

VIA ELECTRONIC MAIL

February 15, 2013

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Ms. Murphy:

On January 7, 2013, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission (SEC) a proposed rule change amending FINRA Rule 2267 (Proposed Rule Change). The Rule Change would require that member firms include a “prominent description” and link to FINRA BrokerCheck¹ on their Web sites, social media pages, and any “comparable Internet presence[s].” This new requirement would also apply to the Web sites, social media pages, and “any comparable internet presence” relating to the investment banking or securities business maintained by or on behalf of any person associated with a member firm. The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal.

¹ See FINRA BrokerCheck ®, available at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck>. (“BrokerCheck is a free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms and brokers, as well as investment adviser firms and representatives.”)

² The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64% percent of all practicing registered representatives – operate in the IBD channel.³ These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

FSI is supportive of measures that will facilitate and increase investors' use of FINRA BrokerCheck. In prior comment letters we have voiced strong support for enhancing investors' access to information and we believe that FINRA BrokerCheck is an important resource that can assist in an investor's decision-making. In that vein, efforts to expand the visibility and description of FINRA BrokerCheck on customer-facing web and social media sites may be particularly useful as advisors and broker dealers expand their use of technology for communicating with clients.

While the effort by FINRA to improve access to FINRA BrokerCheck information is well intentioned, FSI believes that the language of the Proposed Rule Change is vague and ambiguous, and will likely be unworkable and highly burdensome unless FINRA takes steps to significantly revise this proposal. We urge the SEC to return the Proposed Rule Change to FINRA to allow for additional feedback and research with regard to the implementation of potential amendments to FINRA Rule 2267.

Our specific comments can be found below:

- FINRA Has Sought This Rule Change Without Seeking Adequate Perspective from Members of the Industry - The Proposed Rule Change has its origins in FINRA Regulatory Notice 12-10 (Notice),⁵ which requested public comment on methods to facilitate and increase investors' use of BrokerCheck information. In the Notice, FINRA presented hypothetical changes to the information disclosed through FINRA BrokerCheck, the format in which information is presented, other potential strategies to increase investor awareness of FINRA BrokerCheck, and sought responses on the usefulness and challenges of such changes. However, nothing in the Notice made any mention of the changes for which FINRA now seeks approval.⁶ As should be expected, the resulting

⁵ Regulatory Notice 12-10, (Feb 2012), *available at* <http://www.finra.org/Industry/Regulation/Notices/2012/P125622>.

⁶ The only reference to Rule 2267 in the Notice requests comment on the following question: "Should changes be made to FINRA Rule 2267 to further increase investor awareness of BrokerCheck? If so, should such changes involve the items of information

Proposed Rule Change lacks industry perspective with regard to the feasibility of implementing these specific changes. In contrast, FINRA made specific reference to the availability of test scores on industry qualification exams through FINRA BrokerCheck and received a considerable amount of feedback pertaining to that issue.⁷ We believe our comments in this letter will demonstrate the many unanswered issues that the Proposed Rule Change raises. We urge the SEC to return the Proposed Rule Change to FINRA to allow for additional feedback and research.

- FINRA has Failed to Take into Account the Difficulties and Costs Inherent in the Implementation of the Proposed Rule Change - FINRA has failed to adequately describe how the links to FINRA BrokerCheck will be provided, what the meaning of “prominent description” is in practice, or the length of the text description that must be included with these links. Firms will not be able to assess whether their systems can implement the rule as proposed without this information. While updating firm-level corporate website and social media sites is not likely to be significantly burdensome, the larger issue with the Proposed Rule Change is its effect on associated persons of a firm. Due to the volume of a firm’s associated persons and the variety of web and social media platforms used, meeting the requirements of the Proposed Rule Change introduces such significant complexity that FINRA must seek additional information and feedback from industry participants before moving forward with these changes.
- The Costs and Resources Required to Implement the Proposed Rule are Significant - The costs and resources required to update, maintain and monitor the prominent link and description to FINRA BrokerCheck could be significant. The inclusion of a unique URL address on each associated person’s individual website may necessitate new system requirements for the firm’s content management system in order to automate this process. In addition, many associated person’s websites in the independent channel include a page listing the associated person’s staff, most of whom are likely to be associated persons themselves. These additional staff persons would require a unique URL link to FINRA BrokerCheck under the proposed rule. The process of identifying each associated person at the

disclosed, the frequency and/or manner of distribution of information, and/or the member firms covered by the rule? Should any other changes be made?”

