



May 13, 2010

Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Re: Release No. 34-61927; File No. SR-FINRA-2010-012; Notice of Filing of  
Proposed Rule Change to Amend FINRA Rule 8312 (BrokerCheck Disclosure)

Dear Ms. Murphy:

The Small Firms Committee of the Securities Industry and Financial Markets Association (the “Committee”)<sup>1</sup> welcomes the opportunity to comment on the proposed amendments to FINRA Rule 8312 (FINRA BrokerCheck Disclosure) (the “Rule”).<sup>2</sup> FINRA is proposing to: (1) expand the information released through BrokerCheck, both in terms of scope and time disclosed; and (2) establish a process to dispute the accuracy of (or update) information disclosed through BrokerCheck.

The Committee generally supports FINRA’s proposed expansion of BrokerCheck to make additional information available to investors through BrokerCheck and appreciates FINRA’s periodic evaluation of all aspects of the BrokerCheck program. Specifically, the Committee agrees with FINRA’s proposal to: (1) expand the BrokerCheck disclosure period for former associated persons of a member from two years to ten years; (2) permanently make publicly available in BrokerCheck certain information about former associated persons of a member; and (3) subject to our comments below, make publicly

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<sup>1</sup> The Securities Industry and Financial Markets Association (“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).

<sup>2</sup> Securities Exchange Act Release No. 61927 (April 16, 2010), 75 FR 21064 (April 22, 2010) (hereinafter the “Proposal”).

available in BrokerCheck all Historic Complaints of customers that were archived after the implementation of Web CRD.<sup>3</sup>

Although the Committee generally supports FINRA's proposal, the Committee respectfully submits the following comments on the proposed BrokerCheck Dispute Process. FINRA is proposing to enhance and codify the process for determining whether the information disclosed about a registered person is still accurate or whether the information should be modified or removed from BrokerCheck. We applaud FINRA's acknowledgement of "the need for a formalized process for disputing the accuracy of (or updating) information displayed through BrokerCheck."<sup>4</sup>

In order to further enhance the due process rights of affected personnel, however, the Committee suggests that FINRA establish a standing national BrokerCheck Record Review Committee comprised of industry and non-industry members. The BrokerCheck Record Review Committee ("Review Committee") would be charged with responsibility for investigating BrokerCheck inquiries and making determinations with respect to: (1) the eligibility of the inquiry; and (2) whether the information subject to the inquiry is accurate or if the information should be updated, modified or deleted from BrokerCheck. This new Review Committee, and its investigation proceedings, could be modeled after FINRA's National Adjudicatory Council (the "NAC"), and could be constituted as a subcommittee of the NAC. Alternatively, we suggest that the responsibilities of the Review Committee could be added to the portfolio of responsibilities that currently exist within the NAC.<sup>5</sup> In either event, we believe that establishing a standing committee of this sort to review disputed information in BrokerCheck should help to ensure due process rights for registered personnel.

In addition, the Small Firms Committee believes that, as a matter of fundamental fairness, any Historic Complaints included in BrokerCheck that have not been adjudicated or otherwise resolved should include prominent disclosure at the beginning of the BrokerCheck entry indicating that the information is based solely on the customer's allegations and has not been finally determined by a court, arbitration panel, or other trier of fact.

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<sup>3</sup> The term "Historic Complaints" is defined in proposed FINRA Rule 8312(b)(2)(G) as "the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and that have not been settled or adjudicated, and customer complaints, arbitrations, or litigations that have been settled for an amount less than \$10,000 prior to May 18, 2009 or an amount less than \$15,000 on or after May 18, 2009 and are no longer reported on a Registration Form.

<sup>4</sup> Proposal at 21067.

<sup>5</sup> The Small Firms Committee recognizes that the initial volume of inquiries to be reviewed through the BrokerCheck Dispute Process could be substantial. The Committee believes, however, that after the first 24 to 36 months of operation, the volume of review requests will drop considerably, thus permitting the Review Committee to meet less frequently.

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SIFMA's Small Firms Committee appreciates the opportunity to comment on the proposed rule to enhance investor protection by expanding the information disclosed to investors and other users of BrokerCheck. If you need further information, or if you have any questions regarding these comments, please contact me or Robert F. Gannon, Vice President, Private Client Group at (212) 313-1287; or [rgannon@sifma.org](mailto:rgannon@sifma.org).

Sincerely,

A handwritten signature in black ink, appearing to read "E. John Moloney". The signature is written in a cursive style with a large initial "E" and "M".

E. John Moloney  
President and CEO  
Moloney Securities Company, Inc. and  
Chairman, SIFMA Small Firms Committee

cc: Robert F. Gannon, SIFMA  
James T. McHale, SIFMA