

Regulatory Notice

12-10

FINRA BrokerCheck®

FINRA Requests Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information

Comment Period Expires: April 6, 2012

Executive Summary

FINRA requests comment on ways to facilitate and increase investor use of BrokerCheck information. Specifically, FINRA requests comment on potential changes to the information disclosed through BrokerCheck, the format in which the information is presented and strategies to increase investor awareness of BrokerCheck.

Questions concerning this *Notice* should be directed to:

- ▶ Richard E. Pullano, Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or
- ▶ John D. Nachmann, Assistant Chief Counsel, Registration and Disclosure, at (240) 386-4816.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by April 6, 2012.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:
Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

February 2012

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management

Key Topics

- ▶ BrokerCheck
- ▶ Central Registration Depository

Referenced Rules & Notices

- ▶ FINRA Rule 2267
- ▶ FINRA Rule 8312
- ▶ SEA Section 15A

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.¹

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).²

Background & Discussion

FINRA established the BrokerCheck program (then known as the Public Disclosure Program) in 1988 to provide investors and the general public with information on the professional background, business practices and conduct of FINRA member firms and their associated persons. Through BrokerCheck, FINRA releases to the public information reported on uniform registration forms to the Central Registration Depository (CRD®).³ Among other things, BrokerCheck helps investors make informed choices about the individuals and firms with which they currently conduct or are considering conducting business.

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. These changes have made BrokerCheck easier to access by expanding the available methods of requesting information through the program. For instance, initially the public could only request information via U.S. mail or facsimile. FINRA subsequently added the ability to submit requests via a toll-free telephone number and thereafter through email. Now, BrokerCheck reports are available instantly online at www.finra.org/brokercheck. FINRA also has increased the amount of information available through the program. At first, limited employment history, final disciplinary actions and criminal convictions were available. The information currently available to investors, pursuant to FINRA Rule 8312, includes registrations brokers hold and the examinations they have passed, and disclosure information regarding various criminal, regulatory, customer dispute, termination and financial matters on current and former FINRA-registered brokerage firms and brokers.⁴

Until recently, BrokerCheck was the only regulator-provided comprehensive, online tool that enabled investors to check the backgrounds of financial service industry professionals. In 2010, the SEC expanded the Investment Adviser Public Disclosure (IAPD) database—which had previously only included information on investment adviser firms—to include information on investment adviser representatives.⁵ Although BrokerCheck and IAPD have

many similarities, there are differences in the information available, the presentation format and the manner in which individuals may obtain information from the systems. With regard to this last difference, FINRA, through BrokerCheck's Terms & Conditions, prohibits an individual from using BrokerCheck information for anything other than that individual's own personal or professional use. In addition, any voluminous requests or attempts to bypass FINRA software or hardware designed to block such requests is prohibited. In contrast, the SEC does not place any such limitations on an individual's use of IAPD information or the ability to obtain voluminous information through automated data collection tools (e.g., "screen scrapers"),⁶ provided the methods do not detrimentally affect the system's performance.

In January 2011, SEC staff released a [study](#) and recommendations on improving investor access to investment adviser and broker-dealer registration information, as required by Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).⁷ In the study, SEC staff makes the following three near-term recommendations to improve investor access to registration information through BrokerCheck:

- ▶ unify search returns for BrokerCheck and the IAPD databases;
- ▶ add the ability to search BrokerCheck by ZIP Code or other indicator of location; and
- ▶ add educational content to BrokerCheck, including links and definitions of terms that may be unfamiliar to investors.

The Dodd-Frank Act mandates that these recommendations be implemented within 18 months after completion of the study, and FINRA will put them into effect before the July 2012 deadline.

In addition to the near-term recommendations mentioned above, the study includes an intermediate-term recommendation (to be addressed after the 18-month implementation period). Specifically, SEC staff recommends that FINRA continue to analyze the feasibility and advisability of expanding BrokerCheck to include additional information available in the CRD system (e.g., the reason for and comments related to a broker's termination, scores on industry qualification exams, formerly reportable information), as well as the method and format of publishing BrokerCheck content. SEC staff notes that investor input could be valuable in this context.⁸

Based on the study's intermediate-term recommendation and FINRA's belief that regular evaluation of the BrokerCheck program is an important part of its statutory obligation to make information available to the public, FINRA has initiated a thorough review of its BrokerCheck program. The goal of this review is to determine how to facilitate and increase investor use of BrokerCheck information.⁹ As a first step, FINRA recently engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program. With this *Notice*, FINRA is seeking further input from interested parties, including investors who currently use or who may use BrokerCheck, on how FINRA can best achieve its goal.

Request for Comment

FINRA welcomes comments from all interested parties. Among other things, FINRA is interested in comments on the following:

Information Displayed

As mentioned above, the amount of information available through BrokerCheck has significantly increased since its introduction. With respect to brokers, BrokerCheck currently provides registration and employment history; industry examinations the broker has passed; other business activities the broker is engaged in; and information pertaining to criminal, regulatory action, civil judicial, customer complaint, termination and financial events.

