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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 015

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *

☒

Amendment *

☐

Withdrawal

☐

Section 19(b)(2) *

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Section 19(b)(3)(A) *

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Section 19(b)(3)(B) *

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Extension of Time Period for
Commission Action *

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Date Expires *

Rule

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19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

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Section 806(e)(2) *

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Security-Based Swap Submission pursuant to the
Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Release Information on BrokerCheck Relating to Firm Designation as a Restricted Firm.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *

Michael

Last Name *

Garawski

Title *

Associate General Counsel

E-mail *

Michael.garawski@finra.org

Telephone *

(202) 728-8835

Fax

(202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date

06/03/2022

(Title *)

By

Patrice Gliniecki

(Name *)

Senior Vice President and Deputy General Cou

Patrice
Gliniecki

Digitally signed by Patrice
Gliniecki
Date: 2022.06.03 10:56:14
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NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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FINRA-2022-015 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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FINRA-2022-015 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck® as to whether a particular member firm or former member firm is currently designated as a “Restricted Firm” pursuant to Rule 4111 (Restricted Firm Obligations) and Rule 9561 (Procedures for Regulating Activities Under Rule 4111).

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

8000. INVESTIGATIONS AND SANCTIONS

* * * * *

8300. SANCTIONS

* * * * *

8312. FINRA BrokerCheck Disclosure

(a) No Change.

(b)(1) No Change.

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

(b):

(A) through (F) No Change.

¹ 15 U.S.C. 78s(b)(1).

(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]

(H) the name and succession history for current or former BrokerCheck Firms[.]; and

(I) information as to whether a particular current or former member is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561.

(c) through (g) No Change.

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

.01 through .03 No Change.

* * * * *

2. Procedures of the Self-Regulatory Organization

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice following Commission approval.

3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

Background

On July 30, 2021, the SEC issued an order approving proposed rule changes concerning firms with a significant history of misconduct.² The new rules include new Rule 4111 (Restricted Firm Obligations), new Rule 9561 (Procedures for Regulating Activities Under Rule 4111), and amendments to Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series).

Rule 4111 establishes an annual process to designate as “Restricted Firms” member firms that present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events, and then impose on such firms a “Restricted Deposit Requirement”³ or, in addition or in the alternative, conditions

² See Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925 (August 5, 2021) (Order Approving File No. SR-FINRA-2020-041, as Modified by Amendment Nos. 1 and 2) (“SEC Order”); see also Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 49589 (September 3, 2021) (Order Approving File No. SR-FINRA-2020-041) (Correction).

³ See Rule 4111(i)(15) (definition of “Restricted Deposit Requirement”). A firm subject to a Restricted Deposit Requirement will be required to establish a Restricted Deposit Account and deposit in that account cash or qualified securities with an aggregate value that is not less than the member’s Restricted Deposit Requirement. See Rule 4111(a); 4111(i)(14) (definition of “Restricted Deposit Account”).

or restrictions on the member firm's operations that are necessary or appropriate to protect investors and the public interest.⁴

Rule 4111 is designed to protect investors and the public interest by strengthening tools available to FINRA to address the risks posed by member firms with a significant history of misconduct.⁵ The rule will create incentives for firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm, to mitigate FINRA's concerns.⁶

New Rules 4111 and 9561, and the amendments to Rule 9559, were effective on January 1, 2022.⁷ FINRA explained in Regulatory Notice 21-34 that FINRA would announce, in a separate Regulatory Notice, the first Evaluation Date no less than 120 calendar days before the first Evaluation Date, and that FINRA expected that the first Evaluation Date would be mid-year 2022. On February 1, 2022, FINRA announced that the first Evaluation Date for Rule 4111 would be June 1, 2022.⁸

⁴ See SEC Order, 86 FR 42925, 42932. Firms designated as Restricted Firms will have significantly higher levels of risk-related disclosures as compared to firms of similar sizes. See SEC Order, 86 FR 42925, 42926. There are numeric thresholds for seven firm-size categories, based on the number of Registered Persons In-Scope. See Rule 4111(i)(11); see also Rule 4111(i)(13) (definition of "Registered Persons In-Scope").

⁵ See SEC Order, 86 FR 42925, 42926.

⁶ See SEC Order, 86 FR 42925, 42926, 42932.

⁷ See Regulatory Notice 21-34 (September 2021). On May 26, 2022, FINRA filed for immediate effectiveness a proposed rule change to make non-substantive and technical amendments to Rules 4111 and 9561. See SR-FINRA-2022-014 (Form 19b-4), available at <https://www.finra.org/sites/default/files/2022-05/sr-finra-2022-014.pdf>.

⁸ See Information Notice, February 1, 2022 (FINRA Announces Rule 4111 (Restricted Firm Obligations) Evaluation Date); see also Rule 4111(i)(5)

Proposed Amendments to Rule 8312

To enhance the investor-protection benefits of Rule 4111, FINRA is proposing rule changes to amend Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561.⁹

Rule 8312 governs the information FINRA releases to the public through its BrokerCheck system.¹⁰ BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary history to investors at no charge. FINRA requires member firms to inform their customers of the availability of BrokerCheck.¹¹

Information that is released on BrokerCheck includes, among other things, information reported on the most recently filed “Registration Forms” (with limited

(definition of “Evaluation Date”). As FINRA explained in that Information Notice, FINRA plans to actually perform the annual calculation at least 30 days after the June 1, 2022 Evaluation Date.

