

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90778; File No. SR-FINRA-2020-045)

December 22, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 16, 2020, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure). The proposed rule change would (1) make information about formerly registered individuals subject to a final regulatory action available through BrokerCheck[®] on a permanent basis only for those individuals who have been registered on or after August 16, 1999; and (2) exclude information from BrokerCheck about deceased individuals. The proposed rule change also would make non-substantive, technical changes to FINRA Rule 8312.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

BrokerCheck Program

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 member firms and their associated persons. 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 request information only via U.S. mail or facsimile. FINRA subsequently added the ability to submit requests via a toll-free telephone number in 1991 and then through email in

1997.³ Now BrokerCheck reports are available instantly online at <https://brokercheck.finra.org/>.⁴ 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 through BrokerCheck. The information currently available to investors through BrokerCheck 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.

The information displayed through BrokerCheck generally is derived from the Central Registration Depository (“CRD[®]”).⁵ The CRD system is the central licensing and registration system used by the U.S. securities industry and its regulators. In general, information in the CRD system is obtained through the uniform registration forms that firms and regulatory authorities complete as part of the securities industry registration and licensing process.⁶ These

³ Congress in 1990 amended Exchange Act Section 15A to require FINRA to establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its member firms and their associated persons, and promptly respond to such inquiries in writing. See Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, 104 Stat. 931 (1990). See also Notice to Members 00-16 (March 2000).

⁴ In 2006, Congress again amended Exchange Act Section 15A to, among other things, expand the methods by which BrokerCheck information is made available. See Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, 120 Stat. 1317 (2006).

⁵ The concept for the CRD system was developed by FINRA jointly with the North American Securities Administrators Association (“NASAA”). The CRD system fulfills FINRA’s statutory obligation to establish and maintain a system to collect and retain registration information. NASAA and state regulators play a critical role in the ongoing development and implementation of the CRD system.

⁶ 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).

forms, particularly Forms U4 and U5, collect administrative, regulatory, criminal history, financial and other information about brokers, while Form BD collects similar information about broker-dealer firms.⁷ FINRA, state and other regulatory authorities use this information in connection with their licensing and regulatory activities, and member firms use this information to help them make informed employment decisions. As of November 30, 2020, FINRA had processed over 57 million registration approvals for brokers and investment adviser representatives in the CRD system over a period spanning more than 20 years.

Pursuant to rules approved by the SEC, FINRA makes specific information in the CRD system publicly available through BrokerCheck.⁸ BrokerCheck is part of FINRA's ongoing effort to help investors make informed choices about the brokers and broker-dealer firms with which they may conduct business. BrokerCheck maintains information on the approximately 3,550 registered broker-dealer firms and 624,600 registered brokers. BrokerCheck also provides the public with access to information about formerly registered broker-dealer firms and brokers.⁹

⁷ FINRA and NASAA jointly drafted the Forms U4 and U5, and both organizations collaborate in the development of any proposed amendments to these Forms. Form BD is the SEC's registration form for broker-dealer firms.

⁸ Section 15A of the Exchange Act requires FINRA to provide registration information to the public. BrokerCheck is one of the tools through which FINRA disseminates this information to the public. There is a limited amount of information in the CRD system that FINRA does not display through BrokerCheck, including personal or confidential information. A detailed description of the information made available through BrokerCheck is available at <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck>.

⁹ Formerly registered brokers, 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. BrokerCheck provides information on more than 17,120 formerly registered broker-dealer firms and 554,170 formerly registered brokers. Reports are available through BrokerCheck for 10 years after a broker leaves the industry, and brokers who are the subject of disciplinary actions and certain other events remain on BrokerCheck permanently.

In the first 11 months of 2020, BrokerCheck helped users conduct more than 35 million searches of firms and brokers.

FINRA believes that there are changes it can make to BrokerCheck to make the information more useful and relevant for investors and other users of the system. Accordingly, FINRA is proposing to amend FINRA Rule 8312 to (1) make information about final regulatory actions available through BrokerCheck on a permanent basis only for those individuals who have been registered on or after August 16, 1999; and (2) exclude information from BrokerCheck about deceased individuals.¹⁰

Proposed Rule Change

(A) Permanent Inclusion of Individuals Subject to Aged Final Regulatory Actions

Under FINRA Rule 8312(c)(1), information is made available through BrokerCheck on a permanent basis for those formerly registered individuals who:

- are the subject of a final regulatory action;
- have been convicted of or pled guilty or nolo contendere to a crime;
- were the subject of a civil injunction in connection with investment-related activity, a civil court finding of involvement in the 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
- were named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation that alleged the person was involved in a sales practice

¹⁰ FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers (“CABs”), given that the CAB rule set incorporates the impacted FINRA rule by reference.

violation and which resulted in an arbitration award or civil judgment against the individual.

