



Invested in America

April 5, 2012

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 12-10, Request for Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information**

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide this letter in response to FINRA Regulatory Notice 12-10 (“Notice 12-10”), which seeks comments on: (i) potential changes to the information disclosed through BrokerCheck, (ii) the format in which the information is presented, and (iii) strategies to increase investor awareness of BrokerCheck.

SIFMA supports and encourages FINRA’s continued evaluation of the BrokerCheck public disclosure system, both as mandated by the Dodd-Frank Act, and for purposes to help investors make informed choices about the member firms and associated persons with whom they are, or are considering, conducting business. To that end, SIFMA believes that the information maintained in BrokerCheck must be accurate, clear, concise, and relevant to the investor, and must be balanced against member firms’ and their employees’ legitimate privacy interests, and expectations of fairness and balance. With these principles in mind, SIFMA offers the following comments in response to specific questions posed in Notice 12-10 in order of priority:

Proposed Commercial Use of BrokerCheck Information

Notice 12-10 states that “some for-profit companies have established, or are considering establishing, websites or services that enable users to verify or obtain information about financial industry professionals (including brokers).” SIFMA believes that furnishing BrokerCheck information directly to these potential commercial users does not advance, and appears antithetical to, FINRA’s mission of

¹SIFMA 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 (“GFMA”). For more information, visit www.sifma.org.

investor protection, presents substantial potential for abuse, and does not reflect FINRA's principles of fairness and equity.

As set forth on its website, FINRA's mission "is to protect America's investors by making sure the securities industry operates fairly and honestly." The provision of BrokerCheck information directly to for-profit entities whose intended use of this information cannot be verified or reviewed by either the member firms or its associated persons does not comport with FINRA's stated mission of advancing investor protection or maintaining orderly and fair markets. Notice 12-10 indicates that these businesses' "products and services likely would be targeted to fulfilling the needs of businesses and individual (*i.e.* retail) investors." However, fulfilling the needs of commercial "businesses" who may have marketing or other advertising uses for BrokerCheck information, and whose sole purpose is to profit from its ability to collect and re-use such information, is specifically not part of FINRA's stated public mission.

BrokerCheck is already designed "to provide investors and the general public with information on the professional background, business practices and conduct of FINRA member firms and their associated persons" (Notice 12-10, p.2). It is not necessary or appropriate for FINRA to take that same publicly available information and sell it to a commercial business, whose use of that information is not governed by a mandate to serve the public interest, but is instead designed to make a profit for that entity. What possible "products and services" could these commercial businesses offer investors that BrokerCheck does not already provide? The information most important to investors is already available on BrokerCheck. Selling this information for repackaging by a commercial entity serves no legitimate regulatory purpose.

SIFMA also has significant concerns about the potential misuse of aggregate or other "data-dumps" of BrokerCheck information being available to third-parties not subject to FINRA's oversight. Firms and their registered persons provide information to FINRA with the understanding that certain information will be publicly available through BrokerCheck. But that information has not been provided to FINRA by these firms and individuals in order that commercial enterprises can obtain it in bulk and mine the data for any purpose at all.² The risk that commercial entities not subject to FINRA's oversight or control could also "cherry-pick" or aggregate information and present it in ways that does not convey a fair or accurate portrayal of a firm or its representatives outweighs any remunerative benefit from selling BrokerCheck information.

² SIFMA understands that registration information may in some cases be available from states under their respective sunshine or similar laws. However, the fact that some states may have statutes in place that may make some registration information available does not lead to the conclusion that FINRA should provide such information related to member firms or their associated persons.

In addition, these potential third-party firms are not bound by FINRA Rule 8312 governing the release of information through BrokerCheck. As a result, these firms could retain and display information beyond the ten year period prescribed by Rule 8312 for persons who are no longer licensed. Allowing firms not subject to FINRA oversight commercial access to BrokerCheck information unjustifiably raises the risk of the misuse of that information.