⁹ In the rulemaking that approved the new rules concerning firms with a significant history of misconduct, FINRA committed to file this proposed rule change to Rule 8312. See Letter from Michael Garawski, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated July 20, 2021, at p. 3, (“July 2021 FINRA Response to Comments”).

¹⁰ The BrokerCheck website address is brokercheck.finra.org.

¹¹ See Rule 2210(d)(8) (requiring that each of a member’s websites include a readily apparent reference and hyperlink to BrokerCheck on the initial webpage that the member intends to be viewed by retail investors and any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors); Rule 2267 (requiring members to provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck).

exceptions) for both firms and registered individuals, and summary information about certain arbitration awards against a firm involving a securities or commodities dispute with a public customer.¹² To provide enhanced disclosure to the public, FINRA is proposing to amend Rule 8312 to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a “Restricted Firm” pursuant to Rules 4111 and 9561. As explained above, Rule 4111 will be an important new tool to identify and respond to firms that present a high degree of risk to investors. Disclosing on BrokerCheck the firms that are designated as Restricted Firms would provide material information to investors concerning the identity of firms that FINRA has determined pose far higher risks to the public than firms of similar size.¹³

If the proposed rule change is approved, information that a firm is a Restricted Firm would display on BrokerCheck while that firm is designated as a Restricted Firm. This would include while a Rule 9561 expedited proceeding to review a Department of Member Regulation (“Department”) decision is pending, because a Department decision that designates a firm as a Restricted Firm will not be stayed during a Rule 9561 expedited proceeding.¹⁴ When a firm is not designated, or is no longer designated, as a

¹² See Rule 8312. Rule 8312 uses the term “Registration Forms” to refer collectively to the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5), the Uniform Disciplinary Action Reporting Form (Form U6), the Uniform Application for Broker-Dealer Registration (Form BD), and the Uniform Request for Broker-Dealer Withdrawal (Form BDW). See Rule 8312(b)(2)(A).

¹³ This disclosure would be similar to disclosures on BrokerCheck as to whether a particular member is subject to the provisions of Rule 3170 (the “Taping Rule”). See Rule 8312(b)(2)(F).

¹⁴ See Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

Restricted Firm, no historical information would be displayed on BrokerCheck that the firm was a Restricted Firm.

For example:

- If FINRA designates a firm as a Restricted Firm in Year 1 but does not re-designate the firm as a Restricted Firm in Year 2, the Restricted Firm status would display in BrokerCheck beginning from the date in Year 1 when the Department designated the firm as a Restricted Firm to the date in Year 2 when the firm is no longer designated as a Restricted Firm.
- If a firm is designated as a Restricted Firm in Year 1 and subsequently in Year 1 withdraws from FINRA membership and becomes a former member firm,¹⁵ the Restricted Firm status would continue to display in BrokerCheck until the date in Year 2 when the firm is no longer designated as a Restricted Firm (i.e., when the annual calculation of the “Preliminary Criteria for Identification”¹⁶ for member firms occurs), even though the firm had withdrawn from FINRA membership before that date.¹⁷

¹⁵ See Rule 4111(i)(7) (definition of “Former Member”).

¹⁶ See Rule 4111(i)(9) (definition of “Preliminary Criteria for Identification”).

¹⁷ FINRA believes that disclosing on BrokerCheck the former members that are currently designated as Restricted Firms would provide valuable information to investors and third parties. A former member that is currently designated as a Restricted Firm was a member at the time it was designated as a Restricted Firm, and it remains designated as a Restricted Firm until the date when the next annual calculation of the Preliminary Criteria for Identification for member firms occurs. During the period when a former member remains designated as a Restricted Firm, it continues to be subject to the obligations imposed on it pursuant to Rule 4111 and to a presumption that any application it files to withdraw all or any portion of its Restricted Deposit Requirement should be denied. See Rule 4111(f)(1), (3). Disclosure on BrokerCheck of information for a firm that was

Information that a firm is currently a Restricted Firm would be displayed in BrokerCheck on both a firm's summary report and detailed report. Specifically, those reports would include the text, "This firm is currently designated as a Restricted Firm pursuant to FINRA Rule 4111 (Restricted Firm Obligations)," in a color or font that is prominent. The alert also would include the text "Click here for more information," with a hyperlink to a page on FINRA's website that provides for the investing public a clear explanation of Rule 4111 and what it means to be a Restricted Firm.¹⁸ FINRA believes that releasing information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm would help inform investors of firms that may pose outlier-level risks compared to firms of similar sizes, which may incent investors to research more carefully the background of the firm. FINRA also believes that the public disclosure of the firms currently designated as Restricted Firms would create additional incentives for firms with a significant history of misconduct to change behaviors and activities to reduce risk.

If the proposed rule change is approved, FINRA expects that the effective date of the proposed rule change would be a date after FINRA completes the first annual Rule 4111 cycle, but no later than the Evaluation Date for the second annual Rule 4111 cycle.

designated as a Restricted Firm and became a former member in the same year also could be information that investors consider when weighing their options in active or contemplated arbitration claims against former members. See Regulatory Notice 20-11 (April 2020).

