

## **Recommendation of the Investor as Owner Subcommittee:**

### **Empowering Elders and Other Investors: Background Checks in the Financial Markets**

The Investor Advisory Committee recommends that the SEC:

- develop a disciplinary database for violations of the securities laws that will allow elders and other investors to easily conduct searches of any person or firm sanctioned for these violations;
- take steps to reduce the complexity of background searches by taking steps to simplify the search process, including steps to ensure comparable quality between BrokerCheck and IAPD and the development of an appropriately named site that will permit elders and other investors, through a single search, to access information in all databases supervised in whole or in part by the SEC;
- seek to obtain the agreement from other federal regulators, self-regulatory organizations, and state regulators for the development of a single site that will permit a search of all relevant databases that provide background information on financial market professionals.

#### I. Introduction<sup>1</sup>

These recommendations are designed to empower elders and those caring for elders, as well as other investors, by encouraging the development of more complete, simple, and centrally operated search functions that permit thorough understanding of the background of anyone offering a financial product. The proposal is a limited one. Improvements to the database for financial professionals, while valuable, cannot substitute for prompt and decisive action by regulators to remove from the industry individuals whose actions have shown them to represent a threat to the investing public. The public is not invariably protected simply through increased disclosure that reveals severe and repeated examples of misconduct.

Nor does the proposal specifically address the presentation, accuracy or the categories of information produced as a result of a search.<sup>2</sup> These searches will ultimately need to produce useful, verifiable and relevant information on the background of anyone offering a financial

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<sup>1</sup> A glossary of terms is attached as appendix 2.

<sup>2</sup> Content issues exist. Not all data bases report the same types of information. Information on bankruptcies are available in BrokerCheck and IAPD. The same information may be reported by mortgage brokers (<http://www.ndbf.ne.gov/mb/background-credit-checks-faqs.pdf>) but does not appear in NMLS Consumer Access. See *infra* notes 109-112. Moreover, other types of information may not appear in any database. See SEC Warns of Purported Financial Professionals Using False Credentials to Attract Investors, Press Release No. 2015-108, June 3, 2015 (“The Securities and Exchange Commission today warned investors to thoroughly check the claimed credentials of people soliciting their investments to ensure they are not falsifying, exaggerating, or hiding facts about their backgrounds.”).

product. Specifically, excessive reporting of immaterial information can produce clutter that obscures information material to investors, and not being able to obtain information that is material, verified and adverse to an investor has obvious failings. This matter of quality of information is perhaps the most important issue -- bad information, presenting all information as if it should have the same weight in an investors mind, and presenting unverified information (such as raw complaints) without at least noting them as such would all be misleading. Moreover, omitted information that is material would provide reassurances where none are due. And, presenting immaterial items as significant or otherwise overstated would unduly and unfairly wave investors away from a good professional. The result will be data, presented with the assurances of a regulator's imprimatur, that does more damage than good, just as providing false and misleading information, or omitting material information, to an investor in other contexts does more damage than good. In sum, these databases should be held to the same high standards that any commercially available database would be expected to satisfy.

Finally, we note that these recommendations are deliberately designed to provide a course of action that can be accomplished through action by the Commission, either unilaterally or in cooperation with other agencies, regulators, and trade associations. Nonetheless, the space may ultimately benefit from legislation. Legislation may be necessary to provide the funding necessary to maintain a centralized search function.<sup>3</sup> To the extent pressure builds for a single data base that encompasses all financial professionals, no single agency or regulator has the current legal authority to develop the function. Implementing legislation may, therefore, be required.

Although the benefits of these proposals are broad and will benefit investors in general, the Committee developed these recommendations in the context of concerns that arise with respect to the financial abuse of elders. These recommendations seek to empower elders in protecting their financial assets. Protecting elders, however, is more than providing necessary tools to retirees. It also entails the empowerment of family members, caregivers, and others and allows them to quickly and easily obtain the necessary background information on persons offering financial products. Making background information easily available to all of these individuals will contribute to the protection of an elder's financial assets.

