

FINRA BrokerCheck

SEC Approves Changes to Expand the Information Released Through BrokerCheck and Establish a Process to Dispute (or Update) Information Disclosed Through BrokerCheck

Effective Date—Historic Complaints and Dispute Process: August 23, 2010

Effective Date—Disclosure Period and Permanently Available Information: November 6, 2010

Executive Summary

The SEC approved amendments to FINRA Rule 8312, which governs the release of information through BrokerCheck.¹ The amendments:

- (1) make publicly available in BrokerCheck all historic customer complaints that became non-reportable after the implementation of Web CRD;
- (2) permanently make publicly available in BrokerCheck information about former associated persons of a member firm, as reported to CRD on a uniform registration form if they were (a) convicted of or pled guilty or no contest to certain crimes; (b) subject to a civil injunction involving investment-related activity or found in a civil court to have been involved in a violation of investment-related statutes or regulations; or (c) named as a respondent or defendant in an arbitration or civil litigation in which they were alleged to have committed a sales practice violation, and which resulted in an award or civil judgment against them;
- (3) expand the BrokerCheck disclosure period for former associated persons of a member firm to 10 years from two years; and
- (4) codify FINRA's current process for disputing the accuracy of (or updating) information disclosed through BrokerCheck.

July 2010

Notice Type

- Rule Approval

Suggested Routing

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

Key Topics

- BrokerCheck
- BrokerCheck Dispute Process
- Central Registration Depository
- Historic Complaints
- Uniform Registration Forms

Referenced Rules & Notices

- FINRA Rule 8312

The amendments involving the public availability of historic customer complaints and the process for disputing the accuracy of information disclosed through BrokerCheck become effective on August 23, 2010. The effective date for the amendments pertaining to the expansion of the disclosure period for former associated persons and the permanent public availability of certain information about former associated persons of a member firm is November 6, 2010.

The text of the amendments to FINRA Rule 8312 is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or
- ▶ Stan Macel, Assistant General Counsel, Office of General Counsel, at (202) 728-8056.

Background & Discussion

FINRA Rule 8312 governs the information FINRA releases to the public via BrokerCheck. FINRA established BrokerCheck (formerly known as the Public Disclosure Program) in 1988 to provide the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. Via BrokerCheck, FINRA releases to the public certain information reported on uniform registration forms to the Central Registration Depository (CRD[®] or Web CRD).² Among other things, BrokerCheck helps investors make informed choices about the individuals and firms with which they may wish to do business.

The SEC recently approved amendments to FINRA Rule 8312. As discussed in more detail below, the amendments:

- ▶ make publicly available in BrokerCheck all historic customer complaints that became non-reportable after the implementation of Web CRD;
- ▶ expand the BrokerCheck disclosure period for former associated persons of a member firm to 10 years from two years;
- ▶ permanently make publicly available in BrokerCheck certain information about former associated persons of a member firm if any of the following applies, as reported to CRD on a uniform registration form: (i) the person was convicted of or pled guilty or nolo contendere to a crime; (ii) the person was the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation; or

- (iii) the person was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person; and
- ▶ codify FINRA's current process for disputing the accuracy of (or updating) information disclosed through BrokerCheck.

The amendments involving the public availability of historic customer complaints and the process for disputing the accuracy of information disclosed through BrokerCheck become effective on August 23, 2010. The effective date for the amendments pertaining to the expansion of the disclosure period for former associated persons and the permanent public availability of certain information about former associated persons of a member firm is November 6, 2010.

