SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96798; File No. SR-FINRA-2022-015)

February 3, 2023

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a 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 ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm (hereinafter referred to as "member firm" or "firm") or former member firm is currently designated as a "Restricted Firm" pursuant to FINRA Rule 4111 (Restricted Firm Obligations) and FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111).

The proposed rule change was published for comment in the Federal Register on June 17, 2022.[3] On July 20, 2022, FINRA consented to extend until September 15, 2022, 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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Exchange Act Release No. 95092 (June 13, 2022), 87 FR 36551 (June 17, 2022) (File No. SR-FINRA-2022-015) ("Notice"). The Notice is available at https://www.sec.gov/rules/sro/finra/2022/34-95092.pdf.

change.[4] On September 15, 2022, FINRA responded to the comment letters received in response to the Notice.[5] On September 15, 2022, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.[6] On November 25, 2022, FINRA responded to the comment letters received in response to the Order Instituting Proceedings.[7] On November 25, 2022, FINRA consented to extend the time period in which the Commission must approve or disapprove the proposed rule change to February 10, 2023.[8] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. **Background**

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4 See letter from Michael Garawski, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated July 20, 2021. 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 September 15 Letter"). The FINRA September 15 Letter is available at https://www.sec.gov/comments/sr-finra-2022-015/srfinra2022015-20143024-308848.pdf. Comments received on the proposed rule change are available at https://www.sec.gov/comments/sr-finra-2022-015/srfinra2022015.htm.

6 See Exchange Act Release No. 95791 (September 15, 2022), 87 FR 57731 (September 21, 2022) (File No. SR-FINRA-2022-015) ("Order Instituting Proceedings"). The Order Instituting Proceedings is available at https://www.sec.gov/rules/sro/finra/2022/34-95791.pdf.

7 See letter from Michael Garawski, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 25, 2022 ("FINRA November 25 Letter"). The FINRA November 25 Letter is available at https://www.sec.gov/comments/sr-finra-2022-015/srfinra2022015-20151669-320145.pdf.

8 See letter from Michael Garawski, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated November 25, 2022. This letter is available at https://www.finra.org/sites/default/files/2022-11/sr-finra-2022-015-extension2.pdf.

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 member firms as "Restricted Firms" when the member firms 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 member firms a "Restricted Deposit Requirement"[9] 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 public interest.[10] The rule is 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.[11] It creates incentives for member firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm.[12]

FINRA Rule 9561 established expedited proceedings that: (1) provide member firms an opportunity to request a hearing with FINRA's Office of Hearing Officers to approve or withdraw any and all of the requirements, conditions, or restrictions imposed by FINRA's

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9 See FINRA 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's Restricted Deposit Requirement. See FINRA Rule 4111(a); 4111(i)(14) (definition of "Restricted Deposit Account").

10 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, "FINRA Rule 4111 Order").

11 See FINRA Rule 4111 Order, 86 FR at 42926.

12 See id. at 42926 and 42932.

Department of Member Regulation (the "Department") under FINRA Rule 4111;[13] and (2) enables FINRA to address a member firm's failure to comply with any requirements imposed under FINRA Rule 4111.[14]

2. FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

FINRA Rule 8312 (FINRA BrokerCheck Disclosure) governs the information FINRA releases to the public through its BrokerCheck system.[15] Information available to investors through BrokerCheck includes, among other things, information reported on the most recently filed "Registration Forms" (with limited exceptions) for both member firms and registered

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[13] See FINRA Rule 9559(n)(6) (stating that "[i]n any action brought under Rule 9561(a), the Hearing Officer may approve or withdraw any and all of the Rule 4111 Requirements, or remand the matter to the department that issued the notice for further consideration of specified matters, but may not modify any of the Rule 4111 Requirements imposed by the notice or impose any other requirements, obligations or restrictions available under Rule 4111. In any action brought under Rule 9561(b), the Hearing Officer may approve or withdraw the suspension or cancellation of membership, and may impose any other fitting sanction."); see also FINRA Rule 4111 Order, 86 FR at 42928 notes 55 and 65.

[14] FINRA Rule 4111 Order, 86 FR at 42931.

[15] According to FINRA, users of BrokerCheck include, among others, investors, member firms and other entities in the financial services industry, regulators, and individuals 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 FINRA Rule 2210(d)(8) (requiring that each of a member's websites include a readily apparent reference and hyperlink to BrokerCheck on the initial webpage that the member 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 FINRA Rule 2267 (requiring members 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 36552 note 12 and accompanying text (stating FINRA requires member firms to inform their customers of the availability of BrokerCheck). The BrokerCheck website is available at brokercheck.finra.org. See Notice, 87 FR at 36552 note 11.

individuals, and summary information about certain arbitration awards against the firm involving a securities or commodities dispute with a public customer.[16] 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, a firm's history that details mergers, acquisitions or name changes affecting the firm, 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 is subject to FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) (the "Taping Rule"),[17] among other information and disclosures.[18] FINRA stated that BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary history to investors at no charge.[19]

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[16] See Notice, 87 FR at 36552 note 13; see also FINRA Rule 8312(b)(2)(A) (using the term "Registration Forms" to refer collectively to 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)).

[17] For further information regarding the Taping Rule see infra note 21 and accompanying text.

[18] See Notice, 87 FR at 36553-54. On its website, FINRA elaborates on the contents of a firm's BrokerCheck report. Specifically, FINRA states that the BrokerCheck report includes, among other things, a summary report, providing "a brief overview of the firm and its background" ("Summary Report"), and a more detailed report, providing "information about any arbitration awards, disciplinary events, and financial matters on the firm's record," including "pending actions or allegations that have not been resolved or proven" ("Detailed Report"). The website is available at https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck.

[19] See Notice, 87 FR at 36552.