#### A. The Problem of Elder Abuse

We live in an era of elder fraud,<sup>4</sup> something that has been described as an epidemic.<sup>5</sup> Elders can be attractive targets to dishonest financial professionals. With defined contribution

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<sup>3</sup> Legislation, for example, could expand the mission of the Financial Literacy and Education Commission (FLEC) to include the development of such a database. Funding could be drawn from dedicated funds set aside by certain FLEC member agencies for consumer and investor education initiatives.

<sup>4</sup> <http://www.gao.gov/assets/660/650074.pdf> ("A study of media reports from April to June 2010 estimated that financial exploitation cost older adults at least \$2.9 billion in 2010. The money that older adults lose in these cases is rarely recovered, and the loss can undermine both the health of older adults and their ability to support or care for themselves.").

<sup>5</sup> Jeffrey M. Salas, Retirement Adrift: Financial Elder Abuse, 86 Wis. Law. 18, 19 (March 2013) ("Financial abuse of the elderly is reaching epidemic rates as stockbrokers and financial advisors take advantage of the complicated financial landscape to convince older persons to take on risky, high-commission investments and investment strategies.").

plans predominating,<sup>6</sup> those retiring often have access to large pools of liquid assets contained in retirement accounts making them targets for fraudsters.<sup>7</sup> Likewise reduced capacity and social isolation increase the vulnerability of elders.<sup>8</sup>

The Commission has taken a number of steps with respect to elder fraud. Commissioners have raised concern over the problem and acknowledged the “urgent need to address the issue of elder financial abuse.”<sup>9</sup> The Agency joined with a number of other financial regulators to issue guidance designed to clarify the applicability of privacy provisions of the Gramm-Leach-Bliley Act to reporting suspected financial exploitation of older adults.<sup>10</sup> The Securities and Exchange Commission (“SEC” or “Commission”) also files enforcement actions against persons defrauding the elder community. The Commission maintains a website for seniors<sup>11</sup> and has held events to consider issues specific to seniors.<sup>12</sup>

State securities regulators have also focused on elder fraud. At least one third of state enforcement actions involve senior investors.<sup>13</sup> The area has seen specific initiatives from the North American Securities Administrators Association (“NASAA”).<sup>14</sup> States have increasingly put in place mandatory reporting laws that require market professionals to alert appropriate agencies of suspicion of financial fraud against elders. States have given financial institutions the authority to delay the withdrawal of financial resources where such abuses are suspected.<sup>15</sup> In some cases, brokers and other participants in the financial markets are subject to mandatory training in an effort to increase recognition of elder financial abuse<sup>16</sup> and mandatory reporting obligations upon suspicion of financial elder abuse.

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<sup>6</sup> See <http://www.gao.gov/assets/660/652881.pdf>, at 4 (“In 2010, employers sponsored over 510,000 401(k) plans with participation from over 60 million workers. The assets held in these plans totaled more than \$3.1 trillion.”).

<sup>7</sup> <http://www.gao.gov/assets/660/650074.pdf> (“Older adults are particularly attractive targets for financial exploitation by unscrupulous individuals.”).

<sup>8</sup> Protecting Older Investors: The Challenge of Diminished Capacity, Naomi Karp, Ryan Wilson, AARP Public Policy Institute, Nov. 2011, at 7 (“mild cognitive impairment affects about 22 percent of those aged 71 and older”).

<sup>9</sup> Remarks of Commissioner Luis A. Aguilar, Securities & Exchange Commission, Meeting of the Investor Advisory Committee, Washington, DC, July 10, 2014. See also Remarks of Commissioner Michael S. Piwowar, Securities & Exchange Commission, Remarks to the Securities Enforcement Forum 2014, Oct. 14, 2014 (“Many victims of securities fraud are senior citizens.”).

<sup>10</sup> Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults, <http://www.sec.gov/news/press/2013/elder-abuse-guidance.pdf>

<sup>11</sup> <http://www.sec.gov/investor/seniors.shtml> (last visited Mar. 18, 2015).

<sup>12</sup> See, e.g., Third Annual Seniors Summit, Sept. 22, 2008, <http://www.sec.gov/investor/seniors/ss3.htm> (last visited Mar. 18, 2015).

