

February 15, 2013

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

**Re: SR-FINRA-2013-002: Request for Comment on Proposed Amendment of FINRA Rule 2267
Requiring Prominent Disclosure of Link to FINRA BrokerCheck**

Dear Ms. Murphy:

Zions Direct appreciates this opportunity to comment on the proposed amendment of FINRA Rule 2267 (Investor Education and Protection) requiring member firms to include a prominent description of and link to FINRA BrokerCheck on their websites, social media pages and any comparable Internet presence.

Background of Zions Direct

Zions Direct is a registered broker/dealer and a non-bank subsidiary of Zions First National Bank. Customers of Zions Direct purchase a variety of securities through an online trading website and an innovative online securities auction platform, allowing participants to help set the yield or price of securities purchased through a bidding process. Zions Direct has facilitated over 7,000 successful auctions as of February 15, 2013. Further, Zions Direct provides Zions Direct University, a collection of investor education videos meant to educate investors about securities markets, investment products, and personal finance topics including the opportunities and risks of investing.

Zions Direct Advocates Investor Education

Zions Direct is an advocate of the value of investor education regarding securities products and financial markets, as evidenced by our extensive collection of investor videos in the Zions Direct University. Zions Direct is generally in favor of the proposal providing a description and link to BrokerCheck on company websites, social media and other comparable channels, but has concerns that FINRA should consider before implementation of the proposed amendment including a Clarification of or Definition of “Prominent Description”, a “Distinction between Representative and Firm-wide Communications”, and that BrokerCheck lacks Clarity and Ease of Use. Further, we outline several suggestions that we hope FINRA will take into account as they consider how best to educate the investing public, including a Clarification on how a required BrokerCheck description and link would be prominently displayed, improvements that should be made to BrokerCheck to not misinform but truly educate the investing public, and how FINRA should incentivize member firms to take a proactive role in investor education.

Clarification of or Definition of “Prominent Description” is Needed

In its Federal Register filing with the Securities and Exchange Commission dated January 18, 2013, FINRA has proposed requiring member firms to “include a prominent description”¹ and link to FINRA’s BrokerCheck on their web sites, social media sites, and any comparable internet presence. Zions Direct encourages FINRA to provide further detail of how FINRA is choosing to define the term “prominent” as

¹ Federal Register/Vol. 78, No. 17/Friday, January 25, 2013/Notices pg. 5542

systematic changes to implement this request can vary greatly depending on the definition. For example, Zions Direct believes that adding the specified BrokerCheck link to website, social media and other page disclosures would be fairly straightforward for any firm to implement, however, depending on how the term “prominent” could be interpreted without a clear definition, adding the BrokerCheck link may be overly burdensome, particularly on smaller member firms. For example, if “prominent” were to be defined as a pop-up page appearing on the screen each time a viewer enters a member firms website, social media page, or other comparable internet presence; the time and cost to allocate resources, create, develop, and implement such measures could be burdensome.

Social Media page implementation also presents a unique challenge depending on how the social media platform was originally created to be interacted with by users. Providing a link to BrokerCheck that is prominently displayed on a firm’s Facebook page, for example, is much easier for users to view as opposed to Twitter due to the nature of each respective platform and its intended functionality. The question of prominence of display is a special concern with Twitter use, since no Twitter account detail (which would include the interactive link to BrokerCheck) is on clear display when interacting on Twitter through the main page. Zions Direct requests FINRA to further clarify “Prominent Description”, and to give further guidance on how the link can actively be made available, bearing in mind the varied challenges that will exist.

Distinction between Representative and Firm-wide Communications

Zions Direct also expresses concern as we contemplate the use of the BrokerCheck link for individual registered representative communications as opposed to the firm-wide communications. For example, if a representative prepares a retail communication in the form of an investor presentation, would the presentation material need to include a BrokerCheck link for that specific registered representative or only a BrokerCheck link for the member firm? If the link is required for the specific registered representative, would BrokerCheck disclosure for other registered representatives that were involved in the creation or approval of the piece, such as an advertising principal or compliance officer, also be required?²

BrokerCheck Lacks Clarity and Ease of Use

In its current state, BrokerCheck provides a great deal of useful information which investors may be able to rely upon when choosing a member firm or a registered representative with which to invest. Zions Direct expresses concern, however, that despite the useful information, an over-abundance and limited clarity of other information contained in BrokerCheck in its current state may in fact lead to greater confusion and difficulty among investors when researching and ultimately selecting a member firm or registered representative.