As FINRA itself recognized in Notice 12-10, through its Terms and Conditions, an individual is prohibited from using BrokerCheck information for anything other than that individual's own personal or professional use, and "voluminous requests or attempts to bypass FINRA's software or hardware designed to block such requests is prohibited." FINRA has a policy of preventing screen scrapers from obtaining voluminous data through automated collection tools.³ Thus, it would be completely inconsistent for FINRA to sell that same information in BrokerCheck to companies that operate in the same manner as screen scrapers. FINRA has not satisfactorily explained, or even attempted to explain, this inconsistency in approach. FINRA's member firms and associated persons rely on FINRA's principles of fairness and equity, and selling BrokerCheck information appears to be in direct conflict with such principles.

Thus, SIFMA strongly believes that the sale of BrokerCheck information to commercial enterprises is not necessary, duplicates information already available to the general public, and does not advance the goal of investor protection.

Comments Regarding Implementation of the Near-Term Recommendations of the Dodd-Frank Section 919B Study

Notice 12-10 identifies three "near-term" recommendations of a study by the Staff of the SEC's Office of Investor Education and Advocacy⁴ pursuant to Section 919B of the Dodd-Frank Act (the "919B Study") to improve investor access to registration information: (i) unification of search returns for BrokerCheck and the Investment Advisor Public Disclosure ("IAPD") databases; (ii) add the ability to search BrokerCheck by ZIP code or other indicator of location; and (iii) add educational content to BrokerCheck.

³ See, footnote 12 herein.

⁴ Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisors and Broker-Dealers, As Required by Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, SECURITIES AND EXCHANGE COMMISSION, OFFICE OF INVESTOR EDUCATION AND ADVOCACY January 2011 (available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>). The shorthand reference to this study as the "SEC Study" recognizes that the study was conducted by OIEA Staff and that the Commission has expressed no view regarding the analysis, findings or conclusions contained therein.

Following the release of the 919B Study, FINRA did not seek input from member firms on the potential implementation of the near term recommendations through a regulatory notice. Recently, some member firms were advised that there is a tentative deployment date of April 30, 2012 for implementation of the 919B Study near-term recommendations.⁵ While Notice 12-10 does not specifically call for comment on the 919B Study recommendations, SIFMA offers the following for FINRA's consideration in advance of any final release or implementation of the near-term recommendations:

Unification of BrokerCheck and IAPD Search Results

The principal reason behind the 919B Study's recommendation for unification of search results between IAPD and BrokerCheck is the concern that investors searching for information about a broker-dealer or registered investment advisor (RIA) (or their representatives) may fail to locate that information because the investor chose the wrong database to search. FINRA indicates in Notice 12-10 that it will implement the unification recommendation on or before a July 2012 deadline.

SIFMA understands and appreciates the respective benefits of broker-dealer and RIA disclosure under the BrokerCheck and IAPD systems. However, unification of search results without clear and unequivocal disclaimers regarding the different roles, regulatory obligations, and reporting requirements for the two systems is likely to cause investor confusion. SIFMA offers the following illustrative example: Unlike Form U4 Question 14I(3), there is no requirement under the Form ADV Part 2 Brochure Supplement to report denied written customer complaints. This could lead an investor, after conducting two searches on two different individuals – one in BrokerCheck and one in IAPD – to form a particular impression that an RIA has never had any written customer complaints while a separate registered representative did have such complaints, even though the RIA actually may have had such complaints, but they were not reportable under the Form ADV.

In addition, the Form ADV (and the ADV Part 2 brochure supplement) requires substantially more information about an RIA's business model, clients, and operations than does a BrokerCheck report. The SEC, FINRA and the industry knows that this reflects the fundamental differences between the obligations imposed by the Securities Exchange Act of 1934 and the Investment Advisors Act of 1940. An investor, however, may not have the same understanding, and may reach a different conclusion about the differences between and RIA and a registered representative. SIFMA

⁵ The status of FINRA's work in this regard was disclosed as part of a FINRA presentation at the 2012 Association of Registration Management Conference on January 24, 2012. Because of the substantial nature of the proposed implementation of even the 919B Study near-term recommendations, SIFMA asks FINRA to consider whether the enactment of those recommendations, or the other contemplated changes to BrokerCheck described in Notice 12-10, requires a full rulemaking process under applicable SEC rules and regulations.

encourages FINRA and the SEC to seek to harmonize BrokerCheck and IAPD with a stated purpose to decrease investor confusion.