¹⁸ This would be similar in nature to how the information in BrokerCheck that a firm is a "taping firm" includes a hyperlink to a page on FINRA's website containing a clear description of what it means to be a "taping firm." See Regulatory Notice 21-09 (March 2021); FINRA Taping Rule, available at <https://www.finra.org/rules-guidance/guidance/taping-rule>.

After the effective date, FINRA would make the relevant disclosures on BrokerCheck beginning with the firms that are designated or re-designated as Restricted Firms in the second annual Rule 4111 cycle. This would allow FINRA to gain meaningful experience with new Rule 4111, including any operational shortcomings, before FINRA begins disclosing Restricted Firms on BrokerCheck.¹⁹

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(i)(1) of the Act,²¹ which requires that FINRA establish and

¹⁹ Information that a firm is currently designated as a Restricted Firm would not be made available on BrokerCheck prior to the effective date of the proposed rule change, and information about the obligations to which a Restricted Firm is subject would not be made available on BrokerCheck. FINRA recognizes that information about a firm's Restricted Firm designation and the obligations imposed on it would be important to state securities regulators, both before and after the effective date of the proposed rule change. FINRA reiterates its commitment to working with individual state securities regulators to share information concerning whether firms that operate in their individual states have been designated by FINRA as Restricted Firms, along with information concerning any obligations that have been imposed pursuant to Rules 4111 and 9561 on the Restricted Firm. See July 2021 FINRA Response to Comments, supra note 9, at p. 3.

²⁰ 15 U.S.C. 78o-3(b)(6).

²¹ 15 U.S.C. 78o-3(i)(1).

maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding, registration information on its members and their associated persons, and to adopt rules governing the process for making inquiries and the type, scope, and presentation of information to be provided in response to such inquiries. Publicly disclosing through BrokerCheck information concerning the current status of a member firm as a Restricted Firm would inform more investors of which firms pose high risks to the investing public, compared to firms of similar sizes, and thereby incent investors to research carefully the background of the firm and may also act to incentivize firms with a significant history of misconduct to change behaviors and activities to reduce risk.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated benefits and costs, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

A. Regulatory Need

Rule 4111 identifies member firms that present a high degree of risk to the investing public and allows FINRA to impose on such firms a Restricted Deposit Requirement and, in addition or in the alternative, other conditions or restrictions on

firms' operations. FINRA anticipates that investors may benefit from the public disclosure of information that a firm is a "Restricted Firm," both in how it would help investors decide whether to use a firm and its registered representatives for brokerage services, and in how it would make stronger the incentives for a firm to improve its supervisory and compliance practices. The proposed amendments to Rule 8312 would provide this information to investors through BrokerCheck.

B. Economic Baseline

The economic baseline for the proposed rule change is the current regulatory framework and Rule 4111 (which was approved by the SEC on July 30, 2021, and was effective on January 1, 2022), the information currently available on BrokerCheck, and current investor utilization of BrokerCheck.²² Rule 4111 creates a multi-step process for FINRA's determination of whether a member firm should be designated as a Restricted Firm. The first step in the process is an annual calculation to determine whether a member firm meets the Preliminary Criteria for Identification.²³ Only some of the firms that meet the Preliminary Criteria for Identification will be designated as Restricted Firms at the end of the multi-step process.²⁴

²² This analysis uses a baseline inclusive of Rule 4111 for clarity and simplicity. The expected impacts of Rule 4111 were considered in detail in SR-FINRA-2020-041. See Securities Exchange Act Release No. 90527 (November 27, 2020), 85 FR 78540, 78551-54 (December 4, 2020) (Notice of Filing of File No. SR-FINRA-2020-041) ("Filing").

²³ The Preliminary Criteria for Identification are based on information that is reportable on Forms U4, U5, U6 and BD or derived from customer arbitrations filed with FINRA Dispute Resolution Services' arbitration forum. See Rule 4111(i)(4). Most of this information is disclosed on BrokerCheck.

²⁴ In 2019, for example, there were 40 small firms (1.3% of all small member firms) and five mid-size firms (2.5% of all mid-size member firms) that would have met

The proposed amendments to Rule 8312 are expected to affect users of BrokerCheck, currently and formerly registered firms, and, indirectly, the individuals associated with those firms. Users of BrokerCheck include, among others, investors, member firms and other entities in the financial services industry, regulators, and individuals registered as brokers or seeking employment in the brokerage industry. The information about firms currently available to investors through BrokerCheck is derived from the Registration Forms and the disclosures required thereunder, and includes a description of where and when the firm was established, people and entities that own controlling shares or directly influence the firm's daily operations, a firm's history that details mergers, acquisitions or name changes affecting the firm, the firm's active licenses and registrations, the types of businesses it conducts, information about arbitration awards and disciplinary matters, and information as to whether a particular member is subject to the provisions of the Taping Rule, among other information and disclosures.²⁵ In 2020, BrokerCheck helped users conduct almost 38 million searches of

the Preliminary Criteria for Identification had it existed at that time. See SR-FINRA-2020-041, Exh. 3g, available at <https://www.finra.org/sites/default/files/2021-07/SR-FINRA-2020-041-Amendment2.pdf>. These statistics correspond to the number of firms that would have met the Preliminary Criteria for Identification as of year-end (December 31, 2019) of the identification year. The total number of member firms that would have met the Preliminary Criteria for Identification had it existed at the time has trended down since 2014, when 75 small firms (2% of all small member firms), four mid-size firms (1.9% of all mid-size member firms) and one large firm (0.6% of all large member firms) would have met the Preliminary Criteria for Identification. FINRA defines a small firm as a member with at least one and no more than 150 registered persons, a mid-size firm as a member with at least 151 and no more than 499 registered persons, and a large firm as a member with 500 or more registered persons. See FINRA By-Laws, Article I.