For example, BrokerCheck currently discloses bankruptcies or financial proceedings for registered individuals. However, registered representative’s reasons for declaring bankruptcy may be widely varied and not necessarily reflect the abilities of the representative, such as a bankruptcy resulting from excessive medical costs or an unexpected job loss. Zions Direct believes that such a disclosure may in fact deter an investor from choosing to invest with a specific registered representative who is otherwise in

² See paragraph 1 of the “Other Issues” section of Comment Letter by Wells Fargo Advisors dated April 5, 2012 page 3.

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p125963.pdf>

excellent standing with regulatory authorities and has a wide breadth of investing knowledge and experience.

This problem of limited clarity is amplified by the way information is displayed on the BrokerCheck overview screen for a specific registered representative. Under the “Disclosure Events” section the viewer simply receives a “Yes” or “No” answer regarding whether the representative or firm has Disclosed Events. This provides the investor with little upfront information about which events have been disclosed and their categorical relevance (for example, a personal bankruptcy versus investor fraud). If the investor opens the detailed report they are greeted with information that is poorly formatted for viewing purposes and difficult to navigate. Buried in this detailed report is the disclosed event(s) for the representative. There is a significant lack of ease in navigating this information throughout the process. Zions Direct also expresses concern about the difficulty involved in expunging inaccurate information from a representative's CRD file and consequently, BrokerCheck.³ Outdated or irrelevant information displayed in BrokerCheck about a particular registered representative or member firm could lead an investor to shy away from investing with these persons or altogether when such information may have little to no bearing on a particular representative's credentials.

Recommendations

Zions Direct requests that FINRA consider the following points before the proposed amendment to Rule 2267 is put in place.

Clarification on how a required BrokerCheck description and link would be prominently displayed

Due to the potential challenges discussed of displaying BrokerCheck links in a prominent manner, Zions Direct requests that FINRA provide clarification on how this disclosure should be prominently displayed. If this proposal were to go into effect, Zions Direct recommends that the link and language be contained in a section with other disclosure information (such as the section of an advertisement disclosing information about the risks of investing in a specific product), in bolded formatting and that the link to the firm's BrokerCheck record be contained in a soft link format, similar to that required when a member firm discloses its relationship to FINRA. Further clarity provided by FINRA will also help provide a clearer path of execution for how firms can implement such disclosures onto social media pages and other areas of comparable Internet presence.

Improvements should be made to BrokerCheck to not misinform, but truly educate the investing public

While BrokerCheck provides information that can be very helpful to investors, Zions Direct is concerned that the organization of this information may lead to additional investor confusion. Zions Direct recommends that a redesign of the information displayed in BrokerCheck take place to improve accessibility and readability of the information displayed, as well as only revealing that information which is relevant to choosing a registered representative or member firm. Zions Direct applauds the current efforts that FINRA is taking to improve the method and format that BrokerCheck information is displayed,⁴ as well as recommendations from other firms that FINRA provide links to definitions⁵ and

³ See Brian Corbitt Comment Letter dated February 23, 2012

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p125695.pdf>

⁴ Federal Register/Vol. 78, No. 17/Friday, January 25, 2013/Notices pg. 5542

establish focus groups between registered representatives and investors to improve the BrokerCheck system.⁶

FINRA should incentivize member firms to take a proactive role in investor education

FINRA recently cited a statistic that 15% of investors acknowledged that they viewed BrokerCheck to select a registered representative or member firm before investing.⁷ This is not surprising, as the incentives for a majority of registered representatives and members firms are aligned not to educate investors or provide transparency to this information, but to sell products to them.

Zions Direct believes that the best educators for investors are the member firms and registered representatives themselves with which the customer is currently interacting or contemplating doing so. In addition, the best investor is he or she who goes into the process with the most amount of relevant information. Zions Direct encourages FINRA to consider ways to provide greater incentives to those firms that proactively seek to educate clients and the investing public about the registered representatives they have chosen or may choose (through an improved BrokerCheck system) and the securities that they offer. Member firms should be encouraged to create a culture of investor education and advocacy, not just salesmanship. FINRA could work more closely with Federal and State securities agencies to identify best practices and advocate for investor education and protection.

While the current BrokerCheck system is a step toward providing investors with reliable information, Zions Direct believes that improvements to the system, including increased ease of use and clear display of relevant information, would greatly enhance the investing experience for customers and serve their needs well in selecting a registered representative or member firm.

Sincerely,

James Cooper
Chief Operating Officer
Zions Direct

⁵ See CFP Board Comment Letter dated April 27, 2012

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p126214.pdf>

⁶ See Wells Fargo Advisors Comment Letter dated April 5, 2012

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p125963.pdf>

⁷ Financial Capability in the United States, Applied Research & Consulting LLC, December 1, 2009