

Required fields are shown with yellow backgrounds and asterisks.

Filing by Financial Industry Regulatory Authority  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

A proposed rule change to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to expand the categories of civil judicial disclosures that are permanently available in BrokerCheck

**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 \* Erika      Last Name \* Lazar  
 Title \* Assistant General Counsel  
 E-mail \* erika.lazar@finra.org  
 Telephone \* (202) 728-8013      Fax (202) 728-8264

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Senior Vice President and Deputy General Counsel

Date 11/01/2013  
 By Patrice Gliniecki  
 (Name \*)

Patrice Gliniecki,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

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 \***

Add Remove View

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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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.

**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**

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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”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to permanently make publicly available in BrokerCheck information about former associated persons of a member firm who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that has been dismissed pursuant to a settlement agreement.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on September 13, 2012, 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.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

(a) Purpose

FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository (“CRD<sup>®</sup>”), the securities industry online registration and licensing database. FINRA member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms. By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

In January 2011, Commission staff released its Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers (“Study”),<sup>2</sup> in furtherance of Section 919B of the Dodd-Frank Act.<sup>3</sup> The Study contains four recommendations for improving investor access to registration information through BrokerCheck and the Commission’s Investment Adviser Public Disclosure (“IAPD”) database. In May 2012, FINRA implemented the Study’s three “near-term” recommendations.<sup>4</sup> FINRA is currently working on the Study’s

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<sup>2</sup> The Study is available online at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

<sup>3</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> These recommendations are to unify search returns for BrokerCheck and IAPD, add the ability to search BrokerCheck by ZIP code, and increase the educational content on BrokerCheck.

“intermediate-term” recommendation, which involves analyzing the feasibility and advisability of expanding the information available through BrokerCheck, as well as the method and format that BrokerCheck information is displayed.

In light of the Study’s “intermediate-term” recommendation and FINRA’s belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation to make information available to the public,<sup>5</sup> FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program. Based on the evaluation that it has conducted to this point, FINRA is proposing to amend FINRA Rule 8312 to permanently make available in BrokerCheck information about former associated persons of a member firm who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that has been dismissed pursuant to a settlement agreement.<sup>6</sup>

Pursuant to Rule 8312(b)(1), FINRA releases to the public through BrokerCheck information on current or former members, current associated persons, and persons who were associated with a member within the preceding 10 years. Under current Rule

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<sup>5</sup> See Section 15A(i) of the Act. 15 U.S.C. 78o-3(i). Since establishing BrokerCheck, FINRA has regularly assessed the scope and utility of the information it provides to the public and, as a result, has made numerous changes to improve the program.

<sup>6</sup> FINRA continues to consider other comments regarding changes to BrokerCheck that were submitted in response to Regulatory Notice 12-10.

8312(c)(1), FINRA makes publicly available in BrokerCheck on a permanent basis information about former associated persons of a member who have not been associated with a member within the preceding ten years, and (A) were ever the subject of a final regulatory action, or (B) were registered on or after August 16, 1999 and were (i) convicted of or pled guilty or nolo contendere to a crime; (ii) 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 (“Civil Judicial Disclosures”); or (iii) named as a respondent or defendant in an investment-related 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.

The proposed rule change would amend Rule 8312(c)(1)(B)(ii) to expand the categories of Civil Judicial Disclosures that are permanently included in BrokerCheck. Specifically, the proposed rule change would permanently make publicly available in BrokerCheck information about former associated persons of a member who were registered on or after August 16, 1999<sup>7</sup> and who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement, as reported to the CRD system via a uniform registration form.<sup>8</sup> This information currently is available in BrokerCheck for

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<sup>7</sup> The proposal will apply only to those individuals registered with FINRA on or after August 16, 1999. Filings for those individuals whose registrations terminated prior to August 16, 1999 were not made electronically so BrokerCheck reports for such firms and individuals cannot be made in an automated fashion. Furthermore, data limitations apply to the information available for some of those individuals.

<sup>8</sup> This information is currently elicited by Question 14H(1)(c) on Form U4 (Uniform Application for Securities Industry Registration or Transfer).

ten years from the date an individual ceases association with a member. FINRA believes that these settled civil actions should be available permanently in BrokerCheck because they may involve significant events or considerable undertakings on the part of the subject individual. For example, one civil action involving excessive and undisclosed markups was settled for over \$200,000. As such, the proposed change would provide the public with additional access to such relevant and important information about formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors and about whom investors may wish to learn relevant information.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing 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,<sup>9</sup> 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. FINRA believes that the proposed rule change to permanently make publicly available in BrokerCheck information about persons formerly associated with a member who have been the subject of an investment-related civil action brought by a state or

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<sup>9</sup> 15 U.S.C. 78q-3(b)(6).

foreign financial regulatory authority that was dismissed pursuant to a settlement agreement will enhance investor protection by expanding the time frame for disclosure of this important information to investors and other users of BrokerCheck. Such formerly registered persons, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors. FINRA believes that it is beneficial to investors to have access to this information on a permanent basis.

**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.

FINRA believes that making publicly available on a permanent basis in BrokerCheck information about former associated persons of a member firm who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement will enhance investor protection. The proposed rule change would provide the public with additional access to such relevant and important information about formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors and about whom investors may wish to learn relevant information. FINRA does not anticipate that the proposed rule change will impose any burden or additional costs on member firms. In this regard, FINRA notes that the proposed rule change will not subject member firms or their associated persons to any



new or additional uniform registration form reporting requirements. The Form U4 question that elicits information on the settled civil judicial actions at issue will remain the same; only the BrokerCheck disclosure period will change.

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

The proposed rule change was published for comment by FINRA in Regulatory Notice 12-10 (February 2012). A copy of the Regulatory Notice is attached as Exhibit 2a. The comment period expired on April 27, 2012. FINRA received 71 comment letters in response to the Regulatory Notice. A list of the comment letters received in response to the Regulatory Notice is attached as Exhibit 2b.<sup>10</sup> Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c.

Ten of the 71 comment letters received addressed the general expansion of the time frame for providing information through BrokerCheck.<sup>11</sup> In general, these comment

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<sup>10</sup> All references to the commenters under this Item are to the commenters as listed in Exhibit 2b.

<sup>11</sup> Letter from Ryan K. Bakhtiari, Public Investors Arbitration Bar Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated March 29, 2012 (“PIABA”); letter from Jeffrey A. Feldman, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 1, 2012 (“Feldman”); letter from Herb Pounds, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 2, 2012 (“Pounds”); letter from Terrence P. Cremins, Securities Arbitration Clinic of St. John’s University School of Law, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2012 (“St. John’s”); letter from Ross M. Langill, Regal Bay Investment Group LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 5, 2012 (“Regal Bay”); letter from Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 20, 2012 (“Aidikoff”); letter from Jonathan W. Evans, Jonathan W. Evans & Associates, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 25, 2012 (“Jonathan Evans”); letter from William A. Jacobson, Cornell University Law School, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 26, 2012 (“Cornell”); letter from Jack E. Herstein, North American Securities Administrators Association, Inc., to Marcia E. Asquith, Corporate Secretary,

letters suggested that there should be no time limits on the inclusion of disclosure events in BrokerCheck (e.g., information about a bankruptcy is no longer disclosed through BrokerCheck after 10 years)<sup>12</sup> and that all information about associated persons should be included in BrokerCheck on a permanent basis.<sup>13</sup> FINRA is not prepared at this time to propose that all BrokerCheck information should be available on a permanent basis. FINRA is currently focused on expanding the categories of Civil Judicial Disclosures to be permanently included in BrokerCheck, specifically those investment-related civil actions brought by a state or foreign financial regulatory authority that were dismissed pursuant to a settlement agreement. FINRA believes that it is important to permanently include such settlements in BrokerCheck at this time, because they may involve significant events or considerable undertakings on the part of the subject individual. The permanent inclusion of such settlements in BrokerCheck will provide investors additional access to this important information. As previously mentioned, FINRA regularly assesses the BrokerCheck program and may consider the inclusion of additional information in BrokerCheck on a permanent basis at a later time.

Four comment letters expressed the view that some types of customer complaints or “technical compliance violations” should be removed from BrokerCheck after a

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FINRA, dated April 27, 2012 (“NASAA”); and letter from Robert C. Port, Esq., Cohen Goldstein Port & Gottlieb, LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 12, 2012 (“Cohen”).

<sup>12</sup> See, e.g., NASAA.

<sup>13</sup> See, e.g., Cornell.

prescribed period of time.<sup>14</sup> Although these comment letters addressed the time frame for disclosure of information through BrokerCheck, they are outside the scope of the current proposal because they do not pertain to the time frame for disclosure of the settled Civil Judicial Disclosures that are the subject of this filing.

**6. Extension of Time Period for Commission Action**

Not applicable.

**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.

**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.

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<sup>14</sup> Letter from Steve Klein, Farmers Financial Solutions, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 3, 2012 (“Farmers”); letter from Ira D. Hammerman, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 5, 2012 (“SIFMA”); letter from Howard Spindel, Integrated Management Solutions USA LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“IMS”); and letter from Cliff Kirsch, Sutherland Asbill & Brennan LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“Sutherland”).

Exhibit 2a. Regulatory Notice 12-10 (February 2012).

Exhibit 2b. List of commenters.

Exhibit 2c. Comments received in response to Regulatory Notice 12-10

Exhibit 5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2013-048)

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 Expand the Categories of Civil Judicial Disclosures that Are Permanently Included in BrokerCheck

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , 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 FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to permanently make publicly available in BrokerCheck information about former associated persons of a member firm who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that has been dismissed pursuant to a settlement agreement.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository ("CRD<sup>®</sup>"), the securities industry online registration and licensing database. FINRA member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms. By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

In January 2011, Commission staff released its Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers (“Study”),<sup>3</sup> in furtherance of Section 919B of the Dodd-Frank Act.<sup>4</sup> The Study contains four recommendations for improving investor access to registration information through BrokerCheck and the Commission’s Investment Adviser Public Disclosure (“IAPD”) database. In May 2012, FINRA implemented the Study’s three “near-term” recommendations.<sup>5</sup> FINRA is currently working on the Study’s “intermediate-term” recommendation, which involves analyzing the feasibility and advisability of expanding the information available through BrokerCheck, as well as the method and format that BrokerCheck information is displayed.

In light of the Study’s “intermediate-term” recommendation and FINRA’s belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation to make information available to the public,<sup>6</sup> FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted

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<sup>3</sup> The Study is available online at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

<sup>4</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>5</sup> These recommendations are to unify search returns for BrokerCheck and IAPD, add the ability to search BrokerCheck by ZIP code, and increase the educational content on BrokerCheck.

<sup>6</sup> See Section 15A(i) of the Act. 15 U.S.C. 78q-3(i). Since establishing BrokerCheck, FINRA has regularly assessed the scope and utility of the information it provides to the public and, as a result, has made numerous changes to improve the program.

focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program. Based on the evaluation that it has conducted to this point, FINRA is proposing to amend FINRA Rule 8312 to permanently make available in BrokerCheck information about former associated persons of a member firm who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that has been dismissed pursuant to a settlement agreement.<sup>7</sup>

Pursuant to Rule 8312(b)(1), FINRA releases to the public through BrokerCheck information on current or former members, current associated persons, and persons who were associated with a member within the preceding 10 years. Under current Rule 8312(c)(1), FINRA makes publicly available in BrokerCheck on a permanent basis information about former associated persons of a member who have not been associated with a member within the preceding ten years, and (A) were ever the subject of a final regulatory action, or (B) were registered on or after August 16, 1999 and were (i) convicted of or pled guilty or nolo contendere to a crime; (ii) 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 (“Civil Judicial Disclosures”); or (iii) named as a respondent or defendant in an investment-related 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.

The proposed rule change would amend Rule 8312(c)(1)(B)(ii) to expand the categories of Civil Judicial Disclosures that are permanently included in BrokerCheck.

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<sup>7</sup> FINRA continues to consider other comments regarding changes to BrokerCheck that were submitted in response to Regulatory Notice 12-10.



Specifically, the proposed rule change would permanently make publicly available in BrokerCheck information about former associated persons of a member who were registered on or after August 16, 1999<sup>8</sup> and who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement, as reported to the CRD system via a uniform registration form.<sup>9</sup> This information currently is available in BrokerCheck for ten years from the date an individual ceases association with a member. FINRA believes that these settled civil actions should be available permanently in BrokerCheck because they may involve significant events or considerable undertakings on the part of the subject individual. For example, one civil action involving excessive and undisclosed markups was settled for over \$200,000. As such, the proposed change would provide the public with additional access to such relevant and important information about formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors and about whom investors may wish to learn relevant information.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

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<sup>8</sup> The proposal will apply only to those individuals registered with FINRA on or after August 16, 1999. Filings for those individuals whose registrations terminated prior to August 16, 1999 were not made electronically so BrokerCheck reports for such firms and individuals cannot be made in an automated fashion. Furthermore, data limitations apply to the information available for some of those individuals.

<sup>9</sup> This information is currently elicited by Question 14H(1)(c) on Form U4 (Uniform Application for Securities Industry Registration or Transfer).

The effective date will be no later than 180 days following publication of the Regulatory Notice announcing 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,<sup>10</sup> 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. FINRA believes that the proposed rule change to permanently make publicly available in BrokerCheck information about persons formerly associated with a member who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement will enhance investor protection by expanding the time frame for disclosure of this important information to investors and other users of BrokerCheck. Such formerly registered persons, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors. FINRA believes that it is beneficial to investors to have access to this information on a permanent basis.

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.

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<sup>10</sup> 15 U.S.C. 78q-3(b)(6).

FINRA believes that making publicly available on a permanent basis in BrokerCheck information about former associated persons of a member firm who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement will enhance investor protection. The proposed rule change would provide the public with additional access to such relevant and important information about formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors and about whom investors may wish to learn relevant information. FINRA does not anticipate that the proposed rule change will impose any burden or additional costs on member firms. In this regard, FINRA notes that the proposed rule change will not subject member firms or their associated persons to any new or additional uniform registration form reporting requirements. The Form U4 question that elicits information on the settled civil judicial actions at issue will remain the same; only the BrokerCheck disclosure period will change.

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

The proposed rule change was published for comment by FINRA in Regulatory Notice 12-10 (February 2012). A copy of the Regulatory Notice is attached as Exhibit 2a. The comment period expired on April 27, 2012. FINRA received 71 comment letters in response to the Regulatory Notice. A list of the comment letters received in response

to the Regulatory Notice is attached as Exhibit 2b.<sup>11</sup> Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c.

Ten of the 71 comment letters received addressed the general expansion of the time frame for providing information through BrokerCheck.<sup>12</sup> In general, these comment letters suggested that there should be no time limits on the inclusion of disclosure events in BrokerCheck (e.g., information about a bankruptcy is no longer disclosed through BrokerCheck after 10 years)<sup>13</sup> and that all information about associated persons should be included in BrokerCheck on a permanent basis.<sup>14</sup> FINRA is not prepared at this time to propose that all BrokerCheck information should be available on a permanent basis.

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<sup>11</sup> All references to the commenters under this Item are to the commenters as listed in Exhibit 2b.

<sup>12</sup> Letter from Ryan K. Bakhtiari, Public Investors Arbitration Bar Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated March 29, 2012 (“PIABA”); letter from Jeffrey A. Feldman, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 1, 2012 (“Feldman”); letter from Herb Pounds, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 2, 2012 (“Pounds”); letter from Terrence P. Cremins, Securities Arbitration Clinic of St. John’s University School of Law, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2012 (“St. John’s”); letter from Ross M. Langill, Regal Bay Investment Group LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 5, 2012 (“Regal Bay”); letter from Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 20, 2012 (“Aidikoff”); letter from Jonathan W. Evans, Jonathan W. Evans & Associates, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 25, 2012 (“Jonathan Evans”); letter from William A. Jacobson, Cornell University Law School, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 26, 2012 (“Cornell”); letter from Jack E. Herstein, North American Securities Administrators Association, Inc., to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“NASAA”); and letter from Robert C. Port, Esq., Cohen Goldstein Port & Gottlieb, LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 12, 2012 (“Cohen”).

<sup>13</sup> See, e.g., NASAA.

<sup>14</sup> See, e.g., Cornell.

FINRA is currently focused on expanding the categories of Civil Judicial Disclosures to be permanently included in BrokerCheck, specifically those investment-related civil actions brought by a state or foreign financial regulatory authority that were dismissed pursuant to a settlement agreement. FINRA believes that it is important to permanently include such settlements in BrokerCheck at this time, because they may involve significant events or considerable undertakings on the part of the subject individual. The permanent inclusion of such settlements in BrokerCheck will provide investors additional access to this important information. As previously mentioned, FINRA regularly assesses the BrokerCheck program and may consider the inclusion of additional information in BrokerCheck on a permanent basis at a later time.

Four comment letters expressed the view that some types of customer complaints or “technical compliance violations” should be removed from BrokerCheck after a prescribed period of time.<sup>15</sup> Although these comment letters addressed the time frame for disclosure of information through BrokerCheck, they are outside the scope of the current proposal because they do not pertain to the time frame for disclosure of the settled Civil Judicial Disclosures that are the subject of this filing.

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

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<sup>15</sup> Letter from Steve Klein, Farmers Financial Solutions, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 3, 2012 (“Farmers”); letter from Ira D. Hammerman, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 5, 2012 (“SIFMA”); letter from Howard Spindel, Integrated Management Solutions USA LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“IMS”); and letter from Cliff Kirsch, Sutherland Asbill & Brennan LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“Sutherland”).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-048 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2013-048. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-048 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.<sup>16</sup>

Elizabeth M. Murphy

Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

# Regulatory Notice

# 12-10

## FINRA BrokerCheck®

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

Comment Period Expires: April 6, 2012

#### Executive Summary

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

Questions concerning this *Notice* should be directed to:

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

#### Action Requested

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

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

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

### February 2012

#### Notice Type

- ▶ Request for Comment

#### Suggested Routing

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

#### Key Topics

- ▶ BrokerCheck
- ▶ Central Registration Depository

#### Referenced Rules & Notices

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



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

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

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

## Background & Discussion

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

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

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

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

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

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

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

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

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

## Request for Comment

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

### Information Displayed

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

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

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

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

### Report Design, Format and Content

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

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

### Investor Awareness of BrokerCheck

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

- ▶ How can FINRA best increase investor awareness of BrokerCheck?
- ▶ Should FINRA make basic BrokerCheck information (e.g., registration status, employing firm, employment location) available in such a way that would enable an investor to enter a broker's name in an Internet search engine, see the basic information in the search results, and be directed to BrokerCheck for more detailed information?
- ▶ Should changes be made to FINRA Rule 2267 to further increase investor awareness of BrokerCheck?<sup>21</sup> If so, should such changes involve the items of information disclosed, the frequency and/or manner of distribution of information, and/or the member firms covered by the rule? Should any other changes be made?

### Commercial Use

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

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

## Endnotes

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

**Exhibit 2b**

**Alphabetical List of Written Comments**

1. Letter from Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari (“Aidikoff”) (April 20, 2012)
2. Letter from Lynn C. Appelman (“Appelman”) (March 20, 2012)
3. Letter from Ryan K. Bakhtiari, Public Investors Arbitration Bar Association (“PIABA”) (March 29, 2012)
4. Letter from David T. Bellaire, Esq., Financial Services Institute (“FSI”) (April 27, 2012)
5. Letter from Amber Bowman, MWA Financial Services, Inc. (“MWA 1”) (March 28, 2012)
6. Letter from Rick Carlson (“Carlson”) (February 28, 2012)
7. Letter from Deborah Castiglioni, Cutter & Company, Inc. (“Cutter”) (March 19, 2012)
8. Letter from Chris Charles, Wulff, Hansen & Co. (“Wulff”) (March 23, 2012)
9. Letter from Bryan Corbitt (“Corbitt”) (February 23, 2012)
10. Letter from Terence P. Cremins, Securities Arbitration Clinic of St. John’s University School of Law (“St. John’s”) (April 4, 2012)
11. Letter from Jaimie Davis (“Davis”) (March 23, 2012)
12. Letter from Marian H. Desilets, Association of Registration Management, Inc. (“ARM”) (April 12, 2012)
13. Letter from Ann Doty-Mitchell, Crowell Weedon & Co. (“Crowell 1”) (March 7, 2012)
14. Letter from Nick Duren, Crescent Securities Group, Inc. (“Crescent”) (April 27, 2012)
15. Letter from David S. Eckess (“Eckess”) (March 22, 2012)
16. Letter from Barry D. Estell (“Estell”) (March 28, 2012)

17. Letter from Jonathan W. Evans, Jonathan W. Evans & Associates (“Jonathan Evans”) (April 25, 2012)
18. Letter from Jeffrey A. Feldman (“Feldman”) (April 1, 2012)
19. Letter from Pam Fritz, MWA Financial Services, Inc. (“MWA 2”) (March 15, 2012)
20. Letter from Pam Fritz, MWA Financial Services, Inc. (“MWA 3”) (March 28, 2012)
21. Letter from Oscar Hackett, BrightScope, Inc. (“BrightScope”) (April 6, 2012)
22. Letter from Ira D. Hammerman, Securities Industry and Financial Markets Association (“SIFMA”) (April 5, 2012)
23. Letter from David Harrison, Esq. (“Harrison”) (March 28, 2012)
24. Letter from Jack E. Herstein, North American Securities Administrators Association, Inc. (“NASAA”) (April 27, 2012)
25. Letter from K. Hetzer, Royal Palms Capital LLC (“Royal Palms”) (March 20, 2012)
26. Letter from S. Lauren Heyne, RW Smith & Associates, Inc. (“RW Smith”) (April 27, 2012)
27. Letter from Keith Hickerson, The American College (“TAC”) (April 5, 2012)
28. Letter from Joan Hinchman, National Society of Compliance Professionals, Inc. (“NSCP”) (April 27, 2012)
29. Letter from Investor Fraud Alliance (“IFA”) (February 22, 2012)
30. Letter from William A. Jacobson, Esq., Cornell University Law School (“Cornell”) (April 26, 2012)
31. Letter from Kevin R. Keller, Certified Financial Planner Board of Standards, Inc. (“CFP”) (April 27, 2012)
32. Letter from Nelson M. Kelly (“Kelly”) (February 24, 2012)

33. Letter from Cliff Kirsch, Sutherland Asbill & Brennan LLP (“Sutherland”) (April 27, 2012)
34. Letter from Steve Klein, Farmers Financial Solutions, LLC (“Farmers”) (April 3, 2012)
35. Letter from April Kvalvik, Merrill Lynch Global Wealth Management (“Merrill”) (March 8, 2012)
36. Letter from Ross M. Langill, Regal Bay Investment Group LLC (“Regal Bay”) (April 5, 2012)
37. Letter from Ronald C. Long, Wells Fargo Advisors (“Wells Fargo”) (April 5, 2012)
38. Letter from Ronald Lussier, Foresters Equity Services, Inc. (“Foresters”) (March 1, 2012)
39. Letter from Jenice L. Malecki, Malecki Law (“Malecki”) (April 17, 2012)
40. Letter from Robert T. Mann, First Georgetown Securities, Inc. (“First Georgetown”) (March 8, 2012)
41. Letter from Carolyn R. May, Simmons First Investment Group, Inc. (“Simmons”) (April 12, 2012)
42. Letter from Keith McCracken, McCracken Advisory Partners (“McCracken”) (April 23, 2012)
43. Letter from Ellen Miller, The Sunlight Foundation (“Sunlight”) (March 8, 2012)
44. Letter from Rick Niedt, DST Systems, Inc. (“DST”) (March 2, 2012)
45. Letter from Catherine M. O’Brien, Crowell, Weedon & Co. (“Crowell 2”) (March 6, 2012)
46. Letter from Joseph L. O’Leary, Crowell, Weedon & Co. (“Crowell 3”) (March 9, 2012)
47. Letter from Angela Pace, RegEd (“RegEd”) (April 25, 2012)



48. Letter from Edward Pekarek, Investor Rights Clinic at Pace Law School (“PIRC”) (April 27, 2012)
49. Letter from Michele M. Perrault (“Perrault”) (March 14, 2012)
50. Letter from Christine Podolak (“Podolak”) (March 8, 2012)
51. Letter from Robert C. Port, Esq., Cohen Goldstein Port & Gottlieb, LLP (“Cohen”) (April 12, 2012)
52. Letter from Nicole Porter, tippybob (“tippybob”) (March 5, 2012)
53. Letter from Herb Pounds, Herbert E. Pounds, Jr., P.C. (“Pounds”) (April 2, 2012)
54. Letter from Lisa Rabatin, Delta Trust Investments (“Delta”) (March 22, 2012)
55. Letter from Robert H. Rex, Dickenson Murphy Rex & Sloan (“Dickenson”) (March 30, 2012)
56. Letter from Tony Ristaino (“Ristaino”) (April 6, 2012)
57. Letter from Barbara Roper, Consumer Federation of America (“CFA”) (April 27, 2012)
58. Letter from Richard Sacks, Investors Recovery Service (“IRS”) (April 27, 2012)
59. Letter from Scott Smith, Compass Financial, LLC (“Compass”) (March 19, 2012)
60. Letter from David Sobel, Abel/Noser Corp. (“Abel”) (March 26, 2012)
61. Letter from Howard Spindel, Integrated Management Solutions (“IMS”) (April 27, 2012)
62. Letter from G. Donald Steel, Planned Investment Co., Inc. (“Planned Investment”) (March 13, 2012)
63. Letter from Leonard Steiner, Steiner & Libo, P.C. (“Steiner”) (February 29, 2012)
64. Letter from Thomas Sullivan, Hagan & Burns CPA’s PC (“Hagan”) (March 30, 2012)
65. Letter from Michael A. Thomas, Thomas Capital Management, LLC (“Thomas”) (March 22, 2012)

66. Letter from Ray Thompson, Dorsey & Co., Inc. (“Dorsey”) (March 28, 2012)
67. Letter from Russell Travis (“Travis”) (April 24, 2012)
68. Letter from Marc E. Walker, Waddell & Reed, Inc. (“Waddell”) (February 24, 2012)
69. Letter from T. Douglas Welsh, Crowell Weedon & Co. (“Crowell 4”) (March 7, 2012)
70. Letter from Peter T. Wheeler, Commonwealth Financial Network (“Commonwealth”) (April 19, 2012)
71. Letter from David Wiley III, Wiley Bros. – Aintree Capital LLC (“Wiley”) (February 25, 2012)

## **Exhibit 2c**

Investors tell us that they find the information regarding arbitrations and disciplinary actions helpful. but complain that it is formatted in the Broker-check report in a confusing way. Many have said that the same 'action' appears over many pages, with the redundant reporting by FINRA, by the Broker-dealer, or by others, making it appear that one reportable event could be misconstrued as two or even three, what with the detail taking up so many pages.

We had one customer tell us they were astonished when checking the disciplinary history of one of the top 5 NYSE Broker-dealers to find that over 2,000 pages were necessary to cover the firm's record of reportable events dating back just 15 or so years. Perhaps a summary report with an opportunity to explore the detail would be less intimidating to those who have tried to use the service but were turned off by its near-unreadability.

Also, included in Notice 12-10 was a comment that some regulatory entity had suggested including candidates' exam scores in Broker-check. If FINRA or the SEC have data that show a clear correlation between exam score and professionalism, performance, and ethics on the job, let those data be made public so we can all make a decision about the relevance to an investor of such a metric. If such a correlation exists, the next step will be Complainant's Attorneys using exam performance to help make their clients' cases against RRs accused of wrongdoing. It looks like a bad idea for many reasons, though we admit it would be fun to know how some current and former NYSE and NASD personnel scored when they took their Series 7 examination, as well as how the many investment company portfolio managers scored on their Series 65 adviser examination.

Investor Fraud Alliance

Dear Sir or Madam.

Sending in comments about expanding information on FINRA brokercheck. Specifically in regards to adding test scores and reason for termination. The test scores should not be posted since all that is required is a 70 the difference between a 93 which I got and a 71 is nothing other than I studied more than I needed. If want to put how many times failed that is fine but an actual score gives no meaningful information. There also is little meaningful information in the reason for termination since unless the termination was for a criminal action having the termination state they left to go to another firm or were not meeting commissions does not help consumers decision making. Since as far as I know this cannot be changed by broker the broker has no recourse to correct wrong or slanderous information on the termination.

Bryan Corbitt  
email [corbittbc@yahoo.com](mailto:corbittbc@yahoo.com)

Providing test scores would not offer any indication of the competence or professionalism of the registered person being scrutinized, and including the reasons for termination other than regulatory, criminal, or financial malfeasance, would do little to help a public client make a determination whether to work with that advisor. The client should know if the advisor was terminated, but only to the extent that advisor broke security industry regulations or securities laws.

Marc E. Walker  
Financial Advisor

Waddell & Reed, Inc.  
450 Carillon Parkway, Suite 130  
St. Petersburg, FL 33716  
(727) 573-7711 - Office  
(727) 204-8483 - Cell  
(727) 573-7722 - Fax  
[mwalker@wradvisors.com](mailto:mwalker@wradvisors.com)

Wealth Accumulation – Wealth Protection – Wealth Legacy

In response to your solicitation for comments regarding broker-check, I am fully in favor of requiring firms to feature a link to the website on their respective home page.

I have been a licensed advisor for 25 years with no securities-related blemishes on my record. HOWEVER, under disciplinary actions etc, on my record it shows a CRIMINAL entry! This was related to a DUI conviction I had in 2007 which was DISMISSED on appeal! HOWEVER, there is NO detail given on the website as to what the "CRIMINAL" entry is/was and leaves the impression that I have done something terrible! This is not fair and could give a potential/existing client a real bad idea about me!

Last, I am very much in favor of listing professional designations such as my CLU & ChFC along with others like CIMA, CFP, CRPC, etc.

Thank you for requesting input and I would like to hear from someone about how to expunge or provide details on my record regarding the "criminal" entry.

Sincerely,

Nelson M Kelly  
CRD#1795855

When I sat for the Series 7, it was my understanding that NASD (FINRA) policy was not to disclose the actual passing score even to the person taking the test, only the fact that the test had been passed. A person would however receive an actual score if the test was failed. I did not learn until years later that there was actually a record of my score on file with the CRD (fortunately I have a high score). Such scores reflect only the knowledge of regulatory requirements at the time of the test and not investment knowledge or any relevant industry skills. Important people skills to keep clients on the right path when they are tempted to make inappropriate changes to their investments would not be reflected in such scores. In my 30 years of experience as a firm owner and sales manager it is apparent that such scores are virtually non-correlated to the success of a broker and as such would be an inappropriate guide to the competence and/or integrity of the registered rep. In fact the very act of publishing such scores would be misleading as it connotes validity to its usefulness in selecting a broker. Also how do you reconcile scores for those that took the Series 1, earlier (easier) versions of the series 7, corporate securities exam etc ? It would be improper to train such professionals for decades under the policy that the actual passing score was irrelevant and then suddenly advertise it to the public as an indication of proficiency.

David Wiley III  
President Wiley Bros. – Aintree Capital LLC

Providing test scores would not offer any indication of the competence or professionalism of the registered rep being scrutinized.

The reasons for termination other than regulatory, criminal, or financial malfeasance, would do little to help a public client make a determination whether to work with that advisor.

The client should know if the advisor was terminated, but only to the extent that advisor broke security industry regulations or securities laws.

Most clients don't use Broker Check. They might after the fact when they choose to file a complaint, but not before hand

**Rick Carlson**  
**South Elgin, Illinois**  
**847-727-1803**



I would like to see three types of additional information available on brokercheck.

First, to my understanding, with respect to customer complaints against broker-dealers, only concluded arbitrations are available under the disclosure section. That should be changed to include pending customer complaints and pending arbitration proceedings as well.

Second, the name and address of the attorney prosecuting any customer complaints or arbitration proceedings, for both brokers and broker-dealers, should be made available.

Third, ownership information pertaining to broker-dealers should reflect the actual owners, not some maze of corporate subsidiaries.

Leonard Steiner  
STEINER & LIBO  
PROFESSIONAL CORPORATION  
433 N. Camden Drive, Suite 730  
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**I support requiring a link to FINRA Broker Check as it would facilitate the user's access to information about a broker-dealer or registered representative.  
I do not support publishing test scores.**

**Ronald Lussier, Compliance/Operations Associate  
Registered Principal  
Foresters Equity Services, Inc.  
6640 Lusk Blvd., Suite A202  
San Diego, CA 92121  
Tel. (858) 550-4844, Ext. 4863  
Fax (858) 244-4984**

Dear FINRA,

I read your article regarding ways to increase investors' utilization of BrokerCheck and wanted to reach out to you to make you aware of my new website that launched a couple of weeks ago and contains exactly the type of user-friendly presentation of data for every FINRA registered financial professional that you are looking to partner with. My site is [www.tippybob.com](http://www.tippybob.com) (tippybob,(n). 18th century euphemism for a man of wealth or substance) My partner and I include a url to BrokerCheck.com on tippybob.com but would love to get approval to post your logo on our site for investors to utilize and further research incident reports, etc. Essentially, we are very interested in partnering with FINRA. Please let me know the best way to contact someone live to further discuss.

Thanks in advance and we look forward to working with you.

Best Regards,

Nicole Porter

Co-Founder & Co-President, tippybob

M| 303.641.0528

[nicole@tippybob.com](mailto:nicole@tippybob.com)

[www.tippybob.com](http://www.tippybob.com)

Proposed:

I would like the grades of all FINRA and SEC employees, schools they attended, last ten years of employment, criminal history whether it was dismissed or expunged, outside business connections, bankruptcy filings and any financial judgements made against them MADE PUBLIC ON FINRA/SEC CHECK.

Comments?

**Catherine M. O'Brien**

*Principal Advisor*

**Crowell, Weedon & Co.**  
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Dear Mr. Pullano,

Responding to your request for comments in regard to FINRA notice 12-10: Broker Check information. I don't know how you can legally change what information is displayed because, the display of previously hidden information certainly effects past settlement agreements. How can a FINRA licensee accurately weigh the consequences of settlement, if, after the agreement is signed, FINRA subsequently changes what the public can view? I believe this is part of the reason that FINRA allowed some client complaints to be expunged, in the past. Sadly, no such relief is available to a licensee if the action was regulatory rather than sales related.

My advice would be that anytime FINRA decides to display additional information on Broker Check, it should be held to display on a forward looking basis only. For instance, if it is decided to display the results of licensing examinations, only the results for examinations going forward from effective date would be included. Results from exams already passed should not be available. This allows full disclosure for someone in the industry to understand the consequences to their career of receiving a high or low score.

In my own case, I would never have agreed to settle a regulatory action had I known that FINRA would publicly display such information to prospective employers (via Broker Check). At the time of signing, disciplinary information was provided by postal mail only, and would be mailed to a prospective employer when authorized by the licensee or requested by a member of the public. It was under this protocol and the assumption this would always be so, that I agreed to settle the action brought against me by the NASD. At the time, I assumed I would have the opportunity to offer an explanation to a prospective employer when I disclosed the action to them. The fact Broker Check changed and now shows the information, on line, has irreparably harmed my life long career in the securities industry.

I think it extremely important that FINRA balance their need for transparency to the public in a way that honors their commitment to fair dealing with their members.

Ann Doty-Mitchell  
Operations Manager  
Crowell Weedon & Co.  
660 Newport Center Drive  
Newport Beach, CA 92660  
949-644-1890 x4325

It is interesting that FINRA is now considering adding qualifying exam scores for brokers. I am unaware of any agency or reporting board that does this. Do Doctors, Lawyers or CPA's have their scores posted? That would be a no. How is my score from 20 years ago relevant to how competent of an advisor I am today? In the last 20 years I have learned more by being a part of the market than anything I would have learned in a class or tested on. It is real life experience.

At what point in time is there going to be a little bit of common sense brought into this project? The goals are admirable, to try and give investors as much information, in particular potentially negative items to educate the investor as much as possible. In reality advisors are considered guilty even after being proved innocent. A client can bring a claim have it reviewed and be dismissed, but that compliant will be on the brokers record.

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Ellen Miller  
Executive Director  
The Sunlight Foundation  
1818 N Street, NW  
Suite 410  
Washington, DC 20036

March 8, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

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

Dear Ms. Asquith,

We are commenting on FINRA's February 2012 proposal on "Ways to Facilitate and Increase Investor Use of BrokerCheck Information." As advocates for open data, we are disturbed that the proposal lacks any mention of making the data underlying FINRA's BrokerCheck website search available for download in electronic, machine readable format.

In the wake of recent scandals surrounding the pyramid schemes of Bernie Madoff and R. Allen Stanford, of multi-million dollar settlements by firms involved in the 2008 financial meltdown, and distrust generally of Wall Street, it is essential that consumers know all they can about the professionals in whom they trust their savings. Accountability is key, and the data maintained by FINRA in its BrokerCheck database and by the SEC in its IAPD database are crucial to that accountability. As the SEC wrote in its January 2011 report, "Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers "because selecting a broker-dealer or investment adviser is one of the most important decisions that investors face, information to help them make this choice should be easy to find, easy to use, and easy to understand."

While FINRA and the SEC are to be commended for creating interactive searches on their websites for this information, providing comprehensive access to it involves more than building a better website with consolidated searches and results by zip code.

It is important that FINRA and the SEC make the data underlying these databases available for download in electronic, machine readable format, so that nonprofit entities such as the Sunlight Foundation as well as journalists and other investigators are able to gain access and do sophisticated investigations using the information.

As it exists now, it is impossible to query these websites to answer questions such as, "Which firms have hired the most advisers and broker/dealers with a history of disciplinary actions"? or "What is the total amount of fines paid by a given entity over a specific time period?" The web interfaces severely limit the ability of researchers to be nimble in their analysis.

It's been well established that bulk access to downloadable data is a necessary to maximize reuse and analysis of public disclosure information. Numerous policies and declarations from the Obama administration embrace this principle, and FINRA should offer free, unrestricted access to its essential data in accordance with open data principles.

The Sunlight Foundation strongly urges FINRA to make these data available to the public in such electronic formats as facilitate this type of research.

#### **The Sunlight Foundation**

The Sunlight Foundation was founded in 2006 with the non-partisan mission of using the revolutionary power of the Internet to make information about Congress and the federal government more meaningfully accessible to citizens. Through our projects and grant-making, Sunlight serves as a catalyst for greater political transparency and to foster more openness and accountability in government. Sunlight's ultimate goal is to strengthen the relationship between citizens and their elected officials and to foster public trust in the federal government. We are unique in that technology and the power of the Internet are at the core of every one of our efforts.