B. Proposed Amendments to FINRA Rule 8312

The proposed rule changes would amend FINRA 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 FINRA Rules 4111 and 9561. Information that a member firm is currently a Restricted Firm would be displayed in BrokerCheck on both the firm's Summary Report and Detailed Report.[20] 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 FINRA Rule 4111 and what it means to be a Restricted Firm.[21] Under the proposed rule change, this information would be displayed during the course of any FINRA Rule 9561 expedited proceeding to review the Department's decision, since the effectiveness of FINRA's decision that designates a member firm as a Restricted Firm will not be stayed during these proceedings.[22]

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[20] For further information regarding the Summary Report and Detailed Report displayed on BrokerCheck see supra note 18.

[21] This disclosure would be made in a similar manner to how FINRA discloses on BrokerCheck that a member firm is a "taping firm" pursuant to the Taping Rule. See Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (File No. SR-FINRA-2020-011) (approving the disclosure of information as to whether a particular member firm is a Taping Firm). In that case, FINRA provides a simplified disclosure that a firm is subject to the Taping Rule on the firm's Summary Report on BrokerCheck, along with a hyperlink to a separate page on FINRA's website containing a clear, more detailed description of what it means to be a taping firm. See Notice, 87 FR at 36552 note 19; see also FINRA Rule 8312(b)(2)(F).

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

FINRA explained that disclosing on BrokerCheck the member firms and former member firms that are currently designated as Restricted Firms would "provide material information to investors concerning the identity of firms that FINRA has determined pose far higher risks to the public than firms of similar size," while incentivizing investors to "research more carefully the background of the firm."[23] In addition, FINRA expressed that the public disclosure of the member firms and former member firms currently designated as Restricted Firms would create additional incentives for those firms with a significant history of misconduct to change behaviors and activities to reduce risk.[24]

If the proposed rule change is approved, FINRA stated that it will announce an effective date that is after the date FINRA completes the first annual FINRA Rule 4111 cycle, but no later than the "Evaluation Date"[25] for the second annual FINRA Rule 4111 cycle.[26] FINRA stated that after the effective date, FINRA would make the relevant disclosures on BrokerCheck beginning with the member firms or former member firms that are designated or re-designated as Restricted Firms in the second annual FINRA Rule 4111 cycle.[27] FINRA stated that this would

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23 See Notice, 87 FR at 36552.

24 See id. at 36552-53.

25 See FINRA Rule 4111(i)(5) (definition of "Evaluation Date"). FINRA established June 1, 2022 as the first Evaluation Date for FINRA Rule 4111, and indicated it expects the Evaluation Date in subsequent years will also be June 1. See FINRA Information Notice 2/1/22, FINRA Announces Rule 4111 (Restricted Firm Obligations) Evaluation Date (Feb. 1, 2022) at note 12. The FINRA Information Notice 2/1/22 is available at https://www.finra.org/rules-guidance/notices/information-notice-020122.

26 See Notice, 87 FR at 36553.

27 See id.

allow FINRA to gain meaningful experience with new FINRA Rule 4111, including any operational shortcomings, before FINRA begins disclosing Restricted Firms on BrokerCheck.[28]

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters,[29] and FINRA's responses to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[30] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA 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.[31]

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[28] See id.

[29] See letter from Francis J. Skinner, Esq., Chief Legal Office, CoastalOne, dated July 6, 2022 ("CoastalOne Letter"); letter from Nicole G. Iannarone, Assistant Professor of Law, Drexel University Thomas R. Kline School of Law, and Christine Lazaro, Professor of Clinical Legal Education and Director of the Securities Arbitration Clinic, St. John's University School of Law, dated July 7, 2022 ("Drexel and St. John's Letter"); letter from Michael Edmiston, President, Public Investors Advocacy Bar Association ("PIABA"), dated July 8, 2022 ("PIABA Letter"); letter from Mark Quinn, Director of Regulatory Affairs, Cetera Financial Group, dated July 8, 2022 ("Cetera Letter"); letter from Steven B. Caruso, dated September 21, 2022 ("Caruso Letter"); letter from William A. Jacobson, Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic and Erik Olson, Class of 2024, Cornell Law School, dated October 10, 2022 ("Cornell Law Letter"); and letter from Andrew Hartnett, NASAA President, NASAA, and Deputy Administrator for Securities, Iowa Insurance Division, dated October 12, 2022 ("NASAA Letter").

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

[31] 15 U.S.C. 78o-3(b)(6).

As discussed in more detail below, four commenters supported the proposed rule change.[32] One of these commenters supported adoption of the proposed rule change without modification.[33] Three of these commenters recommended that FINRA make additional changes to enhance the presentation of the BrokerCheck disclosure.[34] Two of these commenters also recommended that FINRA disclose on BrokerCheck the historical Restricted Firm designations of member firms and former member firms.[35]

Three commenters opposed the proposed rule change.[36] One of these commenters opposed the proposed rule change because it would only require FINRA to disclose whether a member firm is currently designated as a Restricted Firm, but not all historical Restricted Firm designations.[37] Two of these commenters opposed any proposed rule change to publicly disclose Restricted Firm designations on BrokerCheck because they assert that such disclosure could irreparably harm those firms and their personnel.[38] One of these commenters recommended that, if Restricted Firm designations are disclosed, FINRA amend the proposed rule change to give those firms the opportunity to appeal their Restricted Firm designation through a FINRA Rule 9561 expedited proceeding before disclosing their restricted status.[39] Further, one commenter

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[32] See NASAA Letter; PIABA Letter; Drexel and St. John's Letter; and Cornell Law Letter.

[33] See NASAA Letter at 2.

[34] See PIABA Letter at 1; Drexel and St. John's Letter at 2; and Cornell Law Letter at 2.

[35] See Drexel and St. John's Letter at 2; Cornell Law Letter at 3.

[36] See Caruso Letter; CoastalOne Letter; and Cetera Letter.

[37] See Caruso Letter at 2.

[38] See CoastalOne Letter at 3 and Cetera Letter at 2.