<sup>13</sup> <http://www.nasaa.org/32303/new-nasaa-initiative-focuses-senior-investor-issues/> (“One-third (34 percent) of enforcement actions taken by state securities regulators since 2008 have involved senior victims among states that track victims by age, according to NASAA enforcement statistics. Of the 10,526 enforcement actions initiated by states that track victims by age between 2008 and 2013, 3,548 involved victims age 62 and older.”).

<sup>14</sup> NASAA has formed the Committee on Senior Issues and Diminished Capacity, a board level committee to focus on the area. See <http://www.nasaa.org/32303/new-nasaa-initiative-focuses-senior-investor-issues/>

<sup>15</sup> See Financial exploitation of vulnerable adults, Wash. Code 74.34.215(1) (financial institution that “reasonably believes that financial exploitation of a vulnerable adult may have occurred. . . may, but is not required to refuse a transaction requiring disbursement of funds contained in an account . . .” for as long as ten business days).

<sup>16</sup> See Wash. Code 74.34.220(2) (“A financial institution that is a broker-dealer or investment advisor . . . shall provide training concerning the financial exploitation of vulnerable adults to employees who are required to be registered in the state of Washington as salespersons or investment advisor representatives”).

The private sector has also taken steps to address elder fraud.<sup>17</sup> Given financial firms' direct interactions with seniors and client relationships that often span decades, they can play a critical role in identifying and combatting elder fraud.

## B. Empowering Elders and their Caretakers

In addition to attacking the problem after the fact, elder fraud can be reduced by empowering elders, their families, and caretakers to avoid fraudulent transactions in the first instance.<sup>18</sup> As Commission Aguilar has stated: “[I]t is important that seniors and retirees be vigilant and be the first line of defense in protecting their own assets”.<sup>19</sup>

One way to do this is to ensure that elders and other investors can fully vet the backgrounds of any person offering a financial product. Such an examination may provide red flags and other warnings that caution against entering into a proposed transaction or engaging the services of a particular firm or individual and encourage elders to seek additional information.

To effectively conduct this type of due diligence, elders and other investors must have an opportunity to easily and comprehensively obtain background information on market professionals.<sup>20</sup> At the most basic level, such a search would determine whether the market professional is registered or licensed. In other circumstances, such a search would provide information about the background, honesty, integrity and competency of the market professional.

As will be discussed below, some of this information is already available. The Financial Industry Regulatory Authority (“FINRA”) operates BrokerCheck, a comprehensive database on current and former FINRA members.<sup>21</sup> The SEC operates the Investor Advisor Public Disclosure (“IAPD”) system.<sup>22</sup> The IAPD permits the search of investment advisers (whether registered with the Commission or the states) and investment adviser representatives.

These databases, however, do not include all market professionals. They do not include municipal advisors and their employees. They do not include firms and financial professionals

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<sup>17</sup> See, e.g., Financial Services Institute, Elder Abuse Prevention, <http://www.financialservices.org/elderabuse/> (last visited Mar. 18, 2015); Financial Services Roundtable, Refuse Elder Abuse: FSR members Thwart Fraud Perpetrators, <http://fsroundtable.org/refuse-elder-abuse-thwart-fraud-perpetrators/> (last visited Mar. 18, 2015); SIFMA, Protecting Main Street—Industry Safeguards for the Older Investor, Conference, Feb. 7, 2014.

<sup>18</sup> Indeed, after the fact enforcement cannot reach all instances of elder fraud. Many victims do not even report incidents of elder fraud. See Financial Fraud and Fraud Susceptibility in the United States, Research Report from a 2012 National Survey, Applied Research and Consulting, LLC, Sept. 2013, at 20 (prepared for FINRA Investor Education Foundation) (4% admitted investing in fraudulent offerings; 55% did not report the fraud to anyone; of those, 53% said it “would not have made a difference”) while 40% said they “didn’t know where to turn”).

<sup>19</sup> Commissioner Luis A. Aguilar, Protecting the Financial Future of Seniors and Retirees, The American Retirement Initiative’s Winter 2014 Summit Washington, DC, Feb. 4, 2014.