Our work is committed to helping citizens, bloggers and journalists be their own best government watchdogs, by improving access to existing information and digitizing new information, and by creating new tools and Web sites to enable all of us to collaborate in fostering greater transparency. Since our founding in the spring of 2006, we have assembled and funded an array of Web-based databases and tools including OpenCongress.org, Congresspedia.org, FedSpending.org, OpenSecrets.org, EarmarkWatch.org and LOUISdb.org. These sites make millions of bits of



information available online about the members of Congress, their staff, legislation, federal spending and lobbyists. By facilitating the creation of new databases, and the maintenance and expansion of pre-existing ones, along with the application of technologies that free data from its silos, we have liberated gigabytes of important political data from basements, paper, .pdfs and other non-searchable and non-mashable formats. These efforts, combined with our own distributed investigative research projects, community-based engagement with Congress to bridge its technological gaps and lobbying to demand changes in how and what Congress makes publicly available online, have created an unprecedented demand for more: more information, more transparency and more easy-to-use tools.

Underlying all of Sunlight's efforts is a fundamental belief that increased transparency will improve the conduct of Congress itself and the public's confidence in government.

Sincerely,

Ellen Miller

Hello, I am a registered rep and have been for over 25 years. I have been reading on various websites that Finra is considering publishing exam scores for RRs on broker check. I also understand from your website that you are considering publishing designations. I have no concerns about publishing designations. However, I believe publishing test scores makes no sense for someone who has been in the business for over 25 years. As a CFP®, I have mastered many complex areas in investing and financial planning. I do not think that scores from a 25 year old test are relevant. Obviously I have mastered all the required subjects and have no complaints on my U4. For a new RR scores may be relevant or not. I have seen people who earned high scores wash out of the business and others whose scores were average do very well for their clients.

I am also opposed to raising the simplified arbitration awards from \$25,000 to \$50,000. Raising the limit will encourage people to sue RRs because they can. The registered reps should be allowed to confront the accuser in person. The damage to a U4 from a complaint is irreparable. Without being able to defend yourself, you are at the mercy of unscrupulous people. While I have not had any complaints against me, I have seen frivolous complaints against others. In one case a client was older but highly sophisticated. The client claimed he lost money because he didn't understand what he was doing. However, he had multiple accounts at numerous firms and had been doing options for 20 years! When a compliance officer brought this to his attention, his attorney called up and said he would deliver the client to arbitration on a hospital gurney with an IV in his arm. A lot of attention is paid to unscrupulous brokers but who is supervising unscrupulous investors and their attorneys? If there is a potential issue that will affect the U4, the broker must be allowed to confront the accuser. That's the only fair way to go. I should add that until fairly recently broker dealers et. al. settled smaller claims because it cost too much to litigate a claim. These steps were taken without broker consent. This should not be allowed without the broker's written consent. All false claims must be litigated to protect honest RRs from being unfairly penalized. I cannot think of any other profession where the accused cannot confront the accuser and defend himself from unjust claims.

I do not object to scrutiny or compliance. In fact I welcome it. But I think there needs to be fairness and equity in the system. The vast majority of RRs are decent people who try to do right by their clients. Only truly egregious cases should proceed to arbitration and certainly the RR should be allowed to confront the complainant and make his/her own case.

I would appreciate hearing from you on this matter and would like updates on this issue.

Sincerely,  
April Kvalvik

April Kvalvik, CRPC®, CFP®  
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CERTIFIED FINANCIAL PLANNER™



Certified Financial Planner® Board of Standards Inc. owns these certification marks in the U.S., which it awards to individuals who successfully complete CFP Board's initial and ongoing certification requirements.

**Make no changes. It is detailed enough. The descriptions of alleged violations often omit important details that can bias the perception of an advisor. Providing test scores, etc. doesn't indicate the level of an advisor's qualifications or integrity. Why don't you publish a list of all the advisors who have had no blemishes on their record?**

**Robert T. Mann**

**President**

**First Georgetown Securities, Inc.**

**Local (703) 519-7700**

**Nat'l (800) 424-2993**

**Email: [invest@firstgeorgetown.com](mailto:invest@firstgeorgetown.com)**

Good afternoon,

The request for comment on BrokerCheck is quite timely. I had recent conversations with a family member about using BrokerCheck, and FINRA's website as a whole for education purposes. This family member was unaware of the tools that are publicly available through our website, despite documentation that he may have received pursuant to the existing rule.

Suggestions for increasing investor use of BrokerCheck begins with reinforcing the knowledge that this tool exists:

1. Require that information about BrokerCheck be sent to clients concurrently with any new account documentation that is sent for signature.
2. Require that information about BrokerCheck be sent to clients with any paperwork for potential significant account composition changes or transitions, such as 1035 forms, ACAT forms, etc.
3. Require a signature from the customer acknowledging that they've received information about BrokerCheck.
4. On a broader scale, consider advertising FINRA itself and include BrokerCheck in its campaign.

Thanks,

Christine Podolak

Disclosure of numeric grades on qualifying exams does little to help a consumer evaluate the competence of a particular advisor. Is someone with an 86% on their exam better qualified than someone with an 82%? When does the difference become significant? What happens when a score standard is raised on an exam and someone who passed the exam in a previous year with a low qualifying score is reported with a numeric score that is less than the current passing score? If the minimum passing score is not good enough, why is it the minimum? I recommend that a record of Pass/Fails on exams with dates would be a less confusing record of examination performance.

Disclosing reason for termination on Broker check provides employers with an additional weapon with which to threaten advisors should they so choose. I would envision some difficult conversations threatening a public pillorying of departing employees, this threat used perhaps to buy silence ultimately detrimental to the investing public. If we decide to go forward with such disclosure we must clearly explain the meaning and customary use of the terms used and provide the departed employee with a prominent space in which to respond. I am uncomfortable with the privacy issues inherent in this type of disclosure and am not convinced that they help an investor evaluate an advisor.

Broker check should clearly indicate an advisors qualifications, work history, and history of infractions. Muddying the waters with marginally relevant information does little to help the investor make an informed decision.

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Dear Mr. Pullano:

I believe I understand the impetus of expanding BrokerCheck; but as with other initiatives with CRD expansion in the past; the lack of an appellate or record corrections process worries me. Having served on a District Committee and several national FINRA or NASD committees, and as an industry arbitrator, I have heard more than a few stories of misleading or even inaccurate entries on individual CRD records. In the past discussions were held on establishing a review board or a standing committee to offer firms and representatives a process to correct or even expunge their records of misleading information. Such a panel could be comprised of FINRA and/or NASAA representatives or employees, perhaps some industry and public representation.

The lack of such a review process before allowing commercial access to the data on BrokerCheck would be unfair, in my opinion.

**G. Donald Steel**  
**President, CEO**  
**Planned Investment Co., Inc.**  
**9265 Counselors Row Suite 150**  
**Indianapolis, IN 46240**  
**[p] 317-575-8804 [toll free] 800-735-0368**  
**[f] 317-575-0480**  
**Member FINRA SIPC**

Ms. Marcia E. Asquith  
Senior VP and Corporate Secretary  
1735 K Street NW  
Washington, DC 20006

Dear Ms. Asquith,

I am writing to comment on the proposed changes in BrokerCheck information. I have been in the business for over 30 years and have no client complaints, so I welcome any potential client to check me out.

However, I do think that a 30 year old test score is certainly irrelevant to my competency today. I also know several highly skilled, conscientious advisors who barely got a passing score those many years ago... it would be a same if their competence was judged by old data. And a test score does not reveal Integrity, the highest valued attribute in our Investment world.

While it certainly is valid and necessary for a potential investor to have full information (complaints, schooling, bankruptcies, etc.) by which to judge their comfort level with a particular advisor, I object to private vendors having "down-loadable" access. FINRA can certainly offer data to private vendors at Firm or Regional levels to provide relevant info for industry studies. In fact, providing that data could be a source of revenue for FINRA.

However, I believe access to an individual's information should be on a "need-to-know" basis only -- such as for potential investors, regulators and by court order only.

Please note that while I am an employee of Merrill Lynch, my comments are personal in nature and do not necessarily reflect the opinions of my Firm.

Sincerely,

Michele M. Perrault



Mr. Pullano:

In my last ten years as serving as a compliance officer dealing with complaints against our reps I have found that clients are becoming more savvy. They know (via FINRA investor education - which is a good thing) that if they cry "unsuitable" in a down market that companies may feel forced to reimburse their market losses or not depending on the amount of paperwork signed at the point of the account opening, which becomes disclosable on Broker Check as a complaint. **This harms an innocent rep.** There are becoming more misleading and inaccurate entries on individual CRD records due to the vengeance of a disgruntled manager or client. I implore FINRA, how is this a fair and balanced disclosure to the investor?

There is no other profession that is as scrutinized as the financial services industry. I do not know any thing about my physicians and surgeons except they hold the proper licenses and I have referrals from other satisfied patients. I really do not want to know that they had a complaint filed against them ten years ago, it is a mute point.

If the point is to weed out those brokers who are consistently

I believe that FINRA is going to far with this transparency. Enough is enough.



DST Systems, Inc.  
333 West 11<sup>th</sup> Street  
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816.435.1000  
www.dstsystems.com

March 2, 2012

Murcia E. Asquith  
Senior Vice President and Corporate Secretary  
Financial Industry Regulatory Authority  
1735 K Street, NW  
Washington DC 20006-1500

Re: FINRA Regulatory Notice 12-10; FINRA BrokerCheck

Dear Ms. Asquith:

DST Systems, Inc.<sup>1</sup> ("DST") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 12-10 (the "Notice"). Our comments are in response to questions under the sections entitled Report Design, Format and Content and Commercial Use.

Before responding directly to the questions, it may be helpful to describe why DST is an interested party in regard to this Notice as it may help to bring attention to an industry problem that is not well-defined or understood. DST is the largest provider of transfer agency software and services in the mutual fund and real estate investment trust (REIT) industries and has been providing outsourced branch and representative/advisor-level data management services to product manufacturers in those industries for over ten years. The principal reason such a service is necessary is to maintain accurate, up-to-date information about the financial intermediaries servicing accounts, although there are other compelling reasons as well. This level of maintenance is extremely resource-intensive due to the relatively high annual turnover rate of representatives in the securities industry and the variety of methods used to identify the representative responsible for an individual shareholder account and its transactions. The complexity of dealing with these problems increases when the activity is initiated through clearing firms or in cases where the financial intermediary is trading in "street name" or omnibus with the product companies and performing sub-accounting for its beneficial owners.

**Turnover Rates and Representative Identification.** The turnover rate for representatives typically hovers between 15 and 20% with rates on the higher end in recent years. This has resulted in an ongoing effort by the product companies to maintain updated, accurate books of record and databases with information on who is servicing their accounts and selling their funds. In addition to keeping up with the constant turnover, product companies have to translate the industry's "alphabet soup" of identifiers or "aliases" on account records and transactions. These aliases are usually a combination of dealer, branch, and representative codes in the case of brokerage systems but are also sometimes unique to a particular recordkeeping system or distribution platform. While the problems this can create are somewhat mitigated in the case of individual shareholder accounts on the transfer agency system which have the identifying codes and representative names updated by industry utilities such as the National Securities Clearing Corporation's ("NSCC") Networking Service<sup>2</sup>, by no means does this address the entire shareholder base. Networking does not address the problem for direct accounts that were set up in the traditional "check and application" fashion nor for certain sub-account records received by the product companies via data transmissions from financial intermediaries.<sup>3</sup> This incomplete data set requires that each individual product company store and maintain a cross-referencing database capable of linking identifiers from all of these data sources to an actual

<sup>1</sup> DST Systems, Inc. provides sophisticated information processing and computer software products and services to support the global asset management, insurance, retirement, brokerage, and healthcare industries. In addition to technology products and services, DST provides integrated print and electronic statement and billing output solutions through a wholly owned subsidiary. DST's world-class data centers provide technology infrastructure support for mutual fund companies, REITs, insurance companies, retirement recordkeepers, brokerage firms, banks, mortgage bankers and healthcare providers around the globe. DST is headquartered in Kansas City, MO, and is a publicly traded company on the New York Stock Exchange.

<sup>2</sup> NSCC Networking is an industry utility for account reconciliation and dividend processing. Through Networking, all customer account-level information – either in an omnibus or non-omnibus environment – can be exchanged and reconciled between fund companies and broker/dealers and other distribution firms, allowing identical information to appear on all parties' records.

<sup>3</sup> These data transmissions from financial intermediaries include sub-account and transaction level records exported from their sub-accounting systems and supermarket platforms and delivered via secure file transfer protocols or other types of data delivery services. This shared data is typically used in different types of business reporting and oversight, including compliance with federal regulations such as SEC Rule 22c-2.

representative or advisor, or that they subscribe to a data management service like the one DST provides which takes advantage of the scale provided by an information-sharing consortium model.

**BrokerCheck as Solution.** The contents of the BrokerCheck summary report pages, used judiciously, could provide the product companies or their service providers with verified and up-to-date access to key information about representatives including basic employer and contact details. The increases in processing efficiency and cost-effectiveness would benefit investors in terms of more accurate account recordkeeping, timely shareholder and representative communication, and faster customer issue resolution. In order to link accounts and transactions to the appropriate representatives, the product companies would still need to cross-reference trading codes and other aliases to those representatives using the CRD number as the unique identifier, but the effort and expense required to do so would be reduced.

#### Report Design, Format and Content

**What changes, if any, should be made to the design, format or content of the BrokerCheck summary report and/or the full detailed report?**

**Report Design and Format.** If the contents of the reports currently provided by the BrokerCheck site were more easily accessible to the product companies and their service providers, their ability to gather and validate information about representatives and advisors would be greatly enhanced. A "low-tech" method might be to make the information available via a simple data export capability, while a more "high-tech" approach could be to make it available via a web services application programming interface (API). In either case, access to the information could be restricted to product companies which are FINRA Members or their duly authorized service providers (see Conditions and Limitations below). Rather than just allowing screen-scraping as the SEC's Investment Adviser Public Disclosure (IAPD) site does, if FINRA were to provide these "authorized" users with an export or secure web services API, it would enable them to more efficiently maintain an accurate database containing the basic contact information on all of the representatives and investment advisors in the industry. Allowing this type of access would also remove the need to permit screen-scraping technologies altogether, preventing the detrimental effects such technology can have on system performance.

In addition, were FINRA to also provide a "deltas" or changes-only version of the reports, product companies could more easily program to make timely updates to their systems regarding changes to the employer relationship for representatives or advisors who are terminated or transitioning between financial intermediaries. This deltas report could also be used to initiate proactive communications to the financial intermediary the transitioning representative left to determine if a new representative should be assigned to that intermediary's accounts, or to the financial intermediary the transitioning representative has joined in order to determine what identifier(s) or code(s) will be used by the newly-hired representative going forward.

**Report Content.** DST would strongly recommend only one change to the content of the BrokerCheck summary reports. That recommendation would be to specify any licenses or professional designations (e.g. Chartered Financial Consultant, Chartered Financial Analyst, or Chartered Mutual Fund Counselor) the representative or advisor holds. As to the design and format changes suggested above, the representative's full name, CRD number, current employer, contact information, broker qualifications, licensing, professional designations, and registration/employment history would be data points that we would recommend be included in any type of export or data transmission capability. We have noted that the majority of responses to this Notice so far, in both formal comment letters and industry publications, are focused on the disclosure of information about representatives related to scores on securities examinations, disciplinary actions, and reasons for termination. None of these additional disclosures would be data points necessary to address the challenges described above or to realize the benefits outlined below and, as such, we are currently not commenting on their inclusion in the recommended data export or web service API functionality.

#### Commercial Use

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

**Benefits.** There are many benefits to both investors and the investment management industry that would be realized if FINRA were to provide the BrokerCheck information for commercial use in the limited and targeted fashion described above. Beyond the obvious cost-savings it would provide to the product companies attempting to keep up with the ever-changing representative population, there are some less visible operational and compliance-oriented challenges that would be minimized by such a provision. In order to report commission and 12b-1 trailer fees accurately, and to ensure the privacy of investors by delivering shareholder statements to the appropriate representative or advisor, account records must also be accurate and up-to-date. Complying with regulatory requirements such as the prevention of market timing and enforcing

prospectus rules on breakpoints or other cumulative discounts is also enhanced when the product companies know the representatives servicing the accounts, giving them more leverage with the financial intermediaries. Trade reconciliation and other types of account servicing issues are also easier to track down and address, presenting operational efficiency and customer service enhancement opportunities to both the product companies and the financial intermediaries.

**Concerns.** Since there is no non-public personal information included in the recommended data-set, there are no privacy concerns for the representatives or advisors being disclosed. Any unauthorized use of the data can be prevented by the conditions and limitations outlined directly below.

**Conditions and Limitations.** Given the recommendation that access to this particular set of exported or systematically accessible data only be given to FINRA members or their authorized service providers, it would be reasonable to impose other conditions and limitations on its usage as well. In the case of the low-tech option or, data export, DST recommends that access by only authorized parties be enforced via a secure sign-on process to a section of the site exclusively reserved for downloading the export(s). Additional conditions and limitations outlining the permitted use of the exported data for only the outlined parties and purposes could be accepted in a "check-box" fashion similar to that currently implemented in the existing FINRA BrokerCheck Search capability. For the high-tech option, or a web services API, access could be controlled by providing authorized credentials to only the approved entities.

Should you have any questions about these comments or if I can be of assistance in any way, please do not hesitate to contact me via phone at (816) 435-1000. I am also available to meet with the Staff in person upon request.

Very Truly Yours,

Rick Niedt  
Director, Distributor Technologies  
DST Systems, Inc.

Hello,

I wanted to comment on the following proposed regulation.

**12-10 FINRA Requests Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information**

Comment Period: April 9, 2012 - April 16, 2012

Post a Comment

I don't think it is wise to include exam scores in Brokercheck. The reason is simple. The test is designed to test the persons beginning general knowledge of securities. This doesn't mean anything to the individual investor. It means the person can pass a test. It doesn't have any bearing on integrity at all. I was previously in the computer field. Brokercheck doesn't offer offer very much in the form of useful information. How about letting an investor enter a mutual fund, stock, or ETF. Then give some useful information about that investment. I know you would have many brokers, advisors, and individuals using the site.

I have been in the industry for around 7 years now. The way to ensure that brokers or advisors do what is in the clients best interest starts at the top of company. This is why I work alone.

Regards,  
Scott Smith  
Compass Financial, LLC  
RIA  
(760) 522-1240

Thank you for the opportunity to comment on the proposed expansion to BrokerCheck.

I think expanding BrokerCheck to include professional designations would be fine, but with the caveat that there would need to be some sort of requirement that the data be maintained on a current basis. It is quite possible for a registered representative to obtain a designation, only later to let it expire or terminate. If there is no corresponding requirement to notify and update the CRD system of the terminated status, the added information will only confuse and potentially mislead investors (even if inadvertent or just an oversight).

I feel that releasing historical exam scores would have zero relevance in correlation to the current expertise or knowledge of the individual. I think this type of data would enhance the ability of legal counsel to use it in an adverse way, and could even potentially expose FINRA to liability if there should be a challenge against them for allowing someone to register that obtained marginal passing grades, and that individual later commits fraud or violates a securities law. I am unaware of any factual evidence that supports that a high exam score equates to a high level of current knowledge about the financial industry.

Finally, I have encountered many individuals over the last 25 years that have had misleading or inaccurate information on their CRD records, which is nearly impossible to get corrected. I don't believe any additional expansion of information should be considered until there is a platform or formalized process available to the industry, that allows someone to correct this information.

Sincerely,

Deborah Castiglioni  
CEO  
Cutter & Company, Inc.  
(636) 537-8770

Member FINRA, SIPC

March 20, 2012

Marcia E. Asquith  
Senior Vice President and Corporate Secretary  
Financial Industry Regulatory Authority 1735 K Street NW  
Washington DC 20006-1500

Re: Regulatory Notice 12-10

Dear Ms. Asquith,

Most of the ideas for expanding BrokerCheck seem reasonable and will help the public make more informed decisions. Including recognized professional designations certainly would be helpful as well as the number of years as an advisor. One item in particular seems ill conceived and I am afraid would result in misleading the public rather than informing them. Including exam scores has no precedence in the professional community. This is not done for doctors, lawyers or accountants. There is a reason these scores are not given to the public as they have nothing to do with a representative's current ability or honesty. There is no known correlation with exam scores and a broker's potential to effectively guide his clients with competence and understanding.

When these exams were taken, there was no mention or practice of making these scores public and doing so now is unfair and unjustified. Publishing these scores will result in broker's using their exam scores to entice potential clients. Only as I look back over the past 28 years, when I passed my first exam, do I now realize how little I knew. Please leave exam scores out of BrokerCheck as it serves the public much better if they are only informed that the broker they are checking has completed and passed his or her required examinations.

Sincerely,

Lynn C. Appelman CFP, ChFC

March 20, 2012

Richard E. Pullano  
Vice President and Chief Counsel,  
Registration and Disclosure  
FINRA Broker Check

Dear Mr. Pullano:

At this time, Finra is contemplating implementation of Regulation 12-10 . Approximately 2 years ago, Finra changed disclosure policies for Finra including individuals no longer affiliated with a Broker Dealer. Any person(s) rightly or wrongly accused and settling a regulatory complaint or arbitration in past decades would now have all past history disclosed by FINRA for infinity. Had an individual known this information correct or incorrect would be available for anyone's use and dissemination would change the individual's decision to fight or accept a respective charge regardless of the cost. Why would this information continue to be made public when the individual is no longer affiliated with any registered broker dealer?

Any changes made by Finra having to do with disclosure of personal information not previous legally agreed to should be on a "going forward" basis only.

Additionally, there are no standards regarding Regulatory charges and fines. It is clearly evident, there are "rogue" Regulators who use their positions to advance Regulatory positions through their regulatory "zeal". This is easily evident by reading through the regulatory fines and suspensions listed on a monthly and annual basis. The Regulators and their credentials and complaints should be disclosed. To assume all regulatory actions are done with proper oversight and use of the a high degree of integrity is simply not accurate. The process is highly selective, political and dependent on the Regulatory Attorney in charge.

Until unethical and corrupt Regulators are sanctioned and disclosed, no individual should have their privacy rights violated without proper safeguards and protection to the previously Registered Representative.

K. Hetzer  
[kheter@royalpalmscapital.com](mailto:kheter@royalpalmscapital.com)



**FINRA,**

**I believe including test scores in Broker Check is a bad idea.**

**For me, in 1986 I passed the Series 7 under the pass fail system. To date I have no idea what my test score was. Further, if I was studying for a high score I would have studied differently than I did in studying to pass.**

**If these rules must somehow be enacted, perhaps a grandfather clause would be appropriate.**

**David S. Eckess  
Little Rock, AR**



*Invested in our clients' success.*

Gentlemen,

I am opposed to the inclusion of scores of industry qualification exams in BrokerCheck. Like so many other professionals have commented here, the score is not necessarily representative of how competent the advisor is. Issues mentioned by others rightly include not everyone taking the same tests, and the scores having no bearing their current level of industry competency.

How is this new standard fitting with our understanding of other professionals in the United States? We know our CPAs, attorneys, and doctors passed their professional examinations, but we don't know by how much. I feel this measure, if put into practice, would detract from the implied professionalism of our industry far more than benefit from it.

Further, the test scores would appear to the public to be a measure of the knowledge and ability of a given professional to work with them- simply because you're providing the metric. In my opinion, the securities exams are sorely lacking in material that is relevant in this regard. When I took the Series 66 I was amazed at how much of the content was about the Investment Advisors Act of 1940 and how little it was about suitability and fiduciary responsibility. When I took the Series 24 last year, again I was amazed that there was virtually no content on supervising representatives and compliance issues, but instead was full of content on bringing new issues to market. Even if it was a good idea to show exam scores, these scores would be quite misleading because of their irrelevancy to most advisors. Perhaps more attention should be placed by FINRA on the tests themselves, rather than the scores from them.

Lastly, if this measure were to be put into place, I think that FINRA should embrace it fully. If it is truly good for the industry, surely FINRA staff could lead the way in posting their exam scores or perhaps educational transcripts for the positions that they've been accepted into.

Sincerely,

Michael A. Thomas  
Financial Advisor

As an almost 30 year veteran in this business I am continually amazed by this industry. What started out as an exciting fun business has turned into a clog mire of regulation that is driving people away from the financial services area. Why would test scores be published? Are test scores published for surgeons? Anesthesiologists? We don't even know Obama's test scores. And he is the leader of the free world. There will always be bad people in every industry. Is it not enough to go through the layers of testing, CE credits, and on and on and on that prove we are competent to do our job?

Lisa Rabatin

as a victim of fraud who is also a victim of the unjust finra arbitration system, i have noticed by talking with other fraud victims that most have never heard of FINRA. I personally had never heard of finra until i found out i did not have a right to a court trial but had to do finra arbitration. when i talk with other victims its the same story - investors are not aware of finra.

i think an excellent way to increase the publics knowledge of broker check is to require all brokers and employees of broker dealers to have a statement on the front of their business card that says something to to sort of -

"check out my and my brokers discipline record at [finrabrokercheck.org](http://finrabrokercheck.org) or call 800-000-0000"

everyone reads a business card and if it had the website info right there i think people would look it up.

i also think this statement should have to be prominently displayed on all brokers website.

The only way this would work is if the penalty for noncompliance was high enough to deter non-compliance as brokers with bad records are going to try to avoid this requirement. that is why i think you need to have the requirement on any card that has a broker name on it - otherwise brokers will give people their card that says something else but is really for brokerage services. A finding of guilt would also be so basic as a customer having a card that does not have that statement would prove guilt.

another problem is the broker who ruined my financial life just handed all his customers a "advisor" card but then in arbitration refused to admit he was my advisor. so if someone is dually licensed they would have to have the statement on all cards wether the advisor card or the broker card

thank you

jaimie  
California

**WULFF, HANSEN & Co.**  
ESTABLISHED 1831  
**INVESTMENT BANKERS**  
351 CALIFORNIA STREET, SUITE 1000  
SAN FRANCISCO 94104  
(415) 421 8900

March 23, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Dear Ms. Asquith:

Thank you for the opportunity to comment on proposed changes to BrokerCheck. Our comments on various aspects of the proposal appear below.

**Examination scores:**

There has been much speculation about the possible inclusion of FINRA examination scores. We believe that industrywide publication of aged examination scores would be of no value to investors and in many cases could in fact be misleading. For many persons in the industry, these scores reflect examinations taken ten, twenty, or thirty years ago. Decades-old examination content bears little relation to today's rules, regulations, and market conditions and thus says little or nothing about a person's knowledge of today's financial world. A person who took the Series 7 in 1980 or 1990 will not recall mention of CMOs, CLOs, CDOs, ECNs, ETFs, dark pools, swaps, derivatives, or a host of other concepts which are of vital importance in today's markets. At that time high-frequency trading meant spending many hours on the telephone talking to other traders and daily NYSE volume was generally less than 60 million (with an 'm') shares per day. It was another world and the results of an examination testing knowledge of that world have no value today. Indeed, a high score from long ago might well imply current competence where no such competence exists.

In addition, it is reasonable to believe that a person who took an examination early in his or her career has gained experience and knowledge during subsequent decades in the industry. We might well support a proposal to publish contemporaneous scores if the relevant exam was taken during modern times. Given the pace of change in the markets and the industry, we believe that any score more than three to five years old probably has little or no probative value in determining a registered person's knowledge of today's industry or financial markets.

We would reconsider our position if FINRA can provide evidence showing a statistically significant correlation between examination scores, of whatever age, and investment results, client satisfaction, disciplinary record, or any other relevant measure of what investors may be concerned with.

**Educational Background:**

Many of the comments above apply to this proposal as well. Many people end up in careers other than the one they expected at the time they obtained their formal education, and we are not aware of any evidence showing a correlation between educational background and investor satisfaction. Again, we would reconsider our opinion if FINRA can provide evidence showing a statistically significant correlation between educational background and investment results, client satisfaction, disciplinary record, or any other relevant measure of what investors may be concerned with.

An investment professional must have a 'reasonable basis' for recommending something to an investor. That is what investors want, too, when choosing an investment professional. The proposed disclosures do not enhance the effort to develop a 'reasonable basis' for considering an investment professional. We suspect that FINRA would look askance, and rightly so, at an advisor who made recommendations based on the decades-old educational background of a company's senior management. Many, perhaps most, of the individuals involved in various recent financial scandals, Ponzi schemes, and the like have impeccable educational backgrounds.

We respectfully suggest that FINRA abandon the idea of publishing test scores which are of no relevance today and educational backgrounds which are decades old. If we have learned nothing else from the events of the past few years, it is the fact that a resume says nothing about character or competence.

**Links to other sites:**

We believe it would be beneficial for investors if FINRA included links to websites maintained by financial industry regulators or organizations that provide investor education. These could include the SEC's investor guidance and a link to SIPC. We would also include direct links to other parts of the FINRA site, specifically the Investor Alerts and guidance on avoiding fraud.

**Professional Designations:**

We support the idea of disclosing professional designations but are hesitant to increase the burden on Members by requiring additional U4 amendments. We suggest that the organizations granting such designations be invited to supply the data and periodic updates, perhaps upon payment of an appropriate charge to reflect the cost of processing that data. That charge could be borne by the sponsoring organization or passed on to its designees. Doing so would add to the benefits offered by the organizations to their designees, would not increase FINRA's costs, and could prevent fraudulent use of designations to which the individual was not entitled.

**Clarifying terms and phrases:**

FINRA is correct in its suspicion that certain terms and phrases may be unfamiliar to investors. Useful information might include brief (one paragraph) descriptions of what each license represents and an explanation of how customer complaints are reported and disclosed.

**Report format:**

We use BrokerCheck on a regular basis and find the current report format reasonably satisfactory. However, we realize that for very large firms a matrix summarizing disclosure events might be useful.

For smaller firms with few events it is probably not necessary. We strongly believe it would be useful to put disclosure events in context by including a comparison of the individual or firm's record with the industry as a whole. For example, a metric such as 'Customer complaints per year' (for reps) and 'Customer complaints per rep per year' (for firms) compared with comparable numbers for the industry as a whole would give investors a useful indicator as to where a particular firm or individual stands in the larger picture. We strongly believe that customer complaints, which are not presently included, are much more relevant and useful to investors than are disclosure events involving more arcane regulatory matters such as late filings, trade reporting, email retention, etc. and the latter types of events could perhaps be offered as an option rather than automatically included in every report.

**Sale of personal information to commercial vendors:**

We strongly oppose the idea of making personally identifiable BrokerCheck information available to third-party vendors. FINRA collects this data in its role as a regulator, and to give (or, more likely, sell) it into the marketplace is inconsistent with longstanding practice and the understanding with which it was provided to FINRA originally. If FINRA manages BrokerCheck properly, as it is clearly attempting to do by issuing this request for comment, there should be no need or demand to share personal identifying information elsewhere.

Respectfully submitted,

Chris Charles  
President

## **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.

David M. Sobel, Esq.  
EVP / CCO  
Abel/Noser Corp.

Chairman – NAIBD  
Member - SFAB



**DORSEY & COMPANY** INC

- 1) I am opposed to the disclosure of examination grades. **It serves no useful purpose whatsoever.**
  - a) Some persons are not good at taking exams although they may have a high degree of expertise.
  - b) Exams taken many years ago, perhaps decades ago, have no bearing whatsoever on their current level of knowledge.
  - c) I know of multiple instances where candidates have taken exams, and been encouraged by me to do so, when they weren't prepared for the exam, but they were near the end of the exam "window" and a charge would be incurred nevertheless. I have encouraged them to "just take the exam to experience it and you can simply take it again later when you are better prepared". This would particularly apply to subsequent additional exams after their initial registrations.
  - d) In other instances I have personally taken exams, without preparation, just to experience it and advise others in my office as to the difficulty and subject area covered.
  - e) A low exam score could be suggestive to a client/prospect of a lack of knowledge when other professional qualifications and experience may not be fully taken into account.
  - f) Staff and sales assistants taking qualifying exams in their early years of industry exposure may be disadvantaged by the disclosures of low scores with respect to later professional growth.
- 2) To include links to other websites is helpful and has no downside.
- 3) No, BrokerCheck does **not** need to be enhanced to provide comprehensive biographical and resume type information. It should be limited to the regulatory disclosure purpose it now serves. Clients and prospective clients should assume greater responsibility in requesting and gathering biographical information of importance to them in making a decision on the selection of an FA. FINRA **and its member firms** should not be **burdened** with gathering and distributing such voluminous information that a client/prospect can get on their own through simply inquiry.
- 4) No, BrokerCheck does **not** need to be enhanced to provide professional designations. This is biographical information, not regulatory disclosure material. The FA can provide such information on professional designations to their clients and prospects as they so choose.
- 5) No, BrokerCheck should **not** be enhanced to facilitate "screen scraping" and bulk data access and review, and should not facilitate any degree of automated data collection

tools. It should be limited to the intended purposes of inquiry about a specific individual or firm.

- 6) No, BrokerCheck should **not** be out-sourced to commercial companies, nor should the data be made available to them. FINRA should not give any consideration to this as a source of revenue by providing such data. BrokerCheck's purpose should be limited to providing essential regulatory information and not enhanced beyond that. If comprehensive investigations or credit checks, etc on prospective FAs are warranted by a client or prospect, then a multitude of commercial businesses are already in this business.
- 7) No, FINRA should **not** spend money to increase investor awareness of BrokerCheck. It is already readily available and obvious to any person who elects to make that inquiry on the FINRA website. No, changes should not be made to Rule 2267. Our firms are already overburdened with regulation and disclosures.

BrokerCheck serves as a useful and necessary regulatory disclosure tool as is. It does not need to be expanded and further enhanced beyond improvement in the display of information currently in the database, and ease-of-use changes.

Regards,  
Ray Thompson

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Mr. Pullano:

In my last ten years as serving as a compliance officer dealing with complaints against our reps, I have found that clients are becoming increasingly savvy. Investor education and protection is vital to this industry, however, clients have found they can cry "unsuitable" in a down market and possibly get reimbursed for their market losses, resulting in a compliant situation. In a case such as this, the disclosable item on Broker Check shows as a complaint regardless of the merit of the complaint. **This harms an innocent rep and potentially an investor as well.**

Misleading and inaccurate entries are showing on individual CRD records more frequently due to the vengeance of a disgruntled manager or an unhappy client. I implore FINRA to examine - How this is fair and balanced disclosure to the investor?

There is no other profession that is as scrutinized and fully disclosed as the financial services industry. I do not know anything about my physicians and surgeons except they hold the proper licenses and I have referrals from other satisfied patients. I am not interested in the fact that they may have had a complaint filed against them ten years ago; it is a mute point if he is able to do a good job now. Any information that is irrelevant to the financial services industry and has no relation to a client or a client's funds has absolutely NO business being openly available to the public via BrokerCheck.

What is the purpose of making otherwise private information now public? If the point is to weed out those brokers who are consistently breaking the rules, then FINRA needs to step up to the plate and bar these repeat offenders after a fair, balanced, and thorough review. Our firm terminated one rep for stealing over \$60,000 of client's tradition products funds and he was only banned from the industry for two years. Where's the justice there? He's a thief and he should have been barred for life!

If indeed this is part of FINRA's mission statement "Our chief role is to protect investors by maintaining the fairness of the U.S. capital markets" then I demand to know how publishing incorrect and misleading information on reps on Broker Check is "maintaining the fairness". There is nothing fair about ruining a reputation due to a meritless complaint or a criminal charge that was dropped.

As for publishing test scores, please, use reason! Some people are bad test takers but are good communicators and very good representatives. How can publishing test scores benefit the investor? Does it exhibit their sense of ethics, morals, integrity in the market place, or their knowledge or applicability of products in certain situations? I believe, not!

Once again, I implore FINRA, to examine how is this fair and balanced disclosure to the investor? Please use a reasonable standard when proposing rules and consider the unintended consequences that could change people's lives forever.

Respectfully,  
Pam Fritz

Dear Mr. Pullano and Mr. Nachmann,

I have been in the Compliance field of the financial services industry for about 1 ½ years. After reading Regulatory Notice 12-10, I was not only disturbed, but a little bit outraged. I think that it is ridiculous to allow this type of private, personal information to be posted for any eyes to see. I personally go to great lengths to protect my private information. Now it is that much easier for a "scammer" to look me up on BrokerCheck and pretty much have my entire educational, work, and criminal background. Have you considered that the answers to many online security questions rest in this type of information? What if it gets in the wrong hands?

I am coming to you from an administrative point of view. I am only registered because my job position – Compliance Analyst – requires me to do so. I understand the need to research information on a broker, but I do not solicit business nor keep a book of clientele. Yet all of my information is going to be public not only for the time I am with my broker-dealer, but for 10 years after I possibly leave the industry? This is crossing the line!

FINRA is not only punishing those honest, ethical representatives who have kept their records clean and may have had a personal "blip" in their history, but is also punishing those who are not even in the business to sell! I am challenging FINRA to reconsider this action to increase the amount of information released on Registered Persons.

Do FINRA auditors need to be securities licensed as my BD requires their auditors to be? NO. I think this would be a different story if the public could go out and check a FINRA auditor record – such as test scores and possible domestic violations that have absolutely NOTHING to do with the financial industry. And if FINRA is to include professional designations as well as test scores on FINRA exams, then are they going to include each test grade for each exam required to obtain the designation? How is that any different from the FIRA scores?

We pay an unspeakable amount of money to be FINRA members – and what are we getting from this? The chance to be researched and scrutinized by the public for occurrences that may have taken place that are PRIVATE business. This is discouraging to the reps in the field who actually do honest business but maybe is a bad test taker or made a personal mistake in their past.

This type of information is not available for any other type of profession – some that are more important to our very being, such as doctors!

Please reconsider this action as it could potentially prevent a solid, honest relationship between and client and their rep, or perhaps ruin an existing bond. I have no comment on financial-related complaints or violations as those actually pertain to the client-rep relationship.

Sincerely,

Amber Bowman  
MWA Financial Services, Inc.

#### Ways to Facilitate and Increase Investor Use of BrokerCheck Information

FINRA has traditionally served as a filter to prevent investors from going directly to state regulators to obtain a more complete and useful CRD report. But that report was still nearly incomprehensible with pages of redundant information on the same event and almost no information on qualifications.