The BrokerCheck and IAPD reports each contain links to the other's disclosure system when there is reportable information available for the entity or individual being searched. SIFMA suggests that the hyperlinks also include a reference so that investors know that they are being directed from one distinct disclosure source to another with fundamentally different regulatory obligations. Moreover, the current Frequently Asked Questions (FAQs) available on the BrokerCheck site specifically addresses the question of what an investor should do if a search returns no results, including the possibility that the investor should search IAPD.

For the foregoing reasons, SIFMA believes that the goal of implementing the "unification" near-term recommendation can be achieved through more prominent cross-references at the respective BrokerCheck and IAPD main pages, along with more express disclosures explaining the different business models and regulatory obligations governing the firms and individuals subject to these reports.

Zip Code Search Capability

The 919B Study states that adding the capability to BrokerCheck to perform searches by ZIP code "might be helpful to investors who are seeking to hire a financial services provider by identifying those financial services providers who are located close enough to visit in person, or to compare an individual they have already hired with others providing similar services."⁶

SIFMA believes that the potential for abuse noted in the 919B Study – that a ZIP code search function could "encourage third parties to extract data from BrokerCheck and IAPD for repackaging and sale" is of considerable concern for the reasons expressed above concerning commercial use of BrokerCheck information, and therefore is reason enough to not add such functionality. Second, the wealth of information already readily available through standard internet searches provides the investing public with sufficient information concerning location and services offered and that any ZIP code search function within BrokerCheck would be redundant. Third, ZIP code searching raises concerns that individual residences required to be identified as branches could be disclosed through the search function, resulting in potential privacy issues for registered persons. SIFMA recommends that the addition of ZIP code search functionality be delayed pending consideration of the issues raised herein.

Addition of Educational Content

⁶ See 919B Study at p. 40.

SIFMA fully supports the recommendation in the 919B Study to add educational content, including links and additional definitions of terms, to BrokerCheck reports. The 919B Study notes, correctly, that FINRA offers investors a glossary of key terms used in BrokerCheck reports, and that the addition of certain terms (including descriptions of industry examinations) would be helpful to the investing public.

SIFMA understands that the BrokerCheck Glossary, along with other resource material, such as the Form U4/U5 Explanation of Terms, can be hyperlinked from the BrokerCheck summary and detailed reports. Hyperlinks within these reports to the source definitions will allow investors who are reviewing these reports through a PC or mobile device direct access to terms that they may find confusing, thus enhancing the overall user experience.

Disclosure of Reasons for Termination

FINRA has not specifically called for comment on whether BrokerCheck should include Reasons for Termination as reported on Form U5, Question 3. However, the 919B Study suggests that FINRA continue to “analyze the feasibility and advisability of expanding BrokerCheck to include information currently available in CRD....”⁷ The 919B Study notes that “regulators currently collect more information on registration forms that is currently made public on BrokerCheck” and that information reported on Form U5 concerning the reason for a registered representative’s termination is currently excluded from disclosure under Rule 8312(d).⁸

SIFMA is strongly opposed to the release of information related to the reason(s) for a representative’s termination as reported under Question 3 of Form U5. Apart from references to the SEC’s general belief that access to information “can help investors make better decisions about their selection or evaluation of broker-dealers and investment advisors” the 919B Study does not articulate any rationale for the disclosure of reasons for termination. SIFMA believes that the current public disclosure rule (FINRA Rule 8312), appropriately allows only the disclosure of termination information that meets the disclosure requirements of Form U5 Question 7F.⁹

Previously, in connection with a June 2005 proposed rule changes to IM-8310-2 (now FINRA Rule 8312), the NASD took into account concerns that releasing Form U5

⁷ See 919B Study at p. 42.