Revisions Regarding Historic Customer Complaints

Pursuant to FINRA Rule 8312, Historic Complaints are customer complaints that were reported on a uniform registration form, are more than two years old and that have not been settled or adjudicated; and customer complaints, arbitrations or litigations that have been settled for an amount less than the specified dollar amount (identified on the customer complaint question) and are therefore no longer reportable on a uniform registration form. FINRA Rule 8312 currently provides that Historic Complaints be displayed in BrokerCheck only after the following conditions have been met: (1) a matter became a Historic Complaint on or after March 19, 2007; (2) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than 10 years old; and (3) the person has a total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became Historic Complaints on or after March 19, 2007), or any combination thereof. Unless all three conditions are met, a person's Historic Complaints are not disclosed through BrokerCheck.³

Effective August 23, 2010, FINRA will eliminate the conditions set forth in FINRA Rule 8312 that must be met before Historic Complaints will be displayed in BrokerCheck. Eliminating these conditions will result in the disclosure of all Historic Complaints via BrokerCheck that became non-reportable after the implementation of Web CRD (*i.e.*, on or after August 16, 1999).

In conjunction with this change, FINRA will simplify the process by which member firms may add or revise comments to, or otherwise update information pertaining to, Historic Complaints.⁴ Currently, a member firm must contact FINRA and request that a Historic Complaint be “un-archived” if the member firm wants to change the information that it reported with respect to that Historic Complaint. After the member firm makes the necessary changes, the Historic Complaint is once again “archived,” if appropriate.

FINRA will simplify the process to amend Historic Complaints by allowing member firms to amend “archived” Historic Complaints without first contacting FINRA.⁵ With this change, member firms will be able to amend Historic Complaints in the same manner that they currently amend other reported disclosure events.

Expansion of the Disclosure Period for Former Associated Persons and the Information Permanently Available in BrokerCheck

Currently, as described in FINRA Rule 8312, BrokerCheck provides information regarding current and former member firms, as well as current associated persons and persons who were associated with a member firm within the preceding two years (*i.e.*, a two year “post-registration disclosure period”). In addition, BrokerCheck makes publicly available on a permanent basis certain information about former associated persons of a member firm who were the subject of a final regulatory action as defined in Form U4 that has been reported to CRD via a uniform registration form.

Beginning November 6, 2010, FINRA will expand the post-registration disclosure period to 10 years from two years. Furthermore, FINRA will permanently make publicly available in BrokerCheck certain information about former associated persons of a member firm who were registered on or after August 16, 1999, if any of the following applies, as reported to CRD on a uniform registration form: (1) the person was convicted of or pled guilty or *nolo contendere* to a crime;⁶ (2) the person was the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation;⁷ or (3) the person was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person.⁸

FINRA will disclose through BrokerCheck information concerning any of the disclosure events described above, as well as certain administrative information (*e.g.*, employment and registration history) and information as to qualification examinations, if available, regarding these formerly registered individuals. FINRA also will provide the most recently submitted comment, if any has been provided by the subject person, presuming the comment is in the form and in accordance with the procedures established by FINRA and relates to the information provided through BrokerCheck.

BrokerCheck Dispute Process

FINRA occasionally receives telephonic and written inquiries from persons subject to BrokerCheck who believe that information disclosed about them through BrokerCheck is inaccurate. When FINRA receives these inquiries, FINRA typically reviews the alleged inaccuracy and, if appropriate, contacts the entity that reported the information to determine whether the information is accurate. Once FINRA obtains all of the available pertinent information, FINRA determines whether the information is still accurate or whether the information should be modified or removed from BrokerCheck.

Effective August 23, 2010, FINRA will enhance and codify this process, which will allow individuals and firms to dispute the accuracy of information displayed through BrokerCheck. The dispute process will be available both for challenges alleging the information was incorrect when filed and challenges asserting that the information has become incorrect due to events subsequent to filing.

Under the dispute process, only an “eligible party” will be able to dispute the accuracy of information disclosed in that party’s BrokerCheck report. An eligible party consists of any current member firm, any former member firm (subject to a condition discussed below), and any associated person of a member firm or person formerly associated with a member firm for whom a BrokerCheck report is available. With respect to former member firms, a dispute may be submitted only by a natural person who served as the former member firm’s Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Legal Officer or Chief Compliance Officer, or individual with similar status or function, as identified on Schedule A of Form BD at the time the former member firm ceased being registered with FINRA.