It is amusing that so many commentators are terrified concerning disclosure of test scores. I suspect those same individuals aggressively use lots of meaningless credentials to enhance their credibility. If those test scores were part of the public record, registered persons might take them seriously and lobby FINRA to make the tests more meaningful than the lame and irrelevant exercises that so many commentators now characterize them as being. Still, that is a minor issue to investors.

Comments to the specific questions.

#### Categories of Information:

The biggest improvement would be including customer complaints. They are currently available from most state regulators (because they don't work for the industry) and tell more about a broker than any other item. The complaints are reported by the member, and characterized or mischaracterized as the member sees fit, so its not like the broker can't explain how (s)he was actually blameless and the complaint was denied as completely frivolous and unjustified in any case. FINRA should not be in the business of hiding this information from the public.

#### Links to other websites:

An investor should be able to click on each prior industry affiliation to investigate prior employers. As we know, the bottom stratum of the industry transfer from firm to firm as the bucket shops go out of business leaving defrauded investors holding the bag. A record of several successive bucket shops would be highly informative, especially if the current firm is newly organized (by the same usual suspects) with little regulatory history. The control person CRDs should link to firm CRDs so that an investor would know with whom (s)he was dealing.

#### Educational Background:

If a person is hiring a financial advisor, that person should have access to the same information that a reputable firm would require prior to hiring an employee. Most reputable firms would not hire a professional without a resume of education residence, and employment history. An investor should not be asked to do so? The information should be on the CRD so the investor has access to basic background. Furthermore, if it's not on the CRD, the broker is free to make it up or embellish it as necessary; even on the CRD embellishment would probably remain a common practice, but at least there is the chance of some repercussions if discovered.

#### Report Design, Format and Content

The multiple listing of the same complaint or series of complaints by different SRO's is maddeningly distracting. It is as if the CRD was designed to be very hard to read. And yes group disclosure events at the beginning, not the end.

**Investor Awareness**

Unless FINRA makes the CRD useful, those familiar with the system will continue to advise investors to use the on-line search for the sole purpose of doing a preliminary check for reportable information and then calling their state securities regulator to get a more complete report including customer complaints. The public CRD, as now offered, is next to worthless; not worthless, but close.

FINRA should provide all of its records to academic researchers, interested parties and for-profit information services. The information can not have too much dissemination. A more valuable place to start would be with full disclosure of all arbitration claims against brokers and firms from beginning through settlement or award so that an investors would know that if they choose poorly and are defrauded, their chance of recovering their losses is very small.

Barry D. Estell  
Mission, KS 66205



The more disclosure the better. One of the most important decisions an individual makes is finding someone reliable and trustworthy to manage his assets. The BrokerCheck as it currently stands provides inadequate disclosure to prospective investors who seek to hire a broker. At the very least, BrokerCheck should be user-friendly allowing individuals to ascertain a broker's educational background, degrees, titles, etc; history of employment; history of all customer complaints, including verbal complaint, etc. Transparency is good for everyone in the process – it allows investors information to make informed decisions hiring a broker while brokers would strive to a higher standard. Furthermore, allowing custom-made searches on BrokerCheck would be an asset to the public, such as allowing searches by firm, zip code, years in the industry etc. It would be a win-win situation for everyone.

David Harrison, Esq.  
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## Public Investors Arbitration Bar Association

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March 29, 2012

Via Email Only  
[pubcom@finra.org](mailto:pubcom@finra.org)

Ms. Marcia F. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1506

Re: Regulatory Notice 12-10, FINRA BrokerCheck

Dear Ms. Asquith:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"). PIABA is a bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Our members and their clients have a strong interest in FINRA rules relating to both investor protection and disclosure.

PIABA is supportive of FINRA's efforts to make BrokerCheck more accessible for investors. PIABA recognizes that FINRA has expanded the BrokerCheck system since its implementation to make the system more effective. In 2010, FINRA made a number of changes to BrokerCheck, including expanding the amount of information available about brokers, and making the information available for a greater period. During the 2010 revisions, PIABA raised an important issue -- that BrokerCheck provides less information to the public than is otherwise available from certain state securities regulators. We encouraged FINRA to consider harmonizing the information available on BrokerCheck with information available from states, such as Florida. Investors across the country should have access to the same information about the financial professionals with whom they are doing business, regardless of where they are located.

PIABA also requested that FINRA make the information available without artificial time periods, a request that we reiterate today. Information that is material to the investing public should not be eliminated from the system because an artificial period of time lapses.

PIABA believes that FINRA must harmonize BrokerCheck to provide all information to the investing public that would be disclosed by state regulators, such as Florida. BrokerCheck should disclose the broker's educational background and information about professional designations.

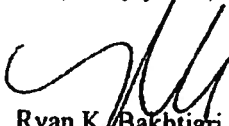
Public Investors Arbitration Bar Association  
2415 A Wilcox Drive Norman, OK 73069 Phone: (405) 360-8776 Fax: (405) 360-2063  
Toll Free: (888) 621-7484 Website: [www.PIABA.org](http://www.PIABA.org) Email: [piaba@piaba.org](mailto:piaba@piaba.org)

With regard to the design, format and content of the summary report and/or the full detailed report, we believe that FINRA should make reports available as a webpage in addition to a stand alone PDF. Hyperlinks to additional information should be included from both the summary report and the full report. This would allow greater flexibility in accessing the information that the viewer deems relevant and provide the best possible disclosure to the investing public.

Lastly, FINRA asks whether BrokerCheck information should be made available to for-profit companies (who have or are contemplating establishing websites or services that gather this information). The information contained in BrokerCheck should be available to as many people as possible, including business that might improve public access to and awareness of the information. To the extent for-profit firms may make this information more accessible, or offer comparative reports about different firms or brokers, they should be permitted to do so. PIABA is supportive of free enterprise determining how it might also serve the investing public as long as FINRA continues to provide a basic level of service and disclosure to the investing public for free through the FINRA website.

PIABA is supportive of FINRA's efforts to continually improve BrokerCheck. We appreciate the opportunity to comment on the process.

Very truly yours,



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Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1506

RE: Regulatory Notice 12-10, FINRA BrokerCheck

Dear Ms. Asquith,

I have specialized in the representation of claimants in NASD and FINRA arbitrations for over twenty years. Most of my clients are from South Florida, but many are from across the country and in other parts of the world.

Countless times over the years I have witnessed the client who has been financially devastated, as he reads the CRD of the subject broker and learns that for years, sometimes decades, prior to entrusting his or her life fortune, the subject broker has been named in countless arbitrations, been terminated for breaches of company policy, been sanctioned by FINRA and/or the SEC.

Obviously in these situations, the tragedy would likely have been avoided if the victim had been aware of the broker's prior transgressions.

Virtually every claimant's lawyer I know, including the undersigned, is supportive of any and all efforts that will make broker history more accessible to the public. There simply is no logical reason for this information to be anything other than readily accessible to the people who are entrusting the broker's and brokerage firms with their life savings.

The existence of BrokerCheck needs to be conveyed to investors on a much more proactive basis by the brokerage firms. It also needs to more fully disclose the information in a manner as complete as the information available from the State of Florida.

I am fully supportive of FINRA's efforts to make the public more aware of the backgrounds of those with whom they entrust their life fortunes to. Likewise, I am fully supportive of the comments on BrokerCheck previously forwarded to you on behalf of the Public Investors Arbitration Bar Association.

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. Rex', with a long horizontal flourish extending to the right.

Robert H. Rex  
Dickenson Murphy Rex & Sloan  
Rex Securities Law  
150 East Palmetto Park Rd, Suite 500  
Boca Raton FL 33432  
561-391-1900

Maria E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1005

Ms. Asquith,

Thank you for the opportunity to allow me to express opinions regarding the content in Regulatory Notice 12-10.

To start, I don't think providing (i.e. sell) registration data to for-profit providers is a good idea. Let the investing public come to FINRA who is the regulator and should be the key information provider for assistance. If you want to generate awareness make them come to you, and figure out a way to achieve that goal.

I think any disclosure/disciplinary information that is published should be solely confined to any situation or incident where investors, firms or the marketplace were harmed or compromised.

Personal Anecdote: Once I was subject of a NASD/FINRA investigation. I voluntarily resigned my position while the investigation was being "conducted". FINRA later withdrew the investigation, and I was not subject to discipline.

It's funny, FINRA Rule 8312(d)(2) states that FINRA shall not release "information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority". But, the idea that I that I voluntarily resigned from the firm during the investigation needs to be disclosed.

Make the information meaningful, important and easy to understand, and you'll increase the effectiveness of BrokerCheck.

Regards,

Thomas Sullivan, CPA  
Hagan & Burns CPA's PC  
120 Broadway  
Suite 940  
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212-425-7790

**Via E-mail Only**  
**[pubcom@finra.org](mailto:pubcom@finra.org)**

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1506

**Re: Regulatory Notice 12-10, FINRA BrokerCheck**

Dear Ms. Asquith:

I am an attorney in San Francisco, CA, with a practice almost exclusively representing the victims of the securities industry, and I often use BrokerCheck. Disclosing more information about brokers can only help the investing public. In this day and age, most of us have come to realize that transparency in general is a good thing. With respect to finding out information about your financial adviser, the pros of as much additional information as possible about a broker will clearly outweigh any perceived cons that the securities industry has. Determining a broker's background, including test scores, education, complaint history, disciplinary history and work history, will help the public choose brokers that are best suited for them. Any arbitrary time limitations on supplying this information would only detract from the needed transparency.

Enhancing the amount of information about brokers and brokerage firms on BrokerCheck will only improve this service, and make it more likely that the public will use it and benefit from it. Allowing third parties to access this information may also make this information more widely available to the public, and may also help people to understand and distill the information contained on BrokerCheck, which may also prove to be a significant benefit to the investing public. It is difficult to see a downside to such access.

Jeffrey A. Feldman  
425 California Street, Suite 2025  
San Francisco, CA 94104

**I represent investors in arbitrations with firms. Most of the claimants which I have represented have been financially devastated by the actions of a broker and/or firm. In some cases, if the investor had seen the BrokerCheck report when he initially met the broker, the loss may have been avoided. Therefore, the broader the report the better. I would support a rule which required the brokerage firm to give the investor a copy of a full and complete CRD when the relationship begins.**

**First, the time period of information available through BrokerCheck should be unlimited.**

**Second, it would be beneficial for links to be made to the U-4 or U-5 for each firm listed in the CRD.**

**Third, a broker's educational background should be listed. Many brokers have no formal education; however, investors assume that the broker has advanced education.**

**Fourth, while the online BrokerCheck is useful as a preliminary tool, it should link the state regulator of each state, where a more comprehensive report could be obtained.**

**Lastly, I fully support any efforts by FINRA to make the BrokerCheck reports more meaningful to investors.**

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April 4, 2012

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1506

Re: Regulatory Notice 12-10, FINRA BrokerCheck

Dear Ms. Asquith:

Thank you for the opportunity to comment on expansion of the categories of information available to investors on BrokerCheck and ways to facilitate and increase investor use of BrokerCheck information. We are writing this comment on behalf of the Securities Arbitration Clinic of St. John's University School of Law. The Securities Arbitration Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization.

The Securities Arbitration Clinic represents aggrieved investors and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing the public disclosure of information about brokers, and ensuring that investors have sufficient information available to them to make informed decisions when determining either to continue to do business with, or form a new relationship with, an investment professional.

The Clinic is supportive of the proposal to include information regarding a broker's educational background in BrokerCheck. Professional designations and links to websites providing an explanation of these designations should be included in BrokerCheck. Also, including educational background in BrokerCheck may prevent brokers from embellishing or lying about their credentials. We believe that this information should be made available because it may play an important role in helping investors decide whether to hire a particular investment

professional.

We do not believe that there should be a time limit on the availability of information that is available on BrokerCheck. BrokerCheck is a system designed to protect investors and deleting information after a certain period of time undermines that purpose. Additionally, the burden on FINRA to maintain these records is very low compared to the benefit the information on BrokerCheck provides to the public.

The Clinic is supportive of the proposal to provide BrokerCheck information to for-profit companies for commercial use. Companies may make this information more accessible and user friendly to the investing public. We believe that wide dissemination of this information will benefit investors.

We encourage FINRA to continually improve BrokerCheck. Thank you for your consideration of this matter.

Sincerely,

/s/

Terence P. Cremins  
Legal Intern

John Marck  
Legal Intern

Lisa A. Catalano, Esq.  
Director, Securities Arbitration Clinic

Christine Lazaro, Esq.  
Supervising Attorney, Securities Arbitration Clinic



April 3, 2012

Ms. Marcia E Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

RE: Regulatory Notice 12-10 FINRA - Request for Comments

Dear Ms Asquith:

Pursuant to FINRA's request for comments on ways to facilitate and increase investor use of BrokerCheck information, potential changes to the information disclosed, the format in which the information is presented and strategies to increase investor awareness of BrokerCheck, Farmers Financial Solutions, LLC offers the following comments:

**Information displayed**

The information currently provided allows investors to make informed decisions regarding any individual Registered Representative's background and does not require amendment. In our opinion, simply adding more information is not likely to increase usage.

It has been suggested that Brokercheck be linked to other web sites. Such disclosure should be limited to a general statement that Representatives may also be licensed or registered with other regulators depending on the products and/or services offered, either through their member firm or as an outside business activity. Such web site links should be limited to "investment related" regulators' general web sites, consistent with the definition included in the U-4 instructions (insurance, commodities, banking, real estate, investment advice or securities regulators).

With regard to the posting of professional designations and education, professional designations should not be provided, as inclusion is likely to be considered by the public as an implied or expressed endorsement of a particular designation. In addition, verification of current standing would be impractical and likely to be inaccurate. Since there are no requirements for a particular educational background to be registered,

such disclosures would not be appropriate nor necessarily provide investors useful information with respect to an individual's ethical behavior or professional experience.

As for publishing test scores, there is no study that we are aware of that indicates any correlation between tests scores and ethical or professional behavior of a Registered Representative. In addition, many long term industry veterans have taken their examinations so long ago that any test results are simply irrelevant. The fact is that these examinations like other professional examinations set a minimum standard for entrance into the profession but are not reflective of experience or ethical behavior.

FINRA should also consider that a number of Registered Representatives may not speak or read English as a first language. These individuals may have had challenges in passing such examinations but may serve their clients with the highest ethics and professionalism, regardless of their test scores.

Lastly, while the securities industry continues to set the standard for self-regulation and public disclosure, no other profession (i.e. attorneys, medical providers, CPAs, insurance producers, general contractors, etc.) have their professional licensing test scores posted in a public forum. The test status should remain at the current disclosure level, indicating only the examinations passed and not the individual scores.

#### **Report Design, Format and Content**

The current report format is satisfactory; however, should contain a link to a glossary of industry terms. The glossary should have an option to print with the report but not otherwise automatically print.

The current system using a secure "FINRA BrokerCheck Authentication" can be difficult for some users, especially seniors or those with impaired vision, and appears from the consumers' perspective as unnecessary since the information is already public.

Customer complaints listed should also show the comments posted by Registered Representatives as indicated on the Form U-4 DRP. In the interest of providing timely information, complaints not involving forgery, theft, conversion or misappropriation of funds or securities should be removed after ten years.

Employment or registration histories should not indicate whether terminations were for cause or voluntary as this may prejudice customer complaint resolutions and will likely increase litigation exposure for member firms. Comments made by certain member firms on a Registered Representative's Form U-5 and posted on BrokerCheck may be inaccurate, misleading or have been misused in disputes between certain member firms and Registered Representatives. Terminated individuals may have very little opportunity to have such firm's comments changed or post a rebuttal, thereby causing

permanent damage to the Registered Representative's professional and personal reputation.

With respect to a member firm's disclosure events, a matrix setting forth the number and types of disclosure events would in fact be more confusing to consumers. Often times the public may not be familiar with the industry terms and the technical requirements broker-dealers are subject to. Member firms may have alleged violations that have been settled with various regulators that did not directly involve customers. Violations should be categorized simply as having direct customer impact or not. Violations that did not directly impact customers should be removed after 5 years. Those disclosure events that did have a direct impact to customers may be shown for a longer period of time. In addition the description of any such disclosure events posted should be subject to a "plain English" standard.

#### **Investor Awareness of Broker-Check**

Use of print and broadcast media has not proven to increase awareness or usage. In addition, past attempts at broadcast or print media left some member firms and Registered Representatives displeased with the impression communicated by such ads. Requiring disclosure of Brokercheck at the time of opening of an account is in most cases "after the fact". While consumers may request mailed copies of such reports, most consumers access the information on-line. We believe that a typical consumer, when looking for a Registered Representative or firm is most likely to use a search engine such as Google, Bing, Yahoo, etc. When the word "background check" is included, the FINRA BrokerCheck usually comes up first or at least on the first page. However, the public may not typically use "background check" in their searches but simply search on "financial advisors" or "stockbrokers" or other similar generic terms. Such searches do not usually list BrokerCheck on the initial results page, if at all, in the listed results.

FINRA should work directly with the most widely utilized search engines to ensure that the FINRA BrokerCheck shows up early in a consumers' typical online search whenever "financial advisor", "stockbroker" or other commonly used search words are used.

#### **Commercial Use**

Currently a number of web based companies have established online services and have published various lists of registered representatives and member firms without the knowledge and consent of the Registered Representatives or member firms. For the most part, these companies are simply in the business of soliciting Registered Representatives to pay for an enhanced listing in their respective referral programs. No background checks are usually done and the referral is strictly by zip code or other territory. Registered Representatives are agreeing to internet advertisement without

recognizing what they have contracted for, many times without their firm's knowledge, approval or ability of the member firm to retain such electronic records.

These private vendors are solely looking to generate fee income from Registered Representatives while consumers have no knowledge of the relationship or motivation of such companies. FINRA should not provide BrokerCheck information to for-profit companies for such commercial use.

As always, we appreciate the opportunity to comment.

Sincerely,



**Steve Klein**  
**Chief Compliance Officer**  
**Farmers Financial Solutions, LLC**



April 5, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
Delivered via email: [pubcom@finra.org](mailto:pubcom@finra.org)

Re: Increasing Investor Information on BrokerCheck® (Regulatory Notice 12-10)

Dear Ms. Asquith:

Thank you for the opportunity to recommend potential enhancements to FINRA's BrokerCheck® functionality. As a non-profit, accredited educational institution with an 85-year heritage and a specialization in financial services, The American College has unique resources and perspectives that may be helpful to you.

We feel strongly that BrokerCheck® should include a broker's educational background, specifically listing meaningful professional designations and advanced degrees. Members of the public should know which credentials an advisor has legitimately earned, and having this information available from one source will greatly streamline the process for investors. The major designation providers – including those representing CFA, ChFC®, CFP®, CLU®, and CPA®/PFS – could provide an additional layer of data to FINRA to verify designation holders in good standing.

Many designations of varying quality are available to advisors. Some of these marks indicate rigor and extensive educational achievement, while others are at the level of continuing education or weekend seminars. The public should be aware of these differences and of which credentials an advisor has legitimately earned. While your professional designation database provides some assistance in distinguishing quality marks from those that are less meaningful, more extensive resources for consumers in this area would be helpful. We have begun building DesignationCheck.com as an online consumer resource to provide an additional level of detail on the top credentials. We would be happy to talk with you about combining our efforts or making DesignationCheck.com, with a broader list of credentials, available through a link from BrokerCheck®. Ultimately, consumers need an easy tool to determine which designations are truly meaningful with some form of quality ranking, rather than just an expanded listing. We would be willing to work with you to deliver this resource, involving leading academics and designation providers to develop a system that meets the full needs of the investing public.

We may also be able to help in providing additional financial services education that could be accessed via BrokerCheck®. The American College has produced extensive content on many aspects of financial services for use in our various designations and master's degrees. That material – which includes multimedia clips, term definitions, and explanatory text – is all digitized for access at the subject or topic level. We could consider ways to make some of this valuable educational information available to investors as an added enhancement to the BrokerCheck® tool.

We hope you will decide to include a broker's professional designations in the data you provide to consumers. It's important information. To enhance some of your other educational offerings to consumers – including further build-out of your material about professional designations – we're ready to provide whatever assistance we can and look forward to talking with you further.

Sincerely,



Keith Hickerson, MSM  
Senior Strategy Consultant  
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423.521.6950





*Invested in America*

April 5, 2012

By Email ([pubcom@finra.org](mailto:pubcom@finra.org))  
Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: **FINRA Regulatory Notice 12-10, Request for Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information**

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide this letter in response to FINRA Regulatory Notice 12-10 (“Notice 12-10”), which seeks comments on: (i) potential changes to the information disclosed through BrokerCheck, (ii) the format in which the information is presented, and (iii) strategies to increase investor awareness of BrokerCheck.

SIFMA supports and encourages FINRA’s continued evaluation of the BrokerCheck public disclosure system, both as mandated by the Dodd-Frank Act, and for purposes to help investors make informed choices about the member firms and associated persons with whom they are, or are considering, conducting business. To that end, SIFMA believes that the information maintained in BrokerCheck must be accurate, clear, concise, and relevant to the investor, and must be balanced against member firms’ and their employees’ legitimate privacy interests, and expectations of fairness and balance. With these principles in mind, SIFMA offers the following comments in response to specific questions posed in Notice 12-10 in order of priority:

### **Proposed Commercial Use of BrokerCheck Information**

Notice 12-10 states that “some for-profit companies have established, or are considering establishing, websites or services that enable users to verify or obtain information about financial industry professionals (including brokers).” SIFMA believes that furnishing BrokerCheck information directly to these potential commercial users does not advance, and appears antithetical to, FINRA’s mission of

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<sup>1</sup>SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (“GFMA”). For more information, visit [www.sifma.org](http://www.sifma.org).

New York

investor protection, presents substantial potential for abuse, and does not reflect FINRA's principles of fairness and equity.

As set forth on its website, FINRA's mission "is to protect America's investors by making sure the securities industry operates fairly and honestly." The provision of BrokerCheck information directly to for-profit entities whose intended use of this information cannot be verified or reviewed by either the member firms or its associated persons does not comport with FINRA's stated mission of advancing investor protection or maintaining orderly and fair markets. Notice 12-10 indicates that these businesses' "products and services likely would be targeted to fulfilling the needs of businesses and individual (*i.e.* retail) investors." However, fulfilling the needs of commercial "businesses" who may have marketing or other advertising uses for BrokerCheck information, and whose sole purpose is to profit from its ability to collect and re-use such information, is specifically not part of FINRA's stated public mission.

BrokerCheck is already designed "to provide investors and the general public with information on the professional background, business practices and conduct of FINRA member firms and their associated persons" (Notice 12-10, p.2). It is not necessary or appropriate for FINRA to take that same publicly available information and sell it to a commercial business, whose use of that information is not governed by a mandate to serve the public interest, but is instead designed to make a profit for that entity. What possible "products and services" could these commercial businesses offer investors that BrokerCheck does not already provide? The information most important to investors is already available on BrokerCheck. Selling this information for repackaging by a commercial entity serves no legitimate regulatory purpose.

SIFMA also has significant concerns about the potential misuse of aggregate or other "data-dumps" of BrokerCheck information being available to third-parties not subject to FINRA's oversight. Firms and their registered persons provide information to FINRA with the understanding that certain information will be publicly available through BrokerCheck. But that information has not been provided to FINRA by these firms and individuals in order that commercial enterprises can obtain it in bulk and mine the data for any purpose at all.<sup>2</sup> The risk that commercial entities not subject to FINRA's oversight or control could also "cherry-pick" or aggregate information and present it in ways that does not convey a fair or accurate portrayal of a firm or its representatives outweighs any remunerative benefit from selling BrokerCheck information.

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<sup>2</sup> SIFMA understands that registration information may in some cases be available from states under their respective sunshine or similar laws. However, the fact that some states may have statutes in place that may make some registration information available does not lead to the conclusion that FINRA should provide such information related to member firms or their associated persons.

In addition, these potential third-party firms are not bound by FINRA Rule 8312 governing the release of information through BrokerCheck. As a result, these firms could retain and display information beyond the ten year period prescribed by Rule 8312 for persons who are no longer licensed. Allowing firms not subject to FINRA oversight commercial access to BrokerCheck information unjustifiably raises the risk of the misuse of that information.

As FINRA itself recognized in Notice 12-10, through its Terms and Conditions, an individual is prohibited from using BrokerCheck information for anything other than that individual's own personal or professional use, and "voluminous requests or attempts to bypass FINRA's software or hardware designed to block such requests is prohibited." FINRA has a policy of preventing screen scrapers from obtaining voluminous data through automated collection tools.<sup>3</sup> Thus, it would be completely inconsistent for FINRA to sell that same information in BrokerCheck to companies that operate in the same manner as screen scrapers. FINRA has not satisfactorily explained, or even attempted to explain, this inconsistency in approach. FINRA's member firms and associated persons rely on FINRA's principles of fairness and equity, and selling BrokerCheck information appears to be in direct conflict with such principles.

Thus, SIFMA strongly believes that the sale of BrokerCheck information to commercial enterprises is not necessary, duplicates information already available to the general public, and does not advance the goal of investor protection.

**Comments Regarding Implementation of the Near-Term Recommendations of the Dodd-Frank Section 919B Study**

Notice 12-10 identifies three "near-term" recommendations of a study by the Staff of the SEC's Office of Investor Education and Advocacy<sup>4</sup> pursuant to Section 919B of the Dodd-Frank Act (the "919B Study") to improve investor access to registration information: (i) unification of search returns for BrokerCheck and the Investment Advisor Public Disclosure ("IAPD") databases; (ii) add the ability to search BrokerCheck by ZIP code or other indicator of location; and (iii) add educational content to BrokerCheck.

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<sup>3</sup> See, footnote 12 herein.

<sup>4</sup> Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisors and Broker-Dealers, As Required by Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, SECURITIES AND EXCHANGE COMMISSION, OFFICE OF INVESTOR EDUCATION AND ADVOCACY January 2011 (available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>). The shorthand reference to this study as the "SEC Study" recognizes that the study was conducted by OIEA Staff and that the Commission has expressed no view regarding the analysis, findings or conclusions contained therein.

Following the release of the 919B Study, FINRA did not seek input from member firms on the potential implementation of the near term recommendations through a regulatory notice. Recently, some member firms were advised that there is a tentative deployment date of April 30, 2012 for implementation of the 919B Study near-term recommendations.<sup>5</sup> While Notice 12-10 does not specifically call for comment on the 919B Study recommendations, SIFMA offers the following for FINRA's consideration in advance of any final release or implementation of the near-term recommendations:

**Unification of BrokerCheck and IAPD Search Results**

The principal reason behind the 919B Study's recommendation for unification of search results between IAPD and BrokerCheck is the concern that investors searching for information about a broker-dealer or registered investment advisor (RIA) (or their representatives) may fail to locate that information because the investor chose the wrong database to search. FINRA indicates in Notice 12-10 that it will implement the unification recommendation on or before a July 2012 deadline.

SIFMA understands and appreciates the respective benefits of broker-dealer and RIA disclosure under the BrokerCheck and IAPD systems. However, unification of search results without clear and unequivocal disclaimers regarding the different roles, regulatory obligations, and reporting requirements for the two systems is likely to cause investor confusion. SIFMA offers the following illustrative example: Unlike Form U4 Question 14I(3), there is no requirement under the Form ADV Part 2 Brochure Supplement to report denied written customer complaints. This could lead an investor, after conducting two searches on two different individuals – one in BrokerCheck and one in IAPD – to form a particular impression that an RIA has never had any written customer complaints while a separate registered representative did have such complaints, even though the RIA actually may have had such complaints, but they were not reportable under the Form ADV.

In addition, the Form ADV (and the ADV Part 2 brochure supplement) requires substantially more information about an RIA's business model, clients, and operations than does a BrokerCheck report. The SEC, FINRA and the industry knows that this reflects the fundamental differences between the obligations imposed by the Securities Exchange Act of 1934 and the Investment Advisors Act of 1940. An investor, however, may not have the same understanding, and may reach a different conclusion about the differences between and RIA and a registered representative. SIFMA

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<sup>5</sup> The status of FINRA's work in this regard was disclosed as part of a FINRA presentation at the 2012 Association of Registration Management Conference on January 24, 2012. Because of the substantial nature of the proposed implementation of even the 919B Study near-term recommendations, SIFMA asks FINRA to consider whether the enactment of those recommendations, or the other contemplated changes to BrokerCheck described in Notice 12-10, requires a full rulemaking process under applicable SEC rules and regulations.

encourages FINRA and the SEC to seek to harmonize BrokerCheck and IAPD with a stated purpose to decrease investor confusion.

The BrokerCheck and IAPD reports each contain links to the other's disclosure system when there is reportable information available for the entity or individual being searched. SIFMA suggests that the hyperlinks also include a reference so that investors know that they are being directed from one distinct disclosure source to another with fundamentally different regulatory obligations. Moreover, the current Frequently Asked Questions (FAQs) available on the BrokerCheck site specifically addresses the question of what an investor should do if a search returns no results, including the possibility that the investor should search IAPD.

For the foregoing reasons, SIFMA believes that the goal of implementing the "unification" near-term recommendation can be achieved through more prominent cross-references at the respective BrokerCheck and IAPD main pages, along with more express disclosures explaining the different business models and regulatory obligations governing the firms and individuals subject to these reports.

#### Zip Code Search Capability

The 919B Study states that adding the capability to BrokerCheck to perform searches by ZIP code "might be helpful to investors who are seeking to hire a financial services provider by identifying those financial services providers who are located close enough to visit in person, or to compare an individual they have already hired with others providing similar services."<sup>6</sup>

SIFMA believes that the potential for abuse noted in the 919B Study – that a ZIP code search function could "encourage third parties to extract data from BrokerCheck and IAPD for repackaging and sale" is of considerable concern for the reasons expressed above concerning commercial use of BrokerCheck information, and therefore is reason enough to not add such functionality. Second, the wealth of information already readily available through standard internet searches provides the investing public with sufficient information concerning location and services offered and that any ZIP code search function within BrokerCheck would be redundant. Third, ZIP code searching raises concerns that individual residences required to be identified as branches could be disclosed through the search function, resulting in potential privacy issues for registered persons. SIFMA recommends that the addition of ZIP code search functionality be delayed pending consideration of the issues raised herein.

#### Addition of Educational Content

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<sup>6</sup> See 919B Study at p. 40.

SIFMA fully supports the recommendation in the 919B Study to add educational content, including links and additional definitions of terms, to BrokerCheck reports. The 919B Study notes, correctly, that FINRA offers investors a glossary of key terms used in BrokerCheck reports, and that the addition of certain terms (including descriptions of industry examinations) would be helpful to the investing public.

SIFMA understands that the BrokerCheck Glossary, along with other resource material, such as the Form U4/U5 Explanation of Terms, can be hyperlinked from the BrokerCheck summary and detailed reports. Hyperlinks within these reports to the source definitions will allow investors who are reviewing these reports through a PC or mobile device direct access to terms that they may find confusing, thus enhancing the overall user experience.

#### Disclosure of Reasons for Termination

FINRA has not specifically called for comment on whether BrokerCheck should include Reasons for Termination as reported on Form U5, Question 3. However, the 919B Study suggests that FINRA continue to “analyze the feasibility and advisability of expanding BrokerCheck to include information currently available in CRD....”<sup>7</sup> The 919B Study notes that “regulators currently collect more information on registration forms that is currently made public on BrokerCheck” and that information reported on Form U5 concerning the reason for a registered representative’s termination is currently excluded from disclosure under Rule 8312(d).<sup>8</sup>

SIFMA is strongly opposed to the release of information related to the reason(s) for a representative’s termination as reported under Question 3 of Form U5. Apart from references to the SEC’s general belief that access to information “can help investors make better decisions about their selection or evaluation of broker-dealers and investment advisors” the 919B Study does not articulate any rationale for the disclosure of reasons for termination. SIFMA believes that the current public disclosure rule (FINRA Rule 8312), appropriately allows only the disclosure of termination information that meets the disclosure requirements of Form U5 Question 7F.<sup>9</sup>

Previously, in connection with a June 2005 proposed rule changes to IM-8310-2 (now FINRA Rule 8312), the NASD took into account concerns that releasing Form U5

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<sup>7</sup> See 919B Study at p. 42.

<sup>8</sup> *Id.*

<sup>9</sup> Form U5 Question 7F requires disclosure where the individual either voluntarily resigned, was discharged or was permitted to resign after allegations were made that accused the individual of (1) violating investment-related statutes, regulations, rules or industry standards of conduct, (2) fraud or the wrongful taking of property, or (3) a failure to supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct.

information could lead to the potential release of allegedly defamatory materials and that such disclosures may occur while firms and brokers were in the process of litigating wrongful termination claims. At that time, NASD specifically declined to release termination information unless such information was disclosed under Question 7F. SIFMA believes that this approach properly balances the need for public disclosure of certain events with a representatives legitimate privacy interest in connection with employment decisions.

Currently, BrokerCheck releases termination information reported on Form U5, Question 7F, along with a registered representative's employment history. This available information already provides investors with sufficient information to evaluate a representative's employment history. No additional utility is cited in the 919B Study for the inclusion of information reported under Question 3 of Form U5.

#### Exam Score Information

The 919B Study also suggests that FINRA continue to analyze the advisability of expanding BrokerCheck to include scores on industry qualification exams. SIFMA would also strongly object to the display of exam score information. We do not believe FINRA or the SEC has stated a rationale for the release of such information and do not consider it to be a fair or valid measure investors should use when considering whether to work with a broker given the current "pass/fail" nature of the exam and absence of any practical implications associated with gradations in scoring. We also believe publishing qualification exams scores would be generally inconsistent with other professional industry practices (e.g. State Bar Associations, etc.).

#### Further Comments on Notice 12-10 Topics

Notice 12-10 asks for specific comments on several topics. Outlined below are SIFMA's views on the subjects raised:

##### **1. Information Displayed**

Notice 12-10 details the significant amount of information currently available through BrokerCheck, including registration and employment history, examinations passed, outside business activities, and criminal, regulatory, litigation, complaint and termination disclosure information. Specifically, FINRA seeks comment on the following:

- a. Should changes be made to the categories of CRD system information that are displayed through BrokerCheck or the time frames for which such information is displayed? If so, what information should be added or deleted from BrokerCheck and how long should the information be available in BrokerCheck?**

SIFMA has expressed in past comments related to BrokerCheck disclosures its fundamental concerns with the release of historic information, especially historic customer complaint information.<sup>10</sup> In particular, in connection with the most recent amendments to FINRA Rule 8312, SIFMA proposed the establishment of a BrokerCheck Review Committee to ensure the accuracy of reported information and also recommended that prominent disclosures be made at the beginning of BrokerCheck entries for Historic Complaints that have not been adjudicated or resolved. FINRA declined to adopt a Review Committee, finding that the current dispute process is “very straightforward” and that the establishment of such a committee to review disputes would “unnecessarily increase the amount of time needed to process disputes.”<sup>11</sup>

While SIFMA recognizes and accepts FINRA’s determinations under Rule 8312 to modify and expand the amount of information available through BrokerCheck,<sup>12</sup> it offers the following suggested changes to the manner in which such information is displayed in order to enhance the overall fairness of the disclosures provided and make the displayed information easier to understand for investors.

**Recommendation: Eliminate Multiple Reporting of the Same Disclosure Events**

Currently, single disclosure events are reported separately for each reporting entity. For example, disclosure information is located in the “Disclosure Event Details” section of the “Detailed” BrokerCheck Report. In many cases, for particular categories of disclosures (e.g. settled customer disputes, awards, actions dismissed or withdrawn) both the disclosure by the member firm and the typically concurrent report by the registered representative for a single, and same, disclosure event are separately listed under “Disclosure 1 of \_\_\_” in the sub-header. In nearly all cases, each report is substantially the same, but several categories of basic information are repeated twice, separated only by a dotted line. Because of the Detailed Reports’ format (i.e., landscape), the dual reports for even the simplest single disclosure event can take up as much as two pages of a report.

SIFMA believes that the repetition of the same basic disclosure information two or more times<sup>13</sup> for a single disclosure event is redundant, unnecessarily lengthens the BrokerCheck Detailed Report, and can lead to investor confusion regarding the broker or firm’s disclosure history.

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<sup>10</sup> See SIFMA Small Firm’s Committee Letter to Elizabeth Murphy, Securities and Exchange Commission, dated May 13, 2010, commenting on SEC Release No 34-61927 (amendments to FINRA Rule 8312); and SIA Letter to Nancy M. Morris, Securities and Exchange Commission, dated July 20, 2006, commenting on Release No 34-54053 (proposed amendments to NASD Interpretive Material 8310-2).

<sup>11</sup> See FINRA Letter to Elizabeth Murphy, Securities and Exchange Commission, dated June 21, 2010, at p. 7.

<sup>12</sup> See Regulatory Notice 10-34.

<sup>13</sup> Or sometimes three times when a regulator files a Form U6.



SIFMA recommends that single disclosure events be reported only once in the Detailed Report, with any material differences between or among a firm, regulator or registered representative's report be detailed within that single disclosure event report. For example, where a description of the allegations of a customer complaint differ materially between a firm and the individual's report, those descriptions can be set forth under sub-headings that identify "Allegations as Reported by Firm" and "Allegations as Reported by Broker." The majority of the other reported information (e.g., employing firm, product type, alleged damages, docket number, whether the matter is pending) does not need to be repeated in the Detailed Report.

***Recommendation: Summarize Information on Denied Customer Complaints***

Reported customer complaints under Questions 14I(3) of the Form U4 or 7E(3) of the Form U5 remain disclosed under amended Rule 8312 until a registered representative is out of the industry for more than ten years. Even if those complaints were investigated by the firm and found to be wholly without merit and denied, the matters remain disclosed under current rules. For example, under current rules, if a broker receives two meritless customer complaints, which result in denials by the firm and no follow-up by the customer, because of the dual reporting per disclosure event described above, a broker could have four or more pages of information on these denied customer complaints in his or her BrokerCheck Detailed Report.

SIFMA believes that as a matter of fairness FINRA should remove from BrokerCheck all denied or withdrawn Historic Complaints that have not resulted in any subsequent action after six (6) years from the date the complaint was received. FINRA Code of Arbitration Rule 12206 (the "Eligibility Rule") precludes filing arbitration claims where more than six years have elapsed from the "occurrence or event giving rise to the claim." For customer complaints that have been denied without further action (as opposed to settled or similarly resolved complaints or arbitration or litigation matters) it serves no regulatory purpose to continue to disclose information related to complaints that have been denied by the respective firms, when those matters would be ineligible for adjudication under the Eligibility Rule.