⁸ Id.

⁹ Form U5 Question 7F requires disclosure where the individual either voluntarily resigned, was discharged or was permitted to resign after allegations were made that accused the individual of (1) violating investment-related statutes, regulations, rules or industry standards of conduct, (2) fraud or the wrongful taking of property, or (3) a failure to supervise in connection with investment-related statutes, regulations, rules or industry standards or conduct.

information could lead to the potential release of allegedly defamatory materials and that such disclosures may occur while firms and brokers were in the process of litigating wrongful termination claims. At that time, NASD specifically declined to release termination information unless such information was disclosed under Question 7F. SIFMA believes that this approach properly balances the need for public disclosure of certain events with a representative's legitimate privacy interest in connection with employment decisions.

Currently, BrokerCheck releases termination information reported on Form U5, Question 7F, along with a registered representative's employment history. This available information already provides investors with sufficient information to evaluate a representative's employment history. No additional utility is cited in the 919B Study for the inclusion of information reported under Question 3 of Form U5.

Exam Score Information

The 919B Study also suggests that FINRA continue to analyze the advisability of expanding BrokerCheck to include scores on industry qualification exams. SIFMA would also strongly object to the display of exam score information. We do not believe FINRA or the SEC has stated a rationale for the release of such information and do not consider it to be a fair or valid measure investors should use when considering whether to work with a broker given the current "pass/fail" nature of the exam and absence of any practical implications associated with gradations in scoring. We also believe publishing qualification exams scores would be generally inconsistent with other professional industry practices (e.g. State Bar Associations, etc.).

Further Comments on Notice 12-10 Topics

Notice 12-10 asks for specific comments on several topics. Outlined below are SIFMA's views on the subjects raised:

1. Information Displayed

Notice 12-10 details the significant amount of information currently available through BrokerCheck, including registration and employment history, examinations passed, outside business activities, and criminal, regulatory, litigation, complaint and termination disclosure information. Specifically, FINRA seeks comment on the following:

- a. Should changes be made to the categories of CRD system information that are displayed through BrokerCheck or the time frames for which such information is displayed? If so, what information should be added or deleted from BrokerCheck and how long should the information be available in BrokerCheck?**

SIFMA has expressed in past comments related to BrokerCheck disclosures its fundamental concerns with the release of historic information, especially historic customer complaint information.¹⁰ In particular, in connection with the most recent amendments to FINRA Rule 8312, SIFMA proposed the establishment of a BrokerCheck Review Committee to ensure the accuracy of reported information and also recommended that prominent disclosures be made at the beginning of BrokerCheck entries for Historic Complaints that have not been adjudicated or resolved. FINRA declined to adopt a Review Committee, finding that the current dispute process is “very straightforward” and that the establishment of such a committee to review disputes would “unnecessarily increase the amount of time needed to process disputes.”¹¹

While SIFMA recognizes and accepts FINRA’s determinations under Rule 8312 to modify and expand the amount of information available through BrokerCheck,¹² it offers the following suggested changes to the manner in which such information is displayed in order to enhance the overall fairness of the disclosures provided and make the displayed information easier to understand for investors.

Recommendation: Eliminate Multiple Reporting of the Same Disclosure Events

Currently, single disclosure events are reported separately for each reporting entity. For example, disclosure information is located in the “Disclosure Event Details” section of the “Detailed” BrokerCheck Report. In many cases, for particular categories of disclosures (e.g. settled customer disputes, awards, actions dismissed or withdrawn) both the disclosure by the member firm and the typically concurrent report by the registered representative for a single, and same, disclosure event are separately listed under “Disclosure 1 of ___” in the sub-header. In nearly all cases, each report is substantially the same, but several categories of basic information are repeated twice, separated only by a dotted line. Because of the Detailed Reports’ format (i.e., landscape), the dual reports for even the simplest single disclosure event can take up as much as two pages of a report.