<sup>20</sup> This is particularly true given the “low-involvement audience” faced by those promoting financial literacy and investor education. See *Using Social Media, Social Marketing and Brain Research to Improve the Design and Delivery of Financial Education*, FINRA Investor Education Foundation (Developed in partnership with Tuck Executive Education at Dartmouth), 2010 (“Financial literacy and investor education providers typically face a low-involvement audience. The audience is deemed relatively uninvolved when consumers are not particularly interested in engaging in an active search for information.”).

<sup>21</sup> <http://brokercheck.finra.org/> (last visited Mar. 18, 2015).

<sup>22</sup> [http://www.adviserinfo.sec.gov/IAPD/Content/IapdMain/iapd\\_SiteMap.aspx](http://www.adviserinfo.sec.gov/IAPD/Content/IapdMain/iapd_SiteMap.aspx) (last visited Mar. 18, 2015).

registered only with the Commodity Futures Trading Commission (“CFTC”) (and National Futures Association). They do not include insurance agents or mortgage brokers. Most noticeably, the databases do not include persons who have been sanctioned by the SEC, FINRA, the CFTC, the National Futures Association (“NFA”), or state regulators, but that are otherwise unregistered.<sup>23</sup>

Elders wishing to conduct a background check on a market professional, therefore, confront a diffuse, confusing, and complex environment. This recommendation seeks to encourage the SEC to take a leadership role in reducing the confusion and complexity of this process and centralizing information relevant to investors.

The SEC can take some direct steps to address the problem. Among other things, the SEC should develop an easily searchable database that allows elders and other investors to determine whether market professionals, including unregistered persons, have been sanctioned for violations of the federal securities laws.

Other efforts to reduce confusion and complexity require coordination with different organizations and agencies. Numerous databases maintained by numerous organizations contain potentially relevant information. Ultimately, the goal should be to allow elders and other investors to rely on a single search function to obtain background information on any person offering financial or financial related products. Investors of all ages, but particularly elders, would benefit from a comprehensive, easy-to-use database containing basic background information on firms and individuals selling financial products. If negative information about a person offering securities or other financial products to an investor appeared in the database, the investor would be on the alert. If the salesperson did not appear in the database at all, the investor would know to proceed with caution and seek additional information before engaging in the proposed transaction.

## II. An Overview of Existing Databases

### A. Securities and Exchange Commission

The two primary databases for securities firms and professionals are BrokerCheck and IAPD. BrokerCheck and IAPD are useful tools for elders or any other investor seeking information on the background of a securities professional. The Commission has recognized that access to this type of information can protect investors and market integrity<sup>24</sup> and has

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<sup>23</sup> The SEC recently brought actions against two dozen companies and individuals alleging that they acted as unregistered broker-dealers. See [SEC Charges Nearly Two Dozen Unregistered Broker-Dealers](http://www.sec.gov/news/pressrelease/2015-50.html#.VRXbpqzwtgdg), available at <http://www.sec.gov/news/pressrelease/2015-50.html#.VRXbpqzwtgdg>

<sup>24</sup> Exchange Act Release No. 62476 (July 8, 2010) (“The Commission recognizes that the public's ability to access information, whether to inquire about a registered person or a formerly associated person, may serve to protect investors, the integrity of the marketplace, and the public interest.”).

encouraged investors to examine the background of market professionals, particularly BrokerCheck.<sup>25</sup> Nonetheless, there is room for improvement.

## 1. BrokerCheck

BrokerCheck has as a primary purpose helping investors “make informed choices about the individuals and firms with which they conduct business. . . .”<sup>26</sup> First implemented in 1988<sup>27</sup> and renamed in 2003,<sup>28</sup> BrokerCheck<sup>29</sup> is an online tool maintained by FINRA<sup>30</sup> that helps “investors make informed choices about brokers and brokerage firms” and “provides information about formerly registered brokers who, although no longer registered in the securities industry, may work in other financial services industries.”<sup>31</sup> In 2013, BrokerCheck was expanded to include non-FINRA members that were registered only with a stock exchange.<sup>32</sup>

Information in BrokerCheck is derived from the Central Registration Depository (“CRD”), an online registration and licensing database.<sup>33</sup> Operated pursuant to policies “developed jointly with the North American Securities Administrators Association”,<sup>34</sup> the CRD system consists of information reported by broker-dealers, associated persons, and regulatory

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<sup>25</sup> Exchange Act Release No. 71195 (Dec. 27, 2013) (“The Commission urges the public to utilize BrokerCheck as well as all other sources of information, particularly the databases of the state regulators, as well as legal search engines, and records searches, to conduct a thorough search of a firm or any associated person’s activities.”).

