



SEC Approves FINRA Rule Requiring BDs to Place Readily Apparent Reference and Hyperlink to BrokerCheck® Website

FINRA Regulatory Notice 15-50 makes effective June 6, 2016 an amendment to FINRA Rule 2210 requiring member-firm websites to include a readily apparent reference and hyperlink to BrokerCheck on (1) the initial Web page that the firm intends to be viewed by retail investors, and (2) any other Web page that includes a professional profile of one or more registered persons who conduct business with retail investors.

Background

FINRA initiated the BrokerCheck platform in furtherance of its belief that making public certain civil judicial, arbitration, customer disputes, financial matters and regulatory actions concerning associated persons is in the best interest of protecting the investing public. In support of this belief FINRA proposed to the SEC that it be authorized to amend FINRA Rule 2210 [Communications with the Public] to require that firms post links to their BrokerCheck profiles as well as their registered representative profiles provided the registered representative is in any way promoting or being referenced on a Web page. FINRA Rule 2210 imposes a requirement on members to have certain retail communications (1) approved by a qualified principal; (2) retained in accordance with SEC mandated record keeping requirements; and (3) file at least 10 business days prior to use with FINRA. The use and maintenance of these communications is subject to a spot-check procedure as specified by FINRA.

Compliance Action to Be Taken

Another important note is that even though this Rule amendment does not impose any requirement on communications regarding the member appearing on social media sites, FINRA considers websites operated by registered representatives that promote the member firm's business to be websites of the firm. Therefore, under this Rule it is foreseeable that the FINRA will view the personal Facebook page of a registered representative that describes his business in any more detail than that of simply being associated with a member firm as a promotion of the member firm's business thus requiring a BrokerCheck link to be present. FINRA has gone so far as to state that it will expect member firms to review such websites and ensure compliance with the Rule.

FINRA has also not established a set standard for compliance with its "readily apparent" requirement. In order to satisfy the "readily apparent" a judgment must be made concerning the location, font size, and proximity of the link to the information contained on the website necessitating the link. FINRA has expressly stated that a link appearing in a footer would not satisfy the requirement and thus attempting to do so would likely be considered to be a violation of FINRA Rule 2010 as well.

This notice is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this notice should be directed to: Ian J. Frimet, Esq. (516) 222-2230
ifrimet@wbhulaw.com



WEXLER BURKHART HIRSCHBERG & UNGER, LLP, ATTORNEYS AT LAW
377 OAK STREET, CONCOURSE LEVEL C2 • GARDEN CITY, NY 11530 •
516.222.2230 • WWW.WBHULAW.COM