

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75988; File No. SR-FINRA-2015-032)

September 25, 2015

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 Reduce the Waiting Period for the Release of Information Reported on Form U5

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 14, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 reduce the 15-day waiting period for the release of information reported on Form U5 (Uniform Termination Notice for Securities Industry Registration) through BrokerCheck<sup>®</sup>.

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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 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 Central Registration Depository (“CRD<sup>®</sup>”), 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.<sup>3</sup> 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.

Rule 8312 governs the information that FINRA releases to the public through BrokerCheck. Pursuant to this rule, most of the information that FINRA releases through BrokerCheck generally is made available the day after it is filed with the CRD system.<sup>4</sup> Rule

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<sup>3</sup> FINRA discloses through BrokerCheck information that is reported on the following uniform registration forms: Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5, Form U6 (Uniform Disciplinary Action Reporting Form), Form BD (Uniform Application for Broker-Dealer Registration), and Form BDW (Uniform Request for Broker-Dealer Withdrawal).

<sup>4</sup> BrokerCheck is periodically “refreshed” based on information filed with the CRD system on the uniform registration forms. Information filed with the CRD system on Monday through Thursday generally is released through BrokerCheck the following day. Information filed with the CRD system on Friday or Saturday generally is released through BrokerCheck on Sunday. The CRD system is not available for filings on Sunday. Information filed with the CRD system that contains details about a disclosure event may require additional processing time. See, e.g., infra note 7.

8312, however, provides for a 15-day delay in the release of disclosure information filed on Form U5, which is used by firms to terminate registrations with self-regulatory organizations (“SROs”) and the states.<sup>5</sup> The 15-day waiting period was established to give brokers on whose behalf the Form U5 was submitted an opportunity to comment on the disclosure event either through a Form U4, which is used by firms to register brokers with SROs and the states, or by submitting a Broker Comment directly to FINRA.<sup>6</sup>

FINRA is concerned that the length of the current waiting period may provide, for an extended period of time, an incomplete picture of a broker’s disclosure history if an investor reviews a broker’s BrokerCheck report during the waiting period. Under those circumstances, an investor, without knowing about a potentially significant disclosure event that has been reported to the CRD system, may determine to conduct business with a formerly registered person who, although no longer in the securities industry in a registered capacity, may work in another investment-related industry or may have attained another position of trust with potential investors.

Moreover, FINRA’s concerns regarding the length of the current waiting period remain even if a broker moves to a new firm and files a Form U4 to report the disclosure event that occurred when the broker was registered at his or her prior firm. In such cases, the broker may not be aware of all the facts and circumstances involving the disclosure event and may therefore provide only limited details about the event. In addition, some brokers may attempt to intentionally reframe the circumstances surrounding the event to put it in a light that is most

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<sup>5</sup> Only disclosure information is subject to the 15-day waiting period. Other Form U5 information, such as the date of termination of a broker’s registrations, is published in BrokerCheck in accordance with the protocols described earlier (see supra note 4).

<sup>6</sup> See Securities Exchange Act Release No. 55127 (January 18, 2007), 72 FR 3455 (January 25, 2007) (Order Approving File No. SR-NASD-2003-168).

favorable to the broker. In either case, investors have access only to the details reported by the broker on the Form U4 if it is processed by FINRA staff prior to the filing of the Form U5 or during the current 15-day waiting period.

To address these concerns, FINRA is proposing to reduce the waiting period for the release of disclosure information reported on Form U5 (other than internal review disclosure information) from 15 days to three business days following the processing<sup>7</sup> of such information by FINRA.<sup>8</sup> FINRA believes that a three-business-day waiting period is more reasonable than a 15-day period because it allows investors to more quickly access disclosure information reported on Form U5 while at the same time still providing brokers with the opportunity to comment on the reported disclosure event.