[39] See Cetera Letter at 3.

stated that the proposed rule change is unnecessary because information about the events giving rise to the Restricted Firm designation are already publicly available on BrokerCheck.[40]

A. Support for Adopting Rule as Proposed

One of the commenters who supported the proposed rule change favored adopting the proposed rule change without modification, stating that Restricted Firm designations "should be public information."[41] More specifically, this commenter stated that such disclosure would be "consistent with the purpose of BrokerCheck,"[42] serving as "clear, simple, and warranted notice to investors to think carefully before doing business with these firms and their associated persons."[43] This commenter further stated the disclosures included in the proposed rule change would advance the goal of investor protection, pointing to studies indicating that "past disclosures can be powerful indicators of future misconduct."[44] Moreover, this commenter stated that disclosure of Restricted Firm designations on BrokerCheck would "facilitate remediation of underlying issues" by "incentiviz[ing firms] to be more proactive in taking remedial measures…to avoid being designated as a Restricted Firm."[45] This commenter also stated that

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40 See CoastalOne Letter at 2.

41 See NASAA Letter at 2.

42 Id.

43 Id. at 2.

44 Id. (citing Mark Egan et al., The Market for Financial Adviser Misconduct, at 3, 12-15, and 52 Fig. 4 (Feb. 2016), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739170; Hammad Qureshi & Jonathan Sokobin, Do Investors Have Valuable Information About Brokers?, at 17 (FINRA Office of the Chief Economist Working Paper, Aug. 2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2652535).

45 Id.

the proposed rule change is consistent with the similar required disclosure on BrokerCheck of firms whose behavior is subject to restrictions under the Taping Rule.[46] Finally, this commenter stated the proposed rule change would provide state securities examiners with information that would help "enhance risk assessments, simplify examinations, and alleviate potential misunderstandings and wasted effort during examinations," as it would make such examiners aware that the named firms were likely subject to certain conditions and restrictions, including the possibility of a Restricted Deposit Requirement.[47]

B. Recommended Enhancements to Presentation of BrokerCheck Disclosure

Three of the commenters who generally supported FINRA's proposed rule change recommended that FINRA make additional changes to help further improve BrokerCheck disclosure.[48] Two of these commenters recommended that FINRA enhance the presentation of the disclosures made on BrokerCheck.[49] One of these commenters expressed concern that

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46 See id. at 3; see also FINRA Rule 8312(b)(2)(F).

47 NASAA Letter at 3-4.

48 See PIABA Letter at 1 (stating that "making this information about firms publicly available on BrokerCheck is the common-sense next step to the newly adopted FINRA Rule 4111 and comports with that rule's intended investor protection goal"); Drexel and St. John's Letter at 2 (stating that "[d]isclosure of restricted firm status would further improve BrokerCheck and allow retail investors to make more informed choices and ask pertinent questions to financial professionals before engaging them"); and Cornell Law Letter at 2 (stating that the proposed rule change would help investors by making this information more easily accessible, and would help explain to investors the meaning of such a designation, providing "a more accurate view of the firm they are considering").

49 See PIABA Letter at 1 and Drexel and St. John's Letter at 2.

investors were unfamiliar with BrokerCheck and how to use it[50] and therefore recommended that FINRA establish "an investor outreach program or marketing effort that draws attention to the importance of BrokerCheck and the types of information that can be found there."[51]

FINRA responded that it appreciated the commenter's suggestion, stating that it "has taken, and continues to take various measures to increase investor awareness of BrokerCheck."[52] For example, FINRA pointed to its adoption of rules that: (1) require any member firm website to include a "readily apparent reference and hyperlink to BrokerCheck" on the webpage the firm intends retail investors to view, along with "any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors;"[53] and (2) require 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."[54] Finally, FINRA stated that it also already "regularly promotes" awareness of BrokerCheck through the media, its own social media channels, and at various investor-focused events.[55]

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50 See PIABA Letter at 1 (stating that "[m]ost investors have no idea that their trusted financial professionals and firms had disclosure events, despite the fact that they were disclosed on BrokerCheck").

51 PIABA Letter at 1.

52 FINRA September 15 Letter at 7.

53 Id. (citing FINRA Rule 2210(d)(8)).

54 See id. at 7-8 (citing FINRA Rule 2267).

55 See id. at 8.

The other commenter stated that it "[does] not believe a link to the rule on its own would be enough for unsophisticated retail investors to understand the importance of the disclosure and make an informed decision about working with such a firm" and therefore recommended that FINRA "provide a plain English explanation of what [R]estricted [F]irm designation means on the BrokerCheck report if a firm is so designated."[56]

FINRA responded that the proposed disclosure on BrokerCheck would be designed to include hyperlinks not only to FINRA Rule 4111, "but also to a page on FINRA's website that provides for the investing public a clear explanation of FINRA Rule 4111 and what it means to be a Restricted Firm."[57] FINRA stated that it chose to provide this explanation through a hyperlink to a separate webpage to facilitate BrokerCheck usability, as "the explanation of what it means to be a Restricted Firm would be several paragraphs long," and its inclusion at the top of the relevant firms' BrokerCheck reports would necessitate using a font "too small to be easily readable" due to space constraints.[58] FINRA asserted that it believes, based on "general user testing" of BrokerCheck, that inclusion of this information on each member firm and former member firm's BrokerCheck report would "create a cluttered presentation that has a detrimental impact on the user's experience."[59] Despite this, FINRA indicated that it appreciated the commenters' suggestions, and stated it would "revisit this presentation choice as part of its

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[56] See Drexel and St. John's Letter at 2.

[57] See FINRA September 15 Letter at 6.

[58] See id.

