

Public Investors Arbitration Bar Association

June 16, 2014

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Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**RE: Regulatory Notice 14-19 – Proposed Rule Change to Amend
FINRA Rule 2210 (Communications with the Public)**

Dear Ms. Asquith,

I write on behalf of the Public Investors Arbitration Bar Association (“PIABA”). PIABA is an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in FINRA rules relating to both investor protection and disclosure.

PIABA was generally in favor of FINRA’s previous effort to require its membership to provide links between their communications to the public and the BrokerCheck system as proposed in SR-FINRA-2013-002. While that proposal was withdrawn, PIABA continues to support FINRA’s efforts to make BrokerCheck more accessible for investors. FINRA has long recognized the importance of BrokerCheck as a source of critical information for the public investor. The system has continued to evolve since its inception in 1988, and its present iteration allows anyone with an internet connection to access FINRA’s BrokerCheck reports instantly through FINRA’s website, demonstrating FINRA’s commitment to ensuring free access to information critical to the investing public.

The need for access to the BrokerCheck system continues to be of critical importance. In 2009, a study of financial capability in the U.S. found that only 15% of survey respondents claimed to have checked a financial advisor’s background with a state or federal regulator. *See* Regulatory Notice 12-10, footnote 9. A 2012 update to that study indicates that 50% of the survey respondents had consulted with a financial professional. More specifically, 29% of the respondents said that they consulted a financial professional regarding “savings or investments.” *See* Financial Capability in the United States, Report of Findings from the 2012 National Financial Capability Study,

sponsored by FINRA Investor Education Foundation.¹ Of particular concern, the 2012 study also revealed that financial literacy had slipped between 2009 and 2012. On average, respondents answered three of five questions regarding fundamental concepts of economics and finance correctly in 2009, but only 2.9 questions correctly in 2012. Thus, the need to ensure that investors have ready and easy-to-use tools to ensure that their financial advisor is qualified to provide advice is more important than ever.

The former, and now withdrawn, recommendation that FINRA rule 2267 be modified to require disclosure in writing of the general BrokerCheck telephone number and website once per year has been modified in the current proposal to modify Rule 2210, governing communications with the public. Generally speaking, PIABA believes that the amendments to Rule 2210 proposed in Regulatory Notice 14-19 would improve public access to investment advisor and broker-dealer registration information. A September 2013 study by the PEW Internet and American Life Project concluded that 86% of Americans use the Internet, with 70% of American adults using a high speed connection to access the Net. As the Internet matures and access becomes more prevalent, it becomes increasingly likely that a public investor will look at a member firm's or associated person's website or social media page for information. By requiring a prominent, uniform text description (which could be drafted by FINRA) and hyperlinks to not only BrokerCheck but a page specific to that member or associated person, FINRA will greatly improve public use of BrokerCheck. By natural extension, it will also improve public access to and use of FINRA's other investor tools on its www.finra.org/investors webpages.

FINRA's proposed changes to Rule 2210 show that FINRA listened carefully to the comments and criticisms the industry offered in response to SR-FINRA-2013-002. While those comments often decried the lack of specificity regarding how and where to place the requisite link to BrokerCheck, PIABA believes that the current proposal is sufficiently specific to provide guidance, but also provides the flexibility needed to allow member firms to utilize a reasonable design strategy designed to place the link where a public investor is likely to notice and utilize it. The current proposal also makes clear exactly which sorts of communications require the link and which do not. While PIABA believes that the list of communications that require the link should be expanded, as discussed below, the clarification removes any doubt regarding where and when the link must be provided. Similarly, the broad language simply requiring a "readily apparent reference and hyperlink to BrokerCheck" allows flexibility in the language used to effect the reference and link.

PIABA strongly encourages FINRA to require the use of "deep links" by which the link would direct the investor to the associated person's BrokerCheck report without any further input from the investor, as would be required if the link simply directed the investor to BrokerCheck and then required that they navigate through to the individual BrokerCheck report. PIABA also strongly encourages the link to be directed to the Web version of the

¹ A copy of the study is available at http://www.usfinancialcapability.org/downloads/NFCS_2012_Report_Natl_Findings.pdf

report instead of a PDF file. In short, PIABA suggests that the process be as streamlined as possible to direct the public investor to the BrokerCheck data with no opportunities to get lost, redirected or distracted along the way.

PIABA is concerned that the limitations set forth in Rule 2210(d)(8)(C) are too restrictive. The exclusion of electronic mail is particularly puzzling. Professional email messages always carry a signature block with relevant contact information and disclaimers. There is no reason a link to BrokerCheck could not be included in that signature block. Similarly, if contact information is provided in an online interactive electronic forum, there is no reason a link (or reference to) BrokerCheck could and should not be included. If the concern is that a link included in an online forum would be long and unwieldy and therefore confusing, the problem can be cured using any one of a number of services that will shorten a link to as few as 21 characters including the "[http://](#)" protocol header.

The proposed changes to Rule 2110 address online communications alone. PIABA strongly encourages FINRA to consider requiring the BrokerCheck description and hyperlink be placed on printed customer account statements as well. Compliance with this requirement would be no more difficult or expensive than including the information within online communications. Including the information on monthly statements is substantially likely to promote investor use of BrokerCheck and can serve no harm to member firms or their associated persons.

In addition to the issues addressed above, PIABA urges FINRA to consider what information is provided in the BrokerCheck reports. We ask that FINRA improve the BrokerCheck system and thereby improve investor education and financial literacy in the following ways:

1. PIABA encourages FINRA to harmonize the information available on BrokerCheck with information available from state regulatory websites, such as Florida's. The additional information provided may include a broker's educational background and professional designations.
2. PIABA requests that FINRA eliminate the artificial time limits on what information must be disclosed on BrokerCheck. Lapse of time should not take critical information away from the investing public.
3. PIABA asks that FINRA consider making BrokerCheck information available to for-profit companies who may make the information more accessible, or offer comparative reports concerning different member firms or associated person. So long as FINRA continues to support a free basic level of service through BrokerCheck, PIABA supports the idea of private companies who may enhance public education through data analysis services.
4. In addition to making BrokerCheck more accessible, investors should have easier access to information about fees paid by the customer to the financial institution. The easiest and most effective way to do this would

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be requiring investment institutions to prominently display the amount of fees charged on the first page of customer account statements. PIABA believes that to be most effective, this fee disclosure should include both the dollar amount of fees charged for that statement time period and year to date, and the annual percentage fee charged with respect to both the net asset value of the account and as a percentage of the net gains and losses for the account. These figures may serve as a basic "red flag" for potential misconduct in the account.

PIABA appreciates and supports FINRA's commitment to investor protection. We recognize that FINRA has continued to improve BrokerCheck and other investor educational resources on its website. We hope that the improvement to Rule 2110 will result in more public investors obtaining the benefit of discovering and accessing those resources. Thank you for giving us the opportunity to comment and share our input.

Very truly yours,



Joseph C. Peiffer

PIABA

Executive Vice-President/President-Elect