

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95791; File No. SR-FINRA-2022-015)

September 15, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Release Information on BrokerCheck Relating to Firm Designation as a Restricted Firm

I. Introduction

On June 3, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FINRA-2022-015 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to amend Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a “Restricted Firm” pursuant to Rule 4111 (Restricted Firm Obligations) and Rule 9561 (Procedures for Regulating Activities Under Rule 4111). The proposed rule change was published for public comment in the Federal Register on June 17, 2022.³ On July 20, 2022, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Act Release No. 95092 (June 13, 2022), 87 FR 36551 (June 17, 2022) (File No. SR-FINRA-2022-015) (“Notice”).

September 15, 2022.⁴ On September 15, 2022, FINRA responded to the comment letters received in response to the Notice.⁵

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁶ to solicit comments on the proposed rule change and to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

1. FINRA Rules 4111 (Restricted Firm Obligations) and 9561 (Procedures for Regulating Activities Under Rule 4111)

FINRA Rule 4111 established an annual process to designate as “Restricted Firms” member firms that present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events, and then impose on such firms a “Restricted Deposit Requirement”⁷ or, in addition or in the alternative, conditions or restrictions on the member firm’s operations that are necessary or appropriate to protect investors and the

⁴ See letter from Michael Garawski, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated July 20, 2022. This letter is available at <https://www.finra.org/sites/default/files/2022-07/sr-finra-2022-015-extension1.pdf>.

⁵ See letter from Michael Garawski, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated September 15, 2022 (“FINRA Response”).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Rule 4111(i)(15) (definition of “Restricted Deposit Requirement”). A firm subject to a Restricted Deposit Requirement will be required to establish a Restricted Deposit Account and deposit in that account cash or qualified securities with an aggregate value that is not less than the member firms’ s Restricted Deposit Requirement. See Rule 4111(a); 4111(i)(14) (definition of “Restricted Deposit Account”).

public interest.⁸ According to FINRA, the rule was designed to protect investors and the public interest by strengthening the tools available to FINRA to address the risks posed by member firms with a significant history of misconduct.⁹ FINRA stated that it creates incentives for firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm.¹⁰

FINRA Rule 9561 established expedited proceedings that: (1) provide firms an opportunity to challenge any requirements the Department has imposed, including any Restricted Deposit Requirements, by requesting a prompt review of its decision in the Rule 4111 process; and (2) address a member firm's failure to comply with any requirements imposed under Rule 4111.¹¹

2. **FINRA Rule 8312 (FINRA BrokerCheck Disclosure)**

FINRA Rule 8312 (FINRA BrokerCheck Disclosure) governs the information about current and former registered broker-dealers and their associated persons that FINRA releases to the public through its BrokerCheck system.¹² Information available to investors through

⁸ See Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925 (August 5, 2021) (Order Approving File No. SR-FINRA-2020-041, as Modified by Amendment Nos. 1 and 2) and Exchange Act Release No. 92525 (July 30, 2021), 86 FR 49589 (September 3, 2021) (Order Approving File No. SR-FINRA-2020-041) (Correction) (collectively, "Rule 4111 Order"). Pursuant to FINRA Rule 9561(a)(1), FINRA's Department of Member Regulation ("Department") shall issue a notice of its determination under Rule 4111 that a firm is a Restricted Firm and the requirements, conditions or restrictions to which the Restricted Firm is subject.

⁹ See Rule 4111 Order, 86 FR at 42926.

¹⁰ See id. at 42926 and 42932.

¹¹ See id. at 42931.

¹² According to FINRA, users of BrokerCheck include, among others, investors, member firms and other entities in the financial services industry, regulators, and individuals

BrokerCheck includes, among other things, information reported on the most recently filed registration forms¹³ (with limited exceptions) for both firms and registered individuals, and summary information about certain arbitration awards against a firm involving a securities or commodities dispute with a public customer.¹⁴ This information includes a description of where and when the firm was established, people and entities that own controlling shares or directly influence the firm's daily operations, the name and succession history for current or former firms, the firm's active licenses and registrations, the types of businesses it conducts, information about arbitration awards and disciplinary matters, and information as to whether a particular member firm is subject to the provisions of the Taping Rule, among other information and disclosures.¹⁵ FINRA stated that BrokerCheck helps investors make informed choices about the

registered as brokers or seeking employment in the brokerage industry. See Notice, 87 FR at 36553. FINRA requires member firms to inform their customers of the availability of BrokerCheck. See Rule 2210(d)(8) (requiring that each of a member firm's websites include a readily apparent reference and hyperlink to BrokerCheck on the initial webpage that the member firm intends to be viewed by retail investors and any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors) and Rule 2267 (requiring member firms to provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck); see also Notice, 87 FR at note 12 and accompanying text. The BrokerCheck website is available at brokercheck.finra.org. See Notice, 87 FR at note 11.

¹³ These registration forms are the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5), the Uniform Disciplinary Action Reporting Form (Form U6), the Uniform Application for Broker-Dealer Registration (Form BD), and the Uniform Request for Broker-Dealer Withdrawal (Form BDW). See Notice, 87 FR at note 13; see also Rule 8312(b)(2)(A).

¹⁴ See Notice, 67 FR at 36552.

¹⁵ See id. at 36553-36554.

brokers and member firms with which they conduct business by providing registration and disciplinary history to investors at no charge.¹⁶

B. Proposed Amendments to Rule 8312

The proposed rule change would amend Rule 8312 to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561. Information that a firm is currently a Restricted Firm would be displayed in BrokerCheck on both a firm's summary report and detailed report. Specifically, those reports would include the text, "This firm is currently designated as a Restricted Firm pursuant to FINRA Rule 4111 (Restricted Firm Obligations)," in a color or font that is prominent. The alert also would include the text "Click here for more information," with a hyperlink to a page on FINRA's website that provides for the investing public a clear explanation of Rule 4111 and what it means to be a Restricted Firm.¹⁷

Information that a firm is a Restricted Firm would display on BrokerCheck while that firm is designated as a Restricted Firm. This Restricted Firm status would remain displayed while a Rule 9561 expedited proceeding to review the Department's decision is pending since the decision that designates a firm as a Restricted Firm will not be stayed during a Rule 9561

¹⁶ See id. at 36552.

¹⁷ See id. at 36522. This would be similar to how BrokerCheck displays information that a firm is a "taping firm." See id. at note 19.

expedited proceeding.¹⁸ When a firm is no longer designated as a Restricted Firm, no historical information would be displayed on BrokerCheck that the firm was a Restricted Firm.¹⁹

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-015 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.²⁰ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration.²¹ The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites

¹⁸ See Notice, 87 FR at 36552; see also Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

¹⁹ See Notice, 87 FR at 36552.

²⁰ 15 U.S.C. 78s(b)(2)(B).

²¹ Id.

the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²²

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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 No. SR-FINRA-2022-015 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.

²² Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to File No. SR-FINRA-2022-015. 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 No. SR-FINRA-2022-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. If comments are received, any rebuttal comments should be submitted on or before [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,
Deputy Secretary.

²³ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).