SIFMA recommends that, in addition to streamlining the reports on a per-disclosure event basis as described above, disclosures related to denied or withdrawn written customer complaints should be reported in summary fashion with only the most pertinent information displayed. Currently, the "closed-no-action/withdrawn/dismissed/denied" section for customer complaint reports in a detailed BrokerCheck report sets out fifteen (15) separate categories of information, including the allegations, the product type, alleged damages and other information. In addition to the fact that a single denied customer complaint gets reported twice (once by the firm and once by the broker) creating the appearance of multiple events, there is no need to include any information beyond (i) the description of the allegations, (ii) the damages claimed, (iii) the date received, and (iv) the current status (including the date of the last status update). There is no need, for example, to clutter the BrokerCheck

report with whether an historic, denied complaint is oral or written because denied oral complaints are not reportable (only oral complaints that settle for an amount over the thresholds in the Form U4 are disclosed). Similarly, a “product type” disclosure is redundant in the face of a description of the allegations. Also, the denied complaints section of the Detailed Report asks whether the complaint is pending, which of course would be “no” if it is reported in this section. Finally, the “closed-no action” section of the Detailed Report does not need to be cluttered up by blank spaces in the “settlement amount” and “individual contribution amount” because, by definition, denied or closed claims have not been settled.

Providing information related to denied or withdrawn customer complaints advances the goal of providing the information required by FINRA rules, but that information should be presented in a way that provides essential information concisely and that appropriately emphasizes the fact that the matters were denied or withdrawn without further action by the customer. Presenting factual information related to denied or withdrawn Historic Complaints in this fashion gives the disclosures appropriate weight in the overall context of the report and would be a fairer way to report the required information.

*Recommendation – Display Only Information Related To Registered Persons With Direct Client Contact Responsibilities*

BrokerCheck is designed as a tool for investors to research the professional background of FINRA registered brokers and should be the first resource used to research a particular broker or firm. BrokerCheck is generally understood to be used by retail investors to look up information on a current or prospective broker who they may conduct business with in a sales or service capacity. However, BrokerCheck information is available for *all* registered individuals of a member firm irrespective of function. As a result, there are many thousands of individuals in BrokerCheck who are required or permitted to be registered but who do not ever deal directly with the public and would not be known to the investing public in a professional capacity. This includes individuals who are permitted to be registered as a result of duties related to legal, compliance, back-office operations, or internal audit activities. It also includes individuals who are required to be registered due to their role in approving or supervising certain non-customer-facing activities such as broker-dealer operations and finance functions but who would never deal directly with an investor.<sup>14</sup>

SIFMA does not understand what benefit is gained to a retail investor seeking information about a prospective broker to also have at his or her disposal registration information, including employment history, outside business activities, and financial disclosures for non-customer facing individuals. The registration of these individuals

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<sup>14</sup> SIFMA is not recommending at this time that information related to control persons or those acting in principal capacities, customer-facing or not, be excluded from public disclosure through BrokerCheck.

may promote particular regulatory purposes, but certainly not for retail investors deciding on selecting a member firm or registered representative.

While there is no current indication on a broker's Form U4 (though a "checkbox" or otherwise) as to whether he or she has direct contact with customers in the conduct of the member's securities business, member firms do keep track of this information for regulatory purposes, including delivery of Firm Element continuing education. If the Form U4 is not amended in connection with overall enhancements to BrokerCheck, another alternative would be for FINRA to allow firms the option of preventing public disclosure of BrokerCheck information for individuals who do not have customer contact, such as by means of a "flag" in BrokerCheck. SIFMA welcomes the opportunity to work with FINRA to establish effective means to implement appropriate modifications to CRD to identify permissive or other registrants whose information need not be displayed through BrokerCheck.

*Recommendation: Correct Inaccurate Reference to "Summary" in Detailed Reports where information included is a Broker Comment*

When a broker elects to comment on a pending or settled matter under Question 24 of the Customer Complaint/Arbitration/Civil Litigation DRP, that information is referenced in the Detailed Report as a "Summary." To avoid investor confusion between this optional broker comment and the description of the allegations as reported by the firm, the "Summary" section sub-heading should be replaced with "Broker Comment."

- b. Would it be beneficial for investors if FINRA included links to other websites (e.g., websites maintained by financial industry regulators or organizations that provide investor education) in BrokerCheck reports? If so, what types of links would be most helpful?**

SIFMA supports FINRA's goal of increasing investor understanding of the financial markets. However, linking to sources outside FINRA or other Self-Regulatory Organizations ("SROs") raises concerns about the accuracy and impartiality of information provided by parties not subject to SEC, FINRA, or other SRO oversight.<sup>15</sup> SIFMA recommends limiting any additional educational links to either: (i) its own investor education webpages and materials, or (ii) similar sites and materials maintained by the SEC or registered SROs.

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<sup>15</sup> Excepted from SIFMA's concerns would be links to the website maintained by the North American Securities Administrators Association ("NASAA"), which, while not subject to SRO oversight, has played a longstanding and valued role in promoting investor protection.

**c. Should a broker's educational background and/or professional designations (e.g., Chartered Financial Consultant, Chartered Financial Analyst) be available in BrokerCheck?**

The Form U4 does not require the disclosure of educational information of an associated person. By contrast, Part 2B of the Form ADV requires disclosure of formal education after high school. Therefore, BrokerCheck and IAPD are markedly different with respect to educational information with respect to associated persons who are not RIAs. SIFMA reserves comment on any such changes to the Uniform Forms until such time as they are proposed, but believes that an associated person's professional licenses should be a sufficient indicator of the basic qualifications necessary for a registered representative.

Furthermore, any requirement to disclose additional information on the Form U4 will be costly and burdensome for the member firms to implement. If education is added to the Form U4, member firms will have to validate, and update as necessary, this component for all of its non-RIA associated persons, which could be a quite substantial number. Firms will have to build supervisory systems, and dedicate resources, to the task of validating educational background, which is compounded by the fact that this information is not already publicly available, and the firms need to rely on the multitudes of private and public educational institutions that their associated persons attended. These very real costs must be weighed against any incremental utility offered by requiring disclosure of educational information about non-RIA associated persons.

Regarding disclosure of professional designations, SIFMA believes that disclosure on BrokerCheck reports of professional designations (as such are disclosed under Question 8 of Form U4) can be useful to investors. However, such disclosures should be limited to those identified under Question 8 of the Form U4. Expansion beyond those designations already listed in the Form U4 would also impose an undue burden on firms who would have to validate and adjust internal systems to capture such information. SIFMA recommends that adding such information to the BrokerCheck reports should be accompanied by links to FINRA's explanations of what such professional designations entail.<sup>16</sup>

**d. What terms or phrases used in BrokerCheck reports are most difficult for public users to understand? What educational or other material should FINRA provide to help public users?**

We refer the Staff to our comments above regarding providing additional educational materials as part of the 919B Study's near-term recommendations.

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<sup>16</sup> FINRA's BrokerCheck homepage provides a link to a page entitled "Understanding Professional Designations." See, <http://apps.finra.org/DataDirectory/1/procdesignations.aspx>. SIFMA note that, for advisors, the Part 2B brochure permits a supervised person to disclose professional designations, but only if accompanied by a "sufficient explanation of the minimum qualifications required for each designation to allow clients to understand the value of the designation."

## **2. Report Design, Format and Content**

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

Please see above concerning SIFMA's suggestions related to the consolidation of event disclosure reporting, and the use of summary tables for denied and/or withdrawn Historic Customer Complaint information.

## **3. Investor Awareness of BrokerCheck**

- a. How can FINRA best increase investor awareness of BrokerCheck?**

SIFMA notes that multiple sources, including internet searches, FINRA's homepage, and disclosures provided by Rule 2267, provide multiple avenues to alert investors to the availability and uses of BrokerCheck. FINRA should continue to reiterate the availability of the system through its multiple channels of investor education that are already in place.

- b. Should FINRA make basic BrokerCheck information (e.g., registration status, employing firm, and employment location) available in such a way that would enable an investor to enter a broker's name in an Internet search engine, see the basic information in the search results, and be directed to BrokerCheck for more detailed information?**

Allowing internet search engines to return information contained within BrokerCheck raises issues identified by the Staff in Notice 12-10 related to data-mining and other automated collections of BrokerCheck information for commercial purposes (i.e. through the use of "screen-scrapers" and similar programs). Currently, access to BrokerCheck is restricted by the use of required field entries known as CAPTCHAs.<sup>17</sup> This tool, which, through the use of distorted or "squiggled" text, prevents access to BrokerCheck by non-human "bots" or programs, would have to be substantially altered or modified to permit search engines to collect and display BrokerCheck data. The potential disabling of such protections from computerized data collection programs is inconsistent with its other expressed concerns about improper data mining. Therefore, SIFMA would recommend considerable additional study and consideration before implementing the suggested changes to BrokerCheck.

### **Additional Issues for FINRA's Consideration**

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<sup>17</sup> CAPTCHA refers to the "squiggled" text boxes described as a "Completely Automated Public Turing test to tell Computers and Humans Apart" pioneered at Carnegie Mellon University in 2000.

### **1. Prominence of Disclaimers/Explanations**

SIFMA encourages FINRA to continue to evaluate the efficacy of the BrokerCheck reports disclosures, especially as those disclosures concern complaints, litigations, and regulatory matters that have not been adjudicated.

In response to previous comments related to the expansion of BrokerCheck disclosures, FINRA has noted that the BrokerCheck reports contain “clarifying language in various locations regarding the fact that certain disclosures may involve allegations that have not been resolved or proven.”<sup>18</sup> SIFMA agrees that such disclosures can provide essential information that place disclosed events in their proper context, but only so long as those disclosures are prominent and clear.

Notice 12-10 references FINRA’s use of a market research consultant to obtain opinions on the BrokerCheck program. To the extent not addressed by the market research conducted,<sup>19</sup> it would be helpful to review investor recognition, comprehension, and retention of disclaimer or explanatory information to determine how effectively such information is conveyed in the BrokerCheck reports.

### **2. Display of Private Residence Information**

SIFMA member firms continue to notice anomalies in the disclosure of private residence information in BrokerCheck in certain limited circumstances. In some cases, firms are required to register private residences as branches under Form BR for representatives who are based in a traditional branch office in one location, but spend more than thirty days of the year in another location. SIFMA members have observed that the private residence information is often disclosed despite the indication on Forms BR or U4 of the “Private Residence” checkbox.

SIFMA understands the purpose behind the “Private Residence” checkbox is to alert FINRA that certain “branches” required to be disclosed under Form BR are private residences and that that information should not be disclosed if supervisory or principal branch location information for that individual is otherwise available. SIFMA requests that, as part of this review of BrokerCheck’s display of registration information, the Staff identify ways to prevent the automated collection and display through BrokerCheck of Form BR data containing branch locations that are identified as “private residences.” Any addresses identified as “private residences” in the Uniform Forms should be subject the protections afforded by FINRA Rule 8312(d) concerning the release of a registrant’s private information.

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<sup>18</sup> FINRA Letter to Elizabeth Murphy, *supra*, note 4.

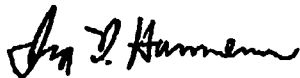
<sup>19</sup> The BrokerCheck Survey linked to on FINRA’s website does not contain any questions about possible investor concerns with the adequacy or clarity of disclaimers related to the information provided in the BrokerCheck reports. The survey is hosted by a third-party and clicking on the link to “BrokerCheck Feedback” from the “Terms and Conditions Page takes a user to <http://www.zoomerang.com/Survey/WEB224TZVUP7UN>.

### **3. Enhanced Aggregate Reporting of Firm Standing and Eligibility**

Fund distributors use BrokerCheck information to confirm that unaffiliated third party intermediaries who sell their funds are in good standing with FINRA and are therefore eligible to receive compensation (e.g. continuing commission, etc.). This appears to be an acceptable use of BrokerCheck under its terms and conditions (“...to assist your organization in determining whether to conduct or continue to conduct securities or commodities business...”) and is consistent with just and equitable principles of trade. However, for larger fund distributors this review process is a labor intensive effort that can even result in being blocked from BrokerCheck due to “excessive use” controls. SIFMA requests that FINRA make information concerning the standing of firms more readily available on an aggregate basis in order to promote more timely and accurate reviews of this nature. For example, FINRA could enhance reporting functionality directly within BrokerCheck to list all firms over the prior month or quarter that terminated registration with FINRA or which are otherwise ineligible to receive compensation due to disciplinary action, etc. This enhanced reporting functionality will help prevent unintended improper payments and will serve to protect investors and the public interest.

SIFMA appreciates the opportunity to comment on the issues raised by Regulatory Notice 12-10 regarding BrokerCheck. If you need further information, or if you have any questions regarding these comments, please contact me at (202) 962-7373.

Sincerely,



Ira D. Hammerman  
Senior Managing Director, General Counsel and Secretary, SIFMA

cc: Mr. Marc Menchel, Executive Vice President and General Counsel for  
Regulation, FINRA



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April 5, 2012

Via E-mail to [pubcom@finra.org](mailto:pubcom@finra.org)

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, N.W.  
Washington, D.C. 20006-1506

Re: FINRA Regulatory Notice 12-10, Request for Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information

Dear Ms. Asquith:

Wells Fargo Advisors ("WFA") takes this opportunity to comment briefly on FINRA's Regulatory Notice 12-10 ("Regulatory Notice 12-10") concerning ways to facilitate and increase investor use of BrokerCheck information. While WFA acknowledges that Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires FINRA to implement three near term recommendations from a January 2011 study, WFA believes that there are concerns that FINRA should address before implementing the recommendations. In addition, FINRA seeks input on including in BrokerCheck information the reason for and comments related to a broker's termination, scores on industry qualification exams, and formerly reportable information. WFA files this comment letter to outline its views on this proposed expansion of BrokerCheck.<sup>1</sup>

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<sup>1</sup> The Securities Industry and Financial Markets Association ("SIFMA") has filed a letter in response to Regulatory Notice 12-10. As a SIFMA member, WFA endorses many of the views outlined in that letter.



Ms. Marcia E. Asquith  
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WFA consists of brokerage operations that administer almost \$1.1 trillion in client assets. It accomplishes this task through 15,263 full-service financial advisors in 1,100 branch offices in all 50 states and 3,548 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>2</sup>

#### **The “Near Term” Recommendations**

In its January 2011 study<sup>3</sup>, the Securities and Exchange Commission (“SEC”) made the following “near term” recommendations to improve investor access to BrokerCheck:

1. Unify the searches for BrokerCheck and Investment Advisers Public Disclosure (“IAPD”) database;
2. Add the ability to search BrokerCheck by ZIP Code; and
3. Add educational content to BrokerCheck, including hyperlinks and definitions of terms.

As it relates to unifying BrokerCheck and IAPD searches, WFA notes that investor confusion may greatly increase as the two databases disclose different information for completely separate regulatory purposes. It is not clear that investors are aware of these differences in the two databases and the varied information available in each. To simply unify both search systems without more education concerning the contents and their meaning could undermine the goal to provide investors with substantial and understandable information on financial professionals. We would encourage FINRA to offer both brief explanatory overviews of the nature of both databases and their differing information structures every time an investor initially accesses the database. It also appears that a longer, video and/or other media “tutorial” on the databases will provide another opportunity to help investors understand these databases and get the maximum benefit from them.

The second “near term” recommendation that FINRA plans to implement is affording investors the ability to search BrokerCheck by ZIP Code. The Study stated that this search capability could help those searching for a broker or those interested in seeing how their existing broker stacks up against others in the same ZIP Code. This stated premise for expanding BrokerCheck in this fashion does seem to be of questionable benefit to investors. The selection of a financial professional is almost certainly done in ways that are more tailored than the random search of BrokerCheck ZIP Code. Whether through word of mouth, advertising or other methods, the best and highest use for BrokerCheck for investors is to use it to learn information about a previously identified financial professional. A broker’s ZIP Code is almost of no relevance in identifying

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<sup>2</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has \$1.1 trillion in assets and more than 278,000 team members across 80+ businesses. Wells Fargo’s brokerage affiliates also include First Clearing LLC, which provides clearing services to 92 correspondent clients and WFA. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

<sup>3</sup> Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisors and Broker-Dealers, As Required by Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, *SECURITIES AND EXCHANGE COMMISSION, OFFICE OF INVESTOR EDUCATION AND ADVOCACY* January 2011 (<http://www.sec.gov/news/studies/2011/919bstudy.pdf>) (the “Study”).

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whether a professional is the right one for an investor. Similarly, a comparison of your existing broker with other brokers residing in the same ZIP Code may give an investor no ability to make evaluations on criteria that matter. Investment choices and service levels offered, as well as the legal standard applicable to the account are all among a basketful of relevant factors on which an investor might compare brokers that are absent in BrokerCheck. The spurious benefit that might result from including ZIP Code searches is outweighed by the financial and privacy costs that could result from allowing unfettered searches of financial advisors by ZIP Codes. This financial and privacy cost is even greater when one notes that private commercial entities will access the information for their profit making purposes. We respectfully request that FINRA and the SEC refrain from implementing the near term recommendation to add Zip Code searches to BrokerCheck.

As noted briefly above, WFA believes that offering a means to educate investors more about the BrokerCheck/IAPD databases is both essential and beneficial to afford a supportable yet informative system. It will be critical that the educational material is both static and interactive so that users can get the most out of the databases and still put the search results in proper perspective. Investors can learn from the tutorials what BrokerCheck/IAPD provides as it relates to the registered financial professionals and, equally critical, they should learn the limitations of the databases. The educational components can also include hyperlinks to other sites, but it will be important that the presentation on the BrokerCheck/IAPD consists of content presented in a new and fresh manner and in a fashion that has been refined through the use of investor focus groups. In other words, given the enhanced role these databases might play for the investing public, it is vital that the educational materials undergo a complete overhaul to make it useful.

### **Other Issues**

FINRA asks for comments on other issues resulting from the Study. WFA believes that to benefit investors and the public the most, the combined databases should only display information related to customer facing registrants. It is the best use of BrokerCheck/IAPD to provide search results that focus on those who may be hired as a financial adviser. Firms are populated with a number of individuals who obtain various licenses or registrations, but actually have no responsibility for direct interaction with clients. The vast array of information contained in the databases simply provides unnecessary background on individuals with whom the investor will never engage, and it exposes the information of these noncustomer facing team members for no clear regulatory or investor benefit.<sup>4</sup>

In terms of information displayed, WFA believes it is necessary to make certain that the information displayed is as uncluttered as possible. As such, the duplication of certain disclosures creates a confused BrokerCheck display. Settled customer disputes or actions dismissed represent just some of the disclosures where FINRA displays the registered individual's disclosure and that of the brokerage firm for the same event. Thus, investors easily could be confused as to whether they are in fact viewing two disclosure events or separate views

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<sup>4</sup> Regulators, of course, would retain unfettered access to the information of all registered persons. There simply would be no such information available on the non-customer facing registrants.

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of the same event. As FINRA takes steps to increase the access to BrokerCheck, it should spend additional time and effort to correct some of the basic flaws in the system so that the screen display is easier to view and comprehend.

WFA opposes any effort to make the BrokerCheck/IAPD information available for commercial, "for profit" purposes. At the outset, as an outgrowth of regulatory initiatives, these public disclosure data bases essentially constitute a "public utility." Registrants acknowledge what would ordinarily consist of a gross invasion of privacy is a part of their investor protection obligations as members of a highly regulated industry. It would be an unfair and unprecedented breach of the informal agreement to allow expansive access to private details for FINRA to then allow commercial exploitation of that same information. No regulatory purpose is served by permitting commercial enterprises to access and exploit the personal data of registrants. Similarly, there should be no adjustments to BrokerCheck/IAPD such that individuals can access the information through ordinary web browsers and internet search engines. There simply would be too many opportunities for abuse where there is no means of controlling "entry" into the regulatory database.

Finally, FINRA should consider establishing a focus group which would consist of registered representatives and investors. The focus group could have a targeted discussion of design, information provided, usability and the purpose of BrokerCheck. The focus group would provide valuable insight from both a registrant and investor perspective. Consideration should also be given for educational seminars for investors. FINRA district offices could host regional seminars for investors which would provide information to them in a face-to-face meeting regarding the importance, purpose and limitations of BrokerCheck. Lastly, FINRA should consider providing BrokerCheck webinars for both registered representatives and investors. Although information about BrokerCheck is provided on FINRA's website, a webinar allows both visual and audio participation.

### **Conclusion**

The SEC Study presents an opportunity for FINRA to consider how to provide more access to information about financial professionals. WFA encourages FINRA to delve deeply into the implications of greater access and to make certain that there are no unintended consequences flowing from some of the recommendations.

If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long  
Director of Regulatory Affairs

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

April 5, 2012

Re: Facilitating and Increasing Investor Use of Broker Check Information

Dear Ms. Asquith,

As an Officer of Supervisory Jurisdiction, Principal and Registered Representative of a Broker/ Dealer and Registered Investment Adviser Representative, I applaud the further expansion of information on FINRA's Broker Check site. I believe the information on current and former representatives should be available permanently as it is for brokerage firms. Investors can be too easily victimized by those persons who have lost their securities license for valid reasons. Broker Check due diligence by investors could safeguard them from unscrupulous financial advisers.

It would be extremely helpful for Broker Check to provide links to other reliable websites such as FINRA's Investor Fraud Alert. Another helpful link would be to each state's insurance department where the representative last resided as well as that states court records. (<http://wcca.wicourts.gov>) Each state has a different name for their securities and insurance regulatory division or department. (<http://www.wdfi.org/>) As a consequence trying to locate the appropriate regulators can be overly burdensome for the typical investor.

Not only should a broker's educational background and professional designations be displayed but their titles and a brief description of their authority and responsibility. Likewise a layman's description of the content of the various exams could be helpful. However the grades should not be disclosed, primarily because this would be a violation of FINRA's own guidelines, in that when representatives took these exams they were told that the scores would not be disclosed. On the other hand FINRA could make disclosures of future exams voluntary or elective for those representatives whose egos need even further stroking.

Rather than a glossary at the Broker Check site, it would be more efficient to refer investors to trusted websites that already contain good glossaries like the following;

<http://www.investopedia.com/dictionary/>, <http://lexicon.ft.com/Overview>,  
<http://www.nytimes.com/library/financial/glossary/bfglosa.html?8ym&emc=ym>

I would limit the previous employment on the first page to the current employment and give the full historical employment of the representative in the detail pages. In addition I would highlight, on the first page, the date of the last reported changes. Along this line I have learned that the information reported on Broker Check is often not current. As a consequence crucial information is not available to investors

on a timely basis. There should be a concerted effort by FINRA to update Broker Check every time a change is made to a U-5 and/or U-4. FINRA should not wait for the Broker/Dealers to submit this information but rather it should be gathered and uploaded on Broker Check as soon as it is filed with FINRA,SRO and/or SEC .

DRP details should be disclosed as they are now with ample opportunity for a Broker/Dealer or representatives rebuttal. Since it is next to impossible to expunge erroneous reportable events they should not be summarized or quantified since this could be very misleading.

In order to enhance awareness of Broker Check, FINRA could ask CNBC to allow it to advertise as a public service announcement on "American Greed" and PBS on "American Experience". In other words any TV show or movie that is about financial bad guys provides an opportunity for Broker Check increase awareness.

Not only could FINRA allow search engines to locate Broker/Dealers and representatives but FINRA should make use of trusted social networking sites that mention employment. In fact TippyBob, another submitter of comments on Broker Check, lets investors comment on the credibility of representatives. (<http://www.tippybob.com/>)

FINRA need not devote time and resources to supplying information for commercial use unless it is deemed to be necessary for the protections of investors.

My comments above are mine alone but based on over four decades of experience in the financial services industry. If you have any questions about my comments, I may be reached at 414-225-3551.

Sincerely,

Ross M Langill

Chairman & CEO

Regal Bay Investment Group LLC

Suite 1500

250 East Wisconsin Ave.

Milwaukee, WI 53202

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 2006-1506

Ms. Asquith,

Thank you for the opportunity to offer my comments on **Ways to Facilitate and Increase Investor Use of BrokerCheck Information.**

Let me start by stating the key is to facilitate and increase Investor use of BrokerCheck, not facilitate use of third parties who will then sell the information. FINRA's current practice of prohibiting an individual (or business) from using BrokerCheck information for anything other than that individual's own personal or professional use is good. The point is to help Investors, not For Profit firms such as Intellius, Lexis-Nexis, Experion, Trans Union and others.

I support the ideas of adding the ability to search by zip code or other indicator of location and adding educational content.

I am against unifying the searches with IAPD if the result is a "back door" method to automate data collection by third parties.

I believe the current format and information is sufficient for an Investor. The educational background and designations of a Registered Representative can be verified through the granting Institutions.

I don't believe that the test scores are meaningful and don't know what my scores from 1983 are.

Linking to some organizations may be helpful but not for firms such as AARP which have products to sell and resulting conflicts of interest.

I am against FINRA making BrokerCheck information available in general search engines.

I have been involved in a divorce where my reputation and business were deliberately trashed and believe that great mischief can be done with information in general search engines. We as Registered Representatives can't use testimonials and must be compliant in our advertising and it would be difficult to counter mischief in a compliant fashion. There must be a balance between Investor Education and the Common Law privacy rights and reputations of Registered Representatives.

Currently there is context for the Disclosures on BrokerCheck. Disclosure information taken out of context can be harmful to Registered Representatives. I fully agree that "Rogue Brokers" must be exposed and stopped. Many "accusations" and customer complaints are spurious, unfounded and thus harmful to Registered Representatives. My hope is that you view Registered Representatives as the Industry Representatives closest to the client and thus afford us due regard and consideration.

Thanks again for taking my comments.

Sincerely,

Tony Ristaino  
606 Baltimore Ave.  
Suite 105  
Towson, MD 21204



Scope

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**April 6, 2012**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington DC 20006-1506

**Re: FINRA Regulatory Notice 12-10; FINRA BrokerCheck**

Dear Ms. Asquith:

BrightScope, Inc. ("BrightScope") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 12-10.

First off, we applaud the advancements in accessibility that FINRA will be making in response to the Dodd-Frank Act by unifying search returns across BrokerCheck and the IAPD website, enabling location-based searching, and adding educational content for investors. These are all positive steps for investor protection.

We are also encouraged that FINRA is considering moving further down the road to true transparency as evidenced by this request for comment. We share FINRA's desire to improve investor awareness of the information available through BrokerCheck, and we are eager to help accelerate the process.

#### **Executive Summary**

As stated by the SEC, "because selecting a broker-dealer or investment adviser is one of the most important decisions that investors face, information to help them make this choice should be easy to find, easy to use, and easy to understand."<sup>1</sup> The best way for FINRA to achieve that objective, and at the same time increase investor use of BrokerCheck information, is to first make the information available in machine-readable format to be indexed by Internet search engines and used by commercial enterprises. Making the information machine-readable so that it will show up in Internet search results will make the information much easier to find and will drive traffic to FINRA's BrokerCheck. Furthermore, commercial enterprises have already built distribution platforms to make the information available to investors in a user-friendly format, and they should be permitted to access and use the information for that purpose. Opening up the data in this manner can be accomplished at minimal cost to FINRA. FINRA can then turn to improving the user experience on the BrokerCheck website.

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<sup>1</sup> See the January 2011 "Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers" at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>





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## BrightScope's Recommendations

### Increasing Investor Awareness of BrokerCheck Information

As currently structured, an investor can use BrokerCheck to search for the public filings of a broker-dealer or registered rep, one record at a time. The investor will only find the broker-dealer or registered rep if he or she (1) knows or has guessed correctly that the firm or individual is registered with FINRA (at least until search is unified across BrokerCheck and the IAPD website), (2) knows how to spell that firm's or individual's name, or (3) knows the CRD number. If the search is successful, the investor will need to pass through a CAPTCHA to view the results, and will need to repeat the same process for each search. Once a record is found, the PDF report can be tens to hundreds of pages long and does not even include hyperlinks to allow investors to navigate quickly from the table of contents or summary page to the sections they are interested in. While this rudimentary and cumbersome process can be used by an experienced investor, or more commonly an industry insider, to perform a preliminary background check on a particular firm or individual, the user interface and data access tools are inadequate for investor protection. In order to help investors make informed decisions when hiring the individual or firm to whom they may entrust their life savings, investors need to be able to quickly run searches on multiple advisors and view the information in a digestible format. This can be delivered through Internet search engines and for-profit companies that build tools and services for investors.

**Internet search engines:** For the average investor, if information cannot be found through Google, it might as well not exist. Such is the case with the information available through FINRA's BrokerCheck, which is tucked away in obscurity, as evidenced by the troublesome statistic that only 15% of investors have performed any sort of background check on a financial advisor.<sup>2</sup> Permitting the information on BrokerCheck to be found in Internet search results is a great way to get the information into the hands of investors and drive traffic to BrokerCheck.

**Commercial use:** Making the information on BrokerCheck available for republishing and commercial use would ensure that the information is far more widely distributed and used by investors in their decision-making.<sup>3</sup> For-profit companies will compete with one another to build powerful research and discovery tools and design decision engines that are easy for investors to find, use and understand. For example, BrightScope already provides investors with free access to tools to conduct searches across the CRD and IARD databases using a variety of highly relevant

<sup>2</sup> A survey conducted for FINRA found that only 15% of respondents claimed that they had checked a financial advisor's background with a state or federal regulator. See Applied Research & Consulting LLC, Financial Capability in the United States (2009) at

<http://www.finrafoundation.org/web/groups/foundation/@foundation/documents/foundation/p120536.pdf>

<sup>3</sup> This approach to disclosure is already being used to great effect by numerous federal agencies and departments. For example, the SEC has opened up information in the IARD, and the DOL has done the same with information from the Form 5500. To learn more visit <http://www.whitehouse.gov/blog/2012/03/30/informing-consumers-through-smart-disclosure>



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criteria, such as location, professional designations, AUM, fee structures, disciplinary history, etc., and then compare brokers and investment advisers side-by-side using these same metrics. These tools distill complicated disclosure data into actionable intelligence and arm investors and plan sponsors with the information they need to make the critically important decisions around selecting a financial advisor.

The more that investors use the publicly disclosed information to make decisions, the greater the incentive will be for financial advisors to keep their information accurate and up-to-date.<sup>4</sup> More accurate information will not only benefit investors directly as they search for and select a financial advisor, but also indirectly as asset managers and financial intermediaries who rely on BrokerCheck information to execute trades will be able to provide more accurate and timely trade execution for investors (this is more thoroughly explained by Rick Niedt in DST's comment letter).<sup>5</sup>

In short, competition among for-profit companies will spur innovation and ensure that the BrokerCheck information is put to its highest and best use, as cheaply and as efficiently as possible.

Concerns about data currency on third-party websites and an increased burden on FINRA BrokerCheck are both easily addressed. Information hosted on third-party websites can be kept up-to-date so long as FINRA provides open access to the database as follows:

- 1) Make all data available for bulk download from BrokerCheck in a machine-readable format (XML-based is a best practice)
- 2) Provide a complete list of CRD numbers to ensure comprehensiveness
- 3) Publish change logs so that third-party consumers of the data know when information has been added to or updated in an advisor's records

The fear that allowing third parties to access their data in bulk would burden the system and hinder site performance is actually unfounded. If FINRA were to create a bulk download system and provide change logs, it would place fewer burdens on the system than building sophisticated systems to try to keep people away from the data. The money currently spent on anti-scraping protection, CAPTCHAs, and PDF creation could be spent to create a bulk download system that would eliminate scraper traffic to the website and reduce the ongoing costs of running BrokerCheck.

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<sup>4</sup> The easier it is for brokers to update their information, the more likely they are to do so, so it may be worthwhile for FINRA to review and streamline that process.

<sup>5</sup> The comments submitted by DST can be found at

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p125828.pdf>



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**Increasing the Amount of Information Disclosed through BrokerCheck**

In the interest of transparency and investor protection, FINRA's stance should always be to disclose more, not less, and let investors and the marketplace decide what information is relevant and what information is not. We would like to see FINRA publish a catalog of the information available in the CRD and open up a discussion on what items merit disclosure.

In the meantime, we believe that it is important for investors to be able to see a broker's educational background and professional designations, because it demonstrates their level of commitment to their trade. Furthermore, if this information were disclosed, brokers would be encouraged to reach for a higher standard. If a broker's professional designation is revoked or expired, they should be required to remove the designation from the CRD system within a certain period of time, so as to avoid misleading investors.

**Conclusion**

We strongly believe that our recommendations would greatly improve FINRA's information disclosure mechanisms. Most importantly, the cause of investor protection will be best served if FINRA opens up the BrokerCheck information for indexing by Internet search engines and for use by commercial enterprises that have already built the framework to make the data easier to find, use and understand. With FINRA's help, we can deliver true transparency and arm investors with the information and tools they need to make informed decisions about whom to trust with their savings.

Should you have any questions about these comments or if we can be of assistance in any way, please do not hesitate to contact us. We are also available to meet with the Staff in person upon request.

Sincerely,

Oscar Hackett  
CFO & General Counsel

Ryan Alfred  
Co-Founder & President



April 12, 2012

By Email ([pubcom@finra.org](mailto:pubcom@finra.org))  
Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1509

Re: FINRA Regulatory Notice 12-10

Dear Ms. Asquith,

The Association of Registration Management, Inc. ("ARM") would like to take the opportunity to comment on FINRA Regulatory Notice 12-10 ("Notice 12-10") which proposes significant changes to BrokerCheck. ARM supports FINRA's efforts to streamline and improve BrokerCheck and appreciates the opportunity to submit this letter.

ARM has participated in some of the discussions with The Securities Industry and Financial Markets Association ("SIFMA") and is in full agreement regarding the comments submitted in their letter dated April 5, 2012. ARM supports FINRA's efforts to improve BrokerCheck, however, feels strongly that FINRA must ensure that BrokerCheck information is accurate, clear, concise and relevant to the investor. ARM also believes that BrokerCheck information must be presented in a manner that is fair, balanced and takes into consideration the privacy concerns of the firms and their registered representatives.

Although FINRA did not request comments on the recommendations below, ARM provides the following comments:

Unification of BrokerCheck and IAPD Search Results

ARM understands the respective benefits of broker-dealer and RIA disclosure under the BrokerCheck and IAPD systems. However, unification of search results without clear disclaimers regarding the different roles, regulatory obligations, and reporting requirements for the two systems may cause investor confusion. Since the registration forms differ in requirement, ARM recommends FINRA and the SEC seek to harmonize BrokerCheck and IAPD with a stated purpose to decrease investor confusion. Clear instructions and information in each site should be included. For example, disclosure information which may be

Ms. M. Asquith  
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contained on a Form U4 will be found on BrokerCheck for a registered representative. That same registered representative who appears on IAPD may not have disclosure information since the information pulled from Form ADV does not contain those details. Likewise, education will be available on IAPD which pulls details from Form ADV but may not be included on BrokerCheck because educational information does not appear on a Form U4. Without clear guidance an investor may fail to locate information because the investor chose the wrong database to search. Rather than provide uniformity, it may increase investor confusion.

#### Zip Code Search

BrokerCheck was initially put in place and its purpose is to provide information to the investing public who want to review information on member firms and associated persons with whom they are, or are considering, conducting business. BrokerCheck should not be used for proposed commercial use and ARM is concerned that Zip Code searches will surely pick-up registered persons who work from their private home or vacation home as a branch. These locations may or may not be registered locations of the BD; either way these locations should not be promoted for commercial use. ARM feels that allowing this information to become available could violate the privacy of the registered person by allowing their residence address to become publicly available.

ARM believes that there already exists ample information which is readily available through standard internet searches concerning location and services offered. ARM recommends that any addition of Zip Code search functionality be delayed pending further consideration of the issues raised herein.

#### Addition of Educational Content

ARM is concerned regarding the recommendation in the 919B Study to add educational content since educational information is not readily available for the vast majority of registered persons. The Form U4 does not include educational history and that information may only appear under the employment history of a Form U4 if the candidate was a student within the preceding 10 years of form submission. ARM is concerned that the investing public may be confused when they see educational information for some but not for all Registered Representatives they may be researching.

ARM suggests that FINRA carefully consider how education will be displayed so that potential clients are not misled by a section of education which in many cases will be blank. ARM is concerned because adding educational information for all will require revising the U4. This will require extreme effort by Industry to amend all U4s to ensure educational content is available. Finally, this effort would appear to be of limited benefit since general education information is readily available through a simple internet search. Additionally, many Registered Representatives have such information available on their firm website, FA.com, Linked In or other social media that are used by Registered Representatives today.

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Broker check should focus on industry related content. For example, the inclusion of industry related "passed" examinations and qualification information is what should be highlighted to the investing public. This is the information which is of value to a potential or existing client. Hyperlinks within these reports to the source definitions will allow investors who are reviewing the information, via the internet, to have direct access to terms, thus enhancing the overall user experience. ARM does strongly agree that the existing hyperlinks are helpful and the addition of further terms in the BrokerCheck summary would be very helpful to the investing public.

FINRA has specifically requested comments on the following items:

#### Information Displayed

ARM completely agrees with SIFMA regarding limiting BrokerCheck disclosure details to Registered Representatives who have direct client contact responsibilities. BrokerCheck's purpose is to help investors make informed choices about member firms and associated persons with whom they are, or are considering, conducting business. We see no purpose served in having information available to the public for numerous individuals who are required to be registered as a result of their duties and who will never deal with the public.

#### Report Design, Format and Content

ARM agrees with the comments made by SIFMA.

#### Investor Awareness of BrokerCheck

The stated goal of the changes and proposed changes is to "increase investor use of BrokerCheck information." We do not agree that the proposed changes will achieve that goal. Adding content that is already available to the public through general internet searches, adding content that is not available on the U4, etc. will not increase investor use. If the goal is to increase usage, ARM suggests that FINRA take an approach similar to what the SEC has done recently with Form ADV 2b. Form ADV 2b requires firms to provide specified information about an advisor to the client upon opening of an advisory or managed account. Similarly, FINRA should simply require firms to include in the account opening documents or in the new account packages the link to the BrokerCheck website. We believe this will do more to increase investor usage than making changes to the content.