The information, which is collected by FINRA and used for registration and regulatory purposes, is available for 10 years after the broker has left the securities industry and, in those cases where a broker has been involved in certain disclosure events, the information is available permanently.¹⁰

Information on brokerage firms provided through BrokerCheck includes locations; ownership; registrations; types of business; clearing, introducing and industry arrangements; affiliates; and disclosure information similar to that provided for brokers. Information pertaining to brokerage firms is available in BrokerCheck permanently.

- ▶ Should changes be made to the categories of CRD system information that are displayed through BrokerCheck or the time frames for which such information is displayed? If so, what information should be added or deleted from BrokerCheck and how long should the information be available in BrokerCheck?
- ▶ Would it be beneficial for investors if FINRA included links to other websites (*e.g.*, websites maintained by financial industry regulators or organizations that provide investor education) in BrokerCheck reports? If so, what types of links would be most helpful?
- ▶ Should a broker's educational background and/or professional designations (*e.g.*, Chartered Financial Consultant, Chartered Financial Analyst) be available in BrokerCheck?
- ▶ What terms or phrases used in BrokerCheck reports are most difficult for public users to understand? What educational or other material should FINRA provide to help public users?

Report Design, Format and Content

In response to a search request, BrokerCheck initially provides a user with a summary report for the requested broker or brokerage firm. For brokers, this summary report provides basic information regarding qualifications, registration and employment history, and existence of disclosure events. With respect to brokerage firms, the summary report contains information pertaining to location, profile, history, operations and the existence of disclosure events. Users have the option of requesting a detailed BrokerCheck report, which provides additional information about the broker or brokerage firm.

- ▶ What changes, if any, should be made to the design, format or content of the BrokerCheck summary report and/or the full detailed report?
- ▶ Would it be helpful to include in the summary report a concise summary of a broker's or brokerage firm's disclosure events (for example, a matrix setting forth the number and types of disclosure events), if any? If so, what would be the best format for the summary? What information should it contain?

Investor Awareness of BrokerCheck

During focus groups with investors, the consensus among participants was that investors should use BrokerCheck when considering whether to work with a new broker or brokerage firm. These participants stated that it was important for BrokerCheck to be more widely known among investors.

- ▶ How can FINRA best increase investor awareness of BrokerCheck?
- ▶ Should FINRA make basic BrokerCheck information (e.g., registration status, employing firm, employment location) available in such a way that would enable an investor to enter a broker's name in an Internet search engine, see the basic information in the search results, and be directed to BrokerCheck for more detailed information?
- ▶ Should changes be made to FINRA Rule 2267 to further increase investor awareness of BrokerCheck?¹¹ If so, should such changes involve the items of information disclosed, the frequency and/or manner of distribution of information, and/or the member firms covered by the rule? Should any other changes be made?

Commercial Use

Some for-profit companies have established, or are contemplating establishing, websites or services that enable users to verify or obtain information about financial industry professionals (including brokers). These companies' products and services likely would be targeted to fulfilling the needs of businesses and individual (i.e., retail) investors.

- ▶ Should FINRA provide BrokerCheck information to for-profit companies for commercial use? What are some of the benefits/concerns of such action? If FINRA were to provide BrokerCheck information to such companies, what conditions or limitations on use should FINRA consider imposing?

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
2. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
3. The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration) and Form U6 (Uniform Disciplinary Action Reporting Form).
4. In 2006, Congress amended SEA Section 15A(i) to, among other things, expand the methods by which BrokerCheck information is available and the amount of information provided. Pub. L. No. 109-209, 120 Stat. 1317 (2006).
5. IAPD, which FINRA operates under contract with the SEC, has been in operation since 2001.
6. A screen scraper is software that “automatically extracts data from HTML pages or other documents that are normally viewed interactively by the user.” See [PC Magazine Encyclopedia](#).
7. Pub. L. No. 111-203, 124 Stat. 1376 (2010).
8. Specifically, SEC staff states that investor input could help determine whether investors would find the disclosure of additional information through BrokerCheck useful and whether to revise the format of the BrokerCheck or IAPD websites.
9. A 2009 study found that only 15 percent of respondents claimed that they had checked a financial advisor’s background with a state or federal regulator. See Applied Research & Consulting LLC, [Financial Capability in the United States \(2009\)](#).
10. For a description of information that is available permanently in BrokerCheck, see [Regulatory Notices 09-66](#) (November 2009) and [10-34](#) (July 2010).
11. FINRA Rule 2267 (Investor Education and Protection) requires FINRA member firms to annually provide in writing to each of their customers the BrokerCheck telephone number and website address, as well as a notification of the availability of an investor brochure that includes information describing BrokerCheck. Pursuant to the rule, a member firm whose contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member firm and thereafter does not carry customer accounts or hold customer funds and securities may provide the information at or prior to the time of the customer’s initial purchase rather than on an annual basis. Also, any member firm that does not have customers or is a party to a carrying agreement where the carrying firm member provides the BrokerCheck information described above is exempt from the requirements of the rule.