Information about individuals formerly registered with FINRA (or a registered national securities exchange that uses the CRD system for registration purposes) who have been involved in the above disclosure events (“Permanent Disclosure Events”), except final regulatory actions, is made available on a permanent basis through BrokerCheck only if the individual has been registered on or after August 16, 1999.¹¹ There is no such registration date limitation with respect to formerly registered individuals subject to a final regulatory action, so information about these individuals is made available on a permanent basis through BrokerCheck even if their most recent registration terminated prior to August 16, 1999. This discrepancy between the availability of information for individuals subject to final regulatory actions and for individuals involved in the other Permanent Disclosure Events developed because FINRA expanded the scope of information made permanently available through BrokerCheck in two phases.

Information about formerly registered individuals subject to a final regulatory action was first made available through BrokerCheck on a permanent basis in 2009.¹² As mentioned above, this increase in the time frame that information about formerly registered individuals subject to a final regulatory action is provided through BrokerCheck applies regardless of when the individual was registered. Data limitations, however, affect the BrokerCheck reports of a number of the individuals subject to final regulatory actions who were no longer registered at the time the Web CRD system was implemented on August 16, 1999. The BrokerCheck reports of

¹¹ On this date, FINRA moved from the paper-based Legacy CRD system to the internet-based Web CRD system.

¹² See Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (Order Approving File No. SR-FINRA-2009-050).

many such individuals contain minimal information about the final regulatory action and no administrative or qualification information.¹³ In addition to the data limitations, FINRA staff also must manually create BrokerCheck reports for these individuals due to the fact that their information is not available in the Web CRD system.¹⁴

In 2010, FINRA again expanded BrokerCheck to permanently make publicly available information about formerly registered individuals who had been involved in any of the Permanent Disclosure Events, other than final regulatory actions.¹⁵ At that time, FINRA proposed applying the expansion only to those individuals who have been registered on or after August 16, 1999, due to the limitations applicable to the information available for some individuals who were no longer registered prior to that date.¹⁶ FINRA also noted that the registration date limitation was warranted because, since the implementation of the Web CRD system, FINRA had used the information in that database to generate BrokerCheck reports.¹⁷

Therefore, FINRA proposes an amendment to FINRA Rule 8312(c)(1) to harmonize the Permanent Disclosure Events categories to make information about formerly registered

¹³ Some of the unavailable information for individuals subject to a final regulatory action whose most recent registration terminated before August 16, 1999, includes registration history, industry examinations the individual has passed, employment history, and other business activities. The lack of information is due in part to the changes in the uniform registration forms. Specifically, Forms U4 and U5 have been revised on a number of occasions since 1999 and now elicit information that previously was not elicited by those Forms.

¹⁴ BrokerCheck is able to automatically generate reports for those individuals whose information is in the Web CRD system because the information in the system is in a web-based format. The automatic generation of BrokerCheck reports is not possible for individuals whose information is in the paper-based Legacy CRD system.

¹⁵ See Securities Exchange Act Release No. 62476 (July 8, 2010), 75 FR 41254 (July 15, 2010) (Order Approving File No. SR-FINRA-2010-012).

¹⁶ See supra note 15.

¹⁷ See supra note 15.

individuals subject to a final regulatory action available in BrokerCheck on a permanent basis only for those individuals who have been registered on or after August 16, 1999.¹⁸ While the proposal would affect the availability of information displayed through BrokerCheck for certain formerly registered individuals, these individuals will not have been registered (and therefore not engaged in the securities business) for more than 21 years.¹⁹ In addition, the limited information available about the final regulatory actions for a number of these individuals, as well as the lack of administrative and qualification information,²⁰ may make the information of minimal use or relevance to BrokerCheck users.²¹

(B) Exclusion of Information Pertaining to Deceased Individuals

Information is available through BrokerCheck for individuals who are currently registered, whose registration was terminated within the preceding 10 years, and on a permanent basis as described in the preceding section. In most circumstances, these time frames for inclusion in BrokerCheck are applied to all individuals and result in information about deceased individuals being displayed in BrokerCheck.