#### Commercial Use

ARM strongly opposes the commercial use of BrokerCheck information on commercial websites. This will not increase awareness or usage of BrokerCheck. BrokerCheck information could get combined with other information and potential investors will not be able to tell what information came from BrokerCheck and what information came from other sources. To the extent that other information on a commercial site is inaccurate, it may be perceived as

Ms. M. Asquith  
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accurate because it is being clothed with regulatory information from BrokerCheck. FINRA loses control over the accuracy and content once it is shared with a third party commercial enterprise. BrokerCheck contains private and confidential information and ARM is concerned that such information could mistakenly become available to the public if shared with a commercial enterprise. BrokerCheck search is free and most other information as stated above is free through the internet. There is no benefit to the industry or potential clients from making the information commercially available. The only benefit will be the company that makes a profit from this enterprise.

ARM supports and commends FINRA for wanting to improve BrokerCheck. However, we respectfully submit that FINRA can accommodate the expansion and update to BrokerCheck in a more simplified fashion. We caution against using all information contained on a Form U4 for BrokerCheck since the Form U4 was meant for regulators to make an informed registration decision and for member firms to make an informed hiring decision. ARM fully appreciates the need to protect the investing public, however, we must ask then how we can continue to meet a Registered Representative's right to privacy against the need to fully represent the individual to the investing public? We ask that FINRA carefully consider the privacy interests of member firms and their employees in moving forward with Notice 12-10.

We thank you for your consideration of these comments.

Respectfully submitted,

*Marian H. Desilets*

Marian H. Desilets, President  
On behalf of Association of Registration Management, Inc.'s Executive Committee

Thank you for the opportunity to comment on the proposed Broker Check expansion.

With regard to expanding Broker Check to include professional designations, while I have no objection to posting the information, I am concerned that the information will not be kept current. Further, this will put an additional burden on firms to not only maintain records on securities industry continuing education, but will require them to ensure a rep meets requirements of other organizations as well. I believe this is an unfair burden on firms.

With regard to the releasing of historical examination information, I do not feel this would serve any purpose whatsoever. I believe that the fact that a representative has qualified by passing the appropriate examinations is sufficient. The scores received on the examinations have zero relevance on an individuals ability to do their job and do it well.

While I realize that there is a push from other regulatory bodies to increase the information given to investors, I would also point out that we, as an industry, give out more information about our professionals than any other industry in the country. I would prefer time be spent on how to make the information more meaningful. For instance, many individuals have disclosures on their record which were later determined to be unfounded. There should be a way to have these complaints and disclosures removed from their record. At the very least, these disclosures should be separated (even more clearly than they currently are) and CLEARLY delineated at unfounded disclosures.

*Carolyn R. May, CSCP*

Co-CCO

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April 12, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: Comment on Regulatory Notice 12-10

I am an attorney in Atlanta, Georgia, and my practice areas include the representation of public customers in securities arbitrations.

I write in response to FINRA's request for comment on ways to facilitate and increase investor use of BrokerCheck information. I am fully supportive of all efforts to make BrokerCheck a robust resource for investors to have full and complete disclosure about the education, employment history, complaint record, and other material information concerning their current or prospective brokers.

The federal securities laws and regulatory scheme reject the concept of "caveat emptor" and, instead, as a matter of public policy, require full disclosure and a high standard of business ethics in the securities industry. In the words of the Supreme Court, the goal is "to substitute a philosophy of full disclosure for the philosophy of caveat emptor." *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 151 (1972) (emphasis added), quoting *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963). BrokerCheck should be an important part of the goal of full disclosure.

I accordingly suggest the following:

- BrokerCheck should be easily accessible by the public. I have recently discovered that there is a glitch in FINRA's Adobe system that can make it difficult for some users to secure the "detailed" Adobe pdf report offered on the site. I experienced this problem myself. Upon contacting FINRA, they recommended that the user change their Adobe reader settings by doing the following: "Go to Adobe Reader/ Edit/ Preferences/ Internet/ Uncheck PDF in Browser/ Hit ok/Close." Presumably, this glitch has stymied many investors trying to get reports, causing them to forgo this important information. FINRA has an obligation to make its records easily accessible, and this is a technical problem that ought to easily be fixed – by FINRA, and not by requiring that the users of BrokerCheck change their computer settings. Notably, there are no instructions on this site on how to address this problem.
- All information about both concluded and pending customer complaints, lawsuits and arbitration proceedings should be identified, including contact information for the

customer, or if represented by counsel, the customer's attorney. If the brokerage industry did not force customers to arbitrate their cases, information that is otherwise concealed by the FINRA arbitration process would be publicly available from court filings. Information on other proceedings often reveals a pattern of repeated improper conduct that would otherwise go undetected.

- The period of time information is available through BrokerCheck should be unlimited.
- BrokerCheck should state verbatim the reasons given on the U-5 when a broker is terminated, as well as stating verbatim any response by the broker, and all subsequent amendments to the U-5.
- The broker's full educational background after high school, and all degrees obtained, should be listed.
- The scores obtained by the broker on all licensing exams should be disclosed.
- All designations claimed by the broker should be listed, along with a link to the FINRA page which provides information on "Understanding Professional Designations," <http://apps.finra.org/DataDirectory/1/prodesignations.aspx>
- BrokerCheck should either link to, or provide contact information for, the securities regulator of each state, with notice to the investor that a more comprehensive report might be obtained from that source.

Thank you for this opportunity to comment.

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April 17, 2012

Via E-Mail: [pubcom@finra.org](mailto:pubcom@finra.org)

Marcia E. Asquith  
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FINRA  
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JENICE L. MALECKI

ASSOCIATES

ADAM M. NICOLOAZZO

ROBERT VAN DE VIERE

OF COUNSEL

JALIA A. BELL

Re: Comment on FINRA Notice 12-10

Dear Ms. Asquith:

In the past 20 years, she has been on the Board of Directors of the *Public Investors Arbitration Bar Association* ("PIABA"), as well as a member of the *Securities Industry Association* (now "SIFMA"), *New York County Lawyers Association*, *Securities and Exchanges Committee*, and *NYS Bar Association*. She has taught classes at NY and Brooklyn Law Schools, as well as been an NASD (now FINRA) and NYSE arbitrator and chairperson, spoken on several panels at and written articles for PLI, NYCLA and PIABA. I have represented both public customers and registered persons and firms in the industry.

Transparency Issues

1. A FINRA Arbitration Docket

a. CRD Entry

Given that FINRA receives every arbitration complaint and sends those complaints to FINRA Regulatory, who manages the Broker Check database, FINRA should enter arbitration and customer complaints directly onto firms and parties CRD records.

Self-reporting remains spotty and inaccurate and it is in the public customers' best interest that there be full and fair reporting. Given that the arbitration (and even FINRA Regulatory) complaints are already passing through two hands at FINRA, the additional time to input the data into the database is relatively minimal given the importance of the disclosure.

Failing to record the information that FINRA has in its possession is a failure to the investing public.

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b. Case Docket and Calendar

Without question, a great improvement to the transparency of the arbitration process would be to create a FINRA case docket that provides access to the vitals of a case. The vitals of a case include the parties, their counsel and the arbitrators.

Given that the state and federal court systems have already developed (through vendors ready to sell new, similar products) computer systems to provide people with access to the court system and given that FINRA has already put in the party and claim data, as well as the data for arbitrator enhanced disclosures, there should be no reason that the parties should not have access to such a searchable database, the way they do in the court system. This would help parties manage and cooperate in discovery the way they would in court actions, as well as keep firms "honest" in arbitration reporting – or providing avenues to find out when they have not been – important information to find out. At the moment, I also understand that a large part of FINRA's docket increasingly involves "product cases." A docket that disclosed this information could be useful to parties that want to cooperate in product discovery and strategy on both sides.

Additionally, a calendar system, where parties to a case could have access to an online calendar would relieve the staff's burden of calls from counsel about deadlines and make the forum easier to use for participants.

c. Order Docket

Decisions on arbitrators as the most important decision a public investor makes on any case both for their case, as well as during settlement negotiations. Knowing what the arbitrator is capable of doing helps both sides make informed decisions both about who to choose and what to do with your case when an arbitrator is appointed.

While the Arbitrator Disclosure Forms currently have cases on which the arbitrator has rendered a final decision in a case, it fails to list many important activities that both a public customer and industry person should equally like to know about an arbitrator, such as the following:

- 1) Cases on which the arbitrator is currently or has sat in the past that have settled without a "Stipulated Award"
  - a. This is important to know whether there are any pending or prior matters with the parties, counsel or involving products that may in any way affect an arbitrators decision making in a potential case;
- 2) Final decisions on discovery motions and/or dispositive motions where it does not affect the pendency of the entire case;
  - a. This is important, as if an entire case is disposed of, the award is posted and made public, but where there is only an award that affects a part of the case, the award is not made public. There should be no rational reason to differentiate between decisions that affect a part of the case and those that

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affect the entire case. While these orders would not have precedential value, neither do the ultimate awards; however, both would help the public and the industry make informed decisions.

## 2. Continued Expungement Abuse

I also comment to provide examples and considerations necessary to consider in the expungement process. I offer some examples and considerations regarding what appear to be continued abuses of the expungement process.

I note as a pre-cursor to this discussion that I have successfully represented registered representatives in the industry who have obtained expungement, but never in just an hour long call. In the cases I tried, including Wachovia v. Brucker, FINRA case number 06-03260 (August 2008), a reasoned decision after 14 hearing sessions, you will see that there was good cause after a full and fair hearing, in person. We have other examples like this.

By way of example of what I believe to be an again growing problem, in a recent case, after completing discovery, the parties agreed to mediate the matter and ultimately settled the case. Few people enjoy the litigation process when they are a party to it, and ultimately seek finality once a settlement is reached. The same way a firm may settle a case that they believe they did nothing wrong in to obtain finality, so may a customer, particularly an elderly one.

In cases where I have represented customers in which a settlement agreement was reached and mutual releases executed, in which both Claimant and Respondents disclaimed all of their claims stemming from this action, including expungement requested specifically in Respondents' Statement of Answer. That mutual release was requested specifically for that purpose as a result of discussions in mediation, as if expungement were granted. Respondents would necessarily have to confirm in court, naming an elderly client that wanted finality, as a party to a subsequent litigation, which would contradict the agreement between the parties that settled the matter in full.

Claimant raised this issue for the Panel's consideration. Ultimately, the Panel concluded that Respondents had a "right" to pursue expungement under Rules 12805 and 2080, despite the mutual release contained in the Settlement Agreement.

Additionally, in contravention to the provision of the same "rule" that established the "right", according to the Panel, Rule 12805, which provides that "the panel must: . . . (d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief," the Panel assessed half of the fees for the call to the Claimant.

Whether intentionally or otherwise, the message behind an assessment in a matter such as this is that if a Claimant chooses to oppose expungement, he or she will have to pay for the privilege. This deterrent should not be in place within the system, and this practice is in direct contravention of the Rules.

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I had the short expungement call taped. Sixteen minutes into the tape, you will hear arbitrator ask the question "What is your client's skin in this game?"

This is the voice we hear as attorneys in arbitration far too often: "for what it's worth". "does it matter?" It does matter. It matters because to expunge a complaint, it must be found, in writing in a reasoned decision publicly available, that the claim was "false" or otherwise not true, then confirmed in court in another public filing. What incentive does a claimant have to settle if they need to fully litigate a matter to avoid expungement and how do we stop the arbitrators from asking "why does it matter?", as that arbitrator did?

This same panel refused an in-person hearing at Claimant's request. Counsel for the parties seeking the expungement responded in one word (in an email): "Shocking." Clearly counsel for the party seeking expungement believes that this should be a rubber-stamp process rather than a search for the truth. I suggest that is because granting expungements has become quite perfunctory.

Our adversary from a well known law firm then "sewer served" the exhibits, meaning that when the short call (after which expungement was granted) occurred, we did not even have the exhibits in front of us that were presented to the Panel. That never would have happened in an in-person hearing, which we were denied. It is impossible to cross-examine a witness properly after being denied an in-person hearing. Moreover, one has no idea whether that witness is reading from a script or otherwise being coached by documents or the histrionics of the lawyer.

The proceedings that have taken place in this matter have raised some serious concerns about not only this matter, but also the current system under which FINRA Arbitrations take place, the propriety of the administration of the system, and its fairness to the public investors, who find themselves as Claimants in these proceedings. Is it in the spirit or dictates of "Good Faith and Fair Dealing" to subject an investor to a full hearing after they settle a matter to "defend" their claims? I believe it is not.

The most startling issues appear to raise themselves when matters before FINRA Dispute Resolution settle prior to a full hearing on the merits. In these situations, registered representatives oftentimes will request an expungement. Since Claimants frequently embrace the closure settling the matter provides, they oftentimes do not oppose, leaving these expungement hearings to proceed ex parte. In the materials we provided you, you will see that these ex-parte proceedings are used by brokerage firms to send the message to panels that "everyone is doing it" and "it happens all the time."

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In order to avoid this, Claimants are forced to appear and oppose the petition for expungement, subjecting them unnecessarily to the rigors of preparing for and giving sworn testimony to an arbitration panel, in a matter that has already been resolved. This is especially concerning since many Claimants are senior citizens, some of whom may have considered avoiding the stress and the associated health risks as a reason for pursuing settlement rather than proceeding to a hearing. Not every settlement amount reflects the merits of the matter, as cases settle for various reasons, including health and personal issues that a claimant may not want to disclose to a panel or the other people in the hearing room.

While expungement after a fully litigated, multi-day arbitration hearing could be warranted where a Panel is given the full breadth of the evidence and concluded that the claim is false, it is hard to believe that there can be much confidence that the same depth of understanding of the issues at hand can be garnered by the Panel from a brief telephonic conference or half day hearing (as most of these are) so as to warrant allowing the Panel to award the remedy of expungement.

The ex parte proceedings in which many expungement petitions are heard further complicate the matters since there are no checks and balances in place to reveal and prevent fabrications and half-truths. The adversarial system is centered on the premise that by allowing both sides to present their version of events to a neutral fact finder, including the cross examination of adverse witnesses, the truth will ultimately surface. In an ex parte proceeding, the checks have been removed, cross examination by an adverse party plays no part, and ultimately the panel, must decide whether or not to grant the extraordinary remedy of expungement based on an incomplete record. How could a panel possibly make an accurate determination of whether a claim is "actually impossible", "clearly erroneous", or "false" after only a short half day, ex parte proceeding? How is this in the dictate or spirit of "Good Faith and Fair Dealing" with an investor?

If a Claimant has to engage in a full hearing after settling to prevent mistruths being put into the record, there will never be any incentive to settle, as an investor can never truly have peaceful closure of the issues after they settle a case. Moreover, it is FINRA Regulator's role to police the CRD for the benefit of future investors with the subject registered person, not that of the investor who has settled his or her claims. Unfortunately, panels appear all too willing to rubber stamp unopposed proceedings and too many elderly clients cannot put themselves through the expungement proceeding.

FINRA also encourages Panels to review the settlement agreement reached between the parties in this process. This raises issues surrounding the confidential settlement process and that of mediation, which FINRA encourages to use and parties often do use effectively to settle their claims. A simple review of the settlement agreement also does not fully inform the Panel as to the reasons for settlement.

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Although the securities exchanges center on money, life does not always revolve around money. Many reasons factor into an individual's decision to settle, including health concerns, family issues, costs of arbitration and questions about the theory and amount of damages. Is the claimant then forced to reveal his or her legitimate reason as for settling at a given amount, even though it may reveal health or personal issues that they rather not disclose to a broker or other people in the room that might, for example, share their country club? If they don't oppose it could lead to embarrassment as the broker waves the award around in front of the settling claimant – calling him or her a liar, even though Ms. Pessen questions in the telephone hearing “why it matters” and “why does the Claimant care,” since he settled. This attitude makes it seem that panels either don't understand or don't care about the significance of the CRD system and view expungement a harmless act, making them more inclined to grant what is meant to be in reality extraordinary relief.

Moreover, in cases where there are found after discovery to be little or no damages under a certain theory and high damages under another theory, a review of the settlement agreement, which would be for a relatively low amount, would only serve to mislead the Panel as to the issues of liability (distinct from damages), which generally involve rule violations that are really the true basis for reporting. What is the relevance of the settlement amount? Is a small settlement (which in some parts of this country would be someone's annual income, or wished annual income given the state of unemployment) unworthy of respect? The simple fact that there was little or no injury is fortunate, but it does not, and should not be viewed to, in and of itself justify the improper conduct.

One needs to look no further than FINRA records. For example, in the week of June 30 through July 7, 2011, of the seven stipulated awards that were reported, all seven were expunged by the Panel. This is at its essence, a continuation of the same conduct that FINRA has repeatedly stated that it was attempting to stop, in which the industry members essentially “purchase” an expungement in a settlement negotiation. Apparently, these efforts have been ineffective.

For years, I have raised the issue with colleagues at PIABA and who serve on the NAMC and other committees that, in my view, FINRA should be able to report arbitrations and disciplinary complaints directly on CRD and we would have many less disciplinary actions that involve failure to report customer complaints and arbitrations, as well as a more transparent system. I have always been told that there are likely budget issues that prevent it. It amazes me that while FINRA is not willing to add information onto the CRD system, FINRA arbitration is willing to help get reporting off the CRD system so routinely.

I certainly would not dispute that in instances where there are two John Smiths at a brokerage firm and they put the reporting on the wrong John Smith's record, he should be able to get that reporting off, but the “clearly erroneous” and “false” standards are being improperly manipulated by the brokerage firms and brokers FINRA regulates through FINRA's own arbitration system.



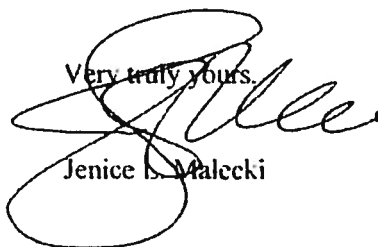
MALECKI LAW

One would think that with the public relying on the veracity and transparency of the CRD system, as well as the supervisory responsibilities of broker dealers, how the public is served by telephonic, non-adversarial hearing, at which no evidence is entered except testimony of someone that no one viewed.

The abuse of this system must end. You have the data; you have the awards granting expungement. The patterns are clear.

Your time and attention to this matter is greatly appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenice B. Malecki". The signature is fluid and cursive, with a large loop at the end.

Jenice B. Malecki

April 19, 2012

By Electronic Mail

To: Richard E. Pullano, Vice President and Chief Counsel  
Registration and Disclosure

From: Peter T. Wheeler, President  
James B. Adelman, General Counsel  
Joe Tully, Asst. General Counsel  
Paul J. Tolley, Chief Compliance Officer  
Commonwealth Financial Network

**Re: Comment with Regard to Regulatory Notice 12-10**

Dear Mr. Pullano:

In Regulatory Notice 12-10 (“RN 12-10”), FINRA requested comments on a variety of proposed enhancements to the BrokerCheck<sup>®</sup> program as a means to “facilitate and increase investor use of BrokerCheck information.” Among other things, RN 12-10 proposes to expand the information available in BrokerCheck to include qualification examination test scores and to provide for the mass dissemination of BrokerCheck information to for-profit commercial users.

Commonwealth Financial Network (“Commonwealth”) is a broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California. The firm has more than 1,600 registered representatives, conducts business in all 50 states, and is the largest privately owned independent broker dealer in the nation.

Commonwealth welcomes the opportunity to comment on RN 12-10.

#### Disclosure of Test Scores

Commonwealth strongly supports investor education and the need for our industry to implement transparent and streamlined means of disseminating relevant information to investors to help them make better informed decisions about the financial professionals from whom they seek investment recommendations or financial advice. However, it is our opinion that posting or disseminating registered representative (“RR”) test scores via FINRA’s broker check web page, or any other vehicle, provides no material insight into the expertise or experience of a RR or the quality of the RR’s recommendations or advice.

Preliminarily, the firm is unaware of any empirical evidence that higher test scores make one a "better" (however defined) or more ethical RR.

The FINRA BrokerCheck program presently offers substantial information to investors with regard to RRs' employment and disciplinary background. Information relative to a RR's test scores would not improve investor protection or serve any public good beyond disclosures that already exist. Investors are already adequately served by the knowledge that FINRA imposes rigorous testing standards upon RRs (along with regulations that govern the ongoing conduct of RRs). Additionally, RRs are required to complete regulatory and firm element continuing education as a means to ensure ongoing exposure to changing rules and regulations in the industry following their initial examination period.

Creating categories of RRs based on test scores will unduly prejudice those individuals that may have required multiple opportunities to achieve a passing score, or who have not satisfactorily achieved what each of the millions of investors arbitrarily considers to be a "high enough" score.

Posting test scores would also seem to unfairly punish those RRs who may have successfully passed more difficult versions of the respective exams, while unfairly rewarding those that may have seemingly overachieved due to the serendipitous passing of less difficult iterations of a given examination.

Similarly, the publication of test scores would seem to adversely affect those RRs who tested under a different framework and now have had the rules changed "in the middle of the game." One imagines that under the existing "pass/fail" structure, where a high passing score is no better than a low passing score, many candidates may have simply foregone the prestige of a high mark, opting instead to devote time and effort to enhancing core investment product and strategy knowledge and learning the practical side of our business. The belief that a high passing score on a qualification examination may somehow result in better quality or more reliable advice from an RR is completely unfounded.

Investors should be encouraged to conduct appropriate due diligence when seeking a RR and should place a premium on a RR's reputation, experience and other relevant criteria, rather than putting undue faith in a higher test score.

Additionally, test scores would almost certainly be abused by plaintiff's lawyers or by competing RRs when soliciting clients of an RR with a lower-passing score. The corollary to this is of course that higher scoring RRs may feel authorized to promote their scores in sales presentations, or marketing materials - leaving the customer with the impression that his recommendations come with a FINRA stamp of approval.

Furthermore, test scores are only indicative of what a RR knew at the very infancy of his/her career and do not represent the vast knowledge and experience gained by the RR throughout the following years of practical experience.

Commercial Use

Commonwealth strongly opposes the release of BrokerCheck information for commercial use. The data provided by BrokerCheck is already publicly available, free of charge. FINRA's consideration to provide for the mass availability and use of BrokerCheck information by for-profit companies will not provide any enhanced investor protections. Rather, making such data available for mass download and use by for-profit companies will only serve the interests of the for-profit companies in question, at the expense and potential harm of investors, RRs and the firm's with which the RRs are associated.

There are already many examples of for-profit companies who are data mining BrokerCheck and other state and federal websites for their own gain. Because data published on these sites often combine information from a variety of public sources, we have witnessed numerous examples of inaccurate information being provided to the investing public. For example, we have seen sites inappropriately combine firm information with RR information in a manner that is misleading and factually inaccurate – such as attributing an investment advisory firm's total assets under management to a single RR.

These errors are exacerbated by the fact that the companies making the errors generally put the burden on the firm or the RR to correct the inaccurate, incomplete or misleading information. In some cases, even requiring a fee to make the correction. Additionally, some of these companies permit the firm or RR to supplement the information derived from regulatory sources with additional marketing content by paying a fee. Such practices give the impression that all of the content published on such sites has been obtained from a reliable source, even when self-serving editorial has been added. Further, combining or supplementing information derived from BrokerCheck and other regulatory sources onto a for-profit site frequently results in such information being taken out of context, and likely lacks the independent verification necessary to ensure that the combined or supplemental information published on the site is not false or misleading.

In summation, Commonwealth supports FINRA's efforts to improve usage of BrokerCheck for the benefit of investors. However, we strongly oppose the publication of test scores and the commercial use of BrokerCheck, neither of which will provide any additional investor protections and, in fact, could be harmful to the investing public.

## AIDIKOFF, UHL & BAKHTIARI

PHILIP M. AIDIKOFF  
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April 20, 2012

Via Email and U.S. Mail  
[marcia.esquith@finra.org](mailto:marcia.esquith@finra.org)

Marcia E. Asquith  
FINRA Office of the Corporate Secretary  
1735 K Street, NM  
Washington, D.C. 20006-1506

Re: Regulatory Notice 12-10, FINRA BrokerCheck

Dear Ms. Asquith:

Our firm has represented customers in claims against broker dealers for more than 20 years. In our view your regulatory notice 12-10 does not go far enough. BrokerCheck does not provide sufficient information to the public and is far less complete than a CRD obtained from various State Regulators. Broker dealers and the broker community like to argue that providing complete information is an invasion of privacy. This position fails to take into consideration the fact that public investors are entrusting their life savings and/or retirement accounts to these financial professionals. Providing redacted background information does a disservice to retail investors in that they are forced to rely on data that is less than complete in making one of the most important decisions in their life.

In addition, the artificial time periods contained in your regulatory notice should be eliminated. If a broker has a history of customer complaints and/or is the subject of regulatory action, this should not be cleansed from publicly available information.

Of course, if you have any question, please feel free to call

Very truly yours,

AIDIKOFF, UHL & BAKHTIARI

  
PHILIP M. AIDIKOFF  
[paidi@aol.com](mailto:paidi@aol.com)

PMA/hh

Sirs,

Per the proposed enhancements to BrokerCheck, I would welcome and endorse a requirement for members to provide a link to BrokerCheck on their websites and perhaps also on their email signatures.

That said, I believe the suggestion that [at times ancient] test scores and or educational background be available via BrokerCheck would be a hopelessly unreliable way for investors to measure the attributes of a broker. Ergo, in my humble opinion this aspect of the proposal would be a bridge too far.

Keith McCracken  
CEO and CCO

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ASSOCIATED OFFICE  
LOS ANGELES

April 25, 2012

Marcia E. Asquith  
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FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: Proposed Changes to Brokercheck

Dear Ms. Asquith:

We have had the pleasure and privilege of representing investors in securities arbitration matters for the past 20 years. We dedicate ourselves to assisting investors to recover losses as a result of broker misconduct. We take our work seriously and don't undertake representation unless we are convinced that a genuine wrong has been committed.

Our experience has been that the securities industry improves each time the member firms and associated persons (brokers) are required to disclose more information about their regulatory and criminal histories as well as their history of complaints, lawsuits, and arbitration claims. As the cliché goes, sunlight is the best disinfectant.

More public disclosure and easier access to it means clients and potential clients will have more information to decide whether to entrust their life savings to a specific firm or associated person.

Marcia E. Asquith  
April 25, 2012  
Page 2

### **Time Frames for Public Disclosures**

We take the position that there should be no artificial time-frames imposed on the information reported on Brokercheck. A broker stands in the rare position where a single recommendation or action taken on one day can have a life-changing effect on his or her client's entire future. Brokers and their firms bear a heavy, heavy responsibility for their clients' futures, and are well compensated for their efforts. There must, however, be checks and balances in this system to prevent abuse. Full disclosure is the best check available to protect the public.

All too often, we see brokers and firms who have little regard for the impact of their actions on their clients. Unfortunately, it is the client who has to live with the consequences of the broker's actions.

In the interest of giving potential clients the maximum amount of information before investing their life savings with a broker or firm, we believe it is not only appropriate, but mandatory, that all customer, regulatory, and criminal complaints reported to FINRA be publicly disclosed with no regard to the reporting time frame. Already, several state securities regulators make this information publicly available. The problem is that unless a broker is registered to do business in one of those states *and* a member of the public knows to ask that specific regulator for it, that additional information remains locked away from public view by FINRA. Locking potentially helpful information away from public scrutiny serves no purpose.

The securities industry fights hard against anything threatening its ability to prospect for customers and sell investment products. Full disclosure of complaints, arbitrations, regulatory actions and criminal matters will make it hard for troubled brokers to sell product to informed clients. Full and complete Brokercheck disclosure lets every broker know with no uncertainty that the consequences from each recommendation, decision, and action will impact the ability to earn future business. As a result, full public disclosure will serve as a long-term market-driven incentive on brokers to curb reckless behaviors and to handle their clients' money with great care.



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### **Brokercheck Should Disclose More Information**

Earlier this month, we looked up a broker-dealer with which our firm recently settled an arbitration claim on behalf of a client. Prior to the settlement, the firm's Brokercheck report disclosed the existence of the pending arbitration claim, the dollar amount, and general allegations. Today, there is absolutely no mention of the dispute or settlement on that same firm's Brokercheck report. Although the settlement contained a confidentiality provision that the Claimant can not disclose the terms of the settlement, we are fairly certain FINRA did not agree to allow the broker-dealer to whitewash the dispute and settlement from Brokercheck.

The very fact member firms, with the obligation to deal fairly with the public and uphold the high standards of commercial behavior, still hide disputes and settlements from public scrutiny should frighten every regulator, client, and potential client. If the purpose of "self-regulation" is for member firms to regulate their activities without governmental intervention, what good does it do to allow each firm to hide its problems from public view?

When a potential client can see the entire history of a firm's discipline and arbitration claims, he or she can make an informed decision whether to risk his or her life-savings with the firm. Full disclosure leads to efficient market-driven regulation: letting clients can decide for themselves who will handle their funds. Successful firms and brokers will thrive while sloppy firms and brokers will fail.

### **Test Scores, Education, and Certifications**

The statement by one commentator of the old industry maxim that a passing grade of 71, one point higher than the minimum passing score on the Series 7 exam, means a registered representative "studied too hard," is outright scary. The exam is the minimal entrance hurdle for brokers to work with other people's money. No one can study too much for such a responsibility. The exam grades should be disclosed. People want the best skill sets from their brokers. An exam grade, while not then end-all statement about the broker's knowledge, is certainly an important element in knowing whether your broker is truly an expert or just "studied too hard."

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Full disclosure of exam grades (available already from some states regulatory agencies) once again will have the effect of improved regulation by economic selection. By giving a potential client complete information enables the client to make an informed decision whether to trust a given broker. Those brokers who study harder; gain at least more theoretical expertise; and score higher will succeed. Those brokers, who "studied too hard" and earned 71's will likely find other opportunities more suited to their natural skill sets.

The same goes for the broker's educational background and certifications. In fact, FINRA not too long ago tried cracking down on the more questionable certifications and titles brokers bestowed upon themselves. There certainly is no harm in requiring a broker to report to FINRA and the public all the so-called titles he or she uses in working with the public.

Lastly on this point, Brokercheck should disclose awards and commendations earned by brokers. Whether it might be an award for sales, a commendation for community service, or recognition for charitable works, positive items should also be made available for the public. By making good deeds a matter of public record encourages more of the same, and lets potential clients get a full, fair, and complete picture of their potential broker as both a professional and a human being.

#### **Uniformity between Brokercheck and IAPD**

It would be immensely helpful to bring Brokercheck and the IAPD into sync with one another. There are too many instances of a troubled broker becoming an investment advisor and the public is forced to look at two separate systems to try to locate the "advisor's" complete history.

In addition, although not in FINRA'S bailiwick, it is worth noting there is a massive hole in the IAPD reporting system, specifically the fact SEC-registered Registered Investment Advisors do not have to disclose the existence of arbitration claims or the results. This gap needs to be fixed.

The more uniformity and ease of access to the regulatory information means the more likely potential clients can make informed decisions

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### **Links to Other Websites**

We agree that FINRA should provide at least the links to other websites such as state securities regulators, state insurance regulators, state banking regulators, and the various certifying entities such as the CFP board and CFA Institute. There is no harm, and certainly a great benefit, in telling members of the public where they can learn more about their brokers and/or advisors.

### **Summary Displays of Brokercheck Information**

One of the most meaningful and concise displays of information is the chart of the number of criminal, regulatory, employment, and customer complaints divided by whether the matters have been resolved or are pending. That detailed chart should appear on the Brokercheck summary page. In addition, with some planning for dealing common names, the chart should be easily accessible from any internet search of a broker's name.

On a related note, over the past years, FINRA discovered it has a problem with displaying PDF files in a web browser. Rather than fix the problem, it posted a "solution" which requires end users to change how their computers display the PDF files. It seems logical, in the absence of additional information; FINRA should fix the problem rather than force members of the public to troubleshoot a computer error caused by FINRA'S Brokercheck system.

### **Availability of Information to Private Companies**

As to commercial firms using the information contained in Brokercheck reports, we do not take a position whether such firms may use the information in profit-making ventures. We believe the Brokercheck information should remain free to the public. In no circumstance should FINRA provide to for-profit companies additional disclosure information that does not appear on the Brokercheck report. On a related note, to further protect investors, FINRA should require any for-profit company selling the information contained in Brokercheck to provide all of the information without limitation or redaction.

There is one additional item of concern the Brokercheck web address. Several potential clients advised us that they tried looking up their broker on Brokercheck, but could not figure out how to do it and described a very strange sounding website. When asked what website they went to, all answered [www.brokercheck.com](http://www.brokercheck.com). FINRA has done an excellent job of branding the word

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Brokercheck. However, it failed to capture the most logical of internet addresses for its service. Right now, if a client enters [www.brokercheck.com](http://www.brokercheck.com), he or she will find a near useless website occupied by a company called "Land Merchandising Corp." If the Brokercheck information becomes available to private companies, it seems almost certain that the [www.brokercheck.com](http://www.brokercheck.com) address will be used by a private, for-profit firm, not unlike what happened with the various so-called free credit reporting companies exploiting the phrase "free credit report". Rather than be surprised at the creative resourcefulness of the free market, FINRA should strongly consider obtaining this domain and putting it to use.

#### **Search Engine Accessibility to a Broker's Records**

If FINRA decides to make its records available to private firms to be sold to the public, those same records should be easily accessible on the internet by way of search engine. There is no reason why a member of the public should pay for "publicly disclosed" information if that information is already available at no charge.

The difficulty of clients understanding they need to go to [www.finra.org](http://www.finra.org), click on the "Investors" link, and then find the link to Brokercheck, can challenge the less technologically sophisticated members of the public. Making a broker's name and Brokercheck information available to search engines improves the probability a potential client will be able to find the important information about his or her broker.

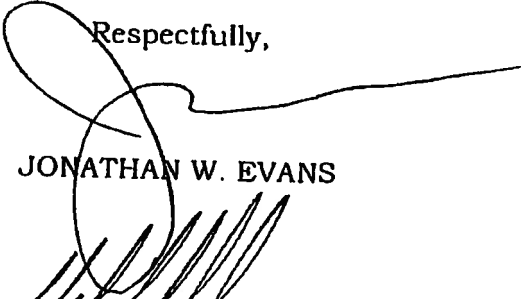
#### **Conclusion**

We support FINRA'S efforts to broaden the disclosure of information on Brokercheck. We are hopeful FINRA will see through the persuasively seductive arguments of the securities industry suggesting that critical information be kept in dark corners away from potential clients' eyes.


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Thank you for your consideration.

Respectfully,



JONATHAN W. EVANS



MICHAEL S. EDMISTON

JWE-MSE/mar



## Consumer Federation of America

April 27, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, N.W.  
Washington, D.C. 20006-1506

**Re: Regulatory Notice 12-10  
Increasing Investor Use of BrokerCheck Information**

Dear Ms. Asquith:

I am writing on behalf of the Consumer Federation of America<sup>1</sup> in response to FINRA's request for comment regarding methods to improve the utility of BrokerCheck for investors and to increase investor use of BrokerCheck information. BrokerCheck has made great strides since it was first established in 1988 both with regard to the content of the reports and with regard to ease of access for investors. However, many investors remain ignorant of this valuable resource. By focusing on how to improve the content, format, and promotion to the public of BrokerCheck, this initiative has the potential to significantly improve investors' ability to make an informed decision among investment professionals. We appreciate the opportunity to provide input on this important topic.

### **Introduction**

At a time when investment decisions have become both more complex and more important to Americans' financial well-being, most investors investing outside a workplace retirement plan choose to do so through some sort of financial intermediary, such as a broker-dealer, investment adviser, or financial planner. Moreover, research has shown that many such investors will rely very heavily if not exclusively on the recommendations they receive from these financial professionals, making the selection of whom to rely on for recommendations among the most important investment decisions most people will ever make. With this in mind, investor education materials on the topic typically warn investors to exercise care in making that selection and to take the time to carefully check out any firm or individual with whom they are considering working.

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<sup>1</sup> Consumer Federation of America (CFA) is a nonprofit association of approximately 280 national, state and local pro-consumer organizations founded in 1968 to advance the consumer interest through research, advocacy and education.

The following are among the key questions investors are typically advised to consider with regard to the firm and the individual provider with whom they are considering working:

- What services do they offer?
- Are they appropriately licensed and registered to offer those services?
- What qualifications or special expertise do they have?
- Are there red flags in their employment or disciplinary record that could suggest a history of abusive sales practices or even fraud?
- How are they compensated?
- Are they subject to conflicts of interest that could bias their recommendations? What is the nature and magnitude of any such conflicts?
- What is their legal obligation to the customer?
- How and how much can you expect to pay?

For a number of these issues (e.g., licensing, registration, work history and disciplinary record), BrokerCheck as it is currently conceived is a valuable tool that can provide investors with the background they need. For BrokerCheck to provide the full range of information deemed by most experts to be essential, however, it would have to be expanded to include a pre-engagement disclosure requirement comparable to Form ADV for investment advisers. We applaud FINRA for taking steps in that direction with its 2010 concept release<sup>2</sup> and recognize that this initiative is on hold while the Securities and Exchange Commission (SEC) considers whether and how to move forward with fiduciary rulemaking. Ultimately, however, we believe the most beneficial change FINRA could make to BrokerCheck would come from incorporation of such a document, since it would ensure that investors get the information they need in an easily comparable format without having to know what questions to ask or where to go to seek out that information.

In the interim, the short-term recommendations by the SEC in its Section 919B Study and the middle-term changes being considered by FINRA in this concept release should result in significant improvements to the system. CFA strongly supports all three of the short-term recommendations made by the SEC staff:

- **Unifying search returns for BrokerCheck and the IAPD database** will address a major disconnect between how the current system is configured and how investors actually select investment service providers. While some investors may shop exclusively for a broker or an investment adviser, many do not. Indeed, research shows that most investors do not understand the differences between the two and cannot distinguish between them even after the differences are explained. The current system makes it reasonably easy to move back and forth between the two databases where individuals or firms have information in both systems, but it is less clear for individuals with information in just one of the databases. For example, entering the name of an investment adviser representative who is not dually registered in BrokerCheck produces a No Results Found message rather than a referral to IAPD, let alone the actual IAPD

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<sup>2</sup> FINRA Regulatory Notice 10-54, Disclosure of Services, Conflicts and Duties.

report an investor would receive with unified search returns. Although that issue is addressed in the BrokerCheck FAQ, not every investor will know to turn to the FAW. An unsophisticated investor who is not familiar with the systems may misinterpret those results and conclude that the individual is not appropriately registered. Unifying the search returns will address that problem. Moreover, if as we have suggested, a pre-engagement disclosure form is adopted for brokers that is roughly comparable to Form ADV, that would address the concern raised by SIFMA that there will be significant discrepancies between the types and quantity of information provided in the two databases. In the meantime, this and other discrepancies between the two disclosure regimes could be addressed through some form of explanatory text or disclosure.

