or by any advertiser on the site. If you are not redirected in 5 seconds, please use this link: <http://www.sipc.org/news-and-media/brochures> Thank you for your interest in FINRA.org.”

BrokerCheck references and hyperlinks unworkable. For these advertisements, FINRA should confirm that they will be treated the same as other retail communications appearing on third-party websites as set forth in the proposal and that the inclusion of a hyperlink to the profile page or firm website (containing the requisite links to BrokerCheck) will satisfy the rule's requirements.

In addition, as with third-party social media sites discussed above, many of these advertisements are space-constrained, making prescriptive content requirements difficult to comply with and still maintain the effectiveness and utility of the advertisement itself. In other words, the proposal should not be construed as requiring content that will, effectively, crowd-out other advertising content. Thus, as suggested above, prescriptive "musts" within the proposal should be replaced with a principals-based approach wherever possible.

Directory Listings

The proposal's exception for "director[ies] or list[s] of associated persons limited to names and contact information" applies to directories that appear either on a member's website or on third-party websites in which the firm or associated person was involved in the website's content.⁷ The proposal also makes clear that for third-party directories where the firm or associated person is not involved with its content, the disclosure requirements would not apply unless the firm or its associated persons "adopt[] or become entangled with the communication."

SIFMA supports this modification of the initial proposal in that it clarifies, for example, that a page maintained on a behalf of a group or team of associated persons would not require separate links next to each member of the group's contact information so long as any linked individual profile page contains the required hyperlink to BrokerCheck. Notwithstanding, additional clarification by FINRA is needed to confirm SIFMA's understanding that the mere inclusion of a link within a directory to the member or associated person's profile page does not trigger an obligation to include the BrokerCheck link and description within the directory listing itself.

However, the limitation within the exception granted in proposed Rule 2210(d)(8)(c)(iv) to directories "limited to names and contact information" is unclear and potentially overly restrictive. Many directory listings include useful general biographic or professional information such as years of service or experience, areas of specialty, or assets under management. The inclusion of this type of professional information allows customers and potential customers to more easily identify representatives with skill sets or experience that they may find useful. Because of the content and space constraints of most member-maintained directories, this additional information related is usually presented generically. For example, relevant experience is often described using such terms as "investments", "retirement planning", "wealth management" or other similar terms. The exception for directory listings should therefore be expanded to include general biographical information and areas of expertise.

Other Issues Requiring Confirmation and/or Clarification

SIFMA notes that the proposal could be further clarified to confirm some of its members understandings related to the following:

⁷ Regulatory Notice 14-19 at p. 3 and footnote 11.

- *BrokerCheck Links and Firm Sub-Pages:* As FINRA is aware, a firm's internet presence is comprised of not just static homepages and profile pages, but also many sub-pages related to particular products or services offered by the firm. SIFMA interprets the proposal to require the reference to and hyperlink to BrokerCheck on only the member's home page and on any associated person's "home" profile page, as opposed to all possible URLs or pages maintained by the member.
- *Exceptions for Email and Text Messaging:* SIFMA believes that the terms "electronic mail" and "text messages" as used in the proposal are terms of convenience and that the exception for such communications would equally apply to any future similar messaging capabilities or modes of communication.
- *The Proposal's Applicability to User-Downloaded Apps or Websites:* Many SIFMA member-firm customers are able to download mobile "apps" or other web-based applications (such as a trading platform or OES) that provide access to their accounts and other firm-provided information and capabilities. SIFMA does not consider these applications to be "website[s]" of their respective members and does not believe that the proposal applies to those applications.
- *The Proposal Should Include a Safe-Harbor for Broken Links:* Often, script or programming issues arise with member websites and the proposal should grant firms an appropriate "safe harbor" for links to BrokerCheck that are "broken" that would permit reasonable times to respond to any link maintenance issues.

Comments on the Specific Questions Presented

Regarding some of the specific comments solicited in Regulatory Notice 14-19, SIFMA offers the following observations:

- *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?*

SIFMA believes that many of the concerns identified in connection with the initial proposal have been carefully evaluated and address in this proposal. Communication through the internet continues to evolve, and given the variation, complexities, and rapid rates of change in the medium, SIFMA encourages FINRA to revisit often the issues identified in the proposals and to seek input from member firms in order to develop and promulgate any additional necessary guidance.

- *Should FINRA retain the deep link requirement to provide investors with direct access to a firm's or associated person's BrokerCheck report summary?*

No. For the reasons described in detail in SIFMA's February 2013 letter, the "deep" link requirement in the initial proposal was overly burdensome. Further, the current proposal recognizes the effectiveness of what is, essentially, the one-click-away disclosure model that SIFMA advocated for in its February 2013 letter.

- *Will the revised proposal increase investor use and awareness of BrokerCheck?*

Yes. However, SIFMA continues to believe that the manner in which information is displayed within BrokerCheck should be revised in the interest of fairness and clarity. These concerns were initially presented in SIFMA's April 2012 comments to Regulatory Notice 12-10 (Request for Comments on Ways to Facilitate and Increase Use of BrokerCheck Information), and were reiterated in its comments to the initial proposal. SIFMA is hopeful that efforts to evaluate the suggestions made in response to Notice 12-10 continue and that FINRA will engage in a more detailed dialog concerning those suggestions in the near future.

Further, SIFMA requests that FINRA carefully consider how it will effectively handle any issues surrounding the increased use of BrokerCheck. For example, when responding to questions about BrokerCheck and the information contained therein, SIFMA believes that FINRA staff should be appropriately trained and supervised.

- *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.*

SIFMA's membership includes firms of all sizes, and the costs of implementation will vary from firm to firm depending on their business model and infrastructure. Because the costs of implementing the rule could be significant for firms with large retail business operations, SIFMA requests that firms be given at least six months to implement any required changes post-approval.

If you have any questions or require further information, please contact me at 202-962-7385, mmacgregor@sifma.org, or our counsel, Mark D. Knoll, Bressler, Amery & Ross, P.C., at 212-510-6901, mknoll@bressler.com.

Very truly yours,

/Melissa MacGregor/

Melissa MacGregor
Managing Director and
Associate General Counsel

cc: Robert L. D. Colby, Chief Legal Officer, FINRA (by email)
Thomas Selman, Executive Vice President, Regulatory Policy, FINRA (by email)
Mark D. Knoll, Esq., Bressler, Amery & Ross (by email)