¹⁸ The proposal would affect the availability of information in BrokerCheck for approximately 14,750 formerly registered individuals whose last registration ended before August 16, 1999, and whose report is available through BrokerCheck solely because they are the subject of a final regulatory action.

¹⁹ Although no BrokerCheck report will be available for those formerly registered individuals who subsequently register only as an investment adviser representative after August 16, 1999, BrokerCheck will note that information about the individual is available on IAPD. Such an individual's IAPD report will include information about the final regulatory action.

²⁰ See supra note 13.

²¹ Although information about these aged final regulatory actions would be removed from BrokerCheck, the information would remain in the CRD system and available to securities regulators and member firms.

There is very little investor protection value to the inclusion of information about deceased individuals in BrokerCheck. In addition, maintaining information about a deceased individual in BrokerCheck may result in unnecessary distress for the individual's family and possibly make it easier for someone to steal the deceased person's identity in an attempt to defraud investors.²² Therefore, FINRA proposes to amend FINRA Rule 8312(g) to specify that information about a deceased individual would be removed from BrokerCheck 180 days after the individual's last registration date.²³ FINRA further proposes that, after the 180 days, FINRA would provide BrokerCheck information on a deceased individual in response to a written request where the information is requested for a legal, regulatory or compliance purpose.²⁴

(C) Technical Changes

FINRA is also proposing non-substantive, technical changes to FINRA Rule 8312 that would (1) delete, with respect to BrokerCheck Firms, the phrase "current or former" from FINRA Rules 8312(b)(1) and (b)(2)(H) as this phrase is redundant; (2) delete the unnecessary numeral 2 pertaining to the age of customer complaints from FINRA Rule 8312(b)(2)(G); and (3) clarify in FINRA Rule 8312(c) that the term "final regulatory action" is used (rather than defined) in Form U4.

²² Last year, FINRA issued an Investor Alert about an unregistered individual using an altered BrokerCheck report to impersonate a registered investment professional.

²³ Information about an individual would be removed from BrokerCheck only upon documentary evidence that the individual is deceased, such as a Form U5 with a reason for termination of "deceased" or a newspaper obituary or death certificate provided by an executor, family member or other party.

²⁴ FINRA would provide information on a deceased individual in response to a written request for up to 10 years after the individual's last registration date unless any of the events set forth in proposed FINRA Rules 8312(c)(1)(A)-(D) applies to the individual, in which case the 10-year limitation would not apply.

If the Commission approves 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 90 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,²⁵ 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.

The proposed rule change will harmonize the information available through BrokerCheck, that is available to investors and other users of the system, about formerly registered individuals who have been involved in Permanent Disclosure Events, including final regulatory actions. Moreover, making information about final regulatory actions available in BrokerCheck on a permanent basis only for those individuals who are registered on or after August 16, 1999, will remove information that is limited with respect to the regulatory action, lacks administrative and qualification information, and involves individuals who have not been in the securities industry for decades. Thus, the proposed rule change will make information presented in BrokerCheck more useful and relevant for investors and other users of the system.

In addition, excluding information from BrokerCheck about deceased individuals will reduce potential distress for a deceased individual's family and possibly make it more difficult for someone to steal the deceased person's identity in an attempt to defraud investors. Although

²⁵ 15 U.S.C. 78q-3(b)(6).

the information on deceased individuals will no longer be in BrokerCheck, the information will continue to be available for legal, regulatory or compliance purposes upon written request.

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

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

Economic Impact Assessment

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

Regulatory Need

BrokerCheck provides the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. FINRA believes, however, that some information presented in BrokerCheck is of minimal use or relevance for investors and other users of the system. Accordingly, FINRA is proposing to remove some information that is displayed or can be accessed through BrokerCheck.

Economic Baseline

The economic baseline for the proposed rule change is the current rule that addresses the types of information displayed in BrokerCheck. In general, the proposed rule change may affect those users of BrokerCheck for whom the removed information may have been relevant. The proposed rule change also may affect individuals who may be adversely impacted by the maintenance of information about a deceased individual in BrokerCheck.

