

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70876; File No. SR-FINRA-2013-048)

November 14, 2013

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

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 November 1, 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“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 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 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

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

In January 2011, Commission staff released its Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers (“Study”),³ in furtherance of Section 919B of the Dodd-Frank Act.⁴ The Study contains

³ The Study is available online at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

four recommendations for improving investor access to registration information through BrokerCheck and the Commission’s Investment Adviser Public Disclosure (“IAPD”) database. In May 2012, FINRA implemented the Study’s three “near-term” recommendations.⁵ FINRA is currently working on the Study’s “intermediate-term” recommendation, which involves analyzing the feasibility and advisability of expanding the information available through BrokerCheck, as well as the method and format that BrokerCheck information is displayed.

In light of the Study’s “intermediate-term” recommendation and FINRA’s belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation to make information available to the public,⁶ FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program. Based on the evaluation that it has conducted to this point, FINRA is proposing to amend FINRA Rule 8312 to permanently make 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.⁷

⁵ These recommendations are to unify search returns for BrokerCheck and IAPD, add the ability to search BrokerCheck by ZIP code, and increase the educational content on BrokerCheck.

⁶ See Section 15A(i) of the Act. 15 U.S.C. 78o-3(i). 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.

⁷ FINRA continues to consider other comments regarding changes to BrokerCheck that were submitted in response to Regulatory Notice 12-10.

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 10 years. Under current Rule 8312(c)(1), FINRA 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 included in BrokerCheck. Specifically, the proposed rule change would permanently make publicly available in BrokerCheck information about former associated persons of a member who were registered on or after August 16, 1999⁸ 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.⁹ This information currently is available in

⁸ The proposal will apply only to those individuals registered with FINRA on or after August 16, 1999. 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, data limitations apply to the information available for some of those individuals.

⁹ This information is currently elicited by Question 14H(1)(c) on Form U4 (Uniform Application for Securities Industry Registration or Transfer).

BrokerCheck for ten years from the date an individual ceases association 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, one civil action involving excessive and undisclosed markups was settled for over \$200,000. As such, the proposed change would provide the public with additional 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.

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 180 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,¹⁰ 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. FINRA believes that the proposed rule change 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 will enhance investor protection by expanding

¹⁰ 15 U.S.C. 78o-3(b)(6).

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. FINRA believes that it is beneficial to investors to have access to this information on a permanent basis.

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.

FINRA believes that making publicly available on a permanent basis 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 was dismissed pursuant to a settlement agreement will enhance investor protection. The proposed rule change would provide the public with additional 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. FINRA does not anticipate that the proposed rule change will impose any burden or additional costs on member firms. In this regard, FINRA notes that the proposed rule change will not subject member firms or their associated persons to any new or additional uniform registration form reporting requirements. The Form U4 question that elicits information on the settled civil judicial actions at issue will remain the same; only the BrokerCheck disclosure period will change.

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

The proposed rule change was published for comment by FINRA in Regulatory Notice 12-10 (February 2012). A copy of the Regulatory Notice is attached as Exhibit 2a.¹¹ The comment period expired on April 27, 2012. FINRA received 71 comment letters in response to the Regulatory Notice. A list of the comment letters received in response to the Regulatory Notice is attached as Exhibit 2b.¹² Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c.

Ten of the 71 comment letters received addressed the general expansion of the time frame for providing information through BrokerCheck.¹³ In general, these comment letters suggested that there should be no time limits on the inclusion of disclosure events in BrokerCheck (e.g., information about a bankruptcy is no longer disclosed through BrokerCheck after 10 years)¹⁴ and

¹¹ The Commission notes that the Exhibits referenced herein are all attached to the filing itself and not to this notice.

¹² All references to the commenters under this Item are to the commenters as listed in Exhibit 2b.

¹³ Letter from Ryan K. Bakhtiari, Public Investors Arbitration Bar Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated March 29, 2012 (“PIABA”); letter from Jeffrey A. Feldman, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 1, 2012 (“Feldman”); letter from Herb Pounds, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 2, 2012 (“Pounds”); letter from Terrence P. Cremins, Securities Arbitration Clinic of St. John’s University School of Law, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2012 (“St. John’s”); letter from Ross M. Langill, Regal Bay Investment Group LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 5, 2012 (“Regal Bay”); letter from Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 20, 2012 (“Aidikoff”); letter from Jonathan W. Evans, Jonathan W. Evans & Associates, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 25, 2012 (“Jonathan Evans”); letter from William A. Jacobson, Cornell University Law School, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 26, 2012 (“Cornell”); letter from Jack E. Herstein, North American Securities Administrators Association, Inc., to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“NASAA”); and letter from Robert C. Port, Esq., Cohen Goldstein Port & Gottlieb, LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 12, 2012 (“Cohen”).

¹⁴ See, e.g., NASAA.

that all information about associated persons should be included in BrokerCheck on a permanent basis.¹⁵ FINRA is not prepared at this time to propose that all BrokerCheck information should be available on a permanent basis. FINRA is currently focused on expanding the categories of Civil Judicial Disclosures to be permanently included in BrokerCheck, specifically those investment-related civil actions brought by a state or foreign financial regulatory authority that were dismissed pursuant to a settlement agreement. FINRA believes that it is important to permanently include such settlements in BrokerCheck at this time, because they may involve significant events or considerable undertakings on the part of the subject individual. The permanent inclusion of such settlements in BrokerCheck will provide investors additional access to this important information. As previously mentioned, FINRA regularly assesses the BrokerCheck program and may consider the inclusion of additional information in BrokerCheck on a permanent basis at a later time.

Four comment letters expressed the view that some types of customer complaints or “technical compliance violations” should be removed from BrokerCheck after a prescribed period of time.¹⁶ Although these comment letters addressed the time frame for disclosure of information through BrokerCheck, they are outside the scope of the current proposal because

¹⁵ See, e.g., Cornell.

¹⁶ Letter from Steve Klein, Farmers Financial Solutions, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 3, 2012 (“Farmers”); letter from Ira D. Hammerman, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 5, 2012 (“SIFMA”); letter from Howard Spindel, Integrated Management Solutions USA LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“IMS”); and letter from Cliff Kirsch, Sutherland Asbill & Brennan LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 27, 2012 (“Sutherland”).

they do not pertain to the time frame for disclosure of the settled Civil Judicial Disclosures that are the subject of this filing.

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.

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-2013-048 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2013-048. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-FINRA-2013-048 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).