



February 15, 2013

By Email (rule-comments@sec.gov)

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: SR-FINRA-2013-002 Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection)

Dear Ms. Murphy:

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 2267. The proposed rule change would require FINRA member firms to “include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA,” on firm “websites, social media pages and any comparable Internet presence[.]” The proposed amendment would require the same descriptions and links to be included on websites, social media pages and any comparable Internet presence “relating to a member’s investment banking or securities business maintained by or on behalf of any person associated with a member.”

Presently, FINRA Rule 2267(a) requires member firms to provide to their customers annually (i) the BrokerCheck Hotline Number; (ii) FINRA’s website address (where the homepage displays a prominent link to BrokerCheck); and (iii) “a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck.” The proposed amendment to Rule 2267 is additive and does not relieve or modify member firms’ existing obligations under Rule 2267(a).

While SIFMA continues to support FINRA’s efforts to evaluate and improve the BrokerCheck public disclosure system, the proposal, filed without prior notice or opportunity to comment directly to FINRA, should not be approved by the SEC in its present form. Among other significant concerns:

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.

- The proposal’s requirement to place links to BrokerCheck on social media sites and other “Internet presence(s)” whose appearance and functionality are not controlled by member firms presents technical and control issues that may render compliance with the rule as amended impossible and could severely restrict the use of social media networks by member firms;
- FINRA’s assessment of the costs and burdens of complying with the proposed amendment fails to address the potentially significant costs of requiring “direct” links to BrokerCheck, especially the costs of implementing and maintaining direct links from webpages maintained for individual registered representatives, broker teams, or branches; and
- FINRA’s proposal to require direct links to summary BrokerCheck information about firms and their registered representatives fails to contain protections against automated data mining.

Notwithstanding these objections to the current proposal, SIFMA appreciates the potential benefits of increased access to BrokerCheck and stands ready to work with FINRA to develop a workable and efficient means of achieving that goal.

SIFMA’s Prior Comments Related to BrokerCheck

In Regulatory Notice 12-10 (February 2012) (“Notice 12-10”), FINRA sought comments on ways to “facilitate and increase investor use of BrokerCheck information.” Several of the concepts offered for comment in Notice 12-10 arose from a study by the SEC’s Office of Investor Education and Advocacy pursuant to Section 919B of the Dodd-Frank Act. SIFMA provided detailed comments to Notice 12-10 on April 5, 2012.²

As stated in the April 2012 letter, 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.” Among the significant concerns detailed in the response to Notice 12-10, SIFMA strongly opposed the proposed commercial use of BrokerCheck information.³ SIFMA continues to believe that the provision of BrokerCheck information to unregistered for-profit entities does not advance FINRA’s mission of advancing investor protection and risks the misuse of this information by entities that are not subject to FINRA’s oversight and enforcement powers.

In further response to Notice 12-10, SIFMA stated that any assessment by FINRA of revisions to BrokerCheck should, in the interest of fairness and clarity, review the content of and manner in which BrokerCheck information is displayed. For example, as SIFMA noted in its comments to Notice 12-10:

² A copy of SIFMA’s Comment Letter can be found at pages 96-110 of SR-FINRA-2013-002.

³ FINRA recently proposed amendments to Rule 8312, see SR-FINRA-2013-007, that would have permitted the commercial sale of bulk BrokerCheck information. SIFMA understands that SR-FINRA-2013-007 has been returned by the SEC.

- BrokerCheck reports the same disclosure events multiple times within a single report. FINRA should eliminate this practice in order to remedy the prejudicial impact of multiple reports of the same disclosure event;
- BrokerCheck continues to display information related to denied customer complaints. The display of such information serves little useful regulatory purpose and the manner in which such denied customer complaints are displayed is nearly identical in detail and prominence as other, more significant disclosure items such as regulatory actions or adverse judgments. If information related to denied customer complaints must be disclosed, SIFMA continues to believe that such disclosures should be made in summary form; and
- BrokerCheck reports should display only information related to registered persons with direct client contact responsibilities. As stated in its response to Notice 12-10, SIFMA believes that no regulatory purpose is served by the public display of information related to registered representatives, such as registered operations professionals, who do not interact with retail investors.

