



NASAA

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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May 11, 2010

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: File Number SR-FINRA-2010-012: Self Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

Dear Ms. Murphy:

The North American Securities Administrators Association, Inc. ("NASAA")<sup>1</sup> submits the following comments in response to the above referenced rule proposal. Historically, NASAA has supported efforts by FINRA to expand the information available on BrokerCheck. Our support, however, has been tempered by FINRA's decisions to impose limitations on this information. As to the release referenced above, NASAA again commends FINRA for taking steps to increase the scope of BrokerCheck but suggests, in the interest of investor protection, that the scope be more fully expanded as discussed herein to provide important information to the investing public.

*Summary of Release*

FINRA Rule 8312 governing the information available to the public through BrokerCheck creates a bifurcated system based on an individual's registration status. There are essentially two categories of registration status – currently registered or formerly registered. The information that is displayed on BrokerCheck is dependent on an individual's registration status.

As explained in the release, FINRA is proposing to change from two years to ten years the limit for disclosure of information on BrokerCheck for formerly registered persons. FINRA also proposes making permanent the disclosure of certain information for formerly registered persons. Currently only final regulatory actions against formerly registered persons are permanently displayed. FINRA is proposing to add to this category guilty or nolo contendere pleas for crimes; civil injunctions that are issued in connection with investment related activity or a civil judgment for violation of any investment related statute or regulation; and, awards issued by a

<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

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Melanie Senter Lubin (Maryland)

court or arbitration panel where the person was a defendant in a matter that alleged a sales practice violation.

FINRA is also proposing to add additional disclosure information for currently registered persons. Specifically, FINRA proposes to display historic complaints on BrokerCheck. Historic complaints are generally customer complaints that were reported on a registration form but are more than two years old and have not been resolved or customer complaints, arbitrations, or civil court cases that have been resolved for less than the reporting dollar threshold. Currently historic complaints are only disclosed if they meet certain disclosure criteria.<sup>2</sup> FINRA is proposing the deletion of these criteria.

### *Comments*

In order to ensure that investors have access to the important information contained in CRD we urge FINRA to abandon the bifurcated system currently in place for BrokerCheck in favor of a more straightforward approach. Simply put, the information that FINRA is proposing to make available for currently registered individuals should be the same information available for formerly registered individuals. Moreover, the scope of the disclosure should be expanded as discussed below

FINRA's decision to distinguish between the types of information available for currently registered and formerly registered individuals is unnecessarily complicated and creates significant gaps in the information available to the public. For instance, FINRA would disclose historic complaints for currently registered persons but, after the ten year period expired following the termination of a registration, would not include such disclosure for formerly registered persons. One of the most significant gaps in the disclosure of information concerns settlements with customers. This information, which is covered in questions 14I(1)(c), 14I(1)(d), 14I(2)(a) and 14I(2)(b) of the Form U4, would only be disclosed if an individual is currently registered and then for ten years after his or her registration was terminated.

To put this in the context of a real-world example, a registered representative can settle a customer dispute for millions of dollars. That settlement would be disclosed on BrokerCheck for the period in which the representative is registered and for a period of up to ten years after the representative is no longer registered. After the tenth year, this settlement will no longer be reflected on the formerly registered person record if in fact his record continues to be displayed at all.

FINRA notes that these expanded disclosures for former registered persons would allow the public access to relevant and important information about formerly registered persons. FINRA maintains that expanding the information available for formerly registered persons is necessary

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<sup>2</sup> Currently, Rule 8312 provides that historic complaints may be displayed in BrokerCheck only after the following conditions have been met: (1) a matter became a historic complaint on or after March 19, 2007; (2) the most recent historic complaint or currently reported customer complaint, arbitration or litigation is less than ten years old; and, (3) the person has total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or historic complaints, or any combination thereof.

in order to assist investors with making informed decisions about the individuals and firms with which they may wish to conduct investment related business. The information reported on Form U4 questions 14I(1)(c), 14I(1)(d), 14I(2)(a) and 14I(2)(b) is extremely important to someone evaluating whether or not to purchase a mortgage or an insurance policy from a formerly registered person. It would be a significant disclosure gap if the public were unaware of a formerly registered person's involvement in a multi-million dollar securities related settlement.

We also remain concerned with FINRA's decision to exclude other critical information. Specifically, and regardless of registration status, BrokerCheck, will not include details on felony charges; misdemeanor charges involving investment related business, fraud, wrongful taking of property, bribery, perjury, forgery, and other crimes of property; employment terminations relating to allegations of violations of investment related statutes or fraud; or bankruptcy and unsatisfied judgments or lien information. This information is captured on the U4 and is available to the public under most state open records laws which leads us to question why this information is not also included on BrokerCheck.

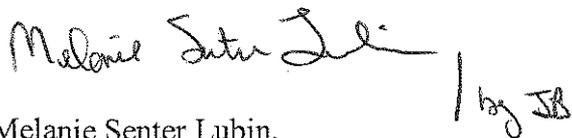
FINRA also proposes the codification of a system for disputing information that is displayed on BrokerCheck. We understand the need for such a system and, while not commenting on the specifics of the process as contained in the proposal, would ask that FINRA clarify whether or not prohibitions on false filings would apply to the filings made under the dispute process.

#### *Conclusion*

In conclusion, while we commend FINRA for taking steps to expand the information available on BrokerCheck we urge FINRA to reconsider its approach. Perpetuating, under the expanded disclosure system, the existing disparate levels of disclosure will not close current gaps and will continue the problem that investors are denied access to important information. We suggest that FINRA simply eliminate the distinction between currently registered persons and formerly registered persons and expand the scope of BrokerCheck as outlined above.

Should you have any questions regarding the comments herein please contact the undersigned by phone at 410-576-6365 or email at [mlubin@oag.state.md.us](mailto:mlubin@oag.state.md.us).

Sincerely,

Handwritten signature of Melanie Senter Lubin in cursive script. To the right of the signature, there is a vertical line followed by the initials "by JB".

Melanie Senter Lubin,  
Maryland Securities Commissioner and  
Chair, NASAA CRD/IARD Steering Committee