[59] See id.

routine monitoring of BrokerCheck information design" if the proposed rule change is approved.[60]

One of the opposing commenters similarly stated that without further guidance, disclosure of Restricted Firm status on BrokerCheck would be confusing and misleading to the general public.[61] This commenter stated that although FINRA stated in the Notice that it would provide a hyperlink to additional information defining Restricted Firm, without an example of the proposed linked webpage the commenter could not opine on its adequacy. Moreover, the commenter stated that there is no guarantee that investors researching a member firm on BrokerCheck would access the hyperlink.[62]

In its response, FINRA disagreed with the commenter's assessment, stating that the proposed rule change would provide investors with clear and accurate information about Restricted Firms and that the specific display of those firms' Restricted Firm designation on BrokerCheck would make this status more readily apparent to investors.[63] Further, FINRA stated that, under the proposed rule, FINRA would present both the information about a member firm's restricted status on BrokerCheck, as well as a hyperlink to a separate page providing a more detailed explanation of what it means to be a Restricted Firm, in the same manner as FINRA discloses similar information about member firms currently subject to the Taping Rule.[64]

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60 See id.

61 See CoastalOne Letter at 2.

62 See id.

63 See FINRA September 15 Letter at 5.

64 See id.

The Commission finds that FINRA's proposal to disclose Restricted Firm designations is reasonable, and that the proposed rule change would enhance the investor-protection benefits of FINRA Rule 4111. As with the Taping Rule disclosures, the proposed rule change would make it easier for investors to obtain information about member firms that are currently designated as Restricted Firms, as well as those registered representatives associated with those member firms, through a preexisting database with which the public is already familiar. Moreover, the proposed rule change would incentivize investors to research more carefully the background of their financial professionals.

Furthermore, the proposed rule change will add an alert to a member firm's Summary Report that the member firm is currently designated as a Restricted Firm, in conjunction with a link to a separate webpage with a description of what this designation entails. A firm's Summary Report is meant to provide readers with an overview of information pertinent to their decision to hire or retain a financial professional. And, BrokerCheck is already structured to employ hyperlinks directing investors to more detailed information, both as to a firm's Detailed Report, and in the case of firms subject to restrictions under the Taping Rule, a hyperlink to a page providing a detailed explanation of the more simplified disclosure found on the firm's Summary Report. As such, the Commission believes FINRA's proposed further use of layered disclosure of summary information combined with the proposed use of hyperlinks to direct investors to more detailed information on what a Restricted Firm designation entails is reasonable, as it aligns with an approach to disclosure on BrokerCheck that investors are already familiar with. In doing so, the proposed rule change appropriately balances investors' need for information about the significance of a Restricted Firm designation with the need to bring the most salient information to the attention of investors in a user-friendly manner. Accordingly, for

the reasons set forth above, the Commission finds that the proposed rule change is designed to protect investors and the public interest.

C. Recommended Disclosure of Historical Restricted Firm Designations

As discussed above, the proposed rule change would impose a disclosure obligation on FINRA as to the current Restricted Firm designations it has made. One commenter opposed the proposed rule change because it would not require FINRA to disclose historical Restricted Firm designations.[65] This commenter stated that "BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary history to investors."[66] As such, the proposed rule change would be "inconsistent with this historical disciplinary predicate," as it would only require the release of information about current Restricted Firm designations.[67] Separately, this commenter stated that requiring the release of information on BrokerCheck of only current Restricted Firm designations "would be inconsistent with the disclosure requirements on Form BD which, in questions 11E(3) and (4), requires disclosure as to whether any self-regulatory organization has 'ever' either 'restricted' the activities of a member firm or 'otherwise restrict[ed] its activities.'"[68] This

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65 See Caruso Letter at 2.

66 Id.

67 Id.

68 Id. See also Form BD, the Uniform Application for Broker-Dealer Registration. 17 CFR § 249.501, available at https://www.sec.gov/files/formbd.pdf (asking in Questions 11E(3) and (4) whether "any self-regulatory organization or commodities exchange ever:…(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?; (4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?").

commenter stressed that if the purpose of both BrokerCheck and Form BD is to help investors make more informed choices by providing registration and disciplinary history of firms to investors, then "the fact that a member firm was ever designated as a Restricted Firm is information that is clearly critical and material to investors."[69]

Two other commenters that supported the proposed rule change also recommended that FINRA disclose on BrokerCheck a member firm's historical Restricted Firm designations.[70] One such commenter stated that "[a] historic record of when – and how many times – a firm has been a restricted firm assists investors in making informed decisions."[71] This commenter further stated that requiring FINRA to disclose historical Restricted Firm designations would incentivize member firms and associated persons "to reform and not engage in future misconduct" because a prospective customer observing on BrokerCheck "a lengthy period of time after a restricted firm designation has been removed may signal that a firm has made significant positive changes."[72]

In response to comments that disclosing only current, but not historical, Restricted Firm designations would be inconsistent with how a member firm's "disciplinary history" is disclosed on BrokerCheck, FINRA noted that it has previously stated that, in its view, "a Restricted Firm designation is not disciplinary in nature."[73] Instead, FINRA stated that it believes that disclosure of Restricted Firm designations more directly analogizes "to how Rule 8312 requires the

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69 Caruso Letter at 2.

70 See Drexel and St. John's Letter at 2; Cornell Law Letter at 3.

71 Drexel and St. John's Letter at 2.

72 Id.

73 See FINRA November 25 Letter at 3 (citing to Notice, 85 FR at 78566).

disclosure of information as to whether a particular member firm 'is' subject to the provisions of [the Taping Rule]."[74] Regarding a commenter's assertion that disclosure of only current Restricted Firm designations would be inconsistent with the disclosure requirements of Questions 11E(3) and (4) on Form BD, FINRA stated that the proposed rule change "would not impact a firm's obligations under Form BD or alter how Rule 8312 requires the release on BrokerCheck of 'any information reported on the most recently filed…Form BD.'"[75]

FINRA further stated that it believes the potential for a Restricted Firm disclosure to be removed from BrokerCheck would provide "a strong incentive" to Restricted Firms to improve their behavior, and "thus, would further the primary purpose of Rule 4111 itself."[76] However, FINRA stated that it appreciated the suggestion to disclose all historical Restricted Firm designations, and "will revisit it after gaining experience with disclosing Restricted Firm designations on BrokerCheck."[77]

The Commission finds that the proposed rule change for FINRA to prominently display current Restricted Firm designations on BrokerCheck is reasonable, and that such disclosure would enhance the investor protection benefits provided by FINRA Rule 4111. Specifically, the disclosure of current Restricted Firm designations on BrokerCheck would provide investors with

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74 Id. (citing to FINRA Rule 8312(b)(2)(F)).