The information displayed in BrokerCheck is derived from the CRD system. In general, the information enables users to make informed decisions regarding the firms currently registered as broker-dealers and the individuals currently registered as brokers. BrokerCheck maintains information on approximately 3,550 firms currently registered as broker-dealers and 624,600 individuals currently registered as brokers. As noted above, BrokerCheck also maintains information on more than 17,120 formerly registered broker-dealer firms and 554,170 formerly registered brokers.²⁶

Decisions include the choice of firms or individuals with whom to do business or employ, and the choice of firms with which to seek employment. The review and consideration of this information before the selection of an individual or firm with which to do business or to employ may improve investor protections by increasing the ability of users to understand the potential risk of misconduct. Disclosure events reported to the CRD system have been found to be predictive of future misconduct.²⁷

Economic Impacts

The proposed rule change would remove some information currently available through BrokerCheck. This information relates to the final regulatory actions of individuals who have not been registered since August 16, 1999, and deceased individuals.²⁸ We discuss the costs and

²⁶ See supra note 8 for a further discussion of the information that is available through BrokerCheck.

²⁷ See Hammad Qureshi & Jonathan Sokobin, Do Investors Have Valuable Information About Brokers? (2015), <https://www.finra.org/sites/default/files/OCE-Working-Paper.pdf>. See also Mark Egan, Gregor Matvos & Amit Seru, The Market for Financial Adviser Misconduct, 127(1) *Journal of Political Economy* 233-295 (2019); and Stephen G. Dimmock, & William C. Gerken, Predicting Fraud by Investment Managers, 105(1) *Journal of Financial Economics* 153-173 (2012).

²⁸ As noted above, approximately 14,750 individuals whose last registration ended before August 16, 1999 have a record in BrokerCheck solely because they are the subject of a final regulatory action that occurred before that date. See supra note 18. In general,

benefits of the proposed rule change below. To the extent that the information remains available online (i.e., discoverable through routine internet searches), however, then the potential benefits and costs of the proposed rule change may be mitigated.

The proposed amendments relating to deceased individuals would reduce the ability for someone to steal the deceased individual's identity in an attempt to defraud investors. This may increase investor protections to the extent someone would use the information to defraud investors, and decrease the potential costs to the families of the deceased individuals (e.g., time and distress) to resolve matters relating to identity theft.

Although the information may be of minimal use or relevance to investors and other users of BrokerCheck, the proposed rule change may impose costs on certain users of BrokerCheck who would otherwise utilize the information that would be removed. For example, the former customers of a deceased broker may use BrokerCheck as a resource to evaluate the potential for previous misconduct in their own account. Instead of obtaining the information through BrokerCheck, these investors would incur the costs associated with submitting a written request to obtain the information.

The information available through BrokerCheck may change over time as a result of the exclusion of information relating to the final regulatory actions of individuals who have not been registered since August 16, 1999, and deceased individuals, which may result in different collections of BrokerCheck data.²⁹ The changes to data collections is dependent, in part, on the

FINRA is not able to identify those individuals in BrokerCheck who are deceased, unless it receives documentary evidence that the individual is deceased.

²⁹ In July 2017, FINRA revised the BrokerCheck Terms of Use to allow "scraping" for academic use. Academic and other users are obligated to comply with the other applicable provisions of the Terms of Use. Academics have collected, in bulk, data from the BrokerCheck website. See, e.g., Mark Egan, Gregor Matvos & Amit Seru, The

number of deceased individuals who would have their information excluded. As the number of deceased individuals for whom information is available through BrokerCheck is uncertain, so is the effect of the proposed rule change on future data collections.

Alternatives Considered

An alternative to the proposed rule change would be to propose a different number of days for removing a deceased individual's information from BrokerCheck. A period longer (shorter) than the proposed 180 days after the individual's last registration may increase (decrease) the ability of investors to readily obtain information about a deceased broker with which they did business prior to the broker's death or examine the misconduct of individual brokers at the firm level. A period longer (shorter) than the proposed 180 days, however, may increase (decrease) the potential for identity theft.

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

Written comments were neither solicited nor received.

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

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

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Market for Financial Adviser Misconduct, 127(1) *Journal of Political Economy* 233-295 (2019).

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2020-045 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2020-045. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons

submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-045 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.³⁰

Eduardo A. Aleman
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).