

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76359; File No. SR-FINRA-2015-032)

November 5, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Reduce the Waiting Period for the Release of Information Reported on Form U5

I. Introduction

On September 14, 2015, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “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 reduce the 15-day waiting period for the release of information reported on Form U5 (Uniform Termination Notice for Securities Industry Registration) through BrokerCheck. The proposed rule change was published for comment in the Federal Register on October 1, 2015.³ The Commission received two comment letters on the proposed rule change.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

BrokerCheck provides the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. The information that FINRA releases through BrokerCheck is derived from the Central Registration

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75988 (September 25, 2015), 80 FR 59215 (“Notice”).

⁴ See Letter from Joseph C. Peiffer, President, Public Investors Arbitration Bar Association, dated October 19, 2015 (“PIABA Letter”) and Letter from Denise M. Hammond, Law Student, Barry University, dated October 22, 2014 (“Hammond Letter”).

Depository (“CRD”), 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.⁵

Rule 8312 governs the information that FINRA releases to the public through BrokerCheck. Pursuant to this rule, most of the information that FINRA releases through BrokerCheck is made available the day after it is filed with the CRD system.⁶ Rule 8312(d)(5), however, prohibits FINRA from releasing Form U5 information for 15 days following the filing of such information. According to FINRA, this 15-day waiting period was established to give brokers on whose behalf the Form U5 was submitted an opportunity to comment on the disclosure event either through a Form U4, or by submitting a comment directly to FINRA to be included on BrokerCheck.⁷

FINRA has proposed to shorten this 15-day waiting period for the release of Form U5 disclosure information. Specifically, the proposed rule change will amend Rule 8312(d)(5) to provide that FINRA shall not release events reported on Section 7 of Form U5 (other than “Internal Review Disclosure” events) for three business days after FINRA’s processing⁸ of the

⁵ FINRA discloses through BrokerCheck information that is reported on the following uniform registration forms: Form U4 (Uniform Application for Securities Industry Registration or Transfer); Form U5 (Uniform Termination Notice for Securities Industry Registration); Form U6 (Uniform Disciplinary Action Reporting Form); Form BD (Uniform Application for Broker-Dealer Registration); and Form BDW (Uniform Request for Broker-Dealer Withdrawal).

⁶ See Notice, supra note 3, at 59216.

⁷ See Securities Exchange Act Release No. 55127 (January 18, 2007), 72 FR 3455 (January 25, 2007) (Order Approving File No. SR-NASD-2003-168).

⁸ FINRA states that, for purposes of the proposed rule change, a Form U5 will be considered processed once the Disclosure Reporting Page, which contains the details about a disclosure event, has been reviewed by FINRA staff. FINRA states that most Forms U5 that contain disclosure information are processed within two days of being filed with the CRD system. See Notice, supra note 3, at 59216, n.7.

filing.⁹ However, if an event is reported on Form U5 and the same event is thereafter reported on Form U4 before the three-business-day period expires, FINRA will release the Forms U4 and U5 information simultaneously upon processing; this three-business-day period may be shortened.¹⁰

III. Comment Letters

Commenters support the proposal.¹¹ One commenter, while supporting the proposed rule change, believes that FINRA needs to go further to “address and correct the present system that allows for the routine expungement of customer claims” from BrokerCheck and to expand the information available to the public through BrokerCheck to include more comprehensive CRD disclosure information that is currently available through some state legacy CRD systems.¹² Another commenter noted that releasing information sooner protects the public and reduces the chance that an investor might deal with a broker who has been terminated.¹³

IV. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.¹⁴

⁹ For example, if disclosure information on Form U5 is processed on Monday, FINRA would release that information via BrokerCheck on Thursday.

¹⁰ For example, if FINRA processes a disclosure event reported on Form U5 on Monday, and on Tuesday processes a Form U4 filed by a broker reporting that event, the Form U5 information would be made publicly available in BrokerCheck on Wednesday, which is the same day that the Form U4 information would be released.

¹¹ See PIABA Letter at 1 and Hammond Letter.

¹² See PIABA Letter at 2.

¹³ See Hammond Letter.

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).

Specifically, the Commission finds that the proposed rule change 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, and, in general, to protect investors and the public interest.

The proposed rule change, by reducing the waiting period for the release of Form U5 information through BrokerCheck, is designed to enhance investor protection by allowing investors to more quickly access disclosure information reported on Form U5 through BrokerCheck and limiting the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck. In addition, by providing for the simultaneous release of Forms U4 and U5 information on BrokerCheck before the three-business day waiting period in the case where the same disclosure event is reported on both forms, the proposed rule should help to reduce investor uncertainty and confusion regarding the same disclosure event; namely, a broker's termination from his prior firm.

The Commission believes that BrokerCheck is an important tool for investors to use to help them make informed choices about the individuals and firms with which they conduct business.¹⁶ The Commission believes that reducing the waiting period for the release of Form U5 disclosure information through Broker Check, and releasing Form U4 and Form U5 information regarding the same disclosure event simultaneously on BrokerCheck before the end of the waiting period, will limit the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck and should help to reduce investor

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ The Commission encourages investors to utilize all sources of information, including the databases of state regulators, as well as legal search engines and records searches to conduct a thorough search of any associated person or firm with which they are considering doing business. See also Securities Exchange Act Release No. 62476 (July 8, 2010), 75 FR 41254 (July 15, 2010) (SR-FINRA-2010-012).

confusion regarding the reason for a broker's termination. The Commission notes that brokers on whose behalf a Form U5 is submitted will continue to have an opportunity to comment on the reported disclosure event either through a Form U4 or by submitting a broker comment directly to FINRA for inclusion in BrokerCheck.

The Commission appreciates FINRA's efforts to enhance BrokerCheck and encourages FINRA to continue improving it and to consider the suggestions made regarding the expungement of customer claims from BrokerCheck and expanding the information made available to the public through BrokerCheck.¹⁷

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-FINRA-2015-032), be, and hereby is, approved.

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

Robert W. Errett
Deputy Secretary

¹⁷ See supra note 12 and accompanying text.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).