SIFMA's response to Notice 12-10 contains several other observations and recommendations that are based on its members' first-hand experience with FINRA's reporting and disclosure regime. SIFMA remains hopeful that FINRA will incorporate these recommendations and observations into its overall approach to public disclosure and the BrokerCheck system.

SIFMA's Specific Comments to the Proposed Amendment to Rule 2267

Keeping SIFMA's comments on Notice 12-10 in mind, in the specific context of the proposed amendment to Rule 2267, increasing the number of internet pathways to BrokerCheck must be accompanied by meaningful revisions to both BrokerCheck's content, and the manner in which BrokerCheck information is displayed. Expanding access to BrokerCheck without addressing the fairness, clarity and pertinence of the information provided risks the increased dissemination of information that could be counterproductive to FINRA's goal of providing information to investors to help them make informed choices about individuals and firms with whom they conduct business.

SIFMA supports that aspect of the proposal that would require the inclusion of a description of and general link to BrokerCheck on a firm's proprietary website. FINRA indicates in the proposal that it will provide firms with guidance regarding the prominence and placement of the BrokerCheck description and link in a Regulatory Notice announcing the effective date of the proposed rule change. SIFMA expects that FINRA's guidance with respect to prominence and placement of the mandated links will take into account the significant investment that many firms have made in the design and content of their proprietary websites. Given the substantial resources that firms have devoted to their proprietary websites, and because member firms are most familiar with the technical aspects of those websites, SIFMA's member firms are willing to work collaboratively

with FINRA on the issues related to the “prominence and placement” of any mandated links and look forward to the opportunity to do so.⁴

The Proposed Rule Should Not Require Links to BrokerCheck from Social Media Pages Not Controlled by Member Firms

SIFMA believes that requiring the placement of a description and link to BrokerCheck on “social media pages and any comparable Internet presence” presents significant issues. While the terms “social media pages” and “comparable Internet presence” are not defined in the rule proposal, FINRA has provided guidance on the use of “social media” in both Regulatory Notice 10-06 (January 2010) and Regulatory Notice 11-39 (August 2011). This guidance primarily addresses supervision and communications rules applicable to communications through social media websites such as Facebook, Twitter and LinkedIn.

In contrast to the guidance related to communications through social media, the proposed amendments to Rule 2267 would, in order to enable the mandated link to BrokerCheck, require technical modifications of the templates or format of social media pages utilized by member firms. For the most prevalent social media sites, the proposed rule would be impossible to comply with because member firms do not fully control the manner in which information is displayed on those sites.

For example, Twitter provides a form template for the user’s “profile” which allows the use of a photo or other graphic, a “header” or title of the Twitter account, the user’s name, location, website and biography (limited to 160 characters). Twitter users can choose from a selection of background formats or can custom-design their own. However, the backgrounds are static and do not permit embedded links. Likewise, Facebook provides additional options to customize a user’s “page” but the basic “template” or manner in which content can be displayed is controlled exclusively by Facebook. LinkedIn permits users to edit their profile but does not appear to allow for the permanent inclusion of links to external websites other than the user’s primary website.

Because of these content and display issues, the proposed mandate that member firms “shall include” a description and link to BrokerCheck on social media pages that firms do not own or control, and that may not provide the functionality to include such links, places firms in the untenable position of either failing to comply with the rule or having to forego the use of these prominent and growing channels of communication.