- **Adding a ZIP code or other location search function** will also significantly improve the functionality of BrokerCheck for individuals who are just beginning their search for a broker or adviser. We have examined the arguments put forward by SIFMA in its comment letter for delaying this step, and we do not find them persuasive. SIFMA suggests that a wealth of information is already available through standard Internet search. In fact, however, it can be extremely difficult to get a reasonably comprehensive listing of the brokers, investment advisers and financial planners offering investment services to retail customers in a particular community. In both print and online “yellow pages” listings, investment service providers are listed under a variety of headings, with some listed only under one or two headings and others listed even under headings that do not appear to match their business model. An unsophisticated investor attempting to find their way through this maze is likely to end up confused and frustrated or with only a partial list of candidates based on the heading they happened to use in initiating their search. Moreover, in our experience these listings, and Internet listings in particular, are likely to include individuals who are incorrectly categorized as well as out of date information.<sup>3</sup> Adding a location search function to BrokerCheck, when combined with unified search returns for BrokerCheck and IAPD, would greatly reduce that problem. SIFMA also suggests that there may be privacy concerns for brokers who are required to list their home address as a branch office. We don’t have access to the data that would allow us to determine how extensive an issue this is (i.e., how many brokers list their home as a branch office but don’t actually conduct business with the public out of their home or publicize that contact information). If this home address information is already provided in BrokerCheck, it is not clear to us how adding a ZIP code search function would increase the privacy risk for these individuals. If the information is not currently provided in BrokerCheck, there is no reason that adding a ZIP code search function would have to change that. Whatever the case, it ought to be possible to address any legitimate privacy concerns through other means.<sup>4</sup> Finally, SIFMA expresses concern that adding a ZIP code search function could lead to abuse by encouraging third parties to extract data from BrokerCheck for sale to investors. As discussed in greater detail below,

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<sup>3</sup> CFA conducted initial work on a (never published) “mystery shopper” survey in the late summer and early fall of 2010 using listings from an online yellow pages service. We found that a large percentage of the listings were incorrectly categorized or included out of date information. As a result, they were not useful in narrowing down a population of investment service providers in a particular town or city.

<sup>4</sup> For example, it might be possible to exclude any such home offices not actually used for conducting business with the public from the ZIP code search where there is an official office location outside the home that is used for that purpose.



we believe increasing the channels through which investors receive this information – and allowing for innovation in how the information is presented – is one of the most effective tools FINRA has at its disposal to increase investor use of BrokerCheck information when selecting an investment services provider. We therefore consider this a benefit of, rather than a problem with, the proposal to add a ZIP code search function.

- **Adding educational content** to BrokerCheck can help investors to better understand the disclosures and their relevance to the selection process. Because FINRA asks specific questions about this in the concept release, we provide our views on the appropriate content and presentation of that material below.

Our detailed comments on the issues addressed in the Request for Comment follow.

### **Information Displayed**

On the topics that it currently covers, BrokerCheck generally provides a good quantity and mix of information.<sup>5</sup> If anything, the reports for brokerage firms include too much rather than too little information.<sup>6</sup> That said, there are tweaks to the content that we believe would be beneficial. As a guidepost for what additional currently available information could be added to BrokerCheck, FINRA would do well to look to its own educational materials on selecting an investment professional. To the degree that there is information that FINRA believes it is appropriate for investors to evaluate that could easily be incorporated into the current BrokerCheck configuration, we encourage you to add that information.

Information on educational background and professional designations would clearly fit within this category. If FINRA decides to include information on professional designations in BrokerCheck, it should consider revamping its current Professional Designation Database to make it more user-friendly. In addition, any designations listed in a report could include a direct link to a description of that particular designation so that investors would not have to seek it out on a long list of credentials. That would make it easier for investors to evaluate the significance of a particular designation.

Adding educational content could greatly enhance investors' ability to use and understand the information contained in BrokerCheck. One way to approach that would be for FINRA to develop a document for prominent display on the BrokerCheck home page on how to get the most out of the database when selecting an investment professional. For each category of information provided in BrokerCheck (e.g., registration, licenses, employment history, disciplinary record), the document could explain why that information is relevant to the selection process and how the investor can best evaluate that information. In addition to displaying the explanatory document on the BrokerCheck home page, FINRA could link to relevant sections of

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<sup>5</sup> As discussed above, we believe the content of BrokerCheck would benefit greatly from the additional of a pre-engagement disclosure requirement for brokers comparable to Form ADV for investment advisers. For the purposes of this discussion, however, we are focusing on BrokerCheck as currently configured, consistent with the existing disclosure requirements for brokers.

<sup>6</sup> We discuss that issue in greater detail under Report Design, Format and Content.

the document from headings in the BrokerCheck report, or alternatively display the relevant content as hover text when the cursor hovers over a particular report heading.

FINRA already has a good base text for providing this content in its own investor education materials. Although that educational information is currently available through a tab on the BrokerCheck home page, it is not terribly prominent.<sup>7</sup> And it is not directly incorporated into BrokerCheck in a way that puts relevant information at the investor's fingertips as they are preparing to launch a search or reading a particular BrokerCheck report. By customizing the information to the investor's immediate experience, our suggested approach offers greater potential benefit in our view than more generic "how to" information. That said, nothing about this approach would preclude FINRA from also linking to other relevant investor education material, which we support so long as that material is free from any particular product or provider bias. The SEC, state securities regulators, and other independent investor education organizations are likely to be the best source of such information.

### **Report Design, Format and Content**

CFA supports continued use of a two-tiered approach in which investors initially receive a summary report that includes one-click access to a more detailed report. In general, we think the overall presentation of the summary report is appropriate and that the highlighted bars directing the eye to questions about the availability of more detailed information are useful. We are not experts in graphic presentation of information, however, and would defer to experts in this area on the best way to present the information visually. Our own reaction was that the access "button" for the detailed report could be made more prominent if, for example, it were placed directly next to the broker's name, rather than at the far right of the screen.

We also believe investors would benefit from some additional information about disciplinary events on the summary report. The yes/no indicator of additional information is useful, but it doesn't distinguish between an individual with numerous regulatory actions, arbitration awards, and customer complaints and the individual with a single event unrelated to their activities as a broker-dealer. A brief description of the number and types of events might be useful in providing that distinction. In presenting this information, it might be appropriate to distinguish between types of regulatory actions along something like the following lines: regulatory actions and non-regulatory events; sales practice violations and more technical violations; court awards, arbitration awards, and customer complaints; and events not directly related to practice as a broker. If FINRA were to adopt our suggested approach of incorporating investor education material as a link or hover text with the report, this could further assist the investor to draw reasonable conclusions based on the information presented.

The need for summary information on disciplinary events is particularly urgent with regard to reports for broker-dealer firms. The mass of undifferentiated information presented for a large, full-service firm is likely to be impenetrable for the vast majority of users. Dividing the information into categories (along the general lines suggested in the previous paragraph for individuals) based on the nature of the event, grouping all related complaints into a single entry, and eliminating duplicative reporting could make the information easier to digest. Even with this

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<sup>7</sup> In evaluating the website, we didn't notice it until we specifically looked to see if it was there.

more user-friendly presentation of the information, however, we are concerned that many investors will not know how to assess the information provided. As discussed in greater detail below, this is an area where we believe commercial and other third-party users may be able to provide significant added value, by digesting the information and presenting it in a format that enables investors to make reasonable comparisons among firms.

### **Investor Awareness of BrokerCheck**

While use of BrokerCheck has grown significantly over the years, we suspect that many if not most investors are not aware of the availability of this resource. A variety of relatively simple steps could help to increase awareness:

- Brokers could be required to provide information on how to access BrokerCheck prominently in appropriate locations on their company websites, on new account documents, and on monthly account statements. When information is provided to investors electronically, they could be required to include a direct link to BrokerCheck. This would help to ensure that investors are reminded of the existence of the database at appropriate times and in appropriate contexts.
- Given widespread use of the Internet as a research tool, significant expanded use would likely be achieved if basic BrokerCheck information popped up prominently in a standard Internet search on a broker's or brokerage firm's name. It wouldn't be necessary to include much more than the broker name, firm name, location, and a link to BrokerCheck, along with a note that further information on licensing and registration status, employment history, and disciplinary record is available through BrokerCheck.
- State securities divisions could be encouraged to provide access to the BrokerCheck/IAPD search results on their website. A quick (and far from scientific) review of several state websites indicated that, if this information is currently available on state securities division websites, it is not always readily apparent where to find it or how to conduct a search.
- FINRA could conduct periodic media campaigns to encourage personal finance writers to publicize the availability of BrokerCheck and to encourage investors to make use of the database when selecting an investment professional.

### **Commercial Use**

If the goal is to promote informed investor decision-making by expanding access to the data contained in BrokerCheck (as opposed to simply increasing use of BrokerCheck itself) then permitting third parties to access BrokerCheck data for repackaging and distribution to investors could contribute significantly to that goal. While some of the third parties interested in using the data would likely be for-profit companies, others such as personal finance writers and not-for-profit services might also be interested in using the data.<sup>8</sup> This has the potential to promote new

<sup>8</sup> For example, we can imagine that *Consumer Reports*, some of the major personal finance magazines, and even local newspapers might be interested in using the data as part of some sort of guide to brokers and advisers.

and innovative approaches to presenting the information, which could be extremely beneficial in enhancing both the use and the usefulness of the data. For example, as noted above, the third party might come up with a way to present firm-level disciplinary information in a way that allows for a more meaningful comparison across firms than is possible using just the raw data.

This is consistent with administration policy to promote "smart disclosure." As outlined in a September 8, 2011 memorandum from Office of Management and Budget Administrator Cass R. Sunstein to heads of executive departments and agencies, "the term 'smart disclosure' refers to the timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions." The memorandum specifically notes as a leading benefit of smart disclosure that it "enables third parties to analyze, repackage, and reuse information to build tools that help individual consumers to make more informed choices in the marketplace ... These tools can ... help individuals search efficiently based on very specific criteria that would be burdensome and time-consuming to extract from traditional print disclosures." While FINRA is not bound by this policy, and BrokerCheck is in and of itself a form of "smart disclosure," we believe additional benefits can be achieved by expanding this concept further and allowing third-party access to the data for further distribution.

We are frankly surprised by the strong industry opposition that has greeted this proposal. Good brokers and advisers only stand to benefit from broader availability of information that helps investors to weed out the bad apples. Similar types of data have been used to good effect in other markets. Perhaps most comparable are Internet sites that combine car crash test, reliability, and fuel economy data to assist consumers shopping for an automobile to identify vehicles with certain characteristics. In the financial services arena, organizations like Morningstar, Lipper and Yahoo! Finance have shown how private services can add value when presenting information, much of which is taken from public sources. To the degree that there are concerns about possible misuse or misrepresentation of the information, FINRA should be able to address any such concerns by applying appropriate limitations on use of the information. While such concerns can and should shape FINRA's approach to providing third parties with access to the data, they do not in our view justify foregoing or even delaying this initiative.

## **Conclusion**

CFA applauds FINRA for undertaking this timely evaluation of its BrokerCheck system. We believe the suggestions we have offered can help to enhance investor use of this valuable tool and thereby promote better informed decision-making when it comes to the all-important task of selecting an investment services provider. Please feel free to contact us if we can offer any assistance in achieving this worthwhile goal.

Respectfully submitted,



Barbara Roper  
Director of Investor Protection



April 26, 2012

Via E-Mail

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 12-10 (Ways to Facilitate and Increase Investor Use of BrokerCheck Information)**

Dear Ms. Asquith:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to provide feedback on the request for comment (the "Request") of the Financial Industry Regulatory Authority ("FINRA") on ways to facilitate and increase investor use of BrokerCheck information. The Clinic is a Cornell Law School curricular offering, in which law students provide representation to public investors and public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please see: <http://securities.lawschool.cornell.edu>.

FINRA established the BrokerCheck program to provide investors and the general public with information on FINRA member firms and their associated persons. As set forth in the Request, FINRA has periodically reviewed BrokerCheck and increased the amount of information reported through this database.

In January 2011, the Securities and Exchange Commission ("SEC") completed a statutorily-mandated study (the "SEC Study") on ways to improve investor access to investment adviser and broker-dealer registration information. Based on the SEC Study's recommendations, discussed below, FINRA initiated a review of BrokerCheck. Our comment letter will address (1) the SEC's near-term recommendations for improving BrokerCheck, and (2) additional issues raised by the SEC and FINRA for consideration.

**I. The Clinic Supports the SEC's Recommendations for Improving BrokerCheck**

As part of the SEC Study, the SEC staff identified three near-term, *i.e.*, within the eighteen-month statutorily mandated implementation period, recommendations for improving BrokerCheck: (1) unify search returns for the Investment Adviser Public Disclosure Search ("IAPD") and BrokerCheck databases; (2) add the ability to search BrokerCheck by zip code or other indicator of location; and (3) add educational content to BrokerCheck.

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The Clinic supports unifying the search returns for the IAPD and BrokerCheck databases because it will increase access to information about investment advisers and broker-dealers. The Clinic also supports adding the ability to search BrokerCheck by zip code or other indicator of location. Like the SEC, we believe that this will make BrokerCheck more useful as a starting point for finding a financial adviser.

Furthermore, we agree that adding educational content to BrokerCheck will be useful to investors. Specifically, we believe that adding "bubbles," "pop-ups," or some type of hover text over key words or phrases will allow investors to more easily understand the substance of a particular technical term or reference.

## **II. Additional Issues Raised by the SEC and FINRA**

In addition to the near-term recommendations, the SEC recommended that FINRA continue to evaluate the feasibility of expanding BrokerCheck to include other information in the Central Registration Depository system ("CRD"), as well as the method and format of publishing BrokerCheck content. The SEC proposed that FINRA begin this evaluation after the eighteen-month implementation period, which ends in July 2012.

Because FINRA delayed issuing the Request until February 2012, we strongly urge FINRA to adopt additional changes as soon as possible.

As such, the remainder of this letter will address other issues raised by the SEC and FINRA, including: (1) the amount of information displayed on BrokerCheck; (2) the length of time information is displayed on BrokerCheck; (3) the BrokerCheck report design, format, and content; (4) investor awareness of BrokerCheck; and (5) commercial use of BrokerCheck.

### **A. The Clinic Supports Increasing the Amount of Information Displayed on BrokerCheck Reports**

Beginning on page four of the Request, FINRA raises a number of questions, of which we will address a few.

With respect to FINRA's question on the type of information that should be available on BrokerCheck, the Clinic strongly supports adding information reported on the Form U-4, Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). Specifically, we suggest adding information related to an associated person's educational history; felony and misdemeanor criminal history, but only to the extent a criminal charge is reportable to FINRA; non-investment related activity to the extent reported on the "Other Business Activities" section of the Form U-4; financial disclosures regardless of when the financial activity occurred and whether the lien or judgment was satisfied<sup>1</sup>; and any civil judgments. Providing this additional information will give investors the opportunity to decide for themselves the significance of this information in choosing an associated person.

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<sup>1</sup> Including bankruptcy, SIPC, compromise with creditors, bonding payouts, revocations, and unsatisfied judgments and liens.

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The Clinic is also in favor of listing an associated person's professional designations, educational history, and examination history (on a pass/fail basis). This information is useful for investors who are deciding on an associated person. Moreover, we believe that a record of examination attempts is useful to investors to evaluate associated persons' professionalism, performance, and ethics.

**B. FINRA Should Make All Information in BrokerCheck Available Indefinitely**

Additionally, FINRA raises a question regarding the length of time information should be displayed on BrokerCheck. The Clinic strongly believes that FINRA should make all information in BrokerCheck available indefinitely.

The Clinic originally addressed this issue in our comment to the SEC dated September 8, 2009 regarding File Number SR-FINRA-2009-050.<sup>2</sup> The Clinic asked FINRA to modify its proposal and make the entire BrokerCheck record available indefinitely. More recently, in our comment letter dated May 13, 2010 regarding File Number SR-2010-012<sup>3</sup>, the Clinic supported (1) increasing the BrokerCheck disclosure period for former associated persons of a member firm; (2) permanently making publicly available in BrokerCheck certain information about former associated persons of a member; and (3) making publicly available on BrokerCheck all historic customer complaints.

We are particularly concerned about formerly associated persons who, though they have left the securities industry, have established themselves in other financial services areas, such as insurance sales or as mortgage brokers. These persons often leave, not of their own accord, and still have the potential to cause great harm to the investing public.<sup>4</sup>

**C. The Clinic is in Favor of Altering the Report Design, Format, and Content of BrokerCheck Reports**

BrokerCheck reports can be lengthy, with some reports totaling more than 1,000 pages. In these instances, the "Report Summary" page ("Summary Page") remains only a page long and provides an overview of only the most basic information, such as the main office location and the mailing address. This is hardly informative.

We support FINRA's suggestion of having a matrix setting forth the number and types of disclosures on the Summary Page. The matrix should mirror the matrix appearing in the "Disclosure of Arbitration Awards, Disciplinary, Financial and Regulatory Events" page. This will allow investors to see at-a-glance the events that are pending, final, and on appeal.

**D. The Clinic Supports Increasing Investor Awareness of BrokerCheck**

FINRA should make basic BrokerCheck information (e.g., registration status, employing firm, employment location) available in such a way that enables investors to enter an associated person's name in an Internet search engine, see the basic information in the search results, and be

<sup>2</sup> <http://www.sec.gov/comments/sr-finra-2009-050/finra2009050-26.pdf>

<sup>3</sup> <http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-8.pdf>

<sup>4</sup> <http://www.finra.org/Newsroom/NewsReleases/2010/P121729>

Marcin E. Asquith  
April 26, 2012  
Page 4

directed to BrokerCheck for more detailed information. This ensures that investors will be able to easily find and access BrokerCheck information.

FINRA should also consider increasing their online presence through advertisements. Accordingly, FINRA should advertise BrokerCheck on websites directed towards financial issues and even, social networking websites. Because many individuals now receive their information through online sources, this is the best way to increase BrokerCheck's visibility to the general public and promote investor awareness.

**E. BrokerCheck Should Be Available for Commercial Use Under Limited Circumstances**

We support making BrokerCheck information available to for-profit companies because for-profit companies have a financial incentive to publicize the availability of BrokerCheck information to investors. Consequently, making information available to for-profit companies may actually increase investor awareness of this information.

Although the Clinic supports commercial use of BrokerCheck information, we believe that FINRA should impose two limitations:

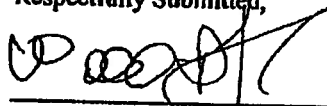
First, for-profit companies must update their BrokerCheck information regularly. An associated person has a reasonable concern that a commercial service may not always have the most updated information on their system. From an investor's perspective, outdated information may not include all reportable events that an investor should know. In either situation, outdated information is misleading information that has the potential to hurt both the associated person and the investor.

Second, FINRA should establish guidelines for how the information is displayed and packaged. This safeguard is necessary to prevent for-profit companies from displaying the information in a deceptive manner.

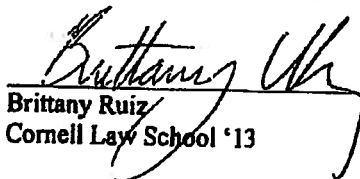
**Conclusion**

For the foregoing reasons, the Clinic supports the SEC's recommendations and urges FINRA to promptly address the other issues in the Request.

Respectfully Submitted,



William A. Jacobson, Esq.  
Associate Clinical Professor of Law  
Director, Cornell Securities Law Clinic



Brittany Ruiz  
Cornell Law School '13



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April 27, 2012

**VIA ELECTRONIC SUBMISSION**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1506

**Re: FINRA Regulatory Notice 12-10, Request for Comments on Ways to Facilitate and Increase Investor Use of BrokerCheck Information**

Dear Ms. Asquith,

The Investor Rights Clinic at Pace Law School ("PIRC"),<sup>1</sup> operating through John Jay Legal Services, Inc., welcomes the opportunity to comment on the scope of information provided in BrokerCheck reports and the ways in which FINRA can facilitate and increase investor use of BrokerCheck information. PIRC fully supports the disclosure of additional information, such as brokers' educational backgrounds, professional designations, examination scores and comments related to a broker's termination in the BrokerCheck reports. Additionally, granting for-profit companies access to BrokerCheck information for commercial use could be a meaningful way to increase investor exposure to such information. PIRC believes that these additional disclosures, the commercial use of BrokerCheck information, and meaningful alterations to the report design, format and content, could all enhance investor access to and understanding of the information disclosed.

*Information Displayed*

We believe investors should be provided with as much information as possible about their brokers, or prospective brokers, so they are positioned to make informed decisions about

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<sup>1</sup> PIRC opened in 1997 as the nation's first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, *SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors- Levitt Responds to Concerns Voiced At Town Meetings* (Nov. 12, 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/91-101.txt>.

whom to entrust with their money. Withholding relevant information from the investing public will not result in an accurate portrayal of the member firms and associated person (APs), and contradicts the purpose of BrokerCheck, established in 1988 “to provide the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons.”<sup>2</sup> PIRC supports disclosure of information possessed by FINRA which relates to broker education, professional designations, and qualification exam scores. We believe disclosure of this information comports with the fundamental purpose of BrokerCheck, as stated by FINRA, and is information on which an investor should be able to reasonably rely when selecting a financial services professional.

In response to comments which oppose exam score disclosure, the concerns expressed could be alleviated in large part by indicating on the report whether the broker passed or failed the exam, with the actual score in parenthesis. As discussed below, BrokerCheck reports could contain hyperlinks which direct investors to a window containing information about the purpose of the test and the significance, or lack thereof, of a particular numerical score.

#### *Adjust Report Design, Format and Content*

Because PIRC regularly represents unsophisticated investors of modest means, we emphatically support the addition of educational content to BrokerCheck as one means of curbing investor illiteracy. For example, use of hyperlinks in reports to allow investors to “click” unfamiliar terms and be automatically re-directed to a window which provides an explanation of that term would be extremely helpful. This additional information may allow for a deeper understanding of the information in the respective report which would otherwise have gone unrecognized. While a link to separate glossary, guide and/or informational website would also be helpful, the ability to click through to the definition of an unfamiliar term improves user-friendliness and, we believe, would enhance the utility of BrokerCheck and reduce investor illiteracy.

We also suggest that BrokerCheck reports include information about the broker dating back to the time of registration. While PIRC applauds FINRA’s 2010 decision to extend the reporting period from two years to ten years, PIRC respectfully asserts that a broker’s *entire* history is relevant to the investing public, not just what has transpired in the past ten years. Additionally, the information in the reports should include complete court action histories, including disclosure of all felony and misdemeanor charges involving investment-related business, fraud, wrongful taking of property, bribery, forgery, and other property crimes.<sup>3</sup> PIRC

<sup>2</sup> See SEC Office of Investor Education and Advocacy Staff, *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers*, n.35 (Jan. 2011), citing Exchange Act Release No. 25604 53 Fed. Reg. 1487 (proposed April 20, 1988), available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

<sup>3</sup> John Wasick, *What You Should Know About Your Adviser*, REUTERS (Mar. 5, 2012), available at <http://www.reuters.com/article/2012/03/05/us-column-wasick-finra-idUSTRE8241TO20120305>.

also supports the disclosure of employment termination circumstances and bases, which may reveal a broker's proclivity for misconduct. This type of information is certainly relevant to an investor's decision to entrust her life's savings to a particular broker who is often a stranger to the investor. Disclosure of this nature also offers the additional benefit of potential deterrence, providing a strong incentive for members and APs to avoid misconduct because information pertaining to misdeeds will be made available to investors.<sup>4</sup> The expected deterrent effect would also help to restore investor trust and confidence in the integrity of the market.

PIRC also suggests that information pertaining to a brokers' termination be accompanied by a description explaining the relevant facts and circumstances surrounding AP employment terminations. This information could certainly be relevant to a customer as it is a direct reflection of the broker's job performance and professionalism. Moreover, such commentary could be favorable to brokers whose positions were terminated for unremarkable reasons. This too may augment the investing public's sentiment regarding market integrity, as transparency, or "sunlight," is believed by many to be the most effective disinfectant.<sup>5</sup>

With respect to the actual format and layout of the report, PIRC suggests that information pertaining to customer complaints and enforcement proceedings be moved forward in the presentation of information. This is typically the type of information which interests investors most, and presenting it prominently would make it more readily accessible. PIRC also supports addition of a concise description of disclosure events in the summary report. The initial summary report may be as far as some investors proceed in their research, and the addition of this information in an abbreviated format may substantially improve investor awareness of prior misconduct. Additionally, with respect to member firms, the number of disclosure events may be so voluminous that the only way for an investor to make sense of it would be to provide a summary table which consolidates the information into a "digestible" format, perhaps using charts or other infographics to summarize a member firm's regulatory, litigation and dispute resolution histories.<sup>6</sup>

PIRC is cognizant of the need to balance the interests of members and APs with investor education and protection. Therefore, PIRC suggests that FINRA implement a more effective procedure in which member firms and APs can correct or expunge inaccurate or misleading information. The existence of a meaningful process for making such corrections is essential to both the protection of brokers and the dissemination of accurate information to investors.

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<sup>4</sup> *Id.*

<sup>5</sup> Louis Brandeis, *Other People's Money, Ch. V, What Publicity Can Do*, HARPER'S WEEKLY (Dec. 20, 1913), available at <http://www.law.louisville.edu/library/collections/brandeis/node/196>.

<sup>6</sup> Edward Wyatt, *Wall Street's Repeat Violations, Despite Repeated Promises*, N.Y. TIMES (Nov. 11, 2011), infographic available at <http://www.nytimes.com/interactive/2011/11/08/business/Wall-Streets-Repeat-Violations-Despite-PromisesStsssss.html?ref=business#>.

*Enhance BrokerCheck Investor Awareness*

PIRC is troubled by the 2009 study FINRA cited in Notice to Members 12-10, which determined a mere fifteen percent of respondents claimed they had checked a financial advisor's background with a state or federal regulator.<sup>7</sup> Another source indicates the actual number is closer to one in every twenty customers who conduct this sort of research presently.<sup>8</sup> Like FINRA, PIRC strives to empower investors by educating them and encouraging the use of informational resources like BrokerCheck to investigate their brokers and investment firms and be better positioned to make informed decisions. PIRC believes that increasing investor awareness is of paramount importance, because, after all, what good is increasing disclosed information if the investing public never sees it?

In order to promote investor awareness, PIRC suggests that FINRA take the relatively simple step of including a direct link or "button" which leads to BrokerCheck on the FINRA homepage accompanied by a brief description of the information BrokerCheck provides. In its current set up, once a visitor arrives at FINRA.org, it is not readily apparent how to access BrokerCheck. Many investors, particularly the elderly, or those who are less educated or internet savvy, may benefit from a more conspicuous path to access BrokerCheck. Similarly, FINRA could require that members include a direct link to BrokerCheck on their websites and other public communications. This would obviously be a more contested undertaking, but it could produce significant results. While investors may not visit FINRA's website, or even know of its existence, they almost certainly visit the website of their broker.

Another possible method to promote and expand investor awareness is to provide informational materials to FINRA members and other financial service providers to distribute to their clients. For example, many people rely heavily on their accountants for financial advice. If FINRA made informational materials available to accountants it may greatly increase the number of investors such materials reach. FINRA could also require members to distribute informational BrokerCheck literature to all customers. Literature of this sort could be provided to customers along with account opening documents, customer profiles and the like. In the case of electronically-established accounts, such materials could be sent to customers via e-mail. At the very least, this would at ensure that all new customers are provided with some notification about the existence of and information available from BrokerCheck. Additionally, FINRA could require member firms to include a brief notation regarding BrokerCheck and/or its internet address on each and every account statement, similar to the disclaimers which aim to inform

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<sup>7</sup> FINRA Regulatory Notice 12-10, *FINRA BrokerCheck: FINRA Requests Comments on Ways to Facilitate and Increase Investor Use of BrokerCheck Information*, n. 9 (Feb. 2012), available at <http://www.finra.org/Industry/Regulation/Notices/2012/P125621>.

<sup>8</sup> Jack Waymire, a representative of The Paladin Registry, stated that his surveys reveal less than five percent of customers review compliance records of advisers before they hire them. Dan Jamieson, *FINRA may give up lock on BrokerCheck*, INVESTMENT NEWS (Mar. 1, 2012), available at <http://www.investmentnews.com/article/20120301/FREE/120309986>.

investors that their accounts are not FDIC-insured. This would be a fairly inexpensive and easy modification for member firms to implement.

FINRA could also take strides to enhance its social networking presence, expanding on its use of Twitter<sup>9</sup> and YouTube.<sup>10</sup> This would be a relatively low-cost endeavor that could have a significantly favorable impact on investor awareness of BrokerCheck.<sup>11</sup> Moreover active social media use dedicated to BrokerCheck could better inform investors and perhaps increase dialogue about other relevant topics beyond that of BrokerCheck. Social media is a powerful communication tool and PIRC believes it would be in the best interest of the investing public to expand FINRA's existing social media presence with messages related directly to BrokerCheck, such as tutorial content that informs investors of BrokerCheck features and functions.

### *Commercial Use*

PIRC supports making BrokerCheck data available to for-profit companies for commercial use. We anticipate that for-profit users would develop a variety of insightful analytics from the data and actively pursue investors to use their services. These commercial users would likely make greater efforts to attract investor attention and deploy more resources to achieve that objective. Presumably, the ultimate result would be increased investor awareness and consumption of the information BrokerCheck provides, albeit from alternative sources, who could be reasonably expected to add value to the information through proprietary analysis.

The commercial disclosure of BrokerCheck information could also have a meaningful contribution to the organization, analysis and presentation of the existing data. As we noted above, the voluminous reports of major brokerage firms can contain hundreds of pages of disclosure events, and in some instances, result in a report exceeding one-thousand pages.<sup>12</sup> It is highly unlikely investors will make sense of such voluminous information, and we know of no data aggregation or analytical services provided by FINRA. Private companies could provide a valuable service by sifting through the data and developing useful summaries and metrics. The information could also be used to compare the performance of brokers and brokerage firms and to establish behavioral norms.<sup>13</sup> The presentation of the currently available information in a

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<sup>9</sup> FINRA presently maintains Twitter accounts, respectively available at [https://twitter.com/#!/FINRA\\_News](https://twitter.com/#!/FINRA_News), [https://twitter.com/#!/FINRA\\_Education](https://twitter.com/#!/FINRA_Education), and [https://twitter.com/#!/FINRA\\_Investor](https://twitter.com/#!/FINRA_Investor).

<sup>10</sup> FINRA and the FINRA Investor Education Foundation both presently maintain YouTube channels, respectively available at <http://www.youtube.com/user/finraonline> and <http://www.youtube.com/user/FINRAFoundation>.

<sup>11</sup> See Samuel Axon, *How Small Businesses are Using Social Media for Real Results*, Mar. 22, 2010 available at <http://mashable.com/2010/03/22/small-business-social-media-results/>.

<sup>12</sup> The Morgan Stanley disciplinary record spans over 500 pages; the UBS disciplinary record approximates 800 pages, and Merrill Lynch's is roughly approximately 1,200 pages. See Edward Siedle, *FINRA BrokerCheck System Collapsing Under Weight of Massive Disclosed Industry Wrongdoing*, FORBES (Oct. 13, 2011), available at <http://www.forbes.com/sites/edwardsiedle/2011/10/13/finra-brokercheck-system-collapsing-under-weight-of-massive-disclosed-industry-wrongdoing/>.

<sup>13</sup> Jamieson, *supra* note 8.

more comprehensible, user-friendly format could take huge strides toward investor education and empowerment.

PIRC is mindful of concerns FINRA may have about releasing BrokerCheck information without any restrictions on its presentation or secondary commercial uses. To alleviate much of that concern, PIRC suggests that FINRA require commercial secondary users to sign a licensing agreement which obligates them to make detailed disclosures when presenting any data, number, analysis, metric or summary that FINRA did not directly provide. Additionally, commercial users should be prohibited from implying FINRA endorsement or approval, especially in instances when FINRA's raw data has been altered.

*Conclusion*

For the foregoing reasons, PIRC supports disclosure of additional information on member and AP BrokerCheck reports. PIRC also supports secondary commercial use of BrokerCheck information because of the increased investor awareness it would likely generate and the anticipated data analysis and disclosure that would presumably result. Moreover, PIRC believes that adjustments to the report format are warranted, as well as inclusion of educational hyperlinks, increased public awareness, and easier internet access to BrokerCheck. Finally, we believe member firms should assist in augmenting public awareness in BrokerCheck by providing related information about the service in communications made to the customers and the investing public.

Respectfully Submitted,

Edward Pekarek  
Assistant Director, PIRC

Kristen Mogavero  
Student Intern, PIRC

Jill I. Gross  
Director, PIRC



**PROVEN COMPLIANCE MANAGEMENT SYSTEMS**

• www.RegEd.com

April 25, 2012

Richard E. Pullano,  
Vice President and Chief Counsel, Registration and Disclosure  
FINRA

Delivered via email to [pubcom@finra.org](mailto:pubcom@finra.org)

Re: FINRA's Request for Comment on Ways to Facilitate and Increase Investor Use of  
BrokerCheck Information

Dear Mr. Pullano:

Thank you for the opportunity to comment on the potential use of data available through  
FINRA's BrokerCheck for commercial use.

RegEd is a leading provider of licensing and registration services to the financial services  
industry and the largest provider of information to the Central Registration Depository (CRD).  
We submit data to CRD and receive data from CRD into our registration applications for our  
client firms' internal use on behalf of more than 100 member firms.

RegEd supports the ability of commercial vendors to receive data from CRD on behalf of their  
clients for their own use in managing their firm and representative data. The sharing of this  
data with RegEd is effected with the agreement and authorization of each member firm.

However, RegEd does not support the provision of CRD data for general, commercial use,  
where that data can be reflected to investors and the use of the data is not specifically  
authorized by each member firm. Our position is based on the following:

- There is the potential for discrepancies between the data provided by CRD and the data reflected on a third party site resulting in inaccurate information to investors. Data incongruence can be caused by errors in the transmission process or delayed synchronization between data sources.
- Member firms and individual representatives could be unaware that information related to their firm or the representatives that is displayed on a third-party site is inaccurate. Those firms/representatives that detect errors in the data would need to undertake appropriate steps with the third party, with whom they may not have a direct relationship, to correct the error. In addition, it may be necessary for the firm/representative to coordinate with both the third party and FINRA to determine the source of the error.



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Of equal concern is the potential for erroneous information to be reported on the BrokerCheck site itself. In these instances, FINRA and its member firms and representatives will need to work together to correct the errors and ensure that investors see accurate information. This issue is exacerbated in cases in which FINRA has shared the erroneous data with other third parties, who are unaware of the ongoing dispute and resolution process between FINRA and the member firm.

Both FINRA and the member firm will need to provide updated information to any third parties and ensure that the inaccurate information is corrected. During the period of time that the issue is being resolved, incorrect, and potentially damaging, information about a registered representative or a firm will be available to investors and have the potential to cause the firm, representative, or both, reputational harm.

RegEd believes that BrokerCheck already effectively provides valuable information to retail investors. The benefits of displaying BrokerCheck data to investors on a third-party commercial vendor's site would have to outweigh the risk of erroneous information being presented to investors.

The potential for third parties to present inaccurate and incongruent data is real. And, the challenges presented if member firms must continuously monitor, identify and undertake all of the required measures to correct erroneous information across one or more sites are onerous. Against the backdrop of these potential consequences, RegEd respectfully requests that FINRA consider an authorization process for member firms in sharing data with any third-party vendor. The authorization process would allow a firm that does not wish to have its information made available to additional commercial vendors to opt out of sharing its information.

Thank you for the opportunity to comment on the commercial use of FINRA BrokerCheck data. Should you have questions regarding RegEd's Response to FINRA Notice to Members 12-10, please contact [Angela.Pace@RegEd.com](mailto:Angela.Pace@RegEd.com).

Sincerely,

Angela Pace  
Chief Regulatory Officer  
RegEd

**About RegEd:** RegEd is a leading provider of licensing and registration technology and outsourcing services, broker-dealer compliance management solutions and training and continuing education for financial professionals.





39 Broadway, Suite 3300, New York, New York 10006-3019

Via email: [pubcom@finra.org](mailto:pubcom@finra.org)

April 27, 2012

RE: RN 12-10, FINRA BrokerCheck®

Integrated Management Solutions USA LLC (“IMS”) is pleased to comment on Regulatory Notice 12-10 (“RN 12-10”), FINRA’s request for comments on facilitating and increasing investor use of BrokerCheck® by changing the information available through BrokerCheck®. If changes are implemented, this would result in an amendment to Rule 8312, FINRA BrokerCheck® Disclosure (“Rule 8312”). By way of background, IMS is one of the largest providers of financial accounting and compliance consultants to the securities industry, representing broker-dealers, investment advisers, hedge funds and commodity firms.

In January, 2011, as mandated by the Dodd-Frank Act, the SEC released a study and recommendations to improve investor access to information concerning broker-dealers and investment advisers (the “Study”). As a result, FINRA is now soliciting comments on three near-term recommendations set forth in the Study, as well as other intermediate-term recommendations for possible implementation 18 months after the January 2011 release date of the Study.

IMS lauds the SEC and FINRA in their efforts to promote responsible disclosure on BrokerCheck®. The public disclosure of pertinent information is always ideal. Not all of the proposals emanating from the Study or in RN 12-10, however, meet their stated goals. Unquestionably, the format of pertinent information should be improved. Irrelevant or misleading information should not be disclosed. But, perhaps above all, any disclosed information should be balanced by respect for the privacy of the people and the organizations

subject to such disclosures. It is critical that any disclosed information be accurate and current. Only meeting these criteria will make BrokerCheck® a relevant tool for investors.