In addition to reducing the length of the waiting period to three business days, FINRA is proposing that the waiting period potentially be curtailed if a broker reports on Form U4 the disclosure event that the broker's prior firm reported on Form U5 prior to the expiration of the waiting period. For example, if FINRA processes a disclosure event reported on Form U5 on Monday, and on Tuesday processes a Form U4 filed by a broker reporting that event, the Form U5 information would be made publicly available in BrokerCheck on Wednesday, which is the same day that the Form U4 information would be released. In such circumstances, the broker has had a chance to comment on the disclosure event that has been reported by the firm on Form U5, so continuing to exclude the Form U5 version of the event from BrokerCheck does not serve

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<sup>7</sup> For purposes of this rule, a Form U5 will be considered processed once the Disclosure Reporting Page, which contains the details about a disclosure event, has been reviewed by FINRA staff. Most Forms U5 that contain disclosure information are processed within two days of being filed with the CRD system.

<sup>8</sup> For example, if disclosure information on Form U5 is processed on Monday, FINRA would release that information via BrokerCheck on Thursday.

any purpose.<sup>9</sup> Furthermore, releasing the Form U5 information at the same time as the Form U4 information helps investors by reducing the uncertainty regarding the reason for a broker's termination from a firm when the broker remains in the industry after leaving his or her old firm.

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The implementation date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.<sup>10</sup>

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> 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. The proposed rule change to reduce the waiting period for the release of Form U5 information through BrokerCheck will enhance investor protection, because it will allow investors to more quickly access disclosure information reported on Form U5 and also limit the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck. The proposed rule change will help investors better determine whether to conduct business with registered persons who have changed firms, as well as formerly registered persons who, although

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<sup>9</sup> If a disclosure event is reported on Form U4 before the same event is reported on Form U5, the waiting period will still apply since the broker will not have had the opportunity to review and comment on the information provided by the firm on Form U5.

<sup>10</sup> The implementation of the proposed rule change will require programming changes to the CRD system, including changing the waiting period to business days from calendar days and allowing for the potential curtailment of the waiting period.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

no longer in the securities industry in a registered capacity, may work in another investment-related industry or may have attained another position of trust with potential investors.

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.

Economic Impact Assessment

A. Need for the Rule

As discussed above, FINRA is concerned that the length of the current waiting period for the release of disclosure information filed on Form U5 may provide, for an extended period of time, an incomplete picture of a broker's disclosure history if an investor reviews a broker's BrokerCheck report during the waiting period. Moreover, if a broker moves to a new firm and files a Form U4 to report the disclosure event that the broker's prior firm reported on Form U5 prior to the expiration of the waiting period, investors could have access only to the details reported by the broker on the Form U4 which may be potentially limited or misleading.

B. Regulatory Objective

The proposed reduction in the waiting period for the release of disclosure information reported on Form U5 aims to allow investors to access important information more quickly while still providing brokers with the opportunity to comment on the reported disclosure event. In addition, FINRA is proposing the simultaneous release of Form U5 and Form U4 information in the case where FINRA processes a Form U4 that reports a disclosure event that a broker's prior firm reported on Form U5 prior to the expiration of the waiting period. The proposed simultaneous release would prevent brokers from accidentally or intentionally releasing incomplete information regarding a disclosure event to the public.

### C. Economic Baseline

The current regulatory environment serves as a baseline for the proposed rule change. Specifically, Rule 8312 provides for a 15-day delay in the release of Form U5 disclosure information to the public through BrokerCheck. Investors reviewing a broker's BrokerCheck report during the waiting period may not be able to obtain a complete picture of the broker's disclosure history.

Brokers on whose behalf a Form U5 was submitted may comment on the disclosure event either through a Form U4 or by submitting a Broker Comment directly to FINRA. Form U4 is used by firms to register brokers with SROs and the states, and thus brokers who remain in the securities industry in a registered capacity have a Form U4 filing requirement. In the cases where a Form U4 was filed prior to the filing of a Form U5 or during the current 15-day waiting period, investors may have access only to the details about the disclosure event reported by the broker on the Form U4 for an extended period of time.

### D. Economic Impacts

The proposed rule change to reduce the waiting period for the release of Form U5 information through BrokerCheck will enhance investor protection, because it will allow investors to more quickly access disclosure information reported on Form U5 and also limit the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck. Therefore, the rule change will benefit investors by allowing them to make better informed decisions about the individuals with whom they conduct business and, in turn, potentially to have greater trust in the markets.

