

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68700; File No. SR-FINRA-2013-002)

January 18, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 2267 (Investor Education and Protection)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 7, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 2267 (Investor Education and Protection) to require that members include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their websites, social media pages and any comparable Internet presence and 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.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA-member firms and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository (“CRD<sup>®</sup>”), the securities industry online registration and licensing database. FINRA-member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms. By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

In January 2011, Commission staff released its Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers (“Study”),<sup>3</sup> in furtherance of Section 919B of the Dodd-Frank Act. The Study contains four recommendations for improving investor access to registration information through

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<sup>3</sup> The Study is available online at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

BrokerCheck and the Commission’s Investment Adviser Public Disclosure (“IAPD”) database. In May 2012, FINRA implemented the Study’s three “near-term” recommendations.<sup>4</sup> FINRA is currently working on the Study’s “intermediate-term” recommendation, which involves analyzing the feasibility and advisability of expanding the information available through BrokerCheck, as well as the method and format that BrokerCheck information is displayed.

In light of the Study’s “intermediate-term” recommendation and FINRA’s belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation to make information available to the public,<sup>5</sup> FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program.

Participants in the focus groups were asked questions about a variety of topics, including the financial markets, working with a broker or investment adviser, and the BrokerCheck program. Many of the participants stated that they had been unaware of the existence of BrokerCheck prior to their participation in the focus groups.<sup>6</sup> After learning about BrokerCheck,

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<sup>4</sup> These recommendations are to unify search returns for BrokerCheck and IAPD, add the ability to search BrokerCheck by ZIP code, and increase the educational content on BrokerCheck.

<sup>5</sup> See Section 15A(i) of the Act. 15 U.S.C. 78o-3(i). Since establishing BrokerCheck, FINRA has regularly assessed the scope and utility of the information it provides to the public and, as a result, has made numerous changes to improve the program.

<sup>6</sup> This is consistent with a 2009 study that found that only 15 percent of respondents said that they had checked a financial advisor’s background with a state or federal regulator. See Financial Capability in the United States (FINRA Investor Education Foundation, Dec. 1, 2009), available at <http://www.finrafoundation.org/web/groups/foundation/@foundation/documents/foundation/p120536.pdf>.

the consensus among focus group participants was that investors should use BrokerCheck when considering whether to work with a new investment professional or firm and that it therefore was important for BrokerCheck to be more widely known among investors. Based on the focus group results and the comments received in response to Regulatory Notice 12-10, FINRA is proposing to amend Rule 2267.<sup>7</sup>

Subject to limited exceptions, FINRA Rule 2267(a) currently requires members to annually provide in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that includes information describing BrokerCheck.<sup>8</sup> To further increase investor awareness and use of BrokerCheck, the proposed rule change would amend Rule 2267 to require all members to include a prominent description of and link to BrokerCheck, as prescribed by FINRA, on their websites, social media pages and any comparable Internet presence, as well as on the websites, social media pages and any comparable Internet presence relating to the firm's investment banking or securities business maintained by or on behalf of any person associated with a member.

To ensure consistency and help with the implementation of the proposed rule change, FINRA would provide members with the text description and web address format for the link to BrokerCheck. The web address provided by FINRA, which would include a firm's or

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<sup>7</sup> FINRA continues to consider other comments regarding changes to BrokerCheck that were submitted in response to Regulatory Notice 12-10.

<sup>8</sup> Any member whose contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member and thereafter does not carry customer accounts or hold customer funds and securities may furnish a customer with such information at or prior to the time of the customer's initial purchase, in lieu of once every calendar year. Any member that does not have customers or is a party to a carrying agreement where the carrying firm member furnishes a customer with such information is exempt from the requirements of FINRA Rule 2267(a).

individual's CRD number, would be specific to each member or associated person. The link would take the user to BrokerCheck's search results screen for the subject firm or individual, which displays basic information, such as CRD number, SEC number (for firms), registration status, and employing firm (for individuals). Once the investor completes the challenge-response test (used to make it more difficult for an automated application to collect BrokerCheck information) and agrees to BrokerCheck's terms and conditions, the investor will be able to obtain a detailed BrokerCheck report on the subject firm or individual.