75 Id. at 4 (citing to FINRA Rule 8312(b)(2)(A)). FINRA also noted that it had "previously acknowledged that 'information about a firm's status as a Restricted Firm…could become publicly available through existing sources or processes,' such as 'through Form BD.'" See Notice, 85 FR at 78467 note 159.

76 FINRA November 25 Letter at 3.

77 See FINRA September 15 Letter at 8 and note 24; see also FINRA November 25 Letter at 3 (reiterating FINRA's assertion that the lack of disclosure of historical Restricted Firm designations would incentivize currently Restricted Firms to improve their behavior).

valuable information in an easily accessible format, including FINRA's determination that a firm currently has a higher risk profile relative to similar firms, and that the firm may be subject to certain conditions and/or restrictions on its operations.

Further, FINRA's determination not to require disclosure of a historical Restricted Firm designation is reasonable. The potential for removal from BrokerCheck of the prominent display of a current Restricted Firm designation once the firm is no longer so-designated could incentivize currently Restricted Firms to improve their behavior, and thereby benefit investors.[78] FINRA's approach with this proposed disclosure obligation is also consistent with its approved approach to disclosing a member firm's Taping Firm status pursuant to FINRA Rule 3170.[79]

The Commission also acknowledges FINRA's commitment to revisit the proposed rule change (including commenters' suggestions to require disclosure on BrokerCheck of the historical Restricted Firm's designations of member firms and former member firms pursuant to this rule) after gaining experience with disclosing Restricted Firm designations on BrokerCheck.[80]

The Commission also finds that the proposed rule change would not be inconsistent with the approach to disclosure of a member firm or former member firm's disciplinary history on BrokerCheck. The disclosure of such firm's disciplinary history on BrokerCheck flows from the information reported on Registration Forms (including Form BD),[81] and appears in the firm's

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78 See infra note 95 and accompanying text (identifying examples of how FINRA believes firms that are currently designated as Restricted Firms could improve their behavior).

79 See supra note 21; see also FINRA Rule 8312(b)(2)(F).

80 See FINRA November 25 Letter at 4.

81 See FINRA Rule 8312(b)(2)(A).

Detailed Report within a discrete "Disclosure Events" section. As FINRA stated, the proposed rule change would have no impact on such disclosures. Relatedly, the Commission also finds that the proposed rule change would not be inconsistent with a firm's disclosure obligations under Form BD. The proposed rule change would not impact any of the requirements imposed upon firms by Form BD, or amend FINRA's obligation under FINRA Rule 8312 to release on BrokerCheck "any information reported on the most recently filed…Form BD."[82] Instead, the proposed rule change would only impose a distinct disclosure obligation on FINRA as to the current Restricted Firm designations it has made.

For the reasons discussed above, the proposed rule change to require FINRA to prominently display current Restricted Firm designations on BrokerCheck is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA 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.

D. Potential Harm to Firms and Their Personnel of Disclosing Restricted Status

Two commenters opposed any proposed rule change to publicly disclose Restricted Firm designations on BrokerCheck because they assert that such disclosure could irreparably harm those firms and their personnel.[83] In particular, one commenter stated that while FINRA Rule 4111 enhances investor protection by "giving FINRA additional authority to enforce compliance with its rules, encourage member firms toward more compliant business models, and better ensure that firms are able to meet their financial obligations to customers or potential claimants,"

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[82] Id.

[83] See CoastalOne Letter at 3 and Cetera Letter at 2.

publicly identifying Restricted Firms on BrokerCheck pursuant to the proposed rule change would likely "undercut the effectiveness of Rule 4111."[84] The commenter stated that while the information "would be relevant to investors in determining whether to establish relationships with or continue to do business with [a firm,] the negative connotation [would] increase the likelihood that the firm will fail."[85] Further, the commenter stated the possibility of failure would "make [the firm] less able to meet its obligations to customers, and perhaps worse, increase the possibility of disorderly failure or closure."[86] As a result, this commenter stated that "customers may well be worse off than had the restricted status of the firm not been disclosed."[87]

The other commenter stated that the disclosure of a member firm's Restricted Firm status would be a "Scarlet Letter" that would have a "severe economic impact" upon the member firm, and would "serve[] no purpose other than to put additional financial strain on Restricted Firms."[88] This commenter stated that this additional financial strain would result from the fact that: (1) some existing and prospective customers would no longer do business with the member

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84 Cetera Letter at 1-2.

85 Id. at 2.

86 Id. In particular, the commenter opined that public disclosure of Restricted Firm status may "create 'run on the bank' situation[s] in which representatives and customers leave the firm quickly and cause it to fail." Id.

87 Id.

88 CoastalOne Letter at 2 (stating that "[u]nder Rule 4111, FINRA may impose upon a Restricted Firm a monetary cash escrow deposit which FINRA will effectively control, and that sum cannot be calculated in net capital. This alone will put some small firms on the edge of net capital failure. In addition, FINRA may order other remedies, such as shorte[r] examination cycles, which result in additional overhead costs to firms. Those remedies alone are sufficient to achieve FINRA's purposes in Rule 4111."). The commenter concluded that the proposed rule change is an "unnecessary 'add-on' to a [r]ule which is already extremely punitive in nature." Id.

firm; and (2) the member firm would lose, and have trouble recruiting, good employees, which is contrary to FINRA's goal of improving "bad" member firms.[89] Accordingly, this commenter stated that the harm to Restricted Firms and their personnel under the proposed rule change would outweigh the potential investor protections.[90] This commenter also stated that FINRA's Notice failed to identify or discuss "any objective evidence which would demonstrate the effectiveness" of providing disclosure of a member firm's designation as a Restricted Firm on BrokerCheck.[91] Without such evidence and understanding of the impact of the proposed rule change, the commenter stated that "FINRA is proposing a rule which has no rational basis to support its implementation," and thus that it should be reconsidered.[92]

In response, FINRA cited its Notice and the economic impact analysis therein, which detailed a range of the potential economic impacts of the proposed rule change, and which FINRA stated is "consistent with FINRA's approach to economic impact assessments for proposed rulemakings."[93] Among the benefits to investors outlined in FINRA's economic impact analysis is that the proposed rule change "may … prompt[] [investors] to learn more

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89 See id.