²⁵ See About BrokerCheck, <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck>; Rule 8312.

firms and individual brokers. Information available on BrokerCheck may reach investors through additional channels, because the data may be copied and compiled through data gathering or extraction tools, subject to applicable terms of use.²⁶

C. Economic Impacts

The proposed amendments to Rule 8312 would disclose in BrokerCheck a firm's designation as a Restricted Firm for the duration of that designation. As noted above, the potential benefits to investors need not be limited to individuals who consult BrokerCheck, because third parties may harvest and compile the information and make it available through other outlets, subject to applicable terms of use.

The disclosure on BrokerCheck of firms' Restricted Firm designations may benefit investors. Currently, BrokerCheck already displays disclosures reported on the most recently filed Registration Forms for both firms and registered individuals, as well as summary information about certain arbitration awards against firms involving a securities or commodities dispute with a public customer. However, with the proposed additional disclosure of a firm's designation as a Restricted Firm, investors might be prompted to learn more about such Restricted Firms, engage with them more cautiously, or—for investors currently using the services of Restricted Firms—critically review their experiences with these firms. As discussed at length in SR-FINRA-2020-041, FINRA's analysis indicated that firms that would have met the Preliminary Criteria for Identification during the 2013-2017 review period had on average 6-20 times more new

²⁶ See Section 5 of the FINRA BrokerCheck Terms of Use, <https://brokercheck.finra.org/terms>.

“Registered Person and Member Firm Events”²⁷ after their identification than other firms of the same size category.²⁸ The disclosure on BrokerCheck of a firm’s Restricted Firm designation and the resulting additional investor caution may help some investors avoid the harms associated with future misconduct. Although the magnitude of these effects is not known, they would supplement the protective effects of the obligations imposed by FINRA on the designated Restricted Firms.²⁹ The anticipated benefits to investors of the proposed amendments would increase with the likelihood that potential or actual customers of a designated Restricted Firm seek or learn information in BrokerCheck about a firm’s Restricted Firm designation and consider it in their research on the background of a firm.

The disclosure on BrokerCheck of firms’ Restricted Firm designations and additional investor caution may have a range of effects on such firms. Designated Restricted Firms may respond by offering more competitive pricing or improved customer service. Designated Restricted Firms may also act to improve internal controls in order to avoid additional reputational harm and being re-designated as a Restricted

²⁷ See Rule 4111(i)(12) (defining “Registered Person and Member Firm Events” to include “Registered Person Adjudicated Events,” “Registered Person Pending Events,” “Registered Person Termination and Internal Review Events,” “Member Firm Adjudicated Events,” and “Member Firm Pending Events,” all of which are defined in Rule 4111(i)(4)).

²⁸ FINRA’s analysis compared firms that satisfied the Preliminary Criteria for Identification in each year between 2013 and 2017 to firms of similar size that did not satisfy the criteria and looked at the number of subsequent disclosure events in the remainder of the period analyzed, which ended in 2019. See Filing, supra note 22, 85 FR 78540, 78552; SR-FINRA-2020-041, Exhibit 3c, available at <https://www.finra.org/sites/default/files/2020-11/SR-FINRA-2020-041.pdf>.

²⁹ Rule 4111 will create strong measures of deterrence of misconduct while a firm is designated a Restricted Firm. See Filing, 85 FR 78540, 78550.

Firm in subsequent years. However, additional investor caution, if significant enough, may cause financial distress at some firms. Disclosing a firm's Restricted Firm designation on BrokerCheck may lead investors to review their engagement with the firm more critically and, therefore, also may potentially lead to increased customer complaints, arbitration cases and possible awards against, and settlements by, such firms. In addition, as noted in SR-FINRA-2020-041, Restricted Firms may have greater difficulty or increased costs associated with maintaining a clearing arrangement, loss of trading partners, or similar impairments where third parties can determine that a firm meets the Preliminary Criteria for Identification or has been deemed to be a Restricted Firm.³⁰ While some third parties like clearing firms may require a firm to disclose Restricted Firm status during private contract negotiations, other third-party firms may learn of a firm's Restricted Firm designation only after the information is disclosed publicly. These third-party firms may then anticipate an increase in legal and contingent costs through the potential liabilities that they face through their business relationships with a Restricted Firm. As a result, Restricted Firms may find that costs of these third-party agreements increase and potentially lose access to such providers. While the magnitude of these reactions from investors and third parties cannot be quantified, it is possible that the disclosure of the designation as a Restricted Firm may result in some firms going out of business.

D. Alternatives Considered

FINRA recognizes that the design and implementation of the rule proposals may impose direct and indirect costs on a variety of stakeholders, including firms, brokers,

³⁰ See Filing, 85 FR 78540, 78553.

regulators, investors and the public. Accordingly, in developing its rule proposals, FINRA seeks to identify ways to enhance the efficiency and effectiveness of the proposed rules while maintaining their regulatory objectives.

