

MICHIGAN STATE  
UNIVERSITY  
COLLEGE OF LAW

October 23, 2014

**Via Email Only**

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090  
rule-comments@sec.gov

**RE: SR-FINRA-2014-038 Proposed Rule Change to Adopt FINRA Rule 3110(e) (Responsibility of Member to Investigate Applicants for Registration) in the Consolidated FINRA Handbook**

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Dear Secretary Fields,

On behalf of the Investor Advocacy Clinic at Michigan State University College of Law, we write to support SR-FINRA-2014-038. The Clinic is a Michigan State College of Law clinical course in which students provide representation to public investors who cannot secure private legal representation due to the relatively small size of their claims. Additionally, students enrolled in the Clinic provide public education about investment fraud in the Michigan Area. The Clinic has a strong interest in supporting measures that increase investor protection. Requiring members to adopt written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant's initial or transfer Form U4 application will provide further protection for the investing public.



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**A. Verification of Form U4 Information Is a Necessary Protection**

Form U4 is used to gather information regarding employment background, disciplinary history, criminal convictions and other material from registered individuals. The information is submitted to the Central Registration Depository,<sup>1</sup> which is a critical source of information provided to investors on individual brokers through FINRA's BrokerCheck system. FINRA promotes BrokerCheck as an important investor education and protection tool. FINRA's website states,

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<sup>1</sup> "FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals" *Central Registration Depository*, FINRA (2014), <http://www.finra.org/Industry/Compliance/Registration/CRD/>.

“BrokerCheck is a free tool to help investors research the professional backgrounds of brokerage firms and brokers currently or formerly registered with FINRA or a national securities exchange, as well as current or former investment adviser firms and representatives . . . [i]t should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual.”<sup>2</sup>

Because FINRA holds this tool out as the first resource investors should use when considering whether to hire a broker, adequate steps must be taken to ensure that information provided to investors is true. Requiring firms to adopt written procedures that are “reasonably designed to verify the accuracy and completeness of the information contained in an applicant’s Form U4” is such an adequate step. Also requiring the review, “at a minimum,” to include a search of reasonably available public records would better ensure the accuracy of the information that investors are relying on when selecting a broker. Investors should be able to rely on the information provided through BrokerCheck in their due diligence review of a broker’s background.

## **B. Requiring a Search of Public Records Is Not Overly Burdensome**

While members may posit that requiring firms to conduct a search of public records will be overly burdensome or too costly, the benefits provided to investors in the form of accurate and complete information outweigh the costs. We agree with FINRA’s claim that many firms already have a background-check system in place and that the new rule does not place unreasonable costs on them.<sup>3</sup> This is likely the case, as members signing an applicant’s Form U4 already certify that the firm “has taken appropriate steps to verify the accuracy and completeness of the information contained in and with this application.”<sup>4</sup> Many of these firms likely already search public records to fulfill the requirement of taking reasonable steps to verify accurateness of the Form U4 material.

Public records are easily available online and through relatively low cost third-party service providers. FINRA has contracted with a company to provide competitive pricing to members around \$12 per applicant for a public records search.<sup>5</sup> While searching public records will no doubt create some increase in costs, costs are greatly outweighed by the benefits provided to investors through accurate and complete information. To be sure, if firms are not already searching public records to verify personnel information, it raises questions as to whether the

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<sup>2</sup> *BrokerCheck: Research Brokers & Investment Advisors*, FINRA (2014), <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/index.htm>.

<sup>3</sup> *Rule Proposal for New Hire Background Checks Moving to SEC*, INVESTMENT NEWS (Sept. 18, 2014), <http://www.investmentnews.com/article/20140918/FREE/140919916/rule-proposal-for-new-hire-background-checks-moving-to-sec>.

<sup>4</sup> Revised Form U4 (05/2009): Section 15B Firm/ Appropriate Signatory Representations, *available at* <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf>.

<sup>5</sup> Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 3110(e) (Responsibility of Member To Investigate Applicants for Registration) in the Consolidated FINRA Rulebook, Federal Register (Oct. 13th, 2014), <https://www.federalregister.gov/articles/2014/10/03/2014-23567/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-a>.

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firms were truly taking “appropriate steps” to ensure the accuracy of the information provided when signing an applicant’s Form U4.

**Conclusion**

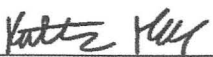
We support FINRA’s proposal to adopt Rule 3110(e) requiring firms to put in place written procedures to verify information contained in the Form U4 and to conduct a search of reasonably available public records.

Respectfully Submitted,



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