SIFMA believes that the repetition of the same basic disclosure information two or more times¹³ for a single disclosure event is redundant, unnecessarily lengthens the BrokerCheck Detailed Report, and can lead to investor confusion regarding the broker or firm’s disclosure history.

¹⁰ See SIFMA Small Firm’s Committee Letter to Elizabeth Murphy, Securities and Exchange Commission, dated May 13, 2010, commenting on SEC Release No 34-61927 (amendments to FINRA Rule 8312); and SIA Letter to Nancy M. Morris, Securities and Exchange Commission, dated July 20, 2006, commenting on Release No 34-54053 (proposed amendments to NASD Interpretive Material 8310-2).

¹¹ See FINRA Letter to Elizabeth Murphy, Securities and Exchange Commission, dated June 21, 2010, at p. 7.

¹² See Regulatory Notice 10-34.

¹³ Or sometimes three times when a regulator files a Form U6.

SIFMA recommends that single disclosure events be reported only once in the Detailed Report, with any material differences between or among a firm, regulator or registered representative's report be detailed within that single disclosure event report. For example, where a description of the allegations of a customer complaint differ materially between a firm and the individual's report, those descriptions can be set forth under sub-headings that identify "Allegations as Reported by Firm" and "Allegations as Reported by Broker." The majority of the other reported information (e.g., employing firm, product type, alleged damages, docket number, whether the matter is pending) does not need to be repeated in the Detailed Report.

Recommendation: Summarize Information on Denied Customer Complaints

Reported customer complaints under Questions 14I(3) of the Form U4 or 7E(3) of the Form U5 remain disclosed under amended Rule 8312 until a registered representative is out of the industry for more than ten years. Even if those complaints were investigated by the firm and found to be wholly without merit and denied, the matters remain disclosed under current rules. For example, under current rules, if a broker receives two meritless customer complaints, which result in denials by the firm and no follow-up by the customer, because of the dual reporting per disclosure event described above, a broker could have four or more pages of information on these denied customer complaints in his or her BrokerCheck Detailed Report.

SIFMA believes that as a matter of fairness FINRA should remove from BrokerCheck all denied or withdrawn Historic Complaints that have not resulted in any subsequent action after six (6) years from the date the complaint was received. FINRA Code of Arbitration Rule 12206 (the "Eligibility Rule") precludes filing arbitration claims where more than six years have elapsed from the "occurrence or event giving rise to the claim." For customer complaints that have been denied without further action (as opposed to settled or similarly resolved complaints or arbitration or litigation matters) it serves no regulatory purpose to continue to disclose information related to complaints that have been denied by the respective firms, when those matters would be ineligible for adjudication under the Eligibility Rule.

SIFMA recommends that, in addition to streamlining the reports on a per-disclosure event basis as described above, disclosures related to denied or withdrawn written customer complaints should be reported in summary fashion with only the most pertinent information displayed. Currently, the "closed-no-action/withdrawn/dismissed/denied" section for customer complaint reports in a detailed BrokerCheck report sets out fifteen (15) separate categories of information, including the allegations, the product type, alleged damages and other information. In addition to the fact that a single denied customer complaint gets reported twice (once by the firm and once by the broker) creating the appearance of multiple events, there is no need to include any information beyond (i) the description of the allegations, (ii) the damages claimed, (iii) the date received, and (iv) the current status (including the date of the last status update). There is no need, for example, to clutter the BrokerCheck

report with whether an historic, denied complaint is oral or written because denied oral complaints are not reportable (only oral complaints that settle for an amount over the thresholds in the Form U4 are disclosed). Similarly, a “product type” disclosure is redundant in the face of a description of the allegations. Also, the denied complaints section of the Detailed Report asks whether the complaint is pending, which of course would be “no” if it is reported in this section. Finally, the “closed-no action” section of the Detailed Report does not need to be cluttered up by blank spaces in the “settlement amount” and “individual contribution amount” because, by definition, denied or closed claims have not been settled.

