



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS  
AND INDEPENDENT FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

August 3, 2015

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2015-022**

Dear Mr. Fields:

On June 29, 2015 the Financial Industry Regulatory Authority (FINRA) filed a proposed rule change (Proposed Rule Change) with the Securities and Exchange Commission (SEC) to amend FINRA Rule 2210. The Proposed Rule Change would require each of a member's websites to include a readily apparent reference and hyperlink to BrokerCheck on: 1) the initial webpage that the member intends to be viewed by retail investors; and 2) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. The 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. The Proposed Rule follows a withdrawn January 2013 proposed rule change (2013 Proposal) to amend FINRA Rule 2267 (Investor Education and Protection). The 2013 Proposal would have required all members to include a prominent description of and link to BrokerCheck 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 a member's investment banking or securities business maintained by or on behalf of any person associated with the member.

The Financial Services Institute<sup>1</sup> (FSI) appreciates the opportunity to comment on this important proposal. FSI applauds FINRA for withdrawing the 2013 Proposal in order to better understand commenters' concerns surrounding the implementation challenges. FSI believes the Proposed Rule Change will be significantly less burdensome than the 2013 Proposal due to important changes made by FINRA, particularly the exclusion of third-party websites such as social media and directories from the BrokerCheck hyperlink requirement. FSI believes the Proposed Rule Change will enhance investors' awareness of BrokerCheck, however, we request additional clarity regarding some aspects of the rule, specifically the scope of the "readily apparent reference" that must appear on member websites. We expand on these issues below.

---

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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 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 appreciates the opportunity to submit comments on the Proposed Rule Change. In an earlier comment letter, FSI suggested that FINRA pursue changes to improve the quality and visibility of the BrokerCheck tool to increase its usage and usefulness to investors.<sup>4</sup> On November 12, 2013,

---

<sup>2</sup> Cerulli Associates at <http://www.cerulli.com/>.

<sup>3</sup> These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

<sup>4</sup> See Letter from David T. Bellaire to Marcia E. Asquith (June 12, 2014), available at <http://www.finra.org/sites/default/files/NoticeComment/p531097.pdf>. (“In addition, FINRA’s homepage should have a larger graphic and more prominent placement of BrokerCheck... Additional efforts to make BrokerCheck more prominent and centralized on FINRA’s homepage will promote increased investor education and use of

FINRA announced the release of an enhanced version of BrokerCheck that includes a more intuitive user interface.<sup>5</sup> FINRA's homepage now includes the BrokerCheck widget displayed prominently, and has made the widget available to third-party websites, allowing visitors to those websites direct access to BrokerCheck reports without having to visit FINRA's website. FINRA also has engaged in a national ad campaign to promote BrokerCheck to investors.<sup>6</sup> FSI applauds FINRA for these important developments.

FSI's concerns with regard to this proposal are unique due to the independent contractor relationship maintained between the financial advisors and broker-dealers. Independent financial advisors are independent business owners, and maintain control over their own websites. These financial advisors' websites are supervised by the broker-dealer for compliance with FINRA rules, but are not owned by the broker-dealer. As a result, implementing the proposed "deep link" on each associated persons' website under the 2013 Proposal would have led to significant challenges. FSI supports FINRA's goal to increase investor awareness and use of BrokerCheck, and has been encouraged by the many changes made since the 2013 Proposal. While the Proposed Rule Change is a significant improvement, FSI remains concerned regarding some aspects of the Proposed Rule Change. We expand upon these concerns below.

- FSI requests additional clarity and guidance on the required "readily apparent reference" and hyperlink to BrokerCheck on member websites: The Proposed Rule Change requires each of a member's websites to include a "readily apparent reference and hyperlink to BrokerCheck on 1) the initial webpage that the member intends to be viewed by retail investors; and 2) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors." The rule also explicitly excludes "1) a member that does not provide products or services to retail investors; and 2) a directory or list of registered persons limited to names and contact information."
  - **Independent Financial Advisors' Websites:** The Proposed Rule Change would apply to each of a "member's websites," including "any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors." This language, according to FINRA, would "exclude the third-party website requirement [including social media sites] and limit the application of the rule proposal to members' websites".<sup>7</sup> Under the Proposed Rule Change, FSI broker-dealer members do not expect significant issues in implementing the readily apparent reference for their own websites. However, it is unclear from this language whether the client-facing website of a financial advisor engaged in an independent contractor relationship with their broker-dealer would be considered a "member website" or a third-party website under FINRA's Proposed Rule Change. FSI requests specific guidance that retains the rule's exclusion of social media and other third-party websites and clarifies the status of

---

BrokerCheck. Finally, FINRA can improve the visual quality and clarity of BrokerCheck summary reports. Currently, the reports are difficult to navigate when investors are seeking information regarding the background of an investment professional.")

<sup>5</sup> FINRA Press Release, "FINRA Releases Enhanced Version of BrokerCheck," (November 12, 2013), available at <https://www.finra.org/newsroom/2013/finra-releases-enhanced-version-brokercheck>.

<sup>6</sup> FINRA Press Release, "FINRA Launches National Ad Campaign Promoting BrokerCheck," available at <https://www.finra.org/newsroom/2015/finra-launches-national-ad-campaign-promoting-brokercheck>.

<sup>7</sup> 80 Fed. Reg. at 40094 "In developing this proposal, FINRA considered requiring members to include links to BrokerCheck on third-party websites, including social media sites. FINRA recognizes the difficulties and costs associated with including links on third-party websites, and as a result FINRA has determined at this time to exclude the third-party website requirement and limit the application of the rule proposal to members' websites."

websites operated by independent contractor financial advisors. FSI also requests clarity with regard to the application of the rule to third-party websites that contain the 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.

- **Specific Guidance on Website Footers:** FSI requests that the accompanying Regulatory Notice announcing the approval of the Proposed Rule include explicit guidance regarding the appearance of the BrokerCheck reference and hyperlink in the website footer of member websites and any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors. Members have successfully implemented existing rules regarding required disclosures on financial advisors' websites (e.g. FINRA Rule 2210(e)(3)) by utilizing the "footer" of financial advisor's websites. FSI believes that explicit guidance on this issue will ensure more clarity with regard to how members can best implement the Proposed Rule Change while enhancing investors' awareness and access to BrokerCheck.
- FSI requests an increase in the implementation period to 12 months as certain firms may have a large number of websites to update: As stated above, independent financial advisors are their own business owners and maintain control over their own individual websites. The Proposed Rule Change would likely require considerable changes to thousands of retail investor-facing websites, and therefore the time period proposed by FINRA is inadequate. Therefore, FSI recommends a 12-month implementation period. This will ensure that FSI member firms and financial advisors have adequate time to bring the affected websites into compliance with the Proposed Rule Change.

#### Conclusion

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

Thank you for your consideration of our comments. Should you have any questions, please contact me at [REDACTED].

Respectfully submitted,



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