However, most prominent social media websites permit firms to link from their “profile” page to the firm’s proprietary “homepage” or primary internet presence. As a result, because the proposed amendments to Rule 2267 requires the inclusion of the description and link to BrokerCheck to appear on a firm’s proprietary website, even if the social media provider does not permit the separate inclusion of the description and link, the link to BrokerCheck will be, in most cases, just

⁴ A possible model for the collaborative consideration and implementation of any proposed rules related to BrokerCheck would be the working groups established in connection with NASD’s decision in 1997-98 to make registration information available over the Internet for the first time.

one click away.⁵ FINRA should therefore amend proposed Rule 2267 to provide that a description of and link to BrokerCheck is not required to be placed on social media sites. So long as the primary, or profile page of the member's social media site contains a link to the member firm's proprietary website which, in turn, contains the required description and link, FINRA's goal of increased access to BrokerCheck is met. At the same time, the recommended revision to FINRA's proposal avoids a result that jeopardizes the continued use by member firms of these communication channels.

Any Required Links Should Be to BrokerCheck's Main Page and Should Not Directly Link to Summary Pages

FINRA indicates in the proposal that it will provide members with a text description and web address format for the link to BrokerCheck. FINRA states that the web address provided will include a firm's or individual's CRD number and would link directly to the search results screen for that subject firm or individual. SIFMA is opposed to direct links to BrokerCheck for three reasons: First, SIFMA does not believe that FINRA has adequately addressed the costs associated with implementing and maintaining direct links. Second, FINRA has also not addressed potential data mining issues associated with direct links. And, third, direct links bypass the BrokerCheck homepage, which contains important information about the scope and contents of BrokerCheck.

FINRA Must Complete an Adequate Cost Benefit Analysis, Especially as the Proposed Rule Would Effect Websites Maintained for Individuals and Broker Teams

As noted above, technical limitations may make the placement of even a generic link to BrokerCheck on many social media sites impossible. A requirement for a direct link to BrokerCheck, even where feasible at a social media site, could require the personalization of hundreds or thousands of social media sites maintained on behalf of individual registered persons. Likewise, even for proprietary firm websites maintained for registered representatives, the inclusion of direct links on those websites presents logistical and cost issues that are not adequately addressed in the proposal.

Even if FINRA were to provide the template language for the proposed direct links, at the associated person level, firms would be required to expend substantial resources verifying and updating those links as appropriate. The difficulties associated with direct links become even more pronounced when the requirements are applied to websites maintained by the firm at either the branch level, or for particular broker teams. For example, FINRA has not addressed how the concept of direct links will be applied to pages maintained by firms for broker teams. If a hypothetical broker team webpage lists six registered representatives on the team's homepage, will the rule require that six separate, direct links to BrokerCheck be placed on the team's homepage? Will the links be required only at separate "bio" pages? What if the firm does not break out separate pages for each member of a team? Because the rule, as proposed, could impact

⁵ As noted below, direct links to BrokerCheck summary pages of individuals presents additional technical issues, especially where broker teams are involved. For example, if direct links are required and are ultimately permitted to be placed on a broker team member's biography page as opposed to the team homepage (where multiple links would be cumbersome and inappropriate), then the link to BrokerCheck could be two or three clicks away.

potentially thousands of firm-maintained sites for their registered representatives, these threshold questions must be addressed by FINRA before the rule is approved by the SEC.

Furthermore, the inclusion of a unique URL to each associated person's individual website may necessitate new system requirements for a firm's content management system in order to enable this process to be automated. If this process cannot be automated, manually customizing thousands of individual associated person websites entails significant costs. Generally, the more integrated a technology solution needs to be, the higher the attendant costs. Additional details are needed from FINRA to better understand how the URL address information will be obtained on an ongoing basis and the timeliness of such information being available. Absent such details, SIFMA does not believe that FINRA's Statement on Burden on Competition has adequately addresses the full costs of the proposal.

BrokerCheck's main search page currently provides a simple means of entering names and searching for registered representatives or member firms. In fact, FINRA has recently updated the search functionality at the BrokerCheck homepage to provide for a self-populating menu of names upon the entry of a few characters of a person's first or last name. Because the basic functionality to lookup information through BrokerCheck is already very user-friendly, SIFMA believes that the costs of compliance with the proposal's requirements for direct links – costs which include the implementation, verification, monitoring, and revision of those links – outweighs any incremental ease of use derived from direct links.