To dispute the accuracy of BrokerCheck information, an eligible party must submit a BrokerCheck Dispute Form, which will be available on FINRA’s website. The eligible party must identify the information that the party alleges is inaccurate and provide an explanation as to the reason the information is believed to be inaccurate. Additionally, the eligible party must submit with the BrokerCheck Dispute Form all available supporting documentation (if any exists).

After receiving the BrokerCheck Dispute Form, FINRA will determine whether the dispute is eligible for investigation. To be eligible for investigation, the dispute must pertain only to factual information and not to information that is subjective in nature or a matter of interpretation. FINRA will presume that a dispute involving factual information is eligible for investigation; however, the following non-exhaustive list of situations will be ineligible for investigation, even if they involve factual information:

- a dispute that involves information that was previously disputed under this process and that does not contain any new or additional evidence;
- a dispute that is brought by an individual or entity that is not an eligible party;
- a dispute that does not challenge the accuracy of information contained in a BrokerCheck report but only provides an explanation of such information;
- a dispute that constitutes a collateral attack on or otherwise challenges the allegations underlying a previously reported matter such as a regulatory action, customer complaint, arbitration, civil litigation or termination;
- a dispute that consists of a general statement contesting information in a BrokerCheck report with no accompanying explanation; and
- a dispute that involves information contained in CRD that is not disclosed through BrokerCheck.

If FINRA determines that a dispute is not eligible for investigation, it will notify the individual or firm of this determination in writing, including a brief description of the reason for the determination. A determination by FINRA that a dispute is not eligible for investigation is not subject to appeal.

If FINRA determines that a dispute is eligible for investigation, FINRA will add a general notation to the eligible party's BrokerCheck report stating that the eligible party has disputed certain information included in the report.⁹ FINRA will evaluate the BrokerCheck Dispute Form and supporting documentation submitted by the eligible party. If FINRA concludes that the documentation submitted is sufficient to make a determination regarding the information that is the subject of the request, FINRA will make the appropriate change(s), if any. If, however, the BrokerCheck Dispute Form and supporting documentation do not include sufficient information upon which FINRA can make a determination, FINRA will, under most circumstances, contact the entity that reported the information to CRD (*i.e.*, a firm, other regulator or FINRA department (the "reporting entity")) and request that the reporting entity verify that the information is accurate.¹⁰ Where a reporting entity other than FINRA is involved, FINRA will defer to

that reporting entity regarding the accuracy of the information provided to FINRA and disclosed through BrokerCheck.¹¹ If the reporting entity acknowledges that the information is not accurate, FINRA will update, modify or remove the information, as appropriate, based on the information provided by the reporting entity. If the reporting entity verifies the accuracy of the information or the reporting entity no longer exists or is unable to verify the accuracy of the information, FINRA will not change the information.

Upon making its determination, FINRA will notify the disputing eligible party in writing that the investigation resulted in a determination that (1) the information is inaccurate or not accurately presented and has been updated, modified or deleted; (2) the information is accurate in content and presentation and no changes have been made; or (3) the accuracy of the information or its presentation could not be verified and no changes have been made. In addition, FINRA will remove the dispute notation from the eligible party's BrokerCheck report. A determination by FINRA regarding a dispute, including a determination to leave unchanged or to update, modify or delete disputed information, will not be subject to appeal.¹²