In developing the proposal, FINRA considered two different alternatives for when to begin releasing information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm. Specifically, FINRA considered whether to begin releasing this information on BrokerCheck during the first annual Rule 4111 cycle or, instead, the second annual Rule 4111 cycle. FINRA has proposed to start this disclosure in the second annual Rule 4111 cycle, and not sooner, because it would allow FINRA and member firms to gain meaningful experience with new Rule 4111, including any operational shortcomings, before FINRA begins disclosing Restricted Firms on BrokerCheck.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.³¹

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

³¹

15 U.S.C. 78s(b)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2022-015)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Release Information on BrokerCheck® Relating to Firm Designation as a Restricted Firm

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck® as to whether a particular member firm or former member firm is currently designated as a “Restricted Firm” pursuant to Rule 4111 (Restricted Firm Obligations) and Rule 9561 (Procedures for Regulating Activities Under Rule 4111).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

8000. INVESTIGATIONS AND SANCTIONS

* * * * *

8300. SANCTIONS

* * * * *

8312. FINRA BrokerCheck Disclosure

(a) No Change.

(b)(1) No Change.

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

(b):

(A) through (F) No Change.

(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]

(H) the name and succession history for current or former BrokerCheck Firms[.]; and

(I) information as to whether a particular current or former member is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561.

(c) through (g) No Change.

• • • Supplementary Material: -----

.01 through .03 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On July 30, 2021, the SEC issued an order approving proposed rule changes concerning firms with a significant history of misconduct.³ The new rules include new Rule 4111 (Restricted Firm Obligations), new Rule 9561 (Procedures for Regulating

³ See Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925 (August 5, 2021) (Order Approving File No. SR-FINRA-2020-041, as Modified by Amendment Nos. 1 and 2) ("SEC Order"); see also Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 49589 (September 3, 2021) (Order Approving File No. SR-FINRA-2020-041) (Correction).

Activities Under Rule 4111), and amendments to Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series).

Rule 4111 establishes an annual process to designate as “Restricted Firms” member firms that present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events, and then impose on such firms a “Restricted Deposit Requirement”⁴ or, in addition or in the alternative, conditions or restrictions on the member firm’s operations that are necessary or appropriate to protect investors and the public interest.⁵

Rule 4111 is designed to protect investors and the public interest by strengthening tools available to FINRA to address the risks posed by member firms with a significant history of misconduct.⁶ The rule will create incentives for firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm, to mitigate FINRA’s concerns.⁷

⁴ See Rule 4111(i)(15) (definition of “Restricted Deposit Requirement”). A firm subject to a Restricted Deposit Requirement will be required to establish a Restricted Deposit Account and deposit in that account cash or qualified securities with an aggregate value that is not less than the member’s Restricted Deposit Requirement. See Rule 4111(a); 4111(i)(14) (definition of “Restricted Deposit Account”).

⁵ See SEC Order, 86 FR 42925, 42932. Firms designated as Restricted Firms will have significantly higher levels of risk-related disclosures as compared to firms of similar sizes. See SEC Order, 86 FR 42925, 42926. There are numeric thresholds for seven firm-size categories, based on the number of Registered Persons In-Scope. See Rule 4111(i)(11); see also Rule 4111(i)(13) (definition of “Registered Persons In-Scope”).

⁶ See SEC Order, 86 FR 42925, 42926.

⁷ See SEC Order, 86 FR 42925, 42926, 42932.

New Rules 4111 and 9561, and the amendments to Rule 9559, were effective on January 1, 2022.⁸ FINRA explained in Regulatory Notice 21-34 that FINRA would announce, in a separate Regulatory Notice, the first Evaluation Date no less than 120 calendar days before the first Evaluation Date, and that FINRA expected that the first Evaluation Date would be mid-year 2022. On February 1, 2022, FINRA announced that the first Evaluation Date for Rule 4111 would be June 1, 2022.⁹

Proposed Amendments to Rule 8312

To enhance the investor-protection benefits of Rule 4111, FINRA is proposing rule changes to amend Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561.¹⁰

Rule 8312 governs the information FINRA releases to the public through its BrokerCheck system.¹¹ BrokerCheck helps investors make informed choices about the

⁸ See Regulatory Notice 21-34 (September 2021). On May 26, 2022, FINRA filed for immediate effectiveness a proposed rule change to make non-substantive and technical amendments to Rules 4111 and 9561. See SR-FINRA-2022-014 (Form 19b-4), available at <https://www.finra.org/sites/default/files/2022-05/sr-finra-2022-014.pdf>.

⁹ See Information Notice, February 1, 2022 (FINRA Announces Rule 4111 (Restricted Firm Obligations) Evaluation Date); see also Rule 4111(i)(5) (definition of “Evaluation Date”). As FINRA explained in that Information Notice, FINRA plans to actually perform the annual calculation at least 30 days after the June 1, 2022 Evaluation Date.

¹⁰ In the rulemaking that approved the new rules concerning firms with a significant history of misconduct, FINRA committed to file this proposed rule change to Rule 8312. See Letter from Michael Garawski, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated July 20, 2021, at p. 3, (“July 2021 FINRA Response to Comments”).

