

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71196; File No. SR-FINRA-2013-048)

December 27, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Expand the Categories of Civil Judicial Disclosures Permanently Included in BrokerCheck

I. Introduction

On November 1, 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² 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 proposal was published for comment in the Federal Register on November 20, 2013.³ The Commission received four comments on the proposal.⁴ This order approves the proposed rule change.

II. Description of the Proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70876 (November 14, 2013), 78 FR 69728 (November 20, 2013) (“Notice”).

⁴ See letters to Elizabeth M. Murphy, Secretary, Commission, from: Sneha Parmar and Jeffrey Peters, Student Interns, and Elissa Germaine, Supervising Attorney, Pace Investor Rights Clinic, Pace University School of Law, dated December 9, 2013 (“Pace letter”); Jason Doss, President, Public Investors Arbitration Bar Association, dated December 9, 2013 (“PIABA letter”); David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, dated December 11, 2013 (“FSI letter”); and Andrea Seidt, North American Securities Administrators Association, Inc., President and Ohio Securities Commissioner, dated December 13, 2013 (“NASAA letter”).

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[®]”), which is 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 certain of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

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 ten years. Under Rule 8312(c)(1), FINRA currently 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 made publicly available in BrokerCheck to include

information about former associated persons of a member who were registered on or after August 16, 1999⁵ 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.⁶ This information is currently available in BrokerCheck for ten years from the date an individual ceases to be associated 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, FINRA noted that one civil action involving excessive and undisclosed markups was settled for over \$200,000. As such, FINRA stated that the proposed rule change would provide the public with 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.⁷

⁵ The proposal will apply only to those individuals registered with FINRA on or after August 16, 1999. FINRA stated that 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, FINRA stated that data limitations apply to the information available for some of those individuals. See Notice, *supra* note 3.

⁶ This information is currently elicited by Question 14H(1)(c) on Form U4 (Uniform Application for Securities Industry Registration or Transfer).

⁷ In January 2011, Commission staff released a Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers (“Study”), in furtherance of Section 919B of the Dodd-Frank Act. The Study is available online at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>. The Study contains four recommendations for improving investor access to registration information through BrokerCheck. FINRA stated that it implemented three of these recommendations in May 2012, which are to (i) unify search returns for BrokerCheck and the Investment Adviser Public Disclosure (IAPD) database, (ii) add the ability to search BrokerCheck by zip code, and (iii) increase the educational content on BrokerCheck. FINRA stated that it is currently working on the Study’s fourth recommendation, which is to analyze the

III. Summary of Comments

The Commission received four comment letters on the proposed rule change.⁸ Three comments support the proposal.⁹ One of these commenters suggests FINRA should go further and include in BrokerCheck all information that is available on CRD reports absent a compelling reason to do otherwise.¹⁰ The commenter suggests, for example, that BrokerCheck should include information regarding an associated person's educational background, continuing education history, CRD filing history, and reasons for and comments related to a person's termination, among other things.¹¹

One commenter states that it is concerned that the proposal may lead to individuals uninvolved in the alleged violations that were dismissed pursuant to a settlement agreement having a permanent record on BrokerCheck when no such violation actually occurred.¹² For

feasibility and advisability of expanding information available through BrokerCheck, as well as the method and format in which BrokerCheck information is displayed. FINRA stated that, in light of this recommendation, FINRA initiated a review of BrokerCheck and issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck. See Regulatory Notice 12-10 (February 2012) available online at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125621.pdf>. In addition, FINRA stated that it engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program. FINRA stated that it filed this proposed rule change based on this evaluation, and that it continues to consider other comments regarding changes to BrokerCheck that were submitted in response to Regulatory Notice 12-10. See Notice, supra note 3.

⁸ See supra, note 4.

⁹ See Pace, PIABA, and NASAA letters.

¹⁰ See NASAA letter.

¹¹ Id. at 2.

¹² See FSI Letter.

example, this commenter states that the proposed rule may capture individuals who were named in the regulatory action but did not have the opportunity to be dismissed from the litigation due to the settlement agreement.¹³ While the Commission appreciates this commenter's concerns, the Commission notes that the information that is the subject of this proposed rule change (i.e., an investment related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement) is already provided via BrokerCheck for current members as well as persons who have been associated with a member within the preceding ten years, and that this proposal simply expands the disclosure to make this information permanently available. Furthermore, to the extent a current or formerly associated person believes that the information disclosed through BrokerCheck relating to him is inaccurate or not accurately presented, he can initiate a dispute with FINRA to update, modify, or delete that information pursuant to FINRA Rule 8312(e).

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁴ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

¹³ Id.

¹⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78o-3(b)(6).

system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the proposal 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 may help deter fraudulent and manipulative conduct and 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. The Commission believes that it is beneficial to investors and other users of BrokerCheck to have access to this information on a permanent basis. The Commission urges the public to utilize BrokerCheck as well as all other sources of information, particularly the databases of the state regulators, as well as legal search engines, and records searches, in conducting a thorough search of a firm or any associated person with whom they are considering doing business.

The Commission believes that the proposed rule change is also consistent with the provisions of Section 15A(i)(1) of the Act,¹⁶ which require, among other things, FINRA to maintain a toll-free telephone listing and a readily accessible electronic or other process to receive and promptly respond to inquiries regarding registration information on members and their associated persons. The proposed rule change would allow FINRA, in response to inquiries via BrokerCheck, to make available certain information about persons formerly associated with members who were the subject of an investment-related civil action brought by a state or foreign

¹⁶ 15 U.S.C. 78o-3(i)(1).

financial regulatory authority that has been dismissed pursuant to a settlement agreement on a permanent basis, rather than for ten years from the date an individual ceases association with a member.

Finally, as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck, reviewing what additional information could be disclosed, such as the additional information that NASAA suggested in its comment letter, because BrokerCheck is a valuable tool for the public to use in deciding whether to work with a firm or an industry member.¹⁷ The Commission believes that this proposed rule change will enhance BrokerCheck by including information that should prove useful and beneficial to investors and the general public.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the

¹⁷ See, e.g., Securities Exchange Act Release Nos. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009) and 62476 (July 8, 2010), 75 FR 41254 (July 15, 2010).

¹⁸ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-FINRA-2013-048), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Lynn M. Powalski
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).