Providing information related to denied or withdrawn customer complaints advances the goal of providing the information required by FINRA rules, but that information should be presented in a way that provides essential information concisely and that appropriately emphasizes the fact that the matters were denied or withdrawn without further action by the customer. Presenting factual information related to denied or withdrawn Historic Complaints in this fashion gives the disclosures appropriate weight in the overall context of the report and would be a fairer way to report the required information.

Recommendation – Display Only Information Related To Registered Persons With Direct Client Contact Responsibilities

BrokerCheck is designed as a tool for investors to research the professional background of FINRA registered brokers and should be the first resource used to research a particular broker or firm. BrokerCheck is generally understood to be used by retail investors to look up information on a current or prospective broker who they may conduct business with in a sales or service capacity. However, BrokerCheck information is available for *all* registered individuals of a member firm irrespective of function. As a result, there are many thousands of individuals in BrokerCheck who are required or permitted to be registered but who do not ever deal directly with the public and would not be known to the investing public in a professional capacity. This includes individuals who are permitted to be registered as a result of duties related to legal, compliance, back-office operations, or internal audit activities. It also includes individuals who are required to be registered due to their role in approving or supervising certain non-customer-facing activities such as broker-dealer operations and finance functions but who would never deal directly with an investor.¹⁴

SIFMA does not understand what benefit is gained to a retail investor seeking information about a prospective broker to also have at his or her disposal registration information, including employment history, outside business activities, and financial disclosures for non-customer facing individuals. The registration of these individuals

¹⁴ SIFMA is not recommending at this time that information related to control persons or those acting in principal capacities, customer-facing or not, be excluded from public disclosure through BrokerCheck.

may promote particular regulatory purposes, but certainly not for retail investors deciding on selecting a member firm or registered representative.

While there is no current indication on a broker's Form U4 (though a "checkbox" or otherwise) as to whether he or she has direct contact with customers in the conduct of the member's securities business, member firms do keep track of this information for regulatory purposes, including delivery of Firm Element continuing education. If the Form U4 is not amended in connection with overall enhancements to BrokerCheck, another alternative would be for FINRA to allow firms the option of preventing public disclosure of BrokerCheck information for individuals who do not have customer contact, such as by means of a "flag" in BrokerCheck. SIFMA welcomes the opportunity to work with FINRA to establish effective means to implement appropriate modifications to CRD to identify permissive or other registrants whose information need not be displayed through BrokerCheck.

Recommendation: Correct Inaccurate Reference to "Summary" in Detailed Reports where information included is a Broker Comment

When a broker elects to comment on a pending or settled matter under Question 24 of the Customer Complaint/Arbitration/Civil Litigation DRP, that information is referenced in the Detailed Report as a "Summary." To avoid investor confusion between this optional broker comment and the description of the allegations as reported by the firm, the "Summary" section sub-heading should be replaced with "Broker Comment."

b. Would it be beneficial for investors if FINRA included links to other websites (e.g., websites maintained by financial industry regulators or organizations that provide investor education) in BrokerCheck reports? If so, what types of links would be most helpful?

SIFMA supports FINRA's goal of increasing investor understanding of the financial markets. However, linking to sources outside FINRA or other Self-Regulatory Organizations ("SROs") raises concerns about the accuracy and impartiality of information provided by parties not subject to SEC, FINRA, or other SRO oversight.¹⁵ SIFMA recommends limiting any additional educational links to either: (i) its own investor education webpages and materials, or (ii) similar sites and materials maintained by the SEC or registered SROs.

¹⁵ Excepted from SIFMA's concerns would be links to the website maintained by the North American Securities Administrators Association ("NASAA"), which, while not subject to SRO oversight, has played a longstanding and valued role in promoting investor protection.

c. Should a broker’s educational background and/or professional designations (e.g., Chartered Financial Consultant, Chartered Financial Analyst) be available in BrokerCheck?