Endnotes

- 1 See Securities Exchange Act Release No. 62476 (July 8, 2010), 75 FR 41254 (July 15, 2010) (Order Approving File No. SR-FINRA-2010-012).
- 2 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).
- 3 In addition, even if a person meets the criteria established for disclosing Historic Complaints, only those Historic Complaints that became Historic Complaints after March 19, 2007, currently are displayed through BrokerCheck.
- 4 FINRA will also revise the customer dispute disclosure section of the BrokerCheck report to identify those customer disputes that were reported by a member firm as closed with no action, withdrawn, dismissed or denied. FINRA will continue to evaluate all aspects of its BrokerCheck program, including whether additional changes to the BrokerCheck report format should be implemented to make the reports easier to read and understand.
- 5 FINRA will continue to review all changes made to Historic Complaints to determine if further action is warranted.
- 6 This information is currently elicited by Questions 14A(1)(a) and 14B(1)(a) on Form U4 and Questions 7C(1) and 7C(3) on Form U5.
- 7 This information is currently elicited by Questions 14H(1)(a) and 14H(1)(b) on Form U4.
- 8 This information is currently elicited by Question 14I(1)(b) on Form U4 and Question 7E(1)(b) on Form U5.
- 9 In those circumstances where a dispute involves a court order to expunge information from BrokerCheck, FINRA will, as it does today, prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.
- 10 FINRA will not contact the reporting entity if the entity is unlikely to have information regarding the disputed information.
- 11 If the reporting entity obtained its information from a third party (*e.g.*, a firm reported to CRD that an associated individual had declared bankruptcy based on information from a consumer reporting agency), FINRA will not contact the third party (in this example, the consumer reporting agency) to try to verify the accuracy of the information. The reporting entity will have the responsibility of verifying the accuracy of the information it received from the third party.
- 12 Although FINRA determinations under the dispute process will not be subject to appeal, individuals and firms will continue to have the ability to challenge BrokerCheck information they believe to be inaccurate through other processes that are available today (*e.g.*, an arbitration or court proceeding).

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Attachment A

New language is underlined; deletions are in brackets.

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8000. Investigations and Sanctions

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8300. Sanctions

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8312. FINRA BrokerCheck Disclosure

(a) No Change.

(b) (1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below ~~f[F]~~ or inquiries regarding a current or former member, a current associated person, or a person who was associated with a member within the preceding ten ~~two~~ years, ~~], except as otherwise provided in paragraph (d) below, FINRA shall release:]~~

(2) The following information shall be released pursuant to this paragraph (b):

~~[(1)]~~ (A) any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively “Registration Forms”);

~~[(2)]~~ (B) currently approved registrations;

~~[(3)]~~ (C) summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer;

~~[(4)]~~ (D) the most recently submitted comment, if any, provided to FINRA by a person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included;

~~[(5)]~~ (E) information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations;

~~[(6)]~~ (F) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member is subject to the provisions of NASD Rule 3010(b)(2) (“Taping Rule”);

[(7)] (G) Historic Complaints (i.e., the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and that have not been settled or adjudicated, and customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 prior to May 18, 2009 or an amount less than \$15,000 on or after May 18, 2009 and are no longer reported on a Registration Form), provided that any such matter became a Historic Complaint on or after August 16, 1999; and [:]

[(A) any such matter became a Historic Complaint on or after March 19, 2007;]

[(B) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and]

[(C) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after March 19, 2007), or any combination thereof; and]

[(8)](H) the name and succession history for current or former members.

(c) (1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below f[F] or inquiries regarding a person who [(1)] was formerly associated with a member, but who has not been associated with a member within the preceding ten [two] years, and:

(A) [(2)] was ever the subject of a final regulatory action as defined in Form U4 that has been reported to CRD on a Registration Form; or

(B) was registered with FINRA on or after August 16, 1999, and any of the following applies, as reported to CRD on a Registration Form:

(i) was convicted of or pled guilty or nolo contendere to a crime;

(ii) was the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation; or

(iii) was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person.

[, except as provided in paragraph (d) below, FINRA shall release, to the extent available:]

(2) The following information shall be released pursuant to this paragraph (c):

(A) [(1)] information regarding the [final regulatory action] event(s) enumerated in paragraph (c)(1)(A) or (B) as reported on a Registration Form;

(B) [(2)] administrative information, including employment history and registration history derived from information reported on a Registration Form;

(C) [(3)] the most recently submitted comment, if any, provided to FINRA by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included; and

(D) [(4)] information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations.

For purposes of this paragraph (c), a final regulatory action as defined in Form U4 may include any final action, including any action that is on appeal, by the SEC, the Commodity Futures Trading Commission, a federal banking agency, the National Credit Union Administration, another federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization (as those terms are used in Form U4).

(d) No Change.

