

Broker Check

Regulatory Notice 12-10

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

Approximately one year ago FINRA increased the amount of information that was available on BrokerCheck. The additional information included customer complaints that were unadjudicated and possibly even abandoned by the customer who made the original complaint. At that time we argued vigorously against such inclusion, however, because of the information that was available on the IAPD system for advisors, that information was included. We did get the concession of having it categorized by adjudicated and unadjudicated (whether the public understands that or not is moot). In fact, we have not been told how many investors actually use the broker check website. Our initial reaction is that 90% of all inquiries are from lawyers looking for fodder for arbitration, HR directors looking to hire someone, or BD's checking their own listings. Investors usually do not get their brokers out of the yellow pages; they get them from friends and relatives. However, FINRA does not keep statistics on who is using the site in order to keep inquiries anonymous. There have been no studies to find out if the increase in information has or has not helped investors in determining which broker to use. So, FINRA believing that expanding this information will help investors is a random stab at fulfilling some Dodd-Frank fantasy.

Now FINRA is proposing another unfounded expansion of the information to be included in BrokerCheck: educational background and the scores a broker received on his or her series exams. We find that we are getting dangerously close to, no; we are already at that tipping point of "too much information". What possible advantage can that information give to an investor looking for a broker? It makes no difference if that broker got an 80 or an 85 on his series 7. Perhaps we should just reveal which questions s/he got wrong. At least the investor would know that "this broker failed options, or fixed income." Without knowing which questions or topics were missed, the number grade has no relevance. We are also sure that Bernie Madoff and Allen Stanford both got very good scores on their exams.

When most of us took the series 7 it was a fact that the score you got was irrelevant; it was basically pass/fail. The old joke was that 70 was passing and if you got a 71 you studied too hard. To take those same scores and now use them for a purpose that was not originally intended is not fair to those who took it. The veterans of the industry took the series 1. That exam then became the series 7, and we are now many generations into the series 7. How do we compare those early tests with the current one? This also creates the impression that FINRA embraces the regulatory exam score as a valid benchmark for the proficiency and/or ethics of the Rep. If a test could predict the ethics or success of the RR, it would save the industry billions. It is therefore, misleading to the public to present these scores as some way to evaluate a broker's competency.

The need to know the specific scores on qualifying exams makes the grading of the exams worthless. If the SEC or FINRA believes that it would make a difference to the investor, then why make a grading system at all? Why not make the passing grade 100%, that way all investors would know that their potential broker is qualified.

However, if the passing grade is 75%, then all the investor needs to know is that her broker has qualified; much like an attorney who passes the bar exam. Do we know what score an attorney received on the bar exam? It does not make a difference.

Similarly, the listing of educational background can be a red herring. Some of the best, most ethical and successful brokers have never gone to college. They learned their trade by starting at the bottom, possibly as a runner, and moved up to the “cage” and then as an assistant, etc. Is it fair to that person to be judged on a college degree? When an investor is looking at a broker’s background and it says “Lafayette High School”, that shouldn’t disqualify the broker from doing business. Again, if the education is so important, then require a college degree or an MBA to be a broker. Some believe that educational background is important information for a potential investor to have. If that is true, then the investor should ask his or her broker the questions that they want answered. However, 30 years of experience in the industry will usually trump a college education.

If the SEC and FINRA really want to educate the investing public, they should teach the public about the products that are being offered. Explain what CDO’s or ABS’ are; explain what realistic returns are; tell them what to look for in an investment so that when their broker talks to them they have some understanding. That understanding alone would limit the frauds, scams and Ponzi schemes.

It seems that we are more concerned about our investing than about our health or legal well-being. I guess we should ask for our doctor’s medical school transcript so that we can see what grade he got in whatever ailment we have. Or, did your attorney get an A in contracts? If not, then I want my contract written by someone else. The argument could be made though that this attorney has done 5,000 successful contracts, no matter what grade he got in law school. And, as a registered broker-dealer, I want to know the educational background and the qualifying test scores of any examiner or enforcement attorney that the SEC or FINRA sends my way. What’s sauce for the goose should be sauce for the gander.

FINRA has not proven that exposing this information is historically justified. We would like to see a study of the last five years of disciplinary actions compared to the exam scores and educational levels of those disciplined. Is there some correlation between rogue brokers and their education/scores? Maybe those with the most education or the highest scores are the ones most prone to illegal actions.

This continuous expansion of BrokerCheck is a kneejerk reaction to the 2008 financial debacle; a debacle that was not caused by the average stock broker. It was caused by the highest executives of the largest firms. And yet, those executives have received no additional scrutiny, they continue to get their multi-million dollar bonuses, they continue to skirt the regulator’s wrath, while the average street broker is being bombarded with ridiculous regulations, requirements and fees that will eventually destroy his or her business. We are already seeing this with the number of BD’s that we lose each year. From 2002 to 2010 we lost 18% of our brokerage firms (approximately 950).

Let’s start looking to where the problems lie, and not at the easy, low hanging fruit. If Dodd-Frank is meant to inform the investor, then figure out some way to inform them, to teach them about the markets, stock, debt, and derivatives. The pandering to the lowest common denominator by exposing its own members to an absurd level of exposure, scrutiny and embarrassment is the easy way out and the most public relations

oriented way of making the public feel “protected.” I’ve never known another organization that is so ready to throw its own membership under the bus. We have to deal with Reg S-P and make sure that our clients’ information is sacrosanct, but our own information is fodder for the internet. We have no rights of privacy about anything.

And the outrageous over-exposure would be exacerbated even further if FINRA were to SELL our information to vendors. Are we going to get a cut of the sale price? After all it’s our information. Once that information is sold, our privacy no longer exists. All of our dirty laundry will be all over the internet forever. Additionally, it wasn’t brokers that caused the crash in 2008, it was partly caused by greedy investors who wanted mortgages with no income check; wanted CD’s producing interest that was so high it was obviously bad; or investments that paid 12% when the market was paying 2%. The average broker did nothing to make the market crash, but is now taking the brunt of over-regulation, over exposure and bad press – the sad part is that the negatives are being generated by their own organization. FINRA and the SEC should take a moment to justify these expansions with facts instead of blindly grabbing at straws.

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