The Form U4 does not require the disclosure of educational information of an associated person. By contrast, Part 2B of the Form ADV requires disclosure of formal education after high school. Therefore, BrokerCheck and IAPD are markedly different with respect to educational information with respect to associated persons who are not RIAs. SIFMA reserves comment on any such changes to the Uniform Forms until such time as they are proposed, but believes that an associated person’s professional licenses should be a sufficient indicator of the basic qualifications necessary for a registered representative.

Furthermore, any requirement to disclose additional information on the Form U4 will be costly and burdensome for the member firms to implement. If education is added to the Form U4, member firms will have to validate, and update as necessary, this component for all of its non-RIA associated persons, which could be a quite substantial number. Firms will have to build supervisory systems, and dedicate resources, to the task of validating educational background, which is compounded by the fact that this information is not already publicly available, and the firms need to rely on the multitudes of private and public educational institutions that their associated persons attended. These very real costs must be weighed against any incremental utility offered by requiring disclosure of educational information about non-RIA associated persons.

Regarding disclosure of professional designations, SIFMA believes that disclosure on BrokerCheck reports of professional designations (as such are disclosed under Question 8 of Form U4) can be useful to investors. However, such disclosures should be limited to those identified under Question 8 of the Form U4. Expansion beyond those designations already listed in the Form U4 would also impose an undue burden on firms who would have to validate and adjust internal systems to capture such information. SIFMA recommends that adding such information to the BrokerCheck reports should be accompanied by links to FINRA’s explanations of what such professional designations entail.¹⁶

d. What terms or phrases used in BrokerCheck reports are most difficult for public users to understand? What educational or other material should FINRA provide to help public users?

We refer the Staff to our comments above regarding providing additional educational materials as part of the 919B Study’s near-term recommendations.

¹⁶ FINRA’s BrokerCheck homepage provides a link to a page entitled “Understanding Professional Designations.” See, <http://apps.finra.org/DataDirectory/1/prodesignations.aspx>. SIFMA note that, for advisors, the Part 2B brochure permits a supervised person to disclose professional designations, but only if accompanied by a “sufficient explanation of the minimum qualifications required for each designation to allow clients to understand the value of the designation.”

2. Report Design, Format and Content

- a. What changes, if any, should be made to the design, format or content of the BrokerCheck summary report and/or the full detailed report? Would it be helpful to include in the summary report a concise summary of a broker's or brokerage firm's disclosure events (for example, a matrix setting forth the number and types of disclosure events), if any? If so, what would be the best format for the summary? What information should it contain?**

Please see above concerning SIFMA's suggestions related to the consolidation of event disclosure reporting, and the use of summary tables for denied and/or withdrawn Historic Customer Complaint information.

3. Investor Awareness of BrokerCheck

- a. How can FINRA best increase investor awareness of BrokerCheck?**

SIFMA notes that multiple sources, including internet searches, FINRA's homepage, and disclosures provided by Rule 2267, provide multiple avenues to alert investors to the availability and uses of BrokerCheck. FINRA should continue to reiterate the availability of the system through its multiple channels of investor education that are already in place.

- b. Should FINRA make basic BrokerCheck information (e.g., registration status, employing firm, and employment location) available in such a way that would enable an investor to enter a broker's name in an Internet search engine, see the basic information in the search results, and be directed to BrokerCheck for more detailed information?**

Allowing internet search engines to return information contained within BrokerCheck raises issues identified by the Staff in Notice 12-10 related to data-mining and other automated collections of BrokerCheck information for commercial purposes (i.e. through the use of "screen-scrapers" and similar programs). Currently, access to BrokerCheck is restricted by the use of required field entries known as CAPTCHAs.¹⁷ This tool, which, through the use of distorted or "squiggled" text, prevents access to BrokerCheck by non-human "bots" or programs, would have to be substantially altered or modified to permit search engines to collect and display BrokerCheck data. The potential disabling of such protections from computerized data collection programs is inconsistent with its other expressed concerns about improper data mining. Therefore, SIFMA would recommend considerable additional study and consideration before implementing the suggested changes to BrokerCheck.

