

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76105; File No. SR-FINRA-2015-022)

October 8, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public)

I. Introduction

On June 29, 2015, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rule 2210, Communications with the Public. The proposed rule change was published for comment in the Federal Register on July 13, 2015.³ The Commission received nine comment letters on the proposed rule change⁴ and a response to the comments

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75377 (July 7, 2015), 80 FR 40092 (“Notice”).

⁴ See letters from David Neuman, Israels Neuman PLC, dated July 29, 2015 (“Neuman Letter”); Robert C. Port, Gaslowitz Frankel LLC, dated August 1, 2015 (“Gaslowitz Letter”); William Beatty, President, North American Securities Administrators Association, Inc., dated August 3, 2015 (“NASAA Letter”); David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, dated August 3, 2015 (“FSI Letter”); Dorothy Donohue, Deputy General Counsel – Securities Regulation, Investment Company Institute, dated August 3, 2015 (“ICI Letter”); Elissa Germaine, Supervising Attorney and Jill Gross, Director, Pace Investor Rights Clinic, Pace Law School, dated August 3, 2015 (“PIRC Letter”); Melissa MacGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated August 3, 2015 (“SIFMA Letter”); Joseph C. Peiffer, President, Public Investors Arbitration Bar Association, dated August 3, 2015 (“PIABA Letter”); and Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers, dated August 3, 2015 (“CAI Letter”).

from FINRA.⁵ On August 13, 2015, FINRA extended the time period for Commission action on this proposed rule change to October 9, 2015. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA proposes to amend Rule 2210 to require each of its member's websites to include a readily apparent reference and hyperlink to BrokerCheck⁶ on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conducts business with retail investors. These requirements would not apply to a member that does not provide products or services to retail investors, or to a directory or list of registered persons limited to names and contact information.

III. Comment Letters

Commenters generally support FINRA's proposal.⁷ As discussed below, some commenters recommend that the proposal be expanded and include additional requirements, and some request additional guidance regarding the application of the proposal.

Requests for Additional Requirements

Some commenters state that FINRA should require a reference and hyperlink to BrokerCheck in members' and registered persons' emails and account statements to customers.⁸

⁵ See letter from Jeanette Wingler, Assistant General Counsel, FINRA, dated September 21, 2015 ("FINRA Letter").

⁶ BrokerCheck provides the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. The information that FINRA releases through BrokerCheck is derived from the Central Registration Depository ("CRD"), the securities industry online registration and licensing database.

⁷ See Neuman Letter; Gaslowitz Letter; ICI Letter at 1 and 3; SIFMA Letter at 1; PIRC Letter at 1; NASAA Letter at 1; FSI Letter at 1; and PIABA Letter at 1.

⁸ See Neuman Letter and PIRC Letter at 1-2. See also NASAA Letter at 2.

In its response letter, FINRA states that it did not propose these requirements because at this time FINRA believes such requirements would be overly burdensome and require significant system and operational changes without commensurate benefits.⁹ Some commenters state that FINRA should require firms to include BrokerCheck links on certain third party websites.¹⁰ In response, FINRA states that it recognizes the difficulties and costs associated with including links on third-party websites, and therefore has determined to limit the application of the proposed rule to members' websites at this time.¹¹ However, FINRA notes that it will continue to monitor investors' awareness and use of BrokerCheck and consider whether to pursue further rulemaking.¹²

Some commenters state that FINRA should require deep links to firms' and individuals' BrokerCheck reports.¹³ In response, FINRA states while it has determined not to include deep links at this time, most investors should be able to find information concerning particular members and registered representatives without difficulty given the ease of operation of the BrokerCheck search feature.¹⁴ FINRA also states that, while the proposed rule does not require deep links, it does not prohibit members from using deep links.¹⁵

Finally, some commenters note that BrokerCheck excludes certain information that is currently available on the CRD system, and state that investors should be able to view all

⁹ See FINRA Letter at 3.

¹⁰ See PIRC Letter at 1-2; NASAA Letter at 2; and PIABA Letter at 1-2. But see, e.g., SIFMA Letter at 2 and FSI Letter at 1 (both supporting the exclusion of third-party websites).

¹¹ See FINRA Letter at 3.

¹² See id.

¹³ See PIRC Letter at 1; NASAA Letter at 1-2; and PIABA Letter at 1. But see, e.g., FSI Letter at 3 (supporting the exclusion of deep links).

¹⁴ See FINRA Letter at 2.