90 See id.

91 Id. at 1.

92 Id.

93 FINRA September 15 Letter at 7 and note 22 (citing Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking, available at https://www.finra.org/sites/default/files/Economic%20Impact%20Assessment_0_0.pdf). In the Notice, FINRA discussed the qualitative impact to investors, firms and financial professionals of the disclosure of Restricted Firm designations. For example, FINRA stated that "[w]hile the magnitude of … reactions from investors and third parties cannot be quantified, it is possible that the disclosure of the designation as a Restricted Firm may result in some firms going out of business." See Notice, 87 FR at 36554.

about such Restricted Firms, engage[] with them more cautiously, or—for investors currently using the services of Restricted Firms—critically review their experiences with these firms," which "may help some investors avoid the harms associated with future misconduct."[94] FINRA stated that due to this additional investor caution, "Restricted Firms may respond by offering more competitive pricing or improved customer service … [and] may also act to improve internal controls in order to avoid additional reputational harm and being re-designated as a Restricted Firm in subsequent years."[95]

FINRA also stated that additional investor caution, along with potential reactions by third parties,[96] may lead to financial distress at a Restricted Firm.[97] While FINRA indicated that the "magnitude of those reactions cannot be quantified," it acknowledged that some Restricted Firms may go out of business; but these potential impacts should be mitigated by the inclusion of

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[94] Notice, 87 FR at 36554; see also FINRA September 15 Letter at 2-3.

[95] Notice, 87 FR at 36554; see also FINRA September 15 Letter at 2-3.

[96] FINRA stated that "Restricted Firms may have greater difficulty or increased costs associated with maintaining a clearing arrangement, loss of trading partners, or similar impairments where third parties can determine that a firm meets the Preliminary Criteria for Identification or has been deemed to be a Restricted Firm. While some third parties like clearing firms may require a firm to disclose Restricted Firm status during private contract negotiations, other third-party firms may learn of a Restricted Firm's designation only after the information is disclosed publicly. These third-party firms may anticipate an increase in legal and contingent costs through the potential liabilities that they face through their business relationships with a Restricted Firm. As a result, Restricted Firms may find that costs of these third-party agreements increase and potentially lose access to such providers." Notice, 87 FR at 36554 (citing Exchange Act Release No. 90527 (November 27, 2020), 85 FR 78540 (December 4, 2022) (File No. SR-FINRA-2020-041) ("Rule 4111 Notice"), available at https://www.sec.gov/rules/sro/finra/2020/34-90527.pdf); see also FINRA September 15 Letter at 3.

[97] See FINRA September 15 Letter at 3 (citing Notice, 87 FR at 36554).

"numerous features" within the FINRA Rule 4111 process that are "designed to narrowly focus the new obligations on the firms of the most concern."[98]

Further, FINRA cited regulatory frameworks designed to help mitigate the potential impact on investors should the public disclosure of a member firm's Restricted Firm designation lead to a member firm's failure, such as the Net Capital Rule,[99] the Customer Protection Rule,[100] and the Securities Industry Protection Corporation (SIPC).[101] To the extent there are any residual risks to customers, FINRA stated that "they would be outweighed by the investor-protection benefits from publicly disclosing a firm's designation as a Restricted Firm."[102]

FINRA also addressed the potential impact of BrokerCheck disclosure of Restricted Firm designations on the employees of such member firms, stating that it anticipated an indirect effect on individuals associated with Restricted Firms.[103] For example, employees with clean disciplinary records who work for a currently designated Restricted Firm, or a member firm that an employee anticipates may soon be designated as a Restricted Firm, may be incentivized to

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98 Id. at 3 (citing Rule 4111 Notice).

99 Exchange Act Rule 15c3-1 (Net Capital Rule) requires broker-dealers to maintain certain levels of liquid assets.

100 Exchange Act Rule 15c3-3 (Customer Protection Rule) requires broker-dealers that have custody of customer assets to keep those assets separate from their own accounts.

101 See FINRA September 15 Letter at note 13 (stating that "when a brokerage firm liquidates, securities regulators 'work with the firm to make sure that customer accounts are protected and that customer assets are transferred in an orderly fashion to one or more SIPC-protected brokerage firms.'"). See also Investor Alert, If a Brokerage Firm Closes Its Doors, available at https://www.finra.org/investors/alerts/if-brokerage-firm-closes-its-doors.

102 FINRA September 15 Letter at note 13.

103 Id. at 4 (citing Notice, 87 FR at 36553).

leave.[104] However, FINRA stated that the extent to which disclosure of Restricted Firm designations on BrokerCheck would impact future employment prospects of those firms' registered persons, including those with relevant disclosures, "is expected to be limited,"[105] particularly as "none of the Rule 4111 metrics are based on an employee's prior associations with Restricted Firms."[106] Moreover, FINRA stated that prospective firms likely already consider the disclosure history of individual registered persons seeking new employment, "including in determining if the individual's disclosures impact the firm's Rule 4111 metrics," because "most of the underlying events included in the [Rule 4111 metrics] are already [captured] in BrokerCheck."[107] FINRA stated that there is "some possible risk that a person's association or prior association with a Restricted Firm may potentially impact future employment prospects in ways unrelated to Rule 4111," but, as discussed above, such risks are "outweighed by the investor protection benefits of the proposed rule change."[108]

The Commission acknowledges commenters' concerns that the proposed rule change could negatively impact Restricted Firms and their financial professionals. To the extent customers avoid using, or leave, a Restricted Firm in response to the disclosure of its Restricted

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[104] Id. at 4.