¹¹ The BrokerCheck website address is brokercheck.finra.org.

brokers and member firms with which they conduct business by providing registration and disciplinary history to investors at no charge. FINRA requires member firms to inform their customers of the availability of BrokerCheck.¹²

Information that is released on BrokerCheck includes, among other things, information reported on the most recently filed “Registration Forms” (with limited exceptions) for both firms and registered individuals, and summary information about certain arbitration awards against a firm involving a securities or commodities dispute with a public customer.¹³ To provide enhanced disclosure to the public, FINRA is proposing to amend Rule 8312 to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a “Restricted Firm” pursuant to Rules 4111 and 9561. As explained above, Rule 4111 will be an important new tool to identify and respond to firms that present a high degree of risk to investors. Disclosing on BrokerCheck the firms that are designated as Restricted Firms

¹² See Rule 2210(d)(8) (requiring that each of a member’s websites include a readily apparent reference and hyperlink to BrokerCheck on the initial webpage that the member intends to be viewed by retail investors and any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors); Rule 2267 (requiring members to provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck).

¹³ See Rule 8312. Rule 8312 uses the term “Registration Forms” to refer collectively to the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5), the Uniform Disciplinary Action Reporting Form (Form U6), the Uniform Application for Broker-Dealer Registration (Form BD), and the Uniform Request for Broker-Dealer Withdrawal (Form BDW). See Rule 8312(b)(2)(A).

would provide material information to investors concerning the identity of firms that FINRA has determined pose far higher risks to the public than firms of similar size.¹⁴

If the proposed rule change is approved, information that a firm is a Restricted Firm would display on BrokerCheck while that firm is designated as a Restricted Firm. This would include while a Rule 9561 expedited proceeding to review a Department of Member Regulation (“Department”) decision is pending, because a Department decision that designates a firm as a Restricted Firm will not be stayed during a Rule 9561 expedited proceeding.¹⁵ When a firm is not designated, or is no longer designated, as a Restricted Firm, no historical information would be displayed on BrokerCheck that the firm was a Restricted Firm.

For example:

- If FINRA designates a firm as a Restricted Firm in Year 1 but does not re-designate the firm as a Restricted Firm in Year 2, the Restricted Firm status would display in BrokerCheck beginning from the date in Year 1 when the Department designated the firm as a Restricted Firm to the date in Year 2 when the firm is no longer designated as a Restricted Firm.
- If a firm is designated as a Restricted Firm in Year 1 and subsequently in Year 1 withdraws from FINRA membership and becomes a former member firm,¹⁶ the Restricted Firm status would continue to display in BrokerCheck until the date in

¹⁴ This disclosure would be similar to disclosures on BrokerCheck as to whether a particular member is subject to the provisions of Rule 3170 (the “Taping Rule”). See Rule 8312(b)(2)(F).

¹⁵ See Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

¹⁶ See Rule 4111(i)(7) (definition of “Former Member”).

Year 2 when the firm is no longer designated as a Restricted Firm (i.e., when the annual calculation of the “Preliminary Criteria for Identification”¹⁷ for member firms occurs), even though the firm had withdrawn from FINRA membership before that date.¹⁸

Information that a firm is currently a Restricted Firm would be displayed in BrokerCheck on both a firm’s summary report and detailed report. Specifically, those reports would include the text, “This firm is currently designated as a Restricted Firm pursuant to FINRA Rule 4111 (Restricted Firm Obligations),” in a color or font that is prominent. The alert also would include the text “Click here for more information,” with a hyperlink to a page on FINRA’s website that provides for the investing public a clear explanation of Rule 4111 and what it means to be a Restricted Firm.¹⁹ FINRA believes

¹⁷ See Rule 4111(i)(9) (definition of “Preliminary Criteria for Identification”).

¹⁸ FINRA believes that disclosing on BrokerCheck the former members that are currently designated as Restricted Firms would provide valuable information to investors and third parties. A former member that is currently designated as a Restricted Firm was a member at the time it was designated as a Restricted Firm, and it remains designated as a Restricted Firm until the date when the next annual calculation of the Preliminary Criteria for Identification for member firms occurs. During the period when a former member remains designated as a Restricted Firm, it continues to be subject to the obligations imposed on it pursuant to Rule 4111 and to a presumption that any application it files to withdraw all or any portion of its Restricted Deposit Requirement should be denied. See Rule 4111(f)(1), (3). Disclosure on BrokerCheck of information for a firm that was designated as a Restricted Firm and became a former member in the same year also could be information that investors consider when weighing their options in active or contemplated arbitration claims against former members. See Regulatory Notice 20-11 (April 2020).

¹⁹ This would be similar in nature to how the information in BrokerCheck that a firm is a “taping firm” includes a hyperlink to a page on FINRA’s website containing a clear description of what it means to be a “taping firm.” See Regulatory Notice 21-09 (March 2021); FINRA Taping Rule, available at <https://www.finra.org/rules-guidance/guidance/taping-rule>.

that releasing information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm would help inform investors of firms that may pose outlier-level risks compared to firms of similar sizes, which may incent investors to research more carefully the background of the firm. FINRA also believes that the public disclosure of the firms currently designated as Restricted Firms would create additional incentives for firms with a significant history of misconduct to change behaviors and activities to reduce risk.

