



August 3, 2015

By Email (rule-comments@sec.gov)

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: SR-FINRA-2015-022
Proposed Rule Change to Amend FINRA Rule 2210
to Require Links to BrokerCheck on Member Firm Websites

Dear Mr. Fields:

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). The proposed rule change may be found at File Number SR-FINRA-2015-022, and was published in the Federal Register on July 13, 2015. 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, 2013.³ Among the primary concerns raised by SIFMA in its February 2013 letter were: (i) the proposal’s requirement to place

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).

³ SIFMA Letter to Elizabeth Murphy (Feb. 15, 2013) available [here](#).

BrokerCheck links 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. To consider and address the concerns raised, FINRA withdrew the initial proposal to amend Rule 2267.

The April 2014 Proposed Revision to Rule 2210

In response to the concerns raised regarding the initial proposal, in April 2014, FINRA published Regulatory Notice 14-19 (the “April 2014 Proposal”) requesting comments on a revised proposal to amend Rule 2210 (Communications with the Public). The April 2014 Proposal would have required 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 April 2014 Proposal also contained conditions for references and hyperlinks appearing in online retail communications on websites that are either: (i) 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 April 2014 Proposal would have also excepted 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 submitted comments on the April 2014 Proposal on June 16, 2014.⁴ In addition to several issues, SIFMA maintained that imposing mandatory content and linking requirements on third-party sites not controlled by member firms is unnecessary and not feasible in most cases. For example, we noted that the proposal required that BrokerCheck links be included on third-party sites not controlled by the member, and that such a requirement would be problematic, if not impossible, to achieve compliance.

The Current Proposal to Amend Rule 2210

The proposed amendments to Rule 2210 as submitted to the Commission appear to address many of the significant concerns raised by SIFMA in its prior comments. SIFMA particularly appreciates FINRA’s recognition of the inherent difficulties of imposing mandatory content requirements on social media or other websites not maintained or controlled by the member firm. We appreciate, for example, FINRA’s confirmation that third-party sites not maintained by a member firm (including, for example, LinkedIn, Facebook and Twitter pages, YouTube channels, etc.) are not subject to the rule’s requirements.

SIFMA believes that the effective implementation of the proposed amendments to Rule 2210 by member firms would be enhanced by the promulgation by FINRA of a Regulatory Notice containing appropriate interpretive guidance or responses to frequently asked questions. Such guidance should be accompanied by a succinct reiteration of what information is and is not

⁴ SIFMA Letter to Marcia E. Asquith (June 16, 2014) available [here](#).

disclosed through BrokerCheck (based on FINRA Rule 8312) that would be helpful to firms in responding to customer questions about BrokerCheck and the information available therein.

In particular, guidance in connection with the interpretation of the term “readily apparent” would assist firms in connection with the effective implementation of the rule. FINRA, in its responses to comments, indicates that “members have flexibility on how best to link to BrokerCheck, as long as the reference and link to BrokerCheck are readily apparent.” Presently, Rule 2210(d)(3)(A) requires that firms “prominently disclose” the name of the member firm on retail communications and correspondence. Subsection (e) of Rule 2210 states that, if members chose to indicate that they are FINRA members on their website, that they must “provide a hyperlink to FINRA’s internet home page ... in close proximity to the member’s indication of FINRA membership.” Thus, if the proposed rule is implemented as currently drafted, there would be three different descriptors for the manner in which certain information must be disclosed.

SIFMA believes that rather than attempting to specifically delineate, through the language of the Rule itself, the parameters of what would constitute a “readily apparent” reference, FINRA should provide additional guidance to assist firms as they modify their websites to meet the new requirements. For example, FINRA should confirm that the placement of the link to BrokerCheck within a website’s “footer” in a manner similar to that for the hyperlink to FINRA’s home page would constitute a “readily apparent” reference that satisfies the requirements of proposed Rule 2210(d)(8). Such guidance would be especially useful as the “footer” of many firm websites is an element of the overall webpage design that remains relatively static and would therefore be easier to implement and maintain across a firm’s main homepage as well as any additional websites containing a registered representative’s profile information. SIFMA also suggests that FINRA indicate that, for those firms who chose to provide the required hyperlink through an icon or “button” similar to that used by FINRA, that such use would be a permissible use of any trademark or related intellectual property owned by FINRA. Similarly, FINRA should confirm that language such as “check the background of an investment professional” as used by FINRA in its references to BrokerCheck would satisfy the Rule’s “reference” requirement.

Further, while the proposing release partially addresses mobile applications,⁵ guidance from FINRA regarding the placement of the required reference and hyperlink on websites that are “optimized” for mobile devices would be helpful. For example, many firms will format and display content slightly differently when their homepages are viewed using either a desktop computer or a mobile device. Additionally, for mobile devices, as with desktop computers, content can appear differently based upon a user’s operating system (*e.g.*, Android or iOS) and browser choice (*e.g.*, Internet Explorer, Safari, Firefox, or Chrome).

Other interpretive guidance would also be useful. In some cases, an independent contractor registered representative (“ICRR”) may develop and maintain his or her own internet presence or website. SIFMA believes that, in order to avoid potential confusion concerning whether or not a particular website is a “member’s website”, appropriate interpretive guidance should be issued to

⁵ The proposal makes clear that mobile applications (as opposed to firm websites viewed through a mobile devices internet browser) that simply provide a customer with access to their own account information are not “member websites” covered by the Rule.

provide clarification about the application of the rule to websites maintained by ICRRs. Similarly, FINRA should (i) provide clarification regarding how the rule may apply to the websites of non-member firms who are parties to a networking or other similar arrangement with a member firm, and (ii) confirm that for multi-faceted financial institutions, the link should be placed on the homepage⁶ of the broker-dealer member firm as opposed to the enterprise-level homepage.

Appropriate guidance could also confirm a limited “safe harbor” for links to BrokerCheck that are “broken” as a result of script or programming issues that would permit reasonable times to respond to any link maintenance issues.

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,

/s/

Melissa MacGregor
Managing Director and Associate General Counsel

cc: Mark D. Knoll, Bressler, Amery & Ross (by electronic mail)

⁶ We also would request FINRA’s clarification that the term “initial webpage that the member intends to be viewed by retail investors” applies only to the main, or primary homepage of a member firm, and not to any “micro-sites” or other sites maintained by member firms.