#### Broker Licenses and other Designations

Currently, BrokerCheck® only discloses licenses a broker<sup>1</sup> currently holds. BrokerCheck® does not include other eligible designations as part of the registration record. We suggest that BrokerCheck® also include all licenses and certifications recognized by regulators (federal and state) for broker-dealer and investment adviser registration purposes. BrokerCheck® should include licenses obtained by waiver or through grandfathering, as well as the following five professional designations contained in Form U4:

- Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards Inc. ;
- Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
- Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association; and
- Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

Disclosing all registered licenses, regardless of how obtained, and professional designations is, ironically, currently mandated by Rule 8312(b)(2)(B), which authorizes disclosure of “currently approved registrations.” Obviously, if a person could add to the roster of his or her licenses any for which he or she is already qualified by simply checking a box on Form U4, anyone reading their BrokerCheck® record should also have that information. For example, the BrokerCheck® record of one the authors of this letter indicates that he has passed three Principal/Supervisory Exams, two General Industry/Product Exams, and one State Securities Law Exam. Not reflected in that same record is the fact that he is licensed as an Investment Banker and as an Operations Professional unless one drills down into the record and finds that the person is licensed in those capacities. FINRA should implement its own rules fully so that

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<sup>1</sup> We note that BrokerCheck® uses the term “broker” to describe individual registrants. This is a misnomer, since many individual registrants do not function as brokers, e.g., financial and operations principals, proprietary traders or operations professionals. In our letter, we continue to use the term “broker” to describe any currently or previously registered individual.

disclosure of pertinent facts is as complete as possible. Additionally, it will also satisfy the first of the near-term recommendations made in the Study that unifying search returns for BrokerCheck® and IAPD<sup>2</sup> databases will promote investor access to registration information. We discuss below which features of each database ought to be retained under a unified search system.

### Educational Background

RN 12-10 requests comment on whether a broker's educational background should be added to BrokerCheck®. We fail to see how such information is of any relevance to a broker's professional competency or ethics. Once an individual is professionally licensed, where he or she went to school and what educational degrees, if any, such person holds does not predict how effective such a person will be in meeting his or her obligations to both customers and the firm where registered. Nor would such information serve as an indicator that the broker would perform ethically towards his or her customers or in compliance with regulatory rules.

The investing public knows, as a matter of general knowledge, that broker-dealers and other industry professionals must be licensed with the appropriate regulators. If a particular inquirer views information on a broker's educational background as a significant consideration, that customer is likely to ask the broker about it, or run a web search, regardless of what appears on BrokerCheck®. In most situations, a professional's work experience, registrations and disciplinary information (discussed below) are far more relevant in determining whether to retain a particular professional. Cluttering up the information provided by BrokerCheck® is of no value to anyone, including investors and potential investors, and may, instead, prove overwhelming and, therefore, useless. Moreover, it suggests to an inquirer that FINRA has verified the accuracy of the disclosures, which would burden FINRA unnecessarily if FINRA decided that it needed to do so.

### Scores on Industry Qualification Exams

FINRA has requested comment on the advisability of including a broker's scores on industry qualification exams on BrokerCheck®<sup>3</sup>. Many of the concerns we raised in this

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<sup>2</sup> Investment Adviser Public Disclosure.

<sup>3</sup> This is an intermediate-term recommendation in the Study.

comment letter concerning disclosure of a broker's educational background are even more compelling here. Once again, test scores on tests that may have been taken many years ago are of no relevance to a broker's professional competency or ethics. These tests act as "gatekeepers" and certify that an individual has demonstrated, according to the test parameters, a level of competency allowing initial registration and the authority to engage in certain designated activities. But such tests are only one step in the process of registration because additional barriers exist, such as regulator background checks through fingerprints and the usual employer due diligence on new hires.

What is even more bizarre about this suggestion is that it undercuts the very approval given by FINRA and other recognized test providers, who have already certified the test scores as a measure of competency to register or be awarded a particular professional designation.<sup>4</sup> Disclosure of test scores in BrokerCheck® would be misleading to the public for many reasons. Currently registered brokers, who took those tests knowing the minimum score needed to "pass," took that passing number into consideration when studying. Investors may not fully understand the subject matter of all of the sections of the particular test, and providing a lot of technical detail and/or explanations becomes confusing and overwhelming. Not all tests given by the regulators test every subject possible and even for those topics actually covered on a particular exam, do so in varying detail from test to test. A particular broker may simply have lucked out in taking an exam that had questions on topics he or she had prepared more thoroughly. The age of the test scores also limit their utility. FINRA should accept the limited purpose such tests serve and save the use of scores for an office football pool.<sup>5</sup>

#### Disclosure of Disciplinary Information

Properly explained, disclosure of disciplinary information is certainly useful information for an investor, prospective investor or any other inquirer<sup>6</sup> to know. Sadly, this is the most

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<sup>4</sup> The actual scores may be of some relevance to an individual who has failed a particular exam in assessing what additional subjects to study or in deciding whether to sit for that particular exam again.

<sup>5</sup> For the sake of full disclosure, we note that one of the authors of this letter had a passing score of 101 on one particular examination. We do not know what, if any, relevance that score has.

<sup>6</sup> We note that FINRA seems particularly concerned only with investor awareness of BrokerCheck®. We have aware that there are many other types of users who inquire regularly regarding individuals and broker-dealers. In addition, we are somewhat surprised that FINRA

confusing section of the current BrokerCheck® report. It would be of great benefit to the industry, and concomitantly, to investors, if FINRA took this opportunity to make this section clearer and more accurate.

For example, a single “offense” may be the subject of several charges by federal, state and/or regulatory authorities. Each is separately listed on BrokerCheck® with no explanation that the allegations arose out of a single set of circumstances. Moreover, the allegations may have been brought in one year, but not “resolved” until, generally, a year or two later, but there are reports in which each stage, by each regulator, is separately listed, making it appear that the broker and/or his or her firm committed separate, multiple offenses. No distinction is made for operational violations, that tend to be of a more technical nature, and conduct that may violate legal, ethical and/or regulatory norms.

Even more egregious is the inclusion of customer complaints within 30 days of filing. Many complaints are dismissed after an internal investigation; others are settled; even more languish in arbitration. But until a “final” resolution, these complaints appear on BrokerCheck®, regardless of merit. Generally, on advice of counsel, brokers refrain (or are required to refrain) from stating and/or explaining their own positions on what happened while a matter is pending, with the unfortunate result that only one side of the story is “told” in a publicly available document. A similar situation arises when a Wells Letter (actually, a Notice) is sent; it appears on the broker’s BrokerCheck® report until resolved, and then, even if resolved favorably to the broker. At the very least, FINRA should include a statement on BrokerCheck® that these matters are pending and not a final determination or resolution of the merits.

It is also very difficult to correct any information that appears on BrokerCheck®, particularly with respect to disciplinary actions. One of the authors of this letter, while still actively practicing law, represented a broker in a state disciplinary action that also involved that broker’s firm and several other brokers of the firm. This is an individual with many years in the industry who holds many licenses, and until the event described below, had no disciplinary history; this remains the only reportable event on his record. A settlement agreement was very

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has chosen to exclude data regarding broker-dealers and individuals who have not been or are not currently registered with FINRA itself even though FINRA maintains data regarding these firms and individuals in its Central Registration Depository. Surely, any inquirer should be able to find out information about any securities industry registered participant, not just ones that are FINRA registrants.

carefully drafted, over several months, for this particular broker because his situation was factually different in several significant aspects from those of the other respondents. In fact, all the other respondents had settled either two or three years earlier because of these differences. What was negotiated more intensely than any other provision of the settlement agreement was how the money (a deliberately negotiated nominal amount, far less than any other respondent had paid) to be paid to the complainant was to be characterized. Contrary to the express language in the settlement agreement, the state regulator, in reporting the settlement to FINRA, checked a box that incorrectly described the payment, among other errors. When the broker saw the errors, after they appeared on BrokerCheck®, he asked the state regulator to correct the entries; the regulator refused. He then called FINRA informally, and asked what he could do to get the record corrected. At the end of the day, given how long the matter had dragged on, the overall, favorable result and the need to get on with his professional and personal life, he provided an explanation of his view of the settlement that now appears in the “summary” section of the BrokerCheck® report rather than continuing to fight with the state regulator. But the incorrect report remains, with no guidance to investors as to how to interpret the information displayed.

We suggest that FINRA clearly identify all the allegations that arise out of a single set of circumstances, even if that activity is the subject of investigation by various authorities. Once the matter gets resolved, the resolution(s) should appear as a continuation of the same section as the original description. The current format muddles the disclosure. Allegations of technical violations should be separated from other types of allegations. FINRA should create a panel that reviews claims of errors in BrokerCheck® reports. Inaccurate information hurts everyone. These problems also impugn FINRA’s credibility, which all constituencies should be able to rely on for the disclosure of accurate, succinct and timely information. Shouldn’t FINRA “in the conduct of its business, ... observe high standards of commercial honor and just and equitable principles of trade,” following the standard to which its members must comply as described by FINRA Rule 2010? The data contained in BrokerCheck® should not be so convoluted that even experienced legal professionals have difficulty understanding what the data means.

How Long Should Information Remain on BrokerCheck®?

Currently, a broker's employment history appears on BrokerCheck® for a period of ten years. That time frame should also govern the disciplinary history for technical compliance violations, e.g., trade reporting errors, Know Your Customer violations, etc. Conduct that, after appropriate proceedings and a final determination, is determined to constitute a more serious violation and/or the reporting of a bankruptcy or other insolvency proceeding should remain as part of the broker's BrokerCheck® report. Pending investigations (e.g., customer arbitration, Wells Notice, etc.) should be clearly characterized as such. If dismissed, they should be removed from the BrokerCheck® report.

Printing BrokerCheck® Reports

Unless one has certain advanced software, it is not currently possible to print a BrokerCheck® Report to a computer in PDF format. Instead, BrokerCheck® displays an intimidating message that includes: "This PostScript file was created from an encrypted PDF file. Redistilling encrypted PDF is not permitted...No PDF file produced." While such encryption might protect against automated data collection tools (e.g., "screen scrapers"), it does make the inquiry process a bit difficult for inquirers who wish to store the results of their inquiries.

Additional Information

RN 12-10 also requests comment on two other near-term recommendations: whether investors should be able to search BrokerCheck® by zip code and whether BrokerCheck® should add explanatory material and links to other websites. Zip code information could be a way of identifying local brokers, particularly in under-served areas. However, providing the broker's contact information, such as an email address or a telephone number, together with the zip code, might prove more helpful.

Definitions of technical terms by FINRA would be helpful. So would a general link to both the SEC's and FINRA's websites on investor education. Links to other websites might be confusing and raise questions of endorsement and/or adoption. Those types of links could even prove counter-productive if they contain inaccurate or out-of-date information; does FINRA

intend to monitor such third-party links on a regular basis? Surely, FINRA time and resources could be better spent.

#### Intermediate-Term Recommendations

RN 12-10 also raises certain intermediate-term recommendations for the expansion of BrokerCheck®. Examples provided in RN 12-10 include the reason for and comments related to a broker's termination, scores on industry qualification exams (discussed, negatively, above), and formerly reportable information. Broker's termination issues should be left between the firm and the broker. Many considerations lead to a termination, including, among others, firm politics and animosity between a registrant and his or her broker-dealer. These underlying, silent factors do not lend themselves to easy summary and can easily be misinterpreted. BrokerCheck® should not be turned into an indictment or the airing of dirty linen. Nor is there likely uniformity in such explanations<sup>7</sup>. Future employers have the greatest need for such information and they have other means to obtain it. If such grounds include unethical or illegal conduct, that would appear in the disciplinary report section; investors or other inquirers would have the information without making BrokerCheck® unwieldy, and therefore, unusable. As to formerly reportable information, let proverbial sleeping dogs lie.

#### Commercialization

Our experience has shown that commercial enterprises are well-suited to provide information to the general public. In fact, we know they do very well in providing information as it becomes available in standard databases that are managed by others. For example, EDGAR, which is available on the website of the Securities and Exchange Commission, contains data submitted primarily by its registrants. These commercial enterprises<sup>8</sup> make filings available almost simultaneously with their submission to EDGAR. They are able to provide this information to inquirers based upon a list of specific registrants that the inquirers provide in advance to the commercial enterprises. That type of service, for example, is valuable. We

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<sup>7</sup> Often, broker-dealers are vindictive in the remarks they post with the Central Registration Depository. When that happens, it is not helpful to the veracity or reliability of BrokerCheck® that in at least one state, the broker-dealer posting such information is virtually immune from claims against it relating to misinformation.

<sup>8</sup> See, for example, [www.freeedgar.com](http://www.freeedgar.com).



would not expect BrokerCheck® to provide virtually simultaneous updates, but commercial enterprises likely would if they received access to data as it was filed or amended. If an inquirer would like automatic updates of a particular individual or broker-dealer, he or she should be able to obtain that information just like the inquirer could with respect to an issuer. We would hope that if the data is available to commercial enterprises, those enterprises maintain such data accurately.

**Conclusion**

We hope that FINRA uses this mandate under Dodd-Frank to make BrokerCheck® a more useful, timely and accurate database. Doing so would benefit all of FINRA's constituents, including the investing public.

\* \* \* \* \*

Thank you for the opportunity to comment on RN 12-10. Should you have any further questions, feel free to call Howard Spindel at 212-897-1688 or Cassondra Joseph at 212-897-1687, or by e-mail at [hspindel@intman.com](mailto:hspindel@intman.com) or [cjoseph@intman.com](mailto:cjoseph@intman.com), respectively.

Very truly yours,



**Howard Spindel**  
Senior Managing Director



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April 27, 2012

**VIA ELECTRONIC MAIL**

Marcia E. Asquith  
Senior Vice President and Corporate Secretary  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 12-10: FINRA BrokerCheck:  
FINRA Requests Comments on Ways to Facilitate and Increase Investor  
Use of BrokerCheck Information**

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),<sup>1</sup> in response to Regulatory Notice 12-10, "FINRA BrokerCheck: FINRA Requests Comments on Ways to Facilitate and Increase Investor Use of BrokerCheck Information" (the "Notice"). The Notice requests comment on ways to facilitate and increase investor use of BrokerCheck information. Specifically, FINRA requests comment on potential changes to the information disclosed through BrokerCheck, the format in which the information is presented and strategies to increase investor awareness of BrokerCheck. This letter provides comments with respect to certain of the questions asked in the Notice.

**INFORMATION DISPLAYED**

**Notice Questions.** Should changes be made to the categories of CRD system information that are displayed through BrokerCheck or the time frames for which such information is displayed? If so, what information should be added to or deleted from BrokerCheck and how long should the information be available in BrokerCheck?

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<sup>1</sup> The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1982 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

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**Committee Comments.** The Committee is concerned about the disclosure of certain information that currently resides on BrokerCheck and is publicly available. For instance, certain questions on Form U4 call for disclosure of, among other things, certain: regulatory complaints, proceedings or investigations; pending civil litigation; arbitration or civil litigation containing certain allegations that are still pending; and investment-related, consumer-initiated, written complaint containing certain allegations. Similarly, various questions on Form US require disclosure of, among other things, certain: investigations or proceedings; internal reviews; investment-related, consumer-initiated arbitration or civil litigation containing certain allegations that are pending; and investment-related, consumer-initiated, written complaints. Form BD likewise requires disclosure of certain civil proceedings that could result in a "yes" answer to other questions on the form. A fair amount of this information, once reported, does not get removed from BrokerCheck even when subsequent events transpire and reveal a lack of justification for the disclosure. The static nature of this information is problematic when the factual predicate for the disclosure is shown to be without merit.

The Committee believes that mere allegations, complaints, proceedings and investigations should not be disclosed on BrokerCheck unless there is a mechanism to easily and promptly remove such information if and when subsequent events demonstrate there is no factual predicate for the disclosure. The Committee believes it is important to promptly update information on BrokerCheck and promptly remove information that is stale and reflects allegations, complaints, proceedings and investigations that are without merit. Allegations, complaints, proceedings and investigations, even if made and taken in good faith, that are later revealed to be without merit should not continue to stain the reputation of registered representatives and firms on BrokerCheck. The Committee maintains that the current practice of maintaining such information on BrokerCheck is not in the public interest. Investors should have the benefit of choosing firms and registered representatives on the basis of the most accurate information possible. Maintaining stale information on BrokerCheck may hurt not only firms and registered representatives but also investors who are influenced by such stale information.

The Committee believes that certain information on BrokerCheck should not be maintained more than two years. For example, "Historic Complaints" should not be maintained for more than two years. "Historic Complaints," as defined in FINRA Rule 8312(b)(2)(G) are (1) 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 (2) 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. The Committee sees little rationale for requiring such complaints to be maintained for a period beyond two years. It is difficult to believe that complaints, arbitrations or litigations that fall within the narrow definition of "Historic Complaint" remain material for many years in the future.

More broadly, the Committee believes that certain information in the "Registration Forms," as defined in FINRA Rule 8312(b)(2)(A) should be archived in the CRD system and not

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publicly available through BrokerCheck. In this respect, it is the Committee's understanding that certain responses, such as prior responses to Items 14(I)(3) and 14(I)(5) of Form U4, are treated as "historical complaints" under Rule 8312(b)(2)(G) and thus are disclosed and publicly available through BrokerCheck despite the fact that (1) these items ask solely about information "[w]ithin the past twenty four (24) months" and (2) Item 14(I)(5) asks about arbitration claims or civil litigation and not customer complaints. Assuming the Committee's understanding is correct, the Committee strongly believes that initial positive responses to these questions and other similar questions on the Registration Forms that are subsequently revised to negative responses because the assertions are "Closed/No Action," "Withdrawn," "Denied," "Dismissed" or result in "No Action" should be archived in the CRD and not available through BrokerCheck the same way other responses to the Registration Forms are archived and not available through BrokerCheck. The Committee believes it is inappropriate and unfair for initial positive responses to these items that are subsequently changed to negative responses for the reasons noted above to continue to be publicly available on BrokerCheck. The Committee sees little rationale for treating responses to items like Items 14(I)(3) and 14(I)(5) of Form U4 differently than other items in the Registration Forms that initially result in positive responses but are then changed to negative responses for the reasons noted above.

The Committee notes that Rule 8312(d)(2) provides that FINRA shall not release information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority. Similarly, Rule 8312(d)(6) provides that FINRA shall not release the most recent information reported on a Registration Form if FINRA has determined that the information was reported in error by a member, regulator or other appropriate authority. The Committee believes that the logic underlying these provisions should apply to the types of responses discussed above.

The Committee maintains that a registered representative's score on industry qualification examinations is not useful to investors. A registered representative's score on an exam often is not indicative of the registered representative's industry knowledge or how well the registered representative will service customers. For many registered representatives, the score is merely indicative of how well they do on industry qualification exams. Disclosing the scores will therefore put undue emphasis on a registered representative's ability with respect to taking standardized tests.

Given the information already disclosed on BrokerCheck, the Committee believes that, in the ordinary course, it would not be helpful to disclose the reason for, and comments related to, a registered representative's termination and that such explanations could create significant legal liability for member firms.

**Notice Question.** Should a broker's educational background and/or professional designations (*e.g.*, Chartered Financial Consultant, Chartered Financial Analyst) be available in BrokerCheck?

**Committee Comments.** The Committee believes it would be beneficial to provide information concerning registered representatives' designations. However, doing so would raise the question which designations would be available on BrokerCheck. The Committee believes

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that only bona fide, industry-recognized quality designations should be available. FINRA would thus be placed in the position of having to vet designations and determining which ones are sufficient to be listed on BrokerCheck. The Committee is interested in understanding what criteria FINRA would use to make such determinations.

### **REPORT DESIGN, FORMAT AND CONTENT**

**Notice Question.** What changes, if any, should be made to the design, format or content of the BrokerCheck summary report and/or the full detailed report?

**Committee Comments.** The Committee believes that the current combination of summary reports and full detailed reports work well and should be retained. The Committee believes that the summary reports provide crucial information in a concise format. If they wish, investors can then view the detailed report to get additional information about specific topics of interest. However, the Committee believes that explanatory comments in the Disclosure Reporting Pages should be more prominent and accessible on BrokerCheck. Based on the experience of Committee members, the Committee also notes that the format and structure of BrokerCheck disclosures at times confuses investors when a single event triggers the disclosure of multiple items on the Registration Forms. Specifically, Committee members have found that investors often mistakenly believe that the various disclosures reflect multiple unrelated events. The Committee believes that the presentation of information on BrokerCheck contributes to investor confusion when a single event triggers multiple disclosure items and that investors would be better served if it were more apparent when a single event triggered multiple disclosures.

In addition, while outside the scope of what the Notice seeks comment on, the Committee continues to believe that information about registered representatives of a broker-dealer and investment adviser representatives of an investment adviser should be available to investors via a single joint database. Forcing investors to go to different sites to obtain information about the professionals they use to provide advice and help manage their financial affairs makes little sense. The Committee believes that BrokerCheck and the Investment Adviser Public Disclosure website ought to be combined and the information available via a single source. A joint database for investment advisers and broker-dealers and their registered personnel would, in the Committee's view, enhance investor awareness of, and use of, such information and make it easier for investors to find information about their financial advisors.

### **INVESTOR AWARENESS OF BROKERCHECK**

**Notice Question.** Should FINRA make basic BrokerCheck information (e.g., registration status, employing firm, employment location) available in such a way that would enable an investor to enter a broker's name in an Internet search engine, see the basic information in the search results, and be directed to BrokerCheck for more detailed information?

**Committee Comments.** The Committee believes that information about member firms and their registered personnel should be limited to BrokerCheck and not available outside the contours of the BrokerCheck website. In this respect, the Committee is concerned about

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investors and others viewing the information from BrokerCheck outside of the context in which such information was designed to be used.

### COMMERCIAL USE

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

**Committee Comments.** The Committee strongly believes that it would be improper for FINRA to provide BrokerCheck information to for-profit companies for commercial use. The Committee believes that member firms should have the ability to decide for themselves whether and how to utilize their own information and the personal information of their registered persons. In the view of the Committee, much of the information about member firms and their registered persons belongs to such member firms and should not be used for commercial purposes without their consent. The Committee would be in favor of a system under which each member firm could decide whether and how such information is utilized for commercial purposes.

### CONCLUSION

The Committee appreciates the opportunity to comment on the Proposal. We are happy to provide more specific input on the issues raised in this letter and answer any questions the staff may have regarding our comments.

Please do not hesitate to contact Michael B. Koffler (212.389.5014), Cliff Kirsch (212.389.5052) or Susan Krawczyk (202.383.0197) if you have any questions regarding this letter.

Respectfully submitted,

**SUTHERLAND ASBILL & BRENNAN LLP**

BY: Cliff Kirsch *(Signature)*  
Cliff Kirsch

BY: Michael Koffler *(Signature)*  
Michael Koffler

BY: Susan S. Krawczyk *(Signature)*  
Susan S. Krawczyk

**FOR THE COMMITTEE OF ANNUITY INSURERS**

**Appendix A**

**THE COMMITTEE OF ANNUITY INSURERS**

Allstate Financial  
AVIVA USA Corporation  
AXA Equitable Life Insurance Company  
Commonwealth Annuity and Life Insurance Company  
*(a Goldman Sachs company)*  
CNO Financial Group, Inc.  
Fidelity Investments Life Insurance Company  
Genworth Financial  
Great American Life Insurance Co.  
Guardian Insurance & Annuity Co., Inc.  
Hartford Life Insurance Company  
ING North America Insurance Corporation  
Jackson National Life Insurance Company  
John Hancock Life Insurance Company  
Life Insurance Company of the Southwest  
Lincoln Financial Group  
MassMutual Financial Group  
Metropolitan Life Insurance Company  
Nationwide Life Insurance Companies  
New York Life Insurance Company  
Northwestern Mutual Life Insurance Company  
Ohio National Financial Services  
Pacific Life Insurance Company  
Protective Life Insurance Company  
Prudential Insurance Company of America  
RiverSource Life Insurance Company  
*(an Ameriprise Financial company)*  
SunAmerica Financial Group  
Symetra Financial  
The Transamerica companies  
TIAA-CREF  
USAA Life Insurance Company



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April 27, 2012

*Via Email Only*  
[pubcom@finra.org](mailto:pubcom@finra.org)

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: Regulatory Notice 12-10, FINRA BrokerCheck**

**Dear Ms. Asquith:**

**Thank you for the opportunity to address ways for investors to better use the information available on BrokerCheck as well as improve investor awareness that such information is available for their use.**

**Investors Recovery Service has been in the business of representing investors in securities arbitration since 1991. In those 20 plus years, we have represented several thousand public customers with claims against their brokers.**

**As currently constituted, there is little correlation between the disclosures on BrokerCheck and broker misconduct. If the purpose of BrokerCheck is to warn investors about "problematic brokers / financial advisors", then it fails miserably.**

**As you know, a great many brokers who have claims made against them by public customers have those claims expunged. Many brokers have had multiple claims expunged. Expungements are so pervasive that it is impossible for a customer who is looking at BrokerCheck to actually know if the broker they are looking at has ever been the subject of a claim.**

**Most customers, seeing no claims on BrokerCheck, falsely believe that this necessarily means that no claims have ever been made.**

**As you may recall, the rationale for allowing expungements was that the brokers were the subject of frivolous claims. There was never any reality behind that assertion. We don't file frivolous claims. Most of the other practitioners who frequent the FINRA arbitration forum don't file frivolous claims either.**



So, it appears that the "tail is wagging the dog" here because only a minute percentage of claims filed are frivolous, certainly in our opinion not enough to justify expungement. Just a simple statement from the arbitrators contained in their award, stating their rationale for denying the customer's claim, should cover the issue of "alleged" frivolous complaints.

And, just so we are perfectly clear on this subject, most states don't even recognize the term "frivolous complaint" when dealing with claims filed in arbitration. Simply put, it is the benefit of the bargain the industry makes with the public when inserting the arbitration clause in the customer agreement, forcing (actually coercing) them to take their dispute with their financial advisor to FINRA.

If the securities industry really has a problem with so-called frivolous complaints, then let the customer go to court and let the judicial system deal with it. If the industry wants the informality and significantly reduced cost of going through its arbitration forum, then the industry also has to accept the shortcomings associated with FINRA arbitration. And, again, just so we are clear, we are not saying that the FINRA arbitration process is unfair, we are only suggesting that one generally gets what one pays for. And, if FINRA wants a low cost expeditious alternative to going to court, which its forum clearly does provide, they have to accept the limitations associated with such a system of resolving customer disputes.

To put this in a different light, if a FINRA member or associated person truly believes the claim filed against them is frivolous, or for that matter even suggests such a complaint is frivolous in their answer, then the "solution" should be that whenever a respondent asserts the "frivolous defense" argument, then the claimant shall have the right to take the matter to court. That would probably put the "frivolous complaint" argument to bed for good. And, since the courts have to grant an expungement request in any event, it would seem that is precisely where an aggrieved industry firm or associated person should have the matter adjudicated.

Notwithstanding all the above, we have repeatedly agreed not to oppose a broker seeking expungement as a way of getting claims settled. We have done so a great many times. Other practitioners representing customers in FINRA arbitrations certainly have had similar experiences.

There are literally hundreds, if not thousands of brokers who have had their records "expunged" by arbitration panels. We personally know of one financial advisor in particular that has had over 20 customer complaints expunged. So, an investor using that particular broker might believe they were dealing with a broker with a clean record, when in fact nothing could be farther from the truth.

What FINRA has created with these extensive expungements is a system that fails to do exactly what it was designed to do, allow public customers to know the record of the person to whom they are entrusting their funds.

FINRA's focus on sales practice abuses and egregious conduct is also misplaced. Consumers today are better educated and more accustomed to searching for any information, positive or negative, about the professionals with whom they deal, especially from other customers of those professionals. Just look at the millions of consumers who use *Yelp* and *Angie's List*. Under FINRA's present system, you can find out more pertinent information about a plumber you are considering hiring to fix your sink through *Yelp*, than you can about a stockbroker to whom you are considering turning over your life's savings through FINRA.

Customers want to know every complaint and every blemish. If 3 customers report, "he didn't return my phone calls", a plumber has a hard time getting new business. If a broker has 100 customer complaints that said the same, FINRA would consider them "non-reportable events". Frankly, this is unfair not only to customers but also to the many conscientious brokers who work hard for their customers to maintain their trust. And, sometime down the road, in the not too distant future, a broker with a few complaints will actually look good, rather than perceived as bad, when compared to the broker with dozens of customer complaints.

FINRA would do a tremendous service by creating an *Angie's List* type website where customers could post comments about their brokers, both good and bad. All brokers are happy to have recommendations from their customers. Those who earn negative comments would have the opportunity to fix them. It would be a win/win for all concerned.

This is an industry that is based upon "full disclosure of the material facts" more than any other industry in America. Notwithstanding, FINRA has always had the industry's back in keeping the disclosure of facts that might dissuade customers from choosing any particular broker.

We constantly see brokers whose business card announces them as "Retirement Specialists", or whose websites tout other expertise. A great many of the claims we have filed over the past 20 years have involved some of the best educated and trained brokers out there, with scores of professional designations after their name.

Simply put, an impressive resume translates to heightened trust.

Many of these "experts" are not expert in solving customers' problems, but are experts in selling one particular type of product. Customers generally begin with the idea that a broker will recommend investments that are suitable and appropriate for *them*.

In reality, a great many brokers sell one type of product to a high percentage of their customers. More importantly, they do so without setting out the basic facts that, if known, would cause customers to look elsewhere.

The first fact most customers might want to know is whether the broker specializes in products that pay 1% commission, 5% commission or 10% commission. We know that this suggestion is a non-starter, but please tell us why? When we have our car repaired, there is a sign on the wall that tells us how much the mechanic charges for an hour of his labor. How would it not benefit the public from knowing in advance of selecting their broker how much the broker expects to earn from their investment? Most brokers, when asked by the customer how much they are paying in commissions will say, "you pay nothing, our fees are covered by the sponsor or the insurance company" etc.

We would recommend that brokers whose business is concentrated (more than 40% of trailing 12 month commissions) in certain products be required to say so on their websites and printed brochures, and include the following disclosures about those products.

1) Variable annuities- We are told that these may constitute as much as 25% of the commission income for the entire retail brokerage industry. Where would banks be without their salesmen selling variable annuities or structured products, whose commissions are far higher than most mutual funds. Disclosures should include: *"Variable annuities are relatively high commission products that include a number of internal fees that may adversely affect performance. To offset those fees, managers frequently take higher than average risks, which, of course, may lead to higher than average losses."*

2) Wrap accounts- a great many brokers at the larger firms "collect assets" from customers that they forward on to so called "professional money managers". Disclosures should include: *We only earn our fees if you stay fully invested. So we will rarely, if ever (read never) counsel you to liquidate your equity holdings and sit on the sidelines, even if market conditions increase your portfolio risk beyond your comfort level." "Further, in order to provide investment performance greater than the "benchmark" and overcome the various fees you will be charged, we will generally invest in securities whose volatility is greater than the those equities comprised within the benchmark".*

3) Individual investment advisor accounts- While the days of the broker as stock-picker may be over for many; some brokers still manage accounts for customers on a discretionary basis. Disclosures should include: *"I have been unable to avoid losses in my customers' accounts during market corrections such as the "tech wreck" in 2001 and the "credit meltdown" in 2008. My track record shows significant losses during these periods. If you are not prepared to accept significant losses to your portfolio, take your money elsewhere." (Of course, they would only have to make these disclosures if they were true).*

4) Alternative investments (private placements) – Many billions of dollars were invested and lost in private placements in the last 10 years. We are certain that FINRA would be “shocked” to learn that a great many were sold to retirees and investors whose new account forms specifically denote that they are “conservative” or “moderate” risk investors. Disclosures should include: *“Private placements pay a higher commission than most investments. They are almost always speculative investments and should only be purchased by investors who stand ready, willing, and able to lose their entire investment.”*

*To summarize, we offer 3 suggestions:*

1) Get rid of the idea that arbitration claims by public customers can be expunged. Expungement corrupts the entire system. It places the broker and the client at odds with one another and prevents the parties from engaging in meaningful dialogue, because as everyone actively engaged in this business of securities arbitration understands, it is all about the apportionment of responsibility. How can one own up to their actions (be honest) if it also has the potential to destroy their careers. If forces industry personnel to lie, both in their answers and under oath when giving testimony. That is another reason why we say that expungement corrupts the system.

2) Set up a system where consumers can get information about their brokers that is important to them. Instead of tweaking a system that doesn't work, or actually makes a problematic broker appear to have a clean record, step up to the 21<sup>st</sup> Century and provide investors a website to air their grievances.

3) Require brokers to disclose facts that are important to consumers, especially facts about the broker's compensation, performance and product concentration.

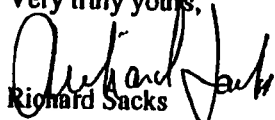
In closing, we are confident that FINRA will likely ignore all of this, because it is all considered “bad for business” and we have rarely seen FINRA take a position that would actually help consumers to the industry's detriment. It appears to be endemic to the system, and when you really think about it, where would defense counsel along with claimants' counsel be, without securities arbitration claims to file or defend against.

But, under close examination, isn't the securities industry simply too important to every one of us, whether everyone fully appreciates that fact or not, too politicize. FINRA tells all its new registered personnel *“You have a legal and moral obligation to place the interests of your customers above all else, particularly, your own financial interests”*. *“The key to your long-term success is integrity and service”*.

No one has all the answers on how to improve the securities industry, or the securities arbitration process. But if those in control of the securities industry would take their own words to heart, and ask themselves if this new rule or other action takes the interests of the customers into consideration, above all else, that appears to me as the perfect place to start again, in restoring investors confidence in the securities markets and those firms that service it. The past is the past. Let's deal with the future.

**Thank you for the opportunity to make suggestions on how to improve FINRA  
BrokerCheck and the public's awareness of it.**

Very truly yours,



**Richard Sacks**

**Investors Recovery Service**

**Novato, California**

**415-382-7898**

**[advice@investorsrecovery.com](mailto:advice@investorsrecovery.com)**



April 27, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 2006-1506

Sent Via Email

RE: Regulatory Notice 12-10  
Ways to Facilitate and Increase Investor Use of BrokerCheck Information

Dear Ms. Asquith,

Thank you for allowing RW Smith to comment on FINRA proposals on ways to facilitate and increase investor use of BrokerCheck information.

First, I believe the unifying search results across BrokerCheck and IAPD, as well as enabling location-based searching, would be beneficial for customers and other users of FINRA's site. I do not believe that many of the other suggested additions would be beneficial.

I am a career compliance officer in the financial services industry and have had direct interactions with many different types of registered representatives: young, old, ignorant, educated, hard-working, lazy, honest, dishonest, etc. Although certain disclosures might capture a registered representative's character, they often won't. An ethical, knowledgeable representative with bad luck or a bad divorce could have numerous disclosures, while a dishonest, unknowledgeable representative may have no disclosures and just hasn't been caught yet.

Customers should choose an investment professional based on a number of factors, using important tools other than FINRA's BrokerCheck. These include customer references, business references, one-on-one conversations, internet searches, and other resources. FINRA's proposed additions are not likely to increase the customer's relevant knowledge base about a prospective investment professional; increasing the *quantity* of facts about associated persons does not necessarily mean increasing the *quality* of information the customer has.

Providing industry exam test scores is an example of a completely irrelevant piece of information that could mistakenly sway a customer one way or another. The Series 7, to take one test example, is intentionally broad. The exam contains large amounts of information, some of which may or not be used in any one individual's professional life (i.e. many RRs do not conduct an options business), but doing poorly on one section of the exam could easily bring down the entire exam score. If one

is not a good test taker, a quality completely independent of one's knowledge, ability, and integrity, this is likely not an exam that will be passed easily.

Providing education and professional credentials may or may not be relevant and I do not automatically put a lot of weight on that information. However, I recognize college degrees and professional certifications demonstrate a minimum level of education and/or evidence a level of competency in a specific area, and that may be a good starting platform for a conversation with the customer's prospective investment professional.

It is unclear to me whether FINRA is considering making legacy disclosures public, but if that is a discussion on the table, I very strongly believe that once a "Yes" disclosure becomes a "No" it should no longer be made available to the public. Even banks and insurance companies, entities in highly-regulated arenas, recognize that people make mistakes, or that bad things can happen to good people, and consumers are not subject to scrutiny and judgment indefinitely after something hits their record.

I do not believe FINRA should provide BrokerCheck information to for-profit companies for commercial use. It is inappropriate for the regulator to *require* so much detailed information of an associated person and then be able to sell that information to a for-profit company.

Thank you for the opportunity to comment on FINRA's proposals.

Sincerely,

S. Lauren Heyne  
RW Smith & Associates, Inc.  
Chief Compliance Officer



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

April 27, 2012

**VIA ELECTRONIC DELIVERY**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 12-10; FINRA BrokerCheck**

Dear Ms. Asquith:

Certified Financial Planner Board of Standards ("CFP Board") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 12-10 regarding BrokerCheck.

FINRA has asked for comment on methods by which it can facilitate and increase investor use of BrokerCheck.<sup>1</sup> Specifically, FINRA is interested in improving the type of information that is available on BrokerCheck, refining the format of the provided information and increasing investor awareness and use of BrokerCheck.

**I. Background of CFP Board**

CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP<sup>®</sup> certification. Our mission is to benefit the public by granting the CFP<sup>®</sup> certification and upholding it as the recognized standard of excellence for personal financial planning. We currently oversee over 65,000 CFP<sup>®</sup> professionals who agree on a voluntary basis to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board.

CFP<sup>®</sup> professionals provide services that integrate knowledge and practices across the financial

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<sup>1</sup> BrokerCheck is a tool that has evolved since its inception, initially providing only the most basic information about current and former FINRA-registered brokerage firms and brokers, and then more substantive disclosures with the passage of amendments to FINRA Rule 8312. Information available through BrokerCheck includes limited employment history, final disciplinary actions, criminal convictions, registrations representatives hold, examinations representatives have passed and disclosure information regarding various criminal, regulatory, customer dispute, termination and financial matters for brokerage firms and brokers.



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services industry. Financial planning typically covers a broad range of subject areas, including investment, income tax, education, insurance, employee benefits, retirement, and estate planning. CFP<sup>®</sup> professionals work with their clients to determine whether and how they can meet their life goals through the proper management of their financial resources.