If the proposed rule change is approved, FINRA expects that the effective date of the proposed rule change would be a date after FINRA completes the first annual Rule 4111 cycle, but no later than the Evaluation Date for the second annual Rule 4111 cycle. After the effective date, FINRA would make the relevant disclosures on BrokerCheck beginning with the firms that are designated or re-designated as Restricted Firms in the second annual Rule 4111 cycle. This would allow FINRA to gain meaningful experience with new Rule 4111, including any operational shortcomings, before FINRA begins disclosing Restricted Firms on BrokerCheck.²⁰

²⁰ Information that a firm is currently designated as a Restricted Firm would not be made available on BrokerCheck prior to the effective date of the proposed rule change, and information about the obligations to which a Restricted Firm is subject would not be made available on BrokerCheck. FINRA recognizes that information about a firm's Restricted Firm designation and the obligations imposed on it would be important to state securities regulators, both before and after the effective date of the proposed rule change. FINRA reiterates its commitment to working with individual state securities regulators to share information concerning whether firms that operate in their individual states have been designated by FINRA as Restricted Firms, along with information concerning any obligations that have been imposed pursuant to Rules 4111 and 9561 on the Restricted Firm. See July 2021 FINRA Response to Comments, supra note 10, at p. 3.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(i)(1) of the Act,²² which requires that FINRA establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding, registration information on its members and their associated persons, and to adopt rules governing the process for making inquiries and the type, scope, and presentation of information to be provided in response to such inquiries. Publicly disclosing through BrokerCheck information concerning the current status of a member firm as a Restricted Firm would inform more investors of which firms pose high risks to the investing public, compared to firms of similar sizes, and thereby incent investors to research carefully the background of the firm and may also act to incentivize firms with a significant history of misconduct to change behaviors and activities to reduce risk.

²¹ 15 U.S.C. 78o-3(b)(6).

²² 15 U.S.C. 78o-3(i)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated benefits and costs, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

1. Regulatory Need

Rule 4111 identifies member firms that present a high degree of risk to the investing public and allows FINRA to impose on such firms a Restricted Deposit Requirement and, in addition or in the alternative, other conditions or restrictions on firms' operations. FINRA anticipates that investors may benefit from the public disclosure of information that a firm is a "Restricted Firm," both in how it would help investors decide whether to use a firm and its registered representatives for brokerage services, and in how it would make stronger the incentives for a firm to improve its supervisory and compliance practices. The proposed amendments to Rule 8312 would provide this information to investors through BrokerCheck.

2. Economic Baseline

The economic baseline for the proposed rule change is the current regulatory framework and Rule 4111 (which was approved by the SEC on July 30, 2021, and was effective on January 1, 2022), the information currently available on BrokerCheck, and

current investor utilization of BrokerCheck.²³ Rule 4111 creates a multi-step process for FINRA's determination of whether a member firm should be designated as a Restricted Firm. The first step in the process is an annual calculation to determine whether a member firm meets the Preliminary Criteria for Identification.²⁴ Only some of the firms that meet the Preliminary Criteria for Identification will be designated as Restricted Firms at the end of the multi-step process.²⁵

The proposed amendments to Rule 8312 are expected to affect users of BrokerCheck, currently and formerly registered firms, and, indirectly, the individuals associated with those firms. Users of BrokerCheck include, among others, investors,

²³ This analysis uses a baseline inclusive of Rule 4111 for clarity and simplicity. The expected impacts of Rule 4111 were considered in detail in SR-FINRA-2020-041. See Securities Exchange Act Release No. 90527 (November 27, 2020), 85 FR 78540, 78551-54 (December 4, 2020) (Notice of Filing of File No. SR-FINRA-2020-041) ("Filing").

²⁴ The Preliminary Criteria for Identification are based on information that is reportable on Forms U4, U5, U6 and BD or derived from customer arbitrations filed with FINRA Dispute Resolution Services' arbitration forum. See Rule 4111(i)(4). Most of this information is disclosed on BrokerCheck.

²⁵ In 2019, for example, there were 40 small firms (1.3% of all small member firms) and five mid-size firms (2.5% of all mid-size member firms) that would have met the Preliminary Criteria for Identification had it existed at that time. See SR-FINRA-2020-041, Exh. 3g, available at <https://www.finra.org/sites/default/files/2021-07/SR-FINRA-2020-041-Amendment2.pdf>. These statistics correspond to the number of firms that would have met the Preliminary Criteria for Identification as of year-end (December 31, 2019) of the identification year. The total number of member firms that would have met the Preliminary Criteria for Identification had it existed at the time has trended down since 2014, when 75 small firms (2% of all small member firms), four mid-size firms (1.9% of all mid-size member firms) and one large firm (0.6% of all large member firms) would have met the Preliminary Criteria for Identification. FINRA defines a small firm as a member with at least one and no more than 150 registered persons, a mid-size firm as a member with at least 151 and no more than 499 registered persons, and a large firm as a member with 500 or more registered persons. See FINRA By-Laws, Article I.

member firms and other entities in the financial services industry, regulators, and individuals registered as brokers or seeking employment in the brokerage industry. The information about firms currently available to investors through BrokerCheck is derived from the Registration Forms and the disclosures required thereunder, and includes a description of where and when the firm was established, people and entities that own controlling shares or directly influence the firm's daily operations, a firm's history that details mergers, acquisitions or name changes affecting the firm, the firm's active licenses and registrations, the types of businesses it conducts, information about arbitration awards and disciplinary matters, and information as to whether a particular member is subject to the provisions of the Taping Rule, among other information and disclosures.²⁶ In 2020, BrokerCheck helped users conduct almost 38 million searches of firms and individual brokers. Information available on BrokerCheck may reach investors through additional channels, because the data may be copied and compiled through data gathering or extraction tools, subject to applicable terms of use.²⁷

3. Economic Impacts

The proposed amendments to Rule 8312 would disclose in BrokerCheck a firm's designation as a Restricted Firm for the duration of that designation. As noted above, the potential benefits to investors need not be limited to individuals who consult BrokerCheck, because third parties may harvest and compile the information and make it available through other outlets, subject to applicable terms of use.