FINRA believes that the proposed change will increase investor use of BrokerCheck because the link provided on a firm's or individual's website will take investors to that firm's or individual's specific BrokerCheck search results screen rather than the BrokerCheck homepage. Thus, investors will not be required to enter the name of the firm or individual they are searching for or to select the correct broker or firm from the search results.

To further help with implementation of the proposed rule change, FINRA will provide in the Regulatory Notice announcing the effective date of the proposed rule change guidance regarding the prominence and placement of the BrokerCheck description and link.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

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. FINRA believes that the proposed rule change would increase investor awareness and use of BrokerCheck, thereby helping investors make informed choices about the individuals and firms with which they conduct business. Specifically, FINRA believes that the proposed description of BrokerCheck will alert investors to the existence of the program and the link to the subject firm or individual will make BrokerCheck even easier to use as a research tool.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

FINRA believes that the proposed rule change will enhance investor protection by increasing the public's awareness and use of BrokerCheck. FINRA expects that the inclusion of a prominent description of BrokerCheck on a firm's or associated person's website will increase the public's awareness of the program by alerting investors to the existence of BrokerCheck while they are researching a firm or broker. FINRA believes that the proposal will not result in a significant burden on members or associated persons. In this regard, although FINRA has not found any independent estimates relating to the cost of adding a link to a website, FINRA anticipates that the costs to comply with the proposed rule change to members and associated persons will be limited, particularly for those firms that will make the changes with a content management system,<sup>10</sup> and will not significantly burden small firms. In addition, FINRA will

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<sup>10</sup> In general, a content management system is a software application that is used to manage text, images, audio and video content for a website. FINRA recognizes that some firms may not use a content management system and therefore may incur additional development costs depending on how their websites are configured.

provide firms with the specific links (in a user-friendly URL format) to be added to their websites, thereby helping to contain the costs associated with the proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment by FINRA in Regulatory Notice 12-10 (February 2012). A copy of the Regulatory Notice is attached as Exhibit 2a.<sup>11</sup> The comment period expired on April 27, 2012. FINRA received 71 comment letters in response to the Regulatory Notice. A list of the comment letters received in response to the Regulatory Notice is attached as Exhibit 2b.<sup>12</sup> Eleven of the 71 comment letters received addressed proposed changes to Rule 2267.<sup>13</sup> Of these 11 comment letters, 10 were in favor of an increase in the communication by firms to their customers about the existence of BrokerCheck and one was opposed.

Several commenters expressed the view that firms should include a link to BrokerCheck on their websites to help increase investor awareness of the program.<sup>14</sup> Some of these commenters also suggested that firms be required to include the BrokerCheck website address in various other locations such as public communications, new account documents, and monthly statements.<sup>15</sup>

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<sup>11</sup> The Commission notes that Exhibit 2a is attached to the filing, not to this Notice.

<sup>12</sup> The Commission notes that Exhibit 2b is attached to the filing, not to this Notice. All references to the commenters under this Item are to the commenters as listed in Exhibit 2b.

<sup>13</sup> ARM, CFA, CFP, Davis, Dickenson, Dorsey, Foresters, Kelly, McCracken, PIRC, and Podolak.

<sup>14</sup> CFA, CFP, Davis, Foresters, Kelly, McCracken, and PIRC.

<sup>15</sup> ARM, CFA, CFP, PIRC, and Podolak.

FINRA appreciates the commenters' suggestions on additional ways to increase investor awareness of BrokerCheck and will consider them in the future. When considering the commenters' suggestions, FINRA will examine, among other things, whether the inclusion of the BrokerCheck website address on materials such as public communications, new account documents, and monthly statements would materially increase investor awareness or use of BrokerCheck, as well as the potential additional costs that the suggested changes would impose on members and their associated persons.

One commenter suggested that no changes be made to Rule 2267.<sup>16</sup> As previously mentioned, FINRA believes that the proposed rule change will benefit investors by increasing the awareness and use of BrokerCheck.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>16</sup> Dorsey.



Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-002 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-FINRA-2013-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).