

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71195; File No. SR-FINRA-2013-047)

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 Include Information About the Member Firms and Their Associated Persons of Any Registered National Securities Exchange that Uses the CRD System for Registration Purposes

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 include in BrokerCheck information about the members and their associated persons of any registered national securities exchange that uses the Central Registration Depository (“CRD[®]”) for registration purposes. The proposal was published for comment in the Federal Register on November 20, 2013.³ The Commission received two 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. 70880 (November 14, 2013), 78 FR 69732 (November 20, 2013) (“Notice”).

⁴ See letter from Jason Doss, President, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated December 9, 2011 (“PIABA letter”) and letter from William A. Jacobsen, Clinical Professor of Law, Cornell University Law School and Michael Baak, to Elizabeth M. Murphy, Secretary, Commission, dated December 11, 2013.

In 2006, Congress amended Section 15A(i) of the Act⁵ with the enactment of the Military Personnel Financial Services Protection Act.⁶ The amendment added a requirement that FINRA 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 the members and their associated persons of any registered national securities exchange that uses the CRD system to register its members and their associated persons (“CRD Exchange”).⁷

BrokerCheck provides 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 CRD system, 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 FINRA member firms and their associated persons with which they conduct business. BrokerCheck allows investors and others to obtain registration information about FINRA member firms and their associated persons by telephone and the Internet.⁸

The registration information currently available through BrokerCheck is limited to firms

⁵ 15 U.S.C. 78q-3(i).

⁶ Pub.L. No. 109-290, 120 Stat. 1317 (2006).

⁷ Section 15A(i) of the Act defines registration information as “the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.”

⁸ The BrokerCheck Hotline telephone number is (800) 289-9999. BrokerCheck is available online at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck>.

that are currently or were previously members of FINRA and the associated persons of such firms. BrokerCheck does not contain information regarding firms or the associated persons of such firms, if the firms were only members of a registered national securities exchange (although such information is contained in the CRD system).

The proposed rule change would amend FINRA Rule 8312 to include these non-FINRA member firms and their associated persons in BrokerCheck. Specifically, the proposed rule change would make publicly available in BrokerCheck information about members and their associated persons of any CRD Exchange.⁹ The information that would be disclosed through BrokerCheck about CRD Exchange members and their associated persons would be the same as the information disclosed about FINRA members and their associated persons pursuant to FINRA Rule 8312. CRD Exchange members and their associated persons would be able to dispute inaccuracies in their BrokerCheck reports as provided for in FINRA Rule 8312(e).¹⁰

Summary of Comments

The Commission received two comment letters on the proposed rule change.¹¹ Both comments support the proposal. One commenter states “The significance of increasing public customers’ awareness and access to background information about the member and/or associated

⁹ Firms and individuals that have been registered exclusively with a CRD Exchange will be included in BrokerCheck only if they were registered on or after August 16, 1999. According to FINRA, filings for those firms and individuals whose registrations terminated before August 16, 1999, were not made electronically, so BrokerCheck reports for such firms and individuals cannot be made in an automated fashion. See proposed Supplementary Material .03 to FINRA Rule 8312.

¹⁰ The proposed rule change also makes non-substantive technical changes to FINRA Rule 8312 to reflect a change in FINRA’s style convention for referencing the CRD system.

¹¹ See supra, note 4.

person handling or potentially handling their account cannot be understated.”¹² The commenter suggests FINRA should include in BrokerCheck all information that is available on CRD reports from state regulators, eliminate time constraints for disclosure of information in BrokerCheck, and include in BrokerCheck disclosures about an associated person’s educational background and professional designation.¹³ While these comments are outside of the scope of the current proposal, they are legitimate and FINRA should consider them.

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

Specifically, the Commission believes that the proposal will enhance investor protection by making available, via BrokerCheck, information regarding the professional background, business practices, and conduct of firms and associated persons that were members solely of a national securities exchange. Making this information available via BrokerCheck harmonizes the

¹² See PIABA letter at 1.

¹³ See PIABA 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).

¹⁵ 15 U.S.C. 78o-3(b)(6).

disclosure across the securities industry. The information is relevant to investors and members of the public who wish to educate themselves with respect to a firm or the professional history of a current or formerly associated person of a CRD Exchange. Further, the public's ability to access information regarding a firm or current or former associated person, whether the individual is or was associated with FINRA or with any national securities exchange that uses CRD for registration purposes, may serve to protect investors, the integrity of the marketplace, and the public interest. 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, to conduct a thorough search of a firm or any associated person's activities.

Furthermore, the proposed rule change is consistent with the provisions of Section 15A(i)(1) of the Act,¹⁶ which require, among other things, that FINRA 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 CRD Exchange members and their associated persons. The proposed amendments require FINRA to release information through BrokerCheck about CRD Exchange members and their associated persons,¹⁷ harmonizing the information available about broker-dealers and their associated persons across the industry.

Finally, the Commission reiterates the need for FINRA to continuously strive to improve BrokerCheck to enhance its value as a tool for the public to use in deciding whether to work with a

¹⁶ 15 U.S.C. 78o-3(i)(1).

¹⁷ See Section 15A(i) of the Act.

firm or a particular associated person.¹⁸ The suggestions for enhancement made by the commenter while outside the scope of this proposal should be considered.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-FINRA-2013-047), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Lynn M. Powalski
Deputy Secretary

¹⁸ 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).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).