## **II. SEC Study Prompts FINRA to Enhance BrokerCheck**

Section 919B of the Dodd-Frank Wall Street Reform and Consumer Protection Act required the Securities and Exchange Commission (“SEC”) to conduct a study (the “919B Study”) to evaluate ways in which investor access to registration information about investment advisers and broker-dealers might be improved.<sup>2</sup> The SEC’s Section 919B Study, prepared by the Office of Investor Education and Advocacy,<sup>3</sup> recognized that FINRA created BrokerCheck primarily “to help investors make informed choices about the individuals and firms with which they may wish to do business.”<sup>4</sup> The 919B Study highlighted the importance of this effort, noting that selecting a broker-dealer or investment adviser is one of the most important decisions that an investor faces, therefore information to help an investor make this choice should be “easy to find, easy to use, and easy to understand.”<sup>5</sup> To this end, the Staff has recommended that FINRA enhance BrokerCheck to include additional information, which is reported through the Central Registration Depository (“CRD”), and reevaluate the method and format by which such information is presented.<sup>6</sup>

CFP Board supports the findings of the 919B Study and agrees that BrokerCheck can be improved to better serve the needs of investors. CFP Board believes that this can be achieved specifically through reporting additional material information, increasing educational content and improving the overall format of BrokerCheck. CFP Board further believes that the full benefit of these enhancements will only be realized when such an initiative is coupled with concentrated efforts to also improve investor awareness of BrokerCheck.

## **III. Recommended Changes to Broker-Check**

- a. Material information should be reported in BrokerCheck.

CFP Board urges FINRA to include in BrokerCheck material information to investors. Material information is any information that will assist investors in making informed choices about the individuals and firms with which they currently conduct or are considering conducting business.

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<sup>2</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> The study was prepared in consultation with the Division of Investment Management, the Division of Trading and Markets, the Division of Risk, Strategy, and Financial Innovation, and the Office of the General Counsel (collectively, the “Staff”).

<sup>4</sup> Study and Recommendations on Improved Investor Access to Registration Information about Investment Advisers and Broker-Dealers at 15 (2011), available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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In determining what to incorporate in BrokerCheck, FINRA should err on the side of inclusion. It is the investors' prerogative to determine what is relevant to them in identifying a financial intermediary to meet their needs and help them achieve their financial goals. We believe that additional or enhanced information in the following five areas would significantly improve the availability of material information on BrokerCheck for investors.

- **Terminations.** CFP Board urges FINRA to disclose the reasons and comments related to a termination of a registered representative from a broker-dealer firm because the information may be relevant to the investor's choice of a registered representative. CFP Board believes that terminations related to regulatory, criminal or financial misconduct are relevant, and the specific reasons for the terminations should be included on BrokerCheck. Some commenters have noted that termination information will unfairly bias an investor against a particular registered representative. We believe that the potential for bias is outweighed by the investor's right to know this information and determine its importance in his or her decision to engage a registered representative. Moreover, even if it biases a particular registered representative, it is unlikely to create a bias against the entire firm.
- **Customer Complaints, Criminal Misconduct and Disciplinary Information.** CFP Board urges FINRA to include customer complaints in BrokerCheck. We believe that the frequency and type of customer complaints are relevant in an investor's decision to choose or stay with a particular registered representative. Customer complaints can give investors valuable insight into issues that arise with a particular registered representative or firm. They can also help investors identify where there are patterns of grievances. Such disclosures empower customers to report misconduct and incentivize registered representatives and firms to properly manage customer relations.

Certain information related to criminal misconduct and disciplinary history is currently available on BrokerCheck, but is not easily accessible. BrokerCheck currently includes information related to a registered representative or firm's criminal and disciplinary history pursuant to FINRA Rule 8312(b)(2)(A). This information, which includes criminal charges, pending regulatory investigations, arbitrations and bankruptcies, is particularly significant to an investor's decision about a financial professional, but it is not featured in a manner that is consistent with its importance to investors. Most of these events are reported through Form U4 because they are critical in an employer's decision to hire an individual. This same information is equally important to an investor, in their decision to employ a registered representative. As described in more detail in Part III.b. below, this type of information should be quickly and easily available to investors on the summary report for both representatives and firms.

- **Educational Background.** Educational background information of the registered representative should be made available on BrokerCheck because it is directly material to

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an investor's assessment of a registered representative. Some commenters have expressed concern that investors may be unfairly biased against registered representatives without college or graduate degrees. However, educational background is important information related to a prospective registered representative's overall qualifications and is a key factor in an investor's determination as to whether a particular registered representative is well-suited for them.

While educational background (schools attended, degrees received and dates of graduation) is material information for evaluating the overall qualifications of a registered representative, specific test scores on FINRA examinations provide an unnecessary level of detail and need not be disclosed on BrokerCheck. There is no evidence to suggest that there is any correlation between higher scores and the qualifications or ethics of a registered representative. Further, there is no precedent to support the disclosure of tests scores in other professional industries.

- **Professional Licenses and Legal Standard of Care.** Information regarding licenses should be prominently available to investors on BrokerCheck. The 919B Study noted that investors often do not know whether they are searching for an investment adviser or a broker-dealer.<sup>7</sup> To help assure that investors are able to locate information about their financial professional, even if they don't know the specific license the financial professional holds, the Staff recommended that results in BrokerCheck and Investment Adviser Public Disclosure ("IAPD") be unified. To avoid investor confusion, the unified search results should clearly identify whether the financial professional is a registered representative or investment adviser and what each license means. This should include the qualifications, services provided, and standards of conduct associated with each license.
- **Certifications and Designations.** CFP Board also urges FINRA to include the certifications and designations held by their registered representatives on BrokerCheck. Including certifications and designations on BrokerCheck would offer investors centralized access to information material to their choice of registered representative. Professional certifications and/or designations can be indicators of a registered representative's specialty, specific training, qualifications for the job, and ethical obligations. While some are reliable indicators of competency and ethical standards, such as the CERTIFIED FINANCIAL PLANNER<sup>TM</sup> certification<sup>8</sup>, many are virtually

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<sup>7</sup> Supra note 4 at 37.

<sup>8</sup> To attain the CFP<sup>®</sup> certification, an individual must have a bachelors degree, must complete a comprehensive financial planning curriculum approved by CFP Board, pass the rigorous 10-hour CFP<sup>®</sup> Certification Exam, have two to three years of relevant work experience; and pass the Fitness Standards for Candidates and Registrants and a background check. After individuals earn the CFP<sup>®</sup> certification, they are subject to continuing education requirements and enforcement actions for violation of CFP Board's *Standards of Professional Conduct*.

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worthless.<sup>9</sup> Given the wide range in rigor behind certifications and designations and understandable consumer confusion surrounding them, certifications and designations convey very little information unless they are accompanied by an explanation of the requirements, obligations and enforcement associated with the certification or designation. One way to provide meaningful information is to link to FINRA's "Understanding Professional Designations" web page, which identifies and defines designations. FINRA could also consider linking the certifications or designations listed in BrokerCheck back to the relevant body's web page so investors can further investigate the merits of any given certification or designation and whether it serves their needs.

- **Consumer Educational Information.** CFP Board urges FINRA to improve the consumer educational content on BrokerCheck to allow investors to better understand the information provided. In the 919B Study, the Staff recommended that educational content be added to BrokerCheck, "including links and definitions of terms that may be unfamiliar to investors."<sup>10</sup> CFP Board supports the Staff's recommendation that BrokerCheck should be enhanced by including definitional material. Currently, when a glossary term is used, BrokerCheck provides a link from the term that takes the investor to the BrokerCheck Glossary page. The investor then has to search through the Glossary to find the relevant term. We recommend that glossary terms used in BrokerCheck be defined using the "hover" text feature so investors can more readily understand what they are reading.

BrokerCheck should also link to relevant information found elsewhere on the FINRA website, IAPD, and external industry websites, whenever applicable. Through such links, FINRA can help investors utilize tools already in place by other organizations. For example, CFP Board has a financial planner search function,<sup>11</sup> which allows investors to search for and do background research on CFP<sup>®</sup> professionals. CFP Board's financial planner search contains information related to CFP<sup>®</sup> professional's certification status, location, specialty, fee structure and enforcement or disciplinary actions.

A link on BrokerCheck to CFP Board's financial planner search would provide an investor the opportunity to determine if the registered representative of a broker-dealer is also a CERTIFIED FINANCIAL PLANNER<sup>™</sup> who is qualified to provide comprehensive financial advice and obligated to provide advice under a fiduciary standard of conduct.

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<sup>9</sup> The FINRA website has over 100 certifications and designations listed. See FINRA, Understanding Professional Designations, available at <http://apps.finra.org/DataDirectory/1/prodesignations.aspx>. Unlike the CERTIFIED FINANCIAL PLANNER<sup>™</sup> certification, many of these designations can be earned by attending a weekend course, have minimal or no education, examination, or continuing education requirements, have no code of professional conduct, and/or have no investigative or enforcement mechanisms to enforce its obligations.

<sup>10</sup> *Supra* note 3 at 6.

<sup>11</sup> Find a CERTIFIED FINANCIAL PLANNER<sup>™</sup> available at <http://www.cfp.net/find/EnhancedSearch.aspx>

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- b. The report summary should be displayed in a user-friendly format.

CFP Board recommends that FINRA simplify the report summary and use a layered approach to display relevant information. When investors look up a representative or firm on BrokerCheck, they are taken to a report summary. The current report summary format is difficult to understand and does not provide all the substantive information that is most relevant to investors. The display page for the report summary has multiple fonts, unaligned columns and inconsistent formatting. Implementing a simplified design and using links to improve access to content would help make the report summary a tool that is more user-friendly and therefore a more effective resource. To present information in a more user-friendly and clear manner, FINRA can consider presenting the report summary in a chart format with each cell addressing one of the following issues:

- Basic demographic information including name, address and phone number of current employer;
- employment history;
- regulatory licenses (broker-dealer and investment adviser registrations);
- professional certifications and designations;
- broker qualifications;
- investment adviser registration status;
- educational background;
- customer complaints; and
- termination events.

Each topic could then be linked to more detailed information on that issue. This would allow the investor to easily find specific information material to the investor's decision regarding a particular representative or firm.

This layered approach provides investors with a quick snapshot of the registered representative or firm they are investigating with the opportunity to learn more about any particular issue that may be of interest. It can highlight positive attributes of a registered representative, such as educational background and professional certifications and designations, and raise red flags where applicable.

The internet is becoming an increasingly competitive space where businesses are vying for user time and attention. CFP Board urges FINRA to consider this when redesigning the report summary. Even with improved content, investors will not be able to use BrokerCheck effectively unless it is designed with investors' needs in mind. CFP Board recommends that the amended report summary be tested in focus groups to confirm improved usability and to identify areas for further improvement.

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#### **IV. Investor Awareness Should Be a Key Focus for Successful Implementation of an Improved BrokerCheck**

BrokerCheck can only be an effective investor education tool if investors are aware of it and use it. As noted in FINRA's request for comments, a study conducted by FINRA in 2009 found that only 15% of respondents claimed they had checked a financial advisor's background with a state or federal regulator.<sup>12</sup> This indicates that most investors are not aware of or do not use BrokerCheck. Even if substantial enhancements are made with respect to the content and usability of BrokerCheck, the system will not be an effective tool for investor protection unless accompanied by changes that will increase investor awareness of BrokerCheck.

CFP Board urges FINRA to adopt requirements designed to increase awareness and use of BrokerCheck by amending FINRA Rule 2267. Rule 2267 currently requires FINRA member firms to annually provide in writing to each of their customers the BrokerCheck telephone number and website address.<sup>13</sup> The current rule only applies to member firms and the annual requirement may be delivered by mail or electronically. This does not present BrokerCheck information to the investor at a time and in a way that is useful or meaningful. As the 919B Study correctly recognized, selecting a financial professional – whether it is a registered representative, investment adviser representative or a financial planner qualified to provide comprehensive and integrated financial advice – is the most important decision an investor makes. To be most effective, BrokerCheck information must be made available to prospective clients of financial services professionals prior to their engagement.

CFP Board believes the following amendments to Rule 2267 would increase investor awareness of this important tool and encourage its regular use – both prior to engagement and during the course of the relationship. First, we suggest that disclosure requirements apply to both registered representatives and member firms. Second, we recommend that registered representatives and member firms be required to prominently display links to BrokerCheck on materials that are readily available to both potential and current customers. Specifically, links to BrokerCheck should be included on business cards, advertising materials, e-mail signature blocks, all correspondence with client and websites.

Increased exposure, coupled with the improved content recommendations above, will increase investors' awareness of BrokerCheck and their likelihood to use it as a meaningful resource.

#### **V. Commercial Use of BrokerCheck Could Increase Investor Protection**

Commercial use of BrokerCheck information could benefit the public, if properly overseen. Currently, BrokerCheck's Terms and Conditions prevent individuals from using BrokerCheck

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<sup>12</sup> FINRA Notice citing Applied Research & Consulting LLC, *Financial Capability in the United States* (2009). *Regulatory Notice 12-10* (Feb. 2012) (FINRA Requests Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information).

<sup>13</sup> FINRA Rule 2267 (Investor Education and Protection).

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for anything other than their own personal or professional use. FINRA is contemplating providing BrokerCheck information to for-profit companies for commercial use. Specifically, FINRA notes that some for-profit companies are interested in receiving BrokerCheck information to populate existing and contemplated websites, which would allow users to verify or obtain information about financial industry professionals, including brokers. CFP Board supports expanded access to BrokerCheck information but with some guidelines designed to ensure that the data is being used to increase investor education and protection.

The relationship between FINRA and potential commercial users could be governed by a user agreement that would place restrictions on the commercial use of BrokerCheck information consistent with certain goals. For example, the agreement could provide, among other things, that the data may only be used towards the end for which it was originally collected – to increase market and consumer protection. FINRA may want to establish guidelines designed to promote the availability of the data to the public, and place certain limitations that would guard against excessive profit making from the use of this data. The goal in creating such guidelines would be to promote innovative commercial use of the data while maintaining some level of access to the general public.

We would also urge that FINRA not profit from making BrokerCheck information commercially available. We suggest that any revenues collected by FINRA, in excess of expenses, be earmarked for initiatives that directly increase investor awareness of BrokerCheck.

If subject to appropriate guidelines that are consistent with the initial purpose behind the collection and dissemination of BrokerCheck information, the commercial use of BrokerCheck information could facilitate independent research and analysis of the financial services industry and thereby help to increase consumer access to BrokerCheck information. If commercial users add BrokerCheck information to their websites – particularly in easily accessible, user-friendly, formats – there is an increased likelihood that investors will be exposed to the information. Further, commercial users such as finance experts, industry specialists and other similar groups can help create useful reference tools for investors and alert the market to positive and negative trends in the broker-dealer industry. Academics may have a particular interest in accessing BrokerCheck information for research that could assist investors and the industry. Such benefits merit the consideration of expanding access to BrokerCheck information subject to appropriate guidelines.

## **VI. Conclusion**

BrokerCheck is an important tool which allows investors to research and evaluate a financial adviser or firm that will be best suited to meet their needs and help them reach their financial goals. The 919B Study provided guidance and recommendations to FINRA for improving both the content and usability of BrokerCheck. CFP Board strongly supports the 919B Study's guidance and FINRA's initiative to improve BrokerCheck and urges FINRA to give serious consideration to our proposed recommendations.

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CFP Board appreciates the opportunity to respond to FINRA's request for comments for the enhancement of BrokerCheck. If you should have any questions regarding this comment letter or CFP Board, please contact Marilyn Mohrman-Gillis, Managing Director, Public Policy and Communications, at (202) 379-2235, or visit CFP Board's Web site at [www.CFP.net](http://www.CFP.net).

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin R. Keller". The signature is fluid and cursive, with the first name "Kevin" being the most prominent part.

Kevin R. Keller, CAE  
Chief Executive Officer





**VIA ELECTRONIC MAIL**

April 27, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

RE: FINRA RN 12-10: Request Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information

Dear Ms. Murphy:

The Financial Industry Regulatory Authority (FINRA) recently published Regulatory Notice 12-10 (RN 12-10)<sup>1</sup> which requested comment on ways to increase investor use of information contained in the BrokerCheck system. FINRA published RN 12-10 in response to an SEC staff study required under Section 919B of the Dodd-Frank Act. The SEC staff study concluded with a series of recommendations regarding improving investor access to the registration information contained in the BrokerCheck system. These recommendations were: (1) unify search returns for BrokerCheck and the IAPD databases; (2) add the ability to search BrokerCheck by ZIP Code or other indicator of location; (3) add educational content to BrokerCheck, including links and definitions of terms that may be unfamiliar to investors; and (4) analyze the viability of expanding BrokerCheck to include additional information available in the CRD system (which could include the reason for and comments related to a broker's termination, scores on industry qualification exams) as well as improving the format in which the information is published.

The Financial Services Institute<sup>2</sup> (FSI) welcomes the opportunity to comment on the Proposed Rule. While we support the move to promote greater awareness and use of the information contained in the BrokerCheck system, we have significant concerns

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<sup>1</sup> Available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125621.pdf>.

<sup>2</sup> The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisers in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 100 independent broker-dealers and more than 35,000 independent financial advisers, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

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regarding potential abuse of the information contained in the system. Our comments are outlined in detail below.

### Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64% percent of all practicing registered representatives – operate in the IBD channel.<sup>3</sup> These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.<sup>4</sup> Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry

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<sup>3</sup> Cerulli Associates at <http://www.cerulli.com/>.

<sup>4</sup> These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

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surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

#### Comments

As noted above, FSI welcomes the opportunity to comment on this issue. We have significant concerns regarding the potential abuse of information. We outline these concerns in detail below.

Under the current system, investors can use BrokerCheck to access information concerning the registration and employment history of brokers, as well as information regarding criminal and regulatory actions, customer complaints, and termination events. With respect to expanding the type of information that is currently available we urge FINRA to consider the following:

- Disclosing Examination Scores – We urge FINRA to refrain from disclosing qualification examination scores. Disclosure of such information has the potential to unfairly stigmatize those individuals that have lower scores. As an initial matter there is no evidence suggesting that higher exam scores are correlated with better performance or being more qualified to act as a broker-dealer. In fact, given that all one must do to become a registered representative is pass a given qualification examination, many individuals simply aim for a score high enough to pass, rather than the highest score possible. Takers of the qualification examinations also believed that their actual results would remain confidential. Knowledge that the exam scores would one day be made public would certainly have served as an encouragement to obtain high scores. It is patently unfair to change these disclosure rules retroactively.

Furthermore, as examinations are not standardized there is the potential for disparity in difficulty across exams, and the public is not aware of the examination administration process. Additionally, because examinations are administered only in English, examination scores may reflect negatively on individuals whose first language is not English based solely on language difficulties rather than on actual financial skills. Finally, including examination scores from several years ago will fail to accurately reflect the knowledge and skills that have been developed by registered representatives through years of work experience. Therefore, older examination scores would be even less relevant and more misleading.

The end result of providing investors with access to scores on qualification examinations would therefore be to unfairly stigmatize certain registered representatives while failing to provide investors with meaningful, useful information. For these reasons we urge FINRA to refrain from disclosing this type of information.

- **Allegations of Criminal Conduct** – As is the case with qualification examination scores, disclosure of unsubstantiated allegations of criminal conduct can unjustifiably harm a registered representative's reputation. Such allegations may be the result of an abuse of our legal system and, therefore, not a reflection of the financial adviser's character. As a result, we urge FINRA to restrict access to mere allegations of criminal conduct.
- **Customer Complaints** – In addition to the risks of disclosing allegations of criminal conduct, disclosure of unsubstantiated customer complaints would have a similar effect. Until greater certainty regarding the veracity customer complaints can be obtained, FINRA should not release information regarding customer complaints to the public through the BrokerCheck system.

While FSI supports greater investor access to information, it is important that FINRA provide useful information that can assist investors in making good decisions. Providing investors with access to test scores, unsubstantiated allegations of criminal conduct, and unconfirmed customer complaints can leave investors with an incorrect perception regarding broker-dealers and registered representatives. We, therefore, urge FINRA to refrain from disclosing such information through BrokerCheck.

**Conclusion**

We remain committed to constructive engagement in the regulatory process and welcome the opportunity to work with the SEC and FINRA to enhance investor protection and broker-dealer compliance efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 202 803-6061.

Respectfully submitted,



David T. Bellaire, Esq.  
General Counsel and Director of Government Affairs

April 24, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 12-10, Request for Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information**

Dear Ms. Asquith,

Thank you for the opportunity to comment on Regulatory Notice 12-10 ("The Notice"), which seeks comments on ways to facilitate and increase investor use of BrokerCheck.

First and foremost, scores on industry qualification examinations should not be included in BrokerCheck nor disclosed to the public. Very few industries if any disclose actual scores on examinations. Scores can in no way accurately reflect the experience gained by a registered representative who has worked years in the brokerage industry. The investor simply knowing that their representative or potential representative is qualified by virtue of passing qualification examinations should continue to suffice. Making examination scores available would have many serious unintended consequences, and in no fashion serves to better protect or educate the investing public.

Comments relating to a broker's termination should be included, but only if the termination was for cause. Employment history with FINRA registered firms is already included in BrokerCheck information, making it easy for the investing public to know where, when, and for how long a broker has been employed. To include information on all terminations would be potentially misleading. The word termination itself has a negative connotation. Many representatives choose to leave a firm for a myriad of different reasons, and more often than not the parting is amicable. The investing public is no better served nor protected by knowing why a representative was terminated, unless it was for cause.

The Notice asks if it would be beneficial for investors to include links to other websites maintained by financial industry regulators or organizations that provide investor education within BrokerCheck reports. While investor education is in the best interest of the industry as a whole, additional links are not needed within BrokerCheck itself. FINRA's website already includes a vast amount of material specifically devoted to investor education. The purpose of

BrokerCheck is to provide information to investors about the persons and firms they are considering working with, and not to further educate investors. FINRA should instead consider putting this additional information from financial industry regulators and organizations under a separate section of their website. If the information were contained in links within BrokerCheck reports themselves it is possible an investor who could benefit from the information and who is not planning on using BrokerCheck would never see the information. By keeping the information separate and on FINRA's main investor site more investors would be exposed to the additional information.

The Notice asks if educational background and/or professional designations should be available in BrokerCheck. Certainly, educational background should not. There are most likely thousands of registered representatives whose level of education does not rise above a high school diploma, but who may have spent many successful decades in the securities industry. Providing educational background could potentially steer investors away from eminently qualified investment professionals who may not possess a commiserate level of education as others in the industry.

Professional designations are a different matter. Designations earned from accredited sources should be included in BrokerCheck. Unlike providing educational background, a professional designation shows that the individual has completed the requirements for such designation in a specified area of expertise. However, should FINRA choose to include professional designations, there should be a specific list of what designations will be included. In the past there have been many so-called designations in the securities industry that could essentially be bought, with no test of knowledge administered. Generally accepted and widely known professional designations should be included in BrokerCheck, as long as the individual's designation is current and up to date.

The Notice asks if FINRA should provide BrokerCheck information to for-profit companies for commercial use. The answer is a resounding no. There are many commercial entities already mining the various state securities boards and commissions for information on registered representatives, and publishing it freely. This information is often subject to editing and/or comment by anyone who desires to do so. As a result, much of the information may be deemed unreliable, although it may have been accurate when initially obtained. The thought of FINRA being in the publishing business to the greater extent than it already is, and especially with such sensitive information, is filled with fraught. Once the information is given, it may prove difficult for FINRA to impose limitations.

Thank you for the opportunity to comment on these important measures. BrokerCheck is a valuable tool for potential investors. FINRA must carefully weigh what additional information (if any) is disclosed and the manner in which it is disclosed. BrokerCheck should provide a starting point to assist the investing public in selecting which representative or firm to work with. The information provided through BrokerCheck should always be fair and balanced. Disclosing

test scores, educational background, or all termination information may serve to create an unfair bias against some in the industry.

Respectfully,

Russell Travis



April 27, 2012

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 12-10, Request for Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information**

Dear Ms. Asquith,

Thank you for the opportunity to comment on Regulatory Notice 12-10 ("The Notice"), which seeks comments on ways to facilitate and increase investor use of BrokerCheck.

- **Scores on industry qualification examinations should NOT be included in BrokerCheck nor disclosed to the public.** Very few industries if any disclose actual scores on examinations. Scores can in no way accurately reflect the experience gained by a registered representative who has worked years in the brokerage industry. The investor simply knowing that their representative or potential representative is qualified by virtue of passing qualification examinations should continue to suffice. Making examination scores available would have many serious unintended consequences, and in no fashion serves to better protect or educate the investing public.
- **Comments relating to a broker's termination should NOT be included.** There are many reasons for a representative being terminated that may not be pertinent to an investor determining the quality of a representative. If a representative is terminated for cause, it will be reported on the U-4 and will be in BrokerCheck.
- **Links to other websites maintained by financial industry regulators or organizations should NOT be within BrokerCheck reports.** The Notice asks if it would be beneficial for investors to include links to other websites maintained by financial industry regulators or organizations that provide investor education within BrokerCheck reports. While investor education is in the best interest of the industry as a whole, additional links are not needed within BrokerCheck itself. FINRA's website already includes a vast amount of material specifically devoted to investor education. The purpose of BrokerCheck is to provide information to investors about the persons and Firms with whom they are considering working. FINRA should instead consider putting this additional information from financial industry regulators and organizations under a separate section of their

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website. If the information were contained in links within BrokerCheck reports themselves it is possible an investor who could benefit from the information and who is not planning on using BrokerCheck would never see the information. By keeping the information separate and on FINRA's main investor site more investors would be exposed to the additional information.

- **Educational background of the representative should NOT be included in BrokerCheck.** Certainly, educational background should not. There are most likely thousands of registered representatives whose level of education does not rise above a high school diploma, but who may have spent many successful decades in the securities industry. Providing educational background could potentially steer investors away from eminently qualified investment professionals who may not possess a commiserate level of education as others in the industry.
- **PROFESSIONAL DESIGNATIONS SHOULD BE INCLUDED IN BROKERCHECK.** Professional designations are a different matter from educational background. Designations earned from accredited sources should be included in BrokerCheck. Unlike providing educational background, a professional designation shows that the individual has completed the requirements for such designation in a specified area of expertise. However, should FINRA choose to include professional designations, there should be a specific list of what designations will be included. In the past there have been many so-called designations in the securities industry that could essentially be bought, with no test of knowledge administered. Generally accepted and widely known professional designations should be included in BrokerCheck, as long as the individual's designation is current and up to date.
- **FINRA SHOULD NOT PROVIDE BROKERCHECK INFORMATION TO FOR-PROFIT COMPANIES FOR COMMERCIAL USE.** There are many commercial entities already mining the various state securities boards and commissions for information on registered representatives, and publishing it freely. This information is often subject to editing and/or comments by anyone who desires to do so. As a result, the information may be deemed unreliable, although it may have been accurate when initially obtained. Once the information is given, it may prove difficult for FINRA to impose limitations. Additionally, the idea seems to indicate FINRA would not have a problem with selling the often confidential information it receives.

Respectfully,

  
Nick Duren



NASAA

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

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April 27, 2012

Via electronic submission to [pubcom@finra.org](mailto:pubcom@finra.org)

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington DC 20006-1506

Re: Comments in Response to Regulatory Notice 12-10

Dear Ms. Asquith:

NASAA appreciates the opportunity to comment on Regulatory Notice 12-10 regarding efforts to facilitate and increase investor use of BrokerCheck information. Historically, NASAA has supported FINRA's initiatives to expand the scope of information available on BrokerCheck while tempering such support with disappointment that there continue to be restrictions placed on the information available through the system. States routinely provide background information on firms and associated persons via state public records laws (in the form of CRD snapshot reports) and believe that this information is critical to investors as they seek out competent and trustworthy investment professionals. As in the past, NASAA encourages FINRA to expand the breadth of information provided to investors through BrokerCheck. To this end, NASAA supports the SEC's recommendations made pursuant to Section 919B of the Dodd-Frank Act, and submits its own further suggestions below.

As an organization focused on investor protection, NASAA vigorously supports efforts to increase transparency and disclosure. Currently, there is a gap between the information that is provided in BrokerCheck reports and CRD snapshot reports provided to the investing public by state securities regulators. NASAA believes that the BrokerCheck system reports should include all of the information that a CRD snapshot would provide, absent a compelling reason to do otherwise. For example, NASAA believes that BrokerCheck reports also should include such information as a broker's educational background, continuing education history, and CRD/IARD filing history as well as the reason for and comments related to a broker's termination. Additionally, NASAA believes that FINRA should discontinue the practice of placing time limits on disclosure, such as the 10-year limit on the inclusion of bankruptcies in BrokerCheck reports.

Although not discussed in the Regulatory Notice, NASAA also recommends that, where an associated person or firm is currently or in the past has been involved in an arbitration involving an allegation of a sales practice violation, BrokerCheck include a link that will include

President: Jack E. Herstein (Nebraska)  
Vice President: A. Heath Abshire (Arkansas)  
Past-President: David Massey (North Carolina)  
Executive Director: Russel Luculano

Secretary: Rick Hancox (New Brunswick)  
Treasurer: Fred Joseph (Colorado)  
Ombudsman: Matthew Neubert (Arizona)

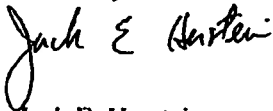
Directors: Steven D. Irwin (Pennsylvania)  
Melanie Senter Lubin (Maryland)  
Andrea Seidt (Ohio)  
Patricia D. Struck (Wisconsin)

Ms. Asquith  
Comments in Response to Regulatory Notice 12-10  
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the relevant arbitration materials (e.g. the statement of claim, the response, and the award). Currently, BrokerCheck provides a link to arbitration awards but this is limited to final awards against associated persons. NASAA urges FINRA to expand the information to include statements of claim, answers, and the final decision regardless of whether a complainant has received a favorable ruling. Similar information involving civil litigation is publicly available in courthouses across the country.

Thank you again for the opportunity to comment on ways to facilitate and increase investor use of BrokerCheck information. NASAA is encouraged by FINRA's efforts to increase transparency and improve the BrokerCheck system. Should you have any questions regarding the comments in this letter, please do not hesitate to contact Joseph Brady, NASAA General Counsel, at [jb@nasaa.org](mailto:jb@nasaa.org) or 202-737-0900.

Sincerely,



Jack E. Herstein  
NASAA President and  
Assistant Director, Nebraska Department of Banking and Finance, Bureau of Securities



April 27, 2012

Marcia E. Asquith  
Office of Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
*pubcom@finra.org*

**Re: FINRA Regulatory Notice 12-10, FINRA BrokerCheck**

Dear Ms. Asquith,

This letter is submitted on behalf of the National Society of Compliance Professionals, Inc. (the "NSCP") in response to the publication of Regulatory Notice 12-10 (the "Notice"), which requests comment on ways to facilitate and increase investor use of information through the Financial Industry Regulatory Authority, Inc.'s ("FINRA's") BrokerCheck program. We appreciate the opportunity to comment on this very important initiative.

**The NSCP**

As you may be aware, the NSCP is a non-profit membership organization with approximately 1,900 securities industry professionals dedicated to developing education initiatives and practical solutions to compliance-related issues. Our members work in the compliance areas of broker-dealers and investment adviser firms and come from firms of all sizes. To our knowledge, NSCP is the largest organization of securities industry professionals in the United States devoted exclusively to compliance.

Our remarks reflect the NSCP's fundamental mission, which is to set the standard for excellence in the securities compliance profession. This commitment is exemplified by, among other things, the time and resources the NSCP, and the industry professionals whose volunteer services it marshals, have devoted in the past five years to the development of a voluntary certification and examination program for compliance professionals.<sup>1</sup>

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<sup>1</sup> Persons who complete NSCP's certification program (CSCP) qualify for the "Certified Securities Compliance Professional" designation.

Marcia E. Asquith - FINRA  
April 27, 2012  
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Our mission is directed at the interests of compliance programs and compliance officers. We accordingly support a regulatory scheme that: (i) promotes practices that support market integrity and the interests of investors; (ii) creates clarity as to a firm's obligations to provide a reasonable system of supervision; (iii) promotes requirements that enable compliance officers to create reasonably workable programs; and (iv) avoids requirements or mandated tasks that are more costly or less efficient in realizing a regulator's public policy objectives, thereby increasing the difficulty facing a compliance officer in the discharge of his or her duties.

### **Information Displayed**

Since the introduction of BrokerCheck in 1988, the amount of information made available through the program has increased considerably. We strongly support the BrokerCheck program. It resulted in increased transparency for the investing public, and has increased investor confidence in the securities personnel with whom they have entrusted their accounts. BrokerCheck is also widely used within the securities industry and in legal matters to evaluate licensed personnel. While increased disclosure is generally positive, NSCP is particularly concerned with the additional disclosures and their potential impact on compliance professionals. We urge FINRA to reconsider this proposal.

### **Examination Scores**

In our view, little is gained by having access to examination scores. In fact, publishing test scores would be potentially misleading, unfair, and is without precedent.

For most professionals in the industry, these examinations were taken at the beginning of their respective careers and, thus, are extremely weak indicators of a person's current knowledge and fitness. Certainly, a person gains far more knowledge and experience through years of practice than he or she did by studying several hours for an examination five, ten, or even twenty years ago. The notion that anyone will make a more informed decision regarding a person's competence by examining his or her performance on tests at a point in time that bears no relationship to the person's present-day abilities is questionable at best. The fact that FINRA has, quite appropriately, adopted continuing education requirements underscores that FINRA itself recognizes that historical test results, standing alone, are not a reliable measure of current regulatory knowledge or fitness. As a result, publishing test scores is likely to misinform by promoting irrelevant information.

Moreover, considering that the content of examinations is constantly updated and improved, it is highly doubtful that scores from examination-to-examination, much less from year-to-year, can or should be meaningfully compared. For example, a person that scores a 75 on the Series 7 examination in 1998 may have performed equally as well as a person that scored an 80 on the Series 7 in 1992. Whether the average person who compares these scores will be misled into believing that the scores represent a fundamental difference between the licensed individuals is unknown, but it seems clear that the risk of misinterpretation and misplaced emphasis on such information outweighs the nominal benefit such disclosure seeks to create.

Marcia E. Asquith - FINRA  
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In addition, there is no indication that the scores on such tests, beyond the pass-fail threshold, reliably measure a person's character or competence. FINRA has not cited a correlation between examination scores and any relevant factor of job performance.

NSCP is unaware of any other professions and industries that have embraced the notion that specific scores on entrance or qualification tests are reliable indicators of character or competence. Notably, neither the medical profession nor the legal profession—the hallmarks of which are experience, integrity and personalized professional advice—have published the professional examination scores of doctors and lawyers in aid of protecting patients and clients. The reasons for not doing so, i.e., that such information has no credible bearing on the experience, integrity or skill of a doctor or lawyer, apply with equal force to the evaluation of the experience, integrity or skill of a FINRA licensed individual.

For these reasons, the publication of examination scores creates the substantial risk that people will gain a false sense of security, and of the relative competence, integrity, professionalism or judgment of licensed individuals. It could also lead people to abdicate their own responsibility of making a properly informed choice about a licensed individual. Encouraging reliance on potentially misleading and largely irrelevant test scores serves neither the interests of investors nor the industry.

For many years, FINRA licensed personnel have taken examinations with the understanding that only they, their firm's registration department, and perhaps their supervisors will be privy to the examination scores. It is also misleading to publish exam scores when they took the exams with the understanding that all they needed to achieve was a passing score, and not the highest score possible. That understanding would certainly have affected the level of preparation of many, if not most. To change these historic practices and publish examination scores decades after the fact is not only categorically unfair, but in the cases of those individuals with relatively low test scores, would also unjustifiably penalize them for the rest of their careers, a consequence that should not be taken lightly.

Faced with the risk of potential adverse consequences flowing from the publication of low test scores, some people may be discouraged from taking additional examinations to earn additional licenses and designations. Consequently, in a profession that values and encourages compliance, continuing education and self-improvement, the publication of scores could have a chilling effect on the advancement of the industry's foundation.

If scores are to be provided, the NSCP strongly encourages FINRA, at the very least, to prominently display a warning that there is no demonstrated correlation between test scores and the person's experience, integrity or performance. This disclosure would be an important safeguard to protect unwary investors from placing undue reliance on the information.

#### **Educational Backgrounds**

For many of the same reasons, disclosure of a person's educational background may also be misleading to investors. There are many exceptional compliance professionals who do not have a college diploma. Conversely, a compliance professional with multiple post-secondary degrees

Marcia E. Asquith - FINRA  
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from prestigious universities and post-graduate institutions may nevertheless be unfit for the job. In short, experience, track record, reputation and solid personal interactions should be the benchmarks for the evaluation of a compliance professional. It is experience, integrity, work ethic and devotion, rather than a person's educational background (or test scores), that are the more relevant indicators of a compliance professional's aptitude and fitness to serve.

**Commercial Use**

FINRA has also proposed providing information about licensed persons to certain companies for commercial use. The NSCP strongly opposes this proposal.

Before sharing information with anyone, for-profit or not, there are certain issues that must be addressed. FINRA is aware of the challenges related to identity theft and maintaining privacy among industry professionals. Any time information is transported from one location to another, or from one party to another, the risks of security and information breaches increase dramatically. While the information contained in BrokerCheck is not necessarily confidential, if the information ends up in the wrong hands, certain unintended and unforeseeable consequences could emerge. Once FINRA has "sold" the information, it could lose control over its use. For example, for-profit companies could organize and sort the data provided by FINRA to "rank" licensed individuals based on meaningless, or at best, questionable measures. As a result, investors could be misled by statistically meaningless distinctions.

BrokerCheck is easy to access, and is widely used, by investors. As a result, neither investors nor licensed individuals nor firms stand to gain anything meaningful or valuable if the same information already accessible through BrokerCheck is sold by FINRA to commercial vendors. The potential for abuse and misuse of this information by commercial vendors and the risk of investor exploitation outweigh any benefits from selling BrokerCheck information to unregulated third parties whose motives and incentives may not be aligned with brokers, firms or customers.

\* \* \* \* \*

Thank you for your attention to these comments. The NSCP appreciates the opportunity to submit comments in response to the Notice and would welcome the opportunity to answer any follow-up questions FINRA has on this submission. Questions regarding the foregoing should be directed to the undersigned at 860.672.0843.

Very truly yours,



Joan Hinchman  
Executive Director, President and CEO  
*jhinchman@nscp.org*

**Exhibit 5**

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) through (b) No Change.

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

(A) No Change.

(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) No Change.

(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 an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement; or

(iii) No Change.



(2) No Change.

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) through (f) No Change.

**••• Supplementary Material: -----**

**.01** No Change.

**.02** No Change.

\* \* \* \* \*