FINRA does not anticipate that the proposed rule change will impose any burden or additional economic costs on member firms. In this regard, FINRA notes that the proposed rule

change will not subject member firms to any new or additional uniform registration form reporting requirements. The Form U5 questions that elicit disclosure information will remain the same as will the timing of filing requirements; only the waiting period for the inclusion of the disclosure information in BrokerCheck will change.

FINRA anticipates that the proposed rule change may impose only a limited burden or additional economic costs on associated persons. As previously mentioned, the proposed rule change will not result in any new or additional uniform registration form reporting requirements. In addition, associated persons will continue to have the opportunity to comment on any disclosure event reported on Form U5. Under the FINRA By-Laws, a firm must provide a terminated broker with a copy of a Form U5 concurrently with the firm filing it with the CRD system.<sup>12</sup> Furthermore, if a broker has moved to a new firm before their prior firm has filed a Form U5, the broker's new firm receives notice of the Form U5 filing when it is made with the CRD system. As a result, FINRA believes that the proposed three-business-day waiting period generally will provide brokers with sufficient time to comment on the reported disclosure event. To the extent that some registered brokers may find the proposed three-business-day waiting period insufficient to comment fully on the disclosure event, they have the option to file a Form U4 amendment within three days of the Form U5 filing to indicate that additional information regarding the facts and circumstances involving the disclosure event will be reported in a forthcoming Form U4 amendment. The additional cost to the broker would include time and effort to file the first U4 amendment and an additional disclosure review fee of \$110.

FINRA also anticipates that the proposed rule change may impose only a limited burden on associated persons because FINRA believes that the proposal will affect only a small

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<sup>12</sup> See FINRA By-Laws Article V, Section 3(a).

percentage of those individuals who have a disclosure event reported on Form U5. FINRA reviewed all 5,654 disclosure events that were reported on Form U5 in 2014 and found that approximately 9.7 percent of Form U4 filings reporting such disclosure events were made between 4 and 15 days after the Form U5 had been filed and that no Broker Comments were submitted to FINRA during that timeframe. Thus, in 2014 the proposed rule change would have likely had no impact on those individuals for whom more than 90 percent of the Forms U5 were filed that included a disclosure event.<sup>13</sup> Furthermore, the percentage of individuals potentially impacted by the proposed rule change may be even less than the figure cited above because some individuals may have had the ability to file a Form U4 within three days of the Form U5 being filed but chose not to do so.<sup>14</sup>

FINRA further notes that the proposed rule change will not impact the number of options brokers have to address their concerns regarding a disclosure event that has been reported on Form U5. As previously mentioned, a broker can respond via a Form U4 or a Broker Comment.<sup>15</sup> Moreover, a broker also may file a complaint with FINRA if they believe that a

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<sup>13</sup> Such individuals include those who filed a Form U4 or Broker Comment prior to or within three days of the filing of the Form U5, more than 15 days after the Form U5 was filed, and never filed a Form U4 or Broker Comment.

<sup>14</sup> During its review, FINRA was unable to determine the reason why individuals made their Form U4 filings between 4 and 15 days after the filing of the Form U5 and therefore FINRA cannot reliably estimate how many individuals may have had the ability to file a Form U4 within three days of the Form U5 being filed. FINRA further notes that the waiting period under the current rule is based on calendar days following the filing of the Form U5 while the waiting period under the proposed rule change is based on business days after FINRA processes the Form U5.

<sup>15</sup> FINRA has improved the display of Broker Comments in the last few years by placing the comment next to the corresponding disclosure in BrokerCheck rather than at the top of the first page of an individual's BrokerCheck report.

firm has filed false or misleading information on Form U5. Brokers now also have the ability to dispute the accuracy of (or update) a reported disclosure event.<sup>16</sup>

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

Written comments were neither solicited nor received.

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 up to 90 days (i) as the Commission may designate 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-032 on the subject line.

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<sup>16</sup> See Rule 8312(e).

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2015-032. 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 the 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-2015-032 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.<sup>17</sup>

Robert W. Errett  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).