⁷ Out of 71 comments to Notice 12-10, FSI identified at least 40 that reference examination scores. See Comments to Regulatory Notice 12-10, *available at* <http://www.finra.org/Industry/Regulation/Notices/2012/P125622>; see, e.g., Comments by Financial Services Institute; Comments by SIFMA; Comments by Commonwealth Financial Network; Comments by Bryan Corbitt; Comments by Rick Carlson; Comments by April Kvalik; Comments by Michele M. Perrault; Comments by Lynn C. Appelman; Comments by David S. Eckess; Comments by Carolyn R. May.

staff-level and verifying their FINRA registration is likely to be very time consuming manual process requiring significant cost and resources. If this process cannot be done through automation, but rather must be done manually, this would require the customization of thousands of individual associated person websites and therefore significant labor costs. Additional details are needed from FINRA to better understand how the URL address information will be obtained on an on-going basis and the timeliness of such information being available.

- The Proposed Changes Involving Social Media Sites Are Challenging or Impossible to Implement - Updating the social media accounts of associated persons to comply with the Proposed Rule Change may be extremely difficult or impossible to implement. Twitter, for example, does not allow for users to exceed 140 characters on either their account biography or any specific message ("tweet"); including the required "prominent description" and outbound hyperlink to FINRA BrokerCheck on Twitter would likely be impossible. In addition, LinkedIn does not allow hyperlinks to external URL's from many of the fields of a user's profile which would be necessary to link to FINRA BrokerCheck; the only field that would allow this is the field for a user's business website rather than their FINRA BrokerCheck record hosted on FINRA's website. Currently, an automated process for "pushing" the FINRA-provided URL address to all associated persons' social media pages that relate or refer to the associated person's securities business does not exist. To implement this proposed change, firms will be required to create processes and procedures to require their associated persons to add this information to their social media profiles. The cost associated with complying with the initial request to perform these tasks and the subsequent oversight and supervision to ensure compliance would likely be prohibitive. Given a number of factors, especially the turnover of associated persons among member firms, adequately supervising this information to ensure its benefit for the investing public would also prove difficult for firms. Looking into the future as technology advances in the social media space, there are likely to be major practical implications to the broad and overreaching language within the Proposed Rule Change.
- Failure to Sufficiently Limit the Breadth of the Definition of "Comparable Internet Presence" - Similar compliance and supervisory challenges are likely to follow when applying the new requirements in the Proposed Rule Change to the nebulous definition of a "compelling internet presence." Many online directory listings for financial advisors and registered representatives are becoming more popular, and under the Proposed Rule Change member firms would need to dedicate significant resources to bring these "internet presence" into compliance. Many of these online

directory listings are known to member firms because the content is posted to the directory site by associated persons;⁸ however, few of these online directories provide a field that allows a hyperlink and prominent description of FINRA BrokerCheck. Other online directory sites for financial advisors exist that act as aggregating tools. These sites assemble and categorize service industry information based upon publicly available data without any involvement of the associated person.⁹ This reality will make it difficult or impossible for firms to meet the goal of the Proposed Rule Change because firms and their representatives do not maintain control over information contained on these aggregation websites. As technology continues to advance, it will be extremely difficult to anticipate and keep current all the information that would qualify as a "comparable internet presence" in compliance with the proposed rule. As such, FINRA should exclude the obligation to monitor and update these types of websites in any final rule proposal.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the SEC and FINRA on this and other important regulations.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 202 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" and a distinct "Bellaire" ending in a period.

David T. Bellaire, Esq.
Executive Vice President & General Counsel

⁸ See, e.g., Brightscope.com.

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