Additional Issues for FINRA's Consideration

¹⁷ CAPTCHA refers to the "squiggled" text boxes described as a "Completely Automated Public Turing test to tell Computers and Humans Apart" pioneered at Carnegie Mellon University in 2000.

1. Prominence of Disclaimers/Explanations

SIFMA encourages FINRA to continue to evaluate the efficacy of the BrokerCheck reports disclosures, especially as those disclosures concern complaints, litigations, and regulatory matters that have not been adjudicated.

In response to previous comments related to the expansion of BrokerCheck disclosures, FINRA has noted that the BrokerCheck reports contain “clarifying language in various locations regarding the fact that certain disclosures may involve allegations that have not been resolved or proven.”¹⁸ SIFMA agrees that such disclosures can provide essential information that place disclosed events in their proper context, but only so long as those disclosures are prominent and clear.

Notice 12-10 references FINRA’s use of a market research consultant to obtain opinions on the BrokerCheck program. To the extent not addressed by the market research conducted,¹⁹ it would be helpful to review investor recognition, comprehension, and retention of disclaimer or explanatory information to determine how effectively such information is conveyed in the BrokerCheck reports.

2. Display of Private Residence Information

SIFMA member firms continue to notice anomalies in the disclosure of private residence information in BrokerCheck in certain limited circumstances. In some cases, firms are required to register private residences as branches under Form BR for representatives who are based in a traditional branch office in one location, but spend more than thirty days of the year in another location. SIFMA members have observed that the private residence information is often disclosed despite the indication on Forms BR or U4 of the “Private Residence” checkbox.

SIFMA understands the purpose behind the “Private Residence” checkbox is to alert FINRA that certain “branches” required to be disclosed under Form BR are private residences and that that information should not be disclosed if supervisory or principal branch location information for that individual is otherwise available. SIFMA requests that, as part of this review of BrokerCheck’s display of registration information, the Staff identify ways to prevent the automated collection and display through BrokerCheck of Form BR data containing branch locations that are identified as “private residences.” Any addresses identified as “private residences” in the Uniform Forms should be subject the protections afforded by FINRA Rule 8312(d) concerning the release of a registrant’s private information.

¹⁸ FINRA Letter to Elizabeth Murphy, *supra*, note 4.

¹⁹ The BrokerCheck Survey linked to on FINRA’s website does not contain any questions about possible investor concerns with the adequacy or clarity of disclaimers related to the information provided in the BrokerCheck reports. The survey is hosted by a third-party and clicking on the link to “BrokerCheck Feedback” from the “Terms and Conditions Page takes a user to <http://www.zoomerang.com/Survey/WEB224TZVUP7UN>.

3. Enhanced Aggregate Reporting of Firm Standing and Eligibility

Fund distributors use BrokerCheck information to confirm that unaffiliated third party intermediaries who sell their funds are in good standing with FINRA and are therefore eligible to receive compensation (e.g. continuing commission, etc.). This appears to be an acceptable use of BrokerCheck under its terms and conditions (“...to assist your organization in determining whether to conduct or continue to conduct securities or commodities business...”) and is consistent with just and equitable principles of trade. However, for larger fund distributors this review process is a labor intensive effort that can even result in being blocked from BrokerCheck due to “excessive use” controls. SIFMA requests that FINRA make information concerning the standing of firms more readily available on an aggregate basis in order to promote more timely and accurate reviews of this nature. For example, FINRA could enhance reporting functionality directly within BrokerCheck to list all firms over the prior month or quarter that terminated registration with FINRA or which are otherwise ineligible to receive compensation due to disciplinary action, etc. This enhanced reporting functionality will help prevent unintended improper payments and will serve to protect investors and the public interest.

SIFMA appreciates the opportunity to comment on the issues raised by Regulatory Notice 12-10 regarding BrokerCheck. If you need further information, or if you have any questions regarding these comments, please contact me at (202) 962-7373.

Sincerely,



Ira D. Hammerman
Senior Managing Director, General Counsel and Secretary, SIFMA

cc: Mr. Marc Menchel, Executive Vice President and General Counsel for
Regulation, FINRA