Because the proposed changes to Rule 2267 were not previously noticed to member firms, FINRA's cost/benefit analysis related to the implementation of the proposed rule is guesswork and cannot meet the rigorous standard for assessment of the economic costs of proposed SRO rulemaking. Indeed, FINRA concedes that it has not obtained any independent estimates relating to the costs of adding a link to a website. (SR-FINRA-2013-002, at p.9) SIFMA believes that the true costs associated with the requirements of the proposed rule, especially those related to any requirement to implement direct links, have not been addressed. Therefore, the SEC cannot approve the rule as presented. As stated above, SIFMA welcomes the opportunity to work with FINRA to assess costs of compliance with the proposed rule and thereafter collaborate on a workable solution to meet FINRA's goal of expanded access to BrokerCheck.

The Proposal to Include Direct Links Raises Data Mining Issues

The proposed amendment to Rule 2267 also raises troubling issues related to potential data mining. FINRA currently employs technologies to prevent automated data mining of BrokerCheck information. For example, users are required to enter characters that are not decipherable by a computer in order to access detailed information on a firm or its registered representatives. While users will still be required to enter specific characters before getting access to detailed information, the direct link to summary information mandated by the proposal would allow internet "screen scrapers" or automated programs to follow all links to BrokerCheck and compile data on registered persons, including their current employers, registration status, address and CRD numbers. A compilation of this data would otherwise not be available without physically entering the name of a firm or registered person.

SIFMA has, in response to Notice 12-10 and as noted above in connection with the proposed revision to Rule 8312, expressed serious concerns about the commercial sale of BrokerCheck information to unregulated third parties. FINRA should be equally concerned that BrokerCheck information, even information seemingly as innocuous as a person's name, employing firm and CRD number, could be collected by unregulated entities and thereafter used for any number of commercial purposes. Absent sufficient protections against the improper use of information obtainable through a direct link, the SEC should decline to approve the amendment to Rule 2267 as proposed.

Direct Links Bypass Disclosures on BrokerCheck's Homepage

In addition to the concerns raised above, SIFMA notes that direct links to summary information would bypass BrokerCheck's homepage. The homepage contains a general description of BrokerCheck and informs users of the basic distinctions between information derived from CRD and that related to investment advisors derived from IAPD. Direct links would bypass this introductory information. Direct links should therefore not be required until FINRA proposes a "landing" page for those direct links that contains all the information about BrokerCheck, CRD and IAPD, that it currently includes on the BrokerCheck homepage.

Applicability of the Proposed Rule to "Internet Presences" Other than Social Media Networks

Beyond the social media networks described above, SIFMA recognizes that the Internet provides an array of possible interactions between firms and the investing public. Similarly to its concerns raised above, a requirement to include a link and description to BrokerCheck on "comparable Internet presence(s)" that are not within the control of the member firm presents issues that must be addressed prior to the SEC's approval. For example, many firms and many registered representatives make their basic contact information available through assorted Internet directories. These directories, similar to social media sites, display information in a manner that is not necessarily subject to the control of the member firm. Thus, these "comparable Internet presences" present the same implementation and cost/benefit issues outlined above.

SIFMA reiterates its general support for the proposed amendment to Rule 2267 as it applies to the placement of a general link to BrokerCheck on proprietary websites. However, for the reasons expressed above, SIFMA cannot support the proposal in its current form. SIFMA thanks the SEC staff for its willingness to consider the issues raised in this letter. We look forward to our next opportunity to comment on issues related to FINRA's BrokerCheck public disclosure program.

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: Joseph Price, FINRA (by electronic mail)
Kevin Zambrowicz, Managing Director and
Associate General Counsel, SIFMA (by electronic mail)
Mark D. Knoll, Esq. (by electronic mail)