(e) Eligible parties may dispute the accuracy of certain information disclosed through FINRA BrokerCheck pursuant to the administrative process described below:

(1) Initiation of a Dispute

(A) The following persons (each an “eligible party”) may initiate a dispute regarding the accuracy of information disclosed in that eligible party’s BrokerCheck report:

(i) any current member;

(ii) any former member, provided that the dispute is submitted by a natural person who served as the former member’s Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Legal Officer or Chief Compliance Officer, or individual with similar status or function, as identified on Schedule A of Form BD at the time the former member ceased being registered with FINRA; or

(iii) any associated person of a member or person formerly associated with a member for whom a BrokerCheck report is available.

(B) To initiate a dispute, an eligible party must submit a written notice to FINRA, in such manner and format that FINRA may require, identifying the alleged inaccurate factual information and explaining the reason that such information is allegedly inaccurate. The eligible party must submit with the written notice all available supporting documentation.

(2) Determination of Disputes Eligible for Investigation

(A) FINRA will presume that a dispute of factual information is eligible for investigation unless FINRA reasonably determines that the facts and circumstances involving the dispute suggest otherwise.

(B) If FINRA determines that a dispute is eligible for investigation, FINRA will, except in circumstances involving court-ordered expungement, add a general notation to the eligible party’s BrokerCheck report stating that the eligible party has disputed certain information included in the report. The notation will be removed from the eligible party’s BrokerCheck report upon resolution of the dispute by FINRA. In disputes involving a court order to expunge information from BrokerCheck, FINRA will prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.

(C) If FINRA determines that a dispute is not eligible for investigation, it will notify the eligible party of this determination in writing, including a brief description of the reason for the determination. A determination by FINRA that a dispute is not eligible for investigation is not subject to appeal.

(3) Investigation and Resolution of Disputes

(A) If FINRA determines that the written notice and supporting documentation submitted by the eligible party is sufficient to update, modify or remove the information that is the subject of the request, FINRA will make the appropriate change. If the written notice and supporting documentation do not include sufficient information upon which FINRA can make a determination, FINRA, under most circumstances, will contact the entity that reported the disputed information (the “reporting entity”) to the Central Registration Depository and request that the reporting entity verify that the information, as disclosed through BrokerCheck, is accurate in content and presentation. If a reporting entity other than FINRA is involved, FINRA will defer to the reporting entity about whether the information received is accurate. If the reporting entity acknowledges that the information is not accurate, FINRA will update, modify or remove the information, as appropriate, based on the information provided by the reporting entity. If the reporting entity confirms that the information is accurate in content and presentation or the reporting entity no longer exists or is otherwise unable to verify the accuracy of the information, FINRA will not change the information.

(B) FINRA will notify the eligible party in writing that the investigation has resulted in a determination that:

(i) the information is inaccurate or not accurately presented and has been updated, modified or deleted;

(ii) the information is accurate in content and presentation and no changes have been made; or

(iii) the accuracy of the information or its presentation could not be verified and no changes have been made.

(C) A determination by FINRA, including a determination to leave unchanged or to modify or delete disputed information, is not subject to appeal.

Existing paragraph (e) to be re-designated as paragraph (f).

• • • **Supplementary Material:** -----

.01 No Change.

.02 Disputes Not Eligible for Investigation. For purposes of paragraph (e) of this Rule, examples of situations in which FINRA will determine that a dispute is not eligible for investigation include, but are not limited to:

(a) a dispute that involves information that was previously disputed under this process and that does not contain any new or additional evidence;

(b) a dispute that is brought by an individual or entity that is not an eligible party;

(c) a dispute that does not challenge the accuracy of information contained in a BrokerCheck report but only provides an explanation of such information;

(d) a dispute that constitutes a collateral attack on or otherwise challenges the allegations underlying a previously reported matter such as a regulatory action, customer complaint, arbitration, civil litigation, or termination;

(e) a dispute that consists of a general statement contesting information in a BrokerCheck report with no accompanying explanation; and

(f) a dispute that involves information contained in the Central Registration Depository that is not disclosed through BrokerCheck.

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