¹⁵ See id.

relevant information that is available in the CRD system.¹⁶ FINRA notes that these comments are outside the scope of the current proposal, but that it regularly assesses the BrokerCheck program and may consider including additional information in BrokerCheck at a later time.¹⁷

Requests for Additional Guidance

Two commenters seek guidance regarding the interpretation of the term “readily apparent” as used in the proposed rule, including whether placing the link to BrokerCheck in a website’s footer would satisfy the “readily apparent” requirement.¹⁸ One commenter seeks guidance regarding the placement of the BrokerCheck reference and hyperlink on websites that are optimized for mobile devices.¹⁹ One commenter requests confirmation that “readily apparent reference” is not meant to be an extensive disclosure and that a firm can simply reference the term BrokerCheck without any accompanying disclosure.²⁰ Another commenter seeks confirmation that language such as “check the background of an investment professional” would satisfy the proposed rule’s “reference” requirement.²¹ In its response letter, FINRA states that it is unable to provide specific guidance regarding what constitutes a readily apparent reference and hyperlink given the wide variety of webpages that its members maintain.²² FINRA states, however, that it generally does not believe that including the reference and hyperlink in a footer would satisfy the “readily apparent” standard.²³ In addition, FINRA notes that members have

¹⁶ See Neuman Letter; PIRC Letter at 2; and PIABA Letter at 2.

¹⁷ See FINRA Letter at 3-4.

¹⁸ See SIFMA Letter at 3 and FSI Letter at 4.

¹⁹ See SIFMA Letter at 3.

²⁰ See CAI Letter at 2-3.

²¹ See SIFMA Letter at 3.

²² See FINRA Letter at 6.

²³ See id. FINRA states that members should adopt the perspective of a reasonable retail investor when making a determination regarding the reference and hyperlink. FINRA

flexibility as to the location of the BrokerCheck reference and hyperlink on websites that are optimized for mobile devices, so long as they are readily apparent.²⁴ Moreover, FINRA states that it anticipates that the readily apparent reference to BrokerCheck would be brief.²⁵

One commenter seeks confirmation that, for firms that choose to provide the BrokerCheck link through an icon or button similar to that used by FINRA, such use would be a permissible use of any trademark or related intellectual property owned by FINRA.²⁶ In response, FINRA states that it anticipates making BrokerCheck-related icons or similar resources available to members as one option for complying with the proposed rule, but use of any such icons or similar resources by members would be subject to FINRA's terms and conditions for use.²⁷

One commenter seeks clarification regarding the application of the proposed rule to websites maintained by independent contractor registered representatives.²⁸ In its response letter, FINRA states that it expects member firms to supervise and review for compliance websites operated by a registered representative that promote the business of the member and, that for purposes of Rule 2210, views such websites to be websites of the member firm.²⁹

states that some of the factors that members should consider include placement, font size, and font color. See id. at 6-7.

²⁴ See id. at 7.

²⁵ See id. at 6.

²⁶ See SIFMA Letter at 3.

²⁷ See FINRA Letter at 7.

²⁸ See SIFMA Letter at 3-4. See also FSI Letter at 3-4 (asking whether the client-facing website of a financial advisor engaged in an independent contractor relationship with its broker-dealer would be considered a "member website" or a third-party website under the proposal).

²⁹ See FINRA Letter at 4. See also letter to Gordon S. Macklin, President, National Association of Securities Dealers, Inc. from Douglas Scarff, Director, Division of Market Regulation, dated June 18, 1982, regarding the status of "independent contractors."

One commenter seeks confirmation that, for multi-faceted financial institutions, the link to BrokerCheck should be placed on the homepage of the broker-dealer member firm as opposed to the enterprise-level homepage,³⁰ as well as 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 the member firm.³¹ With respect to multi-faceted financial institutions, FINRA states that the proposed rule would apply to the affiliated broker-dealer’s main webpage but not to the enterprise-level homepage.³² With respect to micro-sites, FINRA states that if a micro-site acts solely as a conduit to the member’s main website that includes a readily apparent reference and hyperlink to BrokerCheck, then FINRA generally would not require a separate hyperlink and reference to BrokerCheck on the micro-site. Otherwise, the proposed rule would require a separate hyperlink and reference to BrokerCheck on the initial webpage of the micro-site that the member intends to be viewed by retail investors.³³

One commenter seeks additional guidance on the treatment of webpages of registered persons and/or branch offices under the proposal.³⁴ In response, FINRA states that, if a separate

³⁰ See also CAI Letter at 2 (requesting confirmation that, where a broker-dealer does not maintain its own independent website (as is often the case with respect to insurance-affiliated broker-dealers), the BrokerCheck link would not be required on the broker-dealer affiliate’s main webpage, but rather on the first webpage in which the broker-dealer is identified).