[105] Id. at 4-5 (citing Rule 4111 Notice at 78553 and note 62, wherein FINRA asserted that "the economic impact from Rule 4111 on individuals' employment prospects is expected to be limited to a small proportion of registered persons, specifically those with a significant number of disciplinary and other disclosure events on their records, and that the vast majority of member firms would likely be able to employ most of the individuals seeking employment in the industry, including ones who have some disclosures, without coming close to meeting the Rule 4111 Preliminary Criteria for Identification").

[106] Id. at 5.

[107] Id. at 4-5.

[108] Id. at 5.

Firm status, the concomitant reduction in revenue generated by that member firm could increase the risk of that member firm's failure, which could negatively impact the remaining customers of the member firm. In addition, the disclosure of a Restricted Firm's status could negatively impact the firm's ability to hire or retain the type of employees likely to help improve the firm sufficiently to remove the designation.

Despite these possibilities, the Commission finds that the proposed rule change reasonably balances the potential negative impact to Restricted Firms and their employees against the benefits to investors of public disclosure of a Restricted Firm's restricted status, and that it would enhance the investor-protection benefits of FINRA Rule 4111. BrokerCheck is designed to provide free public access to detailed information about member firms and their registered representatives, including information about arbitration awards, disciplinary history, and information concerning conditions and restrictions on the firm or individual's operations, such as whether a particular member firm is subject to the Taping Rule. Investors can use this information to help make informed choices about the member firms with which they conduct business. Public disclosure of a Restricted Firm's status on BrokerCheck, as the proposed rule change would provide, would similarly give investors information they could use to research more carefully the operations of a member firm before engaging it; or, for existing customers, it may encourage them to reevaluate their relationship with the firm. In addition, the display of Restricted Firm designation—which would only occur when a member firm is currently designated and not for historical designations—may encourage Restricted Firms to improve internal controls to avoid further potential reputational harm in being re-designated as a Restricted Firm in subsequent years, which would provide investor protection benefits to both customers and potential customers of Restricted Firms.

It is possible that disclosure of a Restricted Firm's status on BrokerCheck may negatively impact that firm by warning away existing and potential customers. And as a consequence, those firms may experience financial hardship or even failure. It is also possible that the proposed rule change would negatively impact employees, or prior employees, of Restricted Firms. However, any potential effect on the firm or their financial professionals of such a designation must be considered in light of the potential benefits to customers and potential customers of having these disclosures made available to them. As commenters indicate, many investors could find the information regarding a Restricted Firm designation, which FINRA expects to apply to a relatively limited number of member firms with significantly higher levels of risk-related disclosures than similarly sized peers and that present a high degree of risk to investors (i.e., according to FINRA, only 1.3% of all member firms as of December 31, 2019, would have been identified as Restricted Firms),[109] material to their decision of whether to engage or remain with the firm. In addition, to the extent the proposed rule change results in the failure of a Restricted Firm, the regulatory regime governing firm failures provides sufficient investor protections to help ensure the orderly winding up of the firm's business and the protection of their customers.[110] In light of this, the Commission finds that FINRA has appropriately balanced the investor protection benefits of the proposed rule change against the potential harm to Restricted Firms and their registered representatives, and that FINRA has reasonably considered the impacts of the proposed rule change as outlined in its economic impact analysis and its response to comments.

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[109] See Notice, 87 FR at 36553 note 25 (citing SR-FINRA-2020-041, Exhibit 3g).

[110] See supra notes 99-101 and accompanying text.

Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, 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.

E. Recommended Withholding of Disclosure During a FINRA Rule 9561 Expedited Proceeding

As stated above, FINRA Rule 9561 established expedited proceedings providing member firms and former member firms, among other things, an opportunity to challenge any requirements the Department has imposed, including any Restricted Deposit Requirements, by requesting, pursuant to FINRA Rule 9561, a prompt review of its decision in the FINRA Rule 4111 process ("FINRA Rule 9561 expedited proceeding"). Under the proposed rule change, FINRA would prominently disclose a Restricted Firm's status on BrokerCheck, including while such a challenge is ongoing.[111]

One commenter recommended that FINRA amend the proposed rule change to give member firms and former member firms the opportunity to appeal their Restricted Firm designation through a FINRA Rule 9561 expedited proceeding before disclosing their restricted

[111] Proposed FINRA Rule 8312(b)(2)(I) would require the disclosure on BrokerCheck of information as to whether a particular current or former member is currently designated as a Restricted Firm pursuant to FINRA Rules 4111 and 9561. This would include the obligation to disclose while a FINRA Rule 9561 expedited proceeding to review the Department's decision is pending, because a decision that designates a firm as a Restricted Firm will not be stayed during a FINRA Rule 9561 expedited proceeding. See Notice, 87 FR at 36552; see also FINRA Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

status.[112] The commenter stated that publishing a Restricted Firm designation prior to completion of the adjudicatory process denies that firm adequate due process.[113] As such, the arrangement "fails to strike the correct balance between the need for investor protection and the procedural due process rights of the firm."[114]

In response, FINRA stated that it proposed disclosing Restricted Firm designations during the pendency of a FINRA Rule 9561 expedited proceeding, because a "firm's obligations under Rule 4111 are not stayed [during a Rule 9561 expedited proceeding]."[115] Specifically, FINRA stated "a designated Restricted Firm will still be required to comply with any conditions and restrictions imposed on the firm and deposit a portion of any Restricted Deposit Requirement."[116] FINRA stated that although it appreciates the commenter's suggestion, it continues to believe that the display of any member firm's current designation as a Restricted Firm on BrokerCheck, including during the pendency of a FINRA Rule 9561 expedited proceeding, "strikes the right balance in support of investor protection."[117] For example, FINRA stated that "[d]isplaying the firm's Restricted Firm status on BrokerCheck while the Rule 9561 expedited proceeding is pending could prompt investors to ask the firm about the firm's status."