²⁶ See About BrokerCheck, <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck>; Rule 8312.

²⁷ See Section 5 of the FINRA BrokerCheck Terms of Use, <https://brokercheck.finra.org/terms>.

The disclosure on BrokerCheck of firms' Restricted Firm designations may benefit investors. Currently, BrokerCheck already displays disclosures reported on the most recently filed Registration Forms for both firms and registered individuals, as well as summary information about certain arbitration awards against firms involving a securities or commodities dispute with a public customer. However, with the proposed additional disclosure of a firm's designation as a Restricted Firm, investors might be prompted to learn more about such Restricted Firms, engage with them more cautiously, or—for investors currently using the services of Restricted Firms—critically review their experiences with these firms. As discussed at length in SR-FINRA-2020-041, FINRA's analysis indicated that firms that would have met the Preliminary Criteria for Identification during the 2013-2017 review period had on average 6-20 times more new "Registered Person and Member Firm Events"²⁸ after their identification than other firms of the same size category.²⁹ The disclosure on BrokerCheck of a firm's Restricted Firm designation and the resulting additional investor caution may help some investors avoid the harms associated with future misconduct. Although the magnitude of these effects is not known, they would supplement the protective effects of the obligations imposed by

²⁸ See Rule 4111(i)(12) (defining "Registered Person and Member Firm Events" to include "Registered Person Adjudicated Events," "Registered Person Pending Events," "Registered Person Termination and Internal Review Events," "Member Firm Adjudicated Events," and "Member Firm Pending Events," all of which are defined in Rule 4111(i)(4)).

²⁹ FINRA's analysis compared firms that satisfied the Preliminary Criteria for Identification in each year between 2013 and 2017 to firms of similar size that did not satisfy the criteria and looked at the number of subsequent disclosure events in the remainder of the period analyzed, which ended in 2019. See Filing, supra note 23, 85 FR 78540, 78552; SR-FINRA-2020-041, Exhibit 3c, available at <https://www.finra.org/sites/default/files/2020-11/SR-FINRA-2020-041.pdf>.

FINRA on the designated Restricted Firms.³⁰ The anticipated benefits to investors of the proposed amendments would increase with the likelihood that potential or actual customers of a designated Restricted Firm seek or learn information in BrokerCheck about a firm's Restricted Firm designation and consider it in their research on the background of a firm.

The disclosure on BrokerCheck of firms' Restricted Firm designations and additional investor caution may have a range of effects on such firms. Designated Restricted Firms may respond by offering more competitive pricing or improved customer service. Designated Restricted Firms may also act to improve internal controls in order to avoid additional reputational harm and being re-designated as a Restricted Firm in subsequent years. However, additional investor caution, if significant enough, may cause financial distress at some firms. Disclosing a firm's Restricted Firm designation on BrokerCheck may lead investors to review their engagement with the firm more critically and, therefore, also may potentially lead to increased customer complaints, arbitration cases and possible awards against, and settlements by, such firms. In addition, as noted in SR-FINRA-2020-041, Restricted Firms may have greater difficulty or increased costs associated with maintaining a clearing arrangement, loss of trading partners, or similar impairments where third parties can determine that a firm meets the Preliminary Criteria for Identification or has been deemed to be a Restricted Firm.³¹ While some third parties like clearing firms may require a firm to disclose

³⁰ Rule 4111 will create strong measures of deterrence of misconduct while a firm is designated a Restricted Firm. See Filing, 85 FR 78540, 78550.

³¹ See Filing, 85 FR 78540, 78553.

Restricted Firm status during private contract negotiations, other third-party firms may learn of a firm's Restricted Firm designation only after the information is disclosed publicly. These third-party firms may then anticipate an increase in legal and contingent costs through the potential liabilities that they face through their business relationships with a Restricted Firm. As a result, Restricted Firms may find that costs of these third-party agreements increase and potentially lose access to such providers. While the magnitude of these reactions from investors and third parties cannot be quantified, it is possible that the disclosure of the designation as a Restricted Firm may result in some firms going out of business.

4. Alternatives Considered

FINRA recognizes that the design and implementation of the rule proposals may impose direct and indirect costs on a variety of stakeholders, including firms, brokers, regulators, investors and the public. Accordingly, in developing its rule proposals, FINRA seeks to identify ways to enhance the efficiency and effectiveness of the proposed rules while maintaining their regulatory objectives.

In developing the proposal, FINRA considered two different alternatives for when to begin releasing information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm. Specifically, FINRA considered whether to begin releasing this information on BrokerCheck during the first annual Rule 4111 cycle or, instead, the second annual Rule 4111 cycle. FINRA has proposed to start this disclosure in the second annual Rule 4111 cycle, and not sooner, because it would allow FINRA and member firms to gain meaningful experience with

new Rule 4111, including any operational shortcomings, before FINRA begins disclosing Restricted Firms on BrokerCheck.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-015 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2022-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2022-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Jill M. Peterson
Assistant Secretary

³² 17 CFR 200.30-3(a)(12).