³¹ See SIFMA Letter at 4.

³² See FINRA Letter at 4.

³³ See id. at 5.

³⁴ See CAI Letter at 2 (noting that including the BrokerCheck link on the initial page of the branch website would be helpful to investors; however, the current proposal is unclear on how to treat additional pages of a branch office website and, in certain circumstances, requiring a BrokerCheck link on all possible webpages where a branch office registered person’s profile information appears could result in redundant and ineffective disclosure).

retail website has been established for a branch office or branch office personnel, then such a website would be treated as a separate website of the member and would require a separate hyperlink and reference to BrokerCheck.³⁵ On the other hand, if only a sub-page of the member's website was established for the branch office or branch office personnel, then such a webpage would not be treated as a separate website of the member.³⁶ Moreover, FINRA confirms that hyperlinks and references to BrokerCheck would be required for all webpages where a registered person's profile information appears, including webpages on the member's website and webpages on a branch office's website.³⁷

One commenter requests guidance regarding the application of the proposed rule to third-party websites that contain professional profiles of financial advisors that engage in a networking relationship with these third parties, such as websites owned and operated by credit unions and other non-FINRA members.³⁸ In response, FINRA notes that the proposed rule does not require hyperlinks and references to BrokerCheck on third-party websites and, therefore, the proposed rule would not apply to third party websites that contain the professional profiles of registered representatives who engage in networking or similar relationships with the third party.³⁹

One commenter requests that FINRA promulgate a Regulatory Notice to provide interpretive guidance or responses to frequently asked questions, accompanied by a succinct

³⁵ See FINRA Letter at 5.

³⁶ See id. at 5-6.

³⁷ See id. at 6.

³⁸ See FSI Letter at 4. See also SIFMA Letter at 4 (seeking clarification regarding the application of the proposed rule to websites of non-member firms who are parties to a networking or other similar arrangement with a member firm).

³⁹ See FINRA Letter at 5.

reiteration of what information is and is not disclosed through BrokerCheck.⁴⁰ In response, FINRA states that its website provides readily available information regarding the information disclosed through BrokerCheck.⁴¹ This commenter also requests a limited safe harbor for links to BrokerCheck that are broken as a result of script or programming issues that would permit a reasonable amount of time to respond to any link maintenance issues.⁴² FINRA acknowledges that links occasionally may fail, but does not believe that the requested relief is necessary or warranted at this time.⁴³ Rather, FINRA would consider all of the facts and circumstances surrounding any such failures.⁴⁴

One commenter requests a 12-month implementation period for the proposal.⁴⁵ In its response letter, FINRA recognizes that members would be required to identify the webpages that would need to be updated, determine where to place the references and hyperlinks within the webpages, and test and deploy the updated website. FINRA stated that it will consider the need for system and operational changes in establishing the effective date for the proposed rule change.⁴⁶

IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a

⁴⁰ See SIFMA Letter at 2-3.

⁴¹ See FINRA Letter at 4.

⁴² See SIFMA Letter at 4.

⁴³ See FINRA Letter at 7.

⁴⁴ See id.

⁴⁵ See FSI Letter at 4.

⁴⁶ See FINRA Letter at 7.

national securities association.⁴⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁴⁸ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change, by requiring a hyperlink to BrokerCheck on members' websites is designed to increase investors' awareness and use of BrokerCheck. BrokerCheck is an important tool for investors to use to help them make informed choices about the individuals and firms with which they conduct business.⁴⁹ The Commission believes that the requirement for the hyperlink to BrokerCheck to be readily apparent should make it easy for investors to find and use BrokerCheck. The Commission appreciates FINRA's continuing efforts to enhance BrokerCheck and encourages FINRA to continue improving it and to consider the suggestions made by commenters that could result in increased use of BrokerCheck by the investing public.

⁴⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁸ 15 U.S.C. 78o-3(b)(6).

⁴⁹ The Commission encourages investors to utilize all sources of information, including the databases of state regulators, as well as legal search engines and records searches to conduct a thorough search of any associated person or firm with which they are considering doing business. See also Securities Exchange Act Release No. 62476 (July 8, 2010), 75 FR 41254 (July 15, 2010) (SR-FINRA-2010-012).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁰ that the proposed rule change (SR-FINRA-2015-022) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Robert W. Errett
Deputy Secretary

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ 17 CFR 200.30-3(a)(12).