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112 See Cetera Letter at 3.

113 See id.

114 Id. (stating that "[g]iven the potential for serious consequences upon disclosure of Restricted Firm status, it seems only fair that any such disclosure should be delayed until the entire adjudicatory process has been completed").

115 FINRA September 15 Letter at 9 (citing Notice at 36552 and note 15).

116 Id.

117 Id.

However, in response to the commenter's concerns, FINRA stated that it will work to disclose on BrokerCheck that any firm that is appealing its Restricted Firm designation pursuant to a FINRA Rule 9561 expedited proceeding has a Restricted Firm designation that is "on appeal."[118]

The Commission finds that the proposed rule change to display the current Restricted Firm designations of member firms and former member firms, during the pendency of a FINRA Rule 9561 expedited proceeding is reasonable, and appropriately enhances the investor protection benefits of the proposed rule change. The structure of the FINRA Rule 4111 process is designed such that Restricted Firm designations themselves are not stayed, nor are the concomitant obligations and conditions to which the firms are subject, during a FINRA Rule 9561 expedited proceeding. Therefore, it is reasonable for FINRA to require publication of the firm's active Restricted Firm designation on BrokerCheck in light of the important investor protection benefits such disclosure brings, and for FINRA to not delay such disclosure solely because the designated firm has requested a hearing (which may or may not be successful) pursuant to the FINRA Rule 9561 expedited proceeding provisions.[119] Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change is designed to protect investors and the public interest.

F. The Disclosure of Restricted Status is Redundant

[118] Id.

[119] The Commission notes that FINRA's commitment to work to enhance its display of Restricted Firm designations on BrokerCheck to convey to investors when member firms and former member firms have requested a hearing pursuant to FINRA Rule 9561 that such a designation is on appeal would make additional information available to investors, who may benefit from knowing that a firm is challenging its designation.

As stated above, FINRA Rule 4111 authorizes FINRA to designate as Restricted Firms those 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.[120] One commenter stated that the proposed rule change is unnecessary because information about the events giving rise to the Restricted Firm designation are already publicly available on BrokerCheck.[121] The commenter pointed out that disclosures about member firms' and former member firms' history of litigation, regulatory actions, and financial disclosures (among other things) are reported on Form BD, which information in turn appears on BrokerCheck.[122] The commenter stated that, similarly, information about firms' registered representatives is reported on Forms U4 and U5, which information is also available on BrokerCheck.[123] Because investors already have access to the relevant data forming the basis of a Restricted Firm designation, this commenter stated the proposed rule change would result in redundant disclosure.[124]

FINRA disagreed with the assertion that such proposed disclosure would be redundant.[125] FINRA stated that although Restricted Firm designations stem from events already disclosed on BrokerCheck, including certain events that are reported on Registration Forms, "the disclosure of

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120 See FINRA Rule 4111(i)(11).

121 See CoastalOne Letter at 2.

122 See id.

123 See id.

124 See id. at 2-3.

125 See FINRA September 15 Letter at 6.

a firm's designation as a Restricted Firm would provide additional information to investors."[126] Specifically, this information "would convey [to investors] that FINRA has designated the firm as a Restricted Firm after determining that the firm meets the Preliminary Criteria for Identification, conducting an initial evaluation, and having a consultation with the member; that the firm has significantly higher levels of risk-related disclosures than other similarly sized peers and presents a high degree of risk to investors; and that the firm may be subject to a 'Restricted Deposit Requirement' and other conditions or restrictions."[127] FINRA asserted that this information would be new for investors, as it is not information that could be "gather[ed] today from reviewing a firm's BrokerCheck report."[128]

The Commission finds that the proposed rule change requiring the disclosure of Restricted Firm designations on BrokerCheck would not be redundant of existing disclosures and would therefore provide additional information to investors and investor protection benefits. While the FINRA Rule 4111 metrics are comprised of disclosure events that are required to be reported on Registration Forms, FINRA's designation of a member firm or former member firm as a Restricted Firm follows an extensive FINRA Rule 4111 process that includes FINRA's own evaluation of the events, a consultation with the member firm in question, and an independent decision by FINRA's Department of Member Supervision to make the designation in question. Further, the disclosure of Restricted Firm designations also would indicate to investors that the firm may be subject to a Restricted Deposit Requirement and other conditions or restrictions.

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[126] Id.

[127] Id.

[128] Id.

Therefore, this designation would be new and additive to the array of information currently available to investors. Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[129] which requires, among other things, that FINRA 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.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, 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.

As with FINRA's approach to disclosing a member firm's Taping Firm status, the proposed rule change would provide disclosures to investors of information concerning the current status of member firms and former member firms that FINRA believes pose higher risks to the investing public compared to member firms and former member firms of similar sizes. This new category of information, provided in a user-friendly manner, would arm investors with information they could use to more carefully research the background of such firms. The proposed rule change could also incentivize member firms with a significant history of misconduct to change behaviors and activities to reduce risk. As such, the proposed rule change would enhance the investor-protection benefits of FINRA Rule 4111.[130] While the proposed rule change may negatively impact those firms designated as Restricted Firms, as described above,

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129 15 U.S.C. 78o-3(b)(6).

130 See FINRA Rule 4111 Order.

the existing regulatory regime would help mitigate potential harm. Furthermore, FINRA stated that it would revisit the proposed rule change after gaining experience with disclosing Restricted Firm designations on BrokerCheck.

For these reasons, the Commission finds the proposed rule change is designed to protect investors and the public interest.

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act[131] that the proposed rule change (SR-FINRA-2022-015), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[132]

Sherry R. Haywood
Assistant Secretary

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131 15 U.S.C. 78s(b)(2).

132 17 CFR 200.30-3(a)(12).