<sup>26</sup> Exchange Act Release No. 68700 (Jan. 18, 2013) (“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.”)

<sup>27</sup> Exchange Act Release No. 68700 (Jan. 18, 2013) (“FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA-member firms and their associated persons.”).

<sup>28</sup> Exchange Act Release No. 59160 (Dec. 23, 2008) (noting that In December 2003, “FINRA announced that its ‘Public Disclosure Program’ would thereafter be known as ‘BrokerCheck.’”).

<sup>29</sup> BrokerCheck is required by statute. See 15 USC 78o-3(i).

<sup>30</sup> FINRA maintains other relevant databases. The professional designations database allows investors to decode the letters that sometimes follow a financial professional’s name”.

<http://www.finra.org/Investors/ToolsCalculators/ProfessionalDesignations/DesignationsLookup/> FINRA also maintains the Arbitration Awards Online database, see <http://finraawardsonline.finra.org/> and a Disciplinary Actions database. See <http://www.finra.org/Industry/Enforcement/DisciplinaryActions/FDAS/> The latter allows searches to “obtain copies of disciplinary complaints and disciplinary decisions as well as to find actions involving violations of a particular rule or statute, or other criteria of interest to them.” Exchange Act No. 69825 (June 21, 2013).

<sup>31</sup> <http://brokercheck.finra.org/> (last visited Mar. 20, 2015).

<sup>32</sup> Exchange Act Release No. 71195 (Dec. 27, 2013) (“Making this information available via BrokerCheck harmonizes the disclosure across the securities industry.”). Whether BrokerCheck will ultimately include crowdfunding portals is unclear. See FINRA Proposed Rule 800(b), available at <http://www.finra.org/web/groups/industry/%40ip/%40reg/%40notice/documents/industry/p369763.pdf> (“The rule provides that FINRA shall make available to the public information filed by a funding portal member that is currently or was previously registered with FINRA, and that, except as otherwise provided by the rule, FINRA shall make available any information reported on the funding portal’s most recently filed SEC registration forms. Further, under the rule, FINRA shall make available information filed by a funding portal member indicating whether the funding portal member or any associated person of the funding portal member is subject to a statutory disqualification.”).

<sup>33</sup> [https://ews.finra.org/auth/ews\\_logon.jsp?CTAuthMode=BASIC&login\\_form\\_location\\_basic&aa\\_param=user](https://ews.finra.org/auth/ews_logon.jsp?CTAuthMode=BASIC&login_form_location_basic&aa_param=user)

<sup>34</sup> Exchange Act Release No. 59771 (April 15, 2009).

authorities on uniform registration forms.<sup>35</sup> Through CRD, firms and individuals are able to register with multiple states and self-regulatory organizations.<sup>36</sup>

Only a subset of the information in the CRD system appears in BrokerCheck.<sup>37</sup> Under FINRA Rule 8312,<sup>38</sup> disclosure includes certain information provided on Form U4,<sup>39</sup> including criminal and regulatory actions involving fraud or arising out of investment-related actions, certain customer complaints, arbitrations and civil actions, certain arbitration award information, terminations (including voluntary resignations) for certain behavior arising out of investment related statutes, fraud or the wrongful taking of property, and certain financial disclosure, including the filing of a bankruptcy petition or the existence of any unpaid liens or judgments.<sup>40</sup> Test scores, internal investigation reports,<sup>41</sup> and outdated information (such as bankruptcies older than ten years and most information on persons whose registration expired more than ten years ago) are examples of information in the CRD, but excluded from BrokerCheck.<sup>42</sup>

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<sup>35</sup> The system includes information filed with FINRA on Forms U4, Form U5, Form U6, and Form BR, and information required by the SEC but also filed with FINRA, Forms BD, and Form BDW. Information on Form BD and BDW is filed in the first instance with FINRA and then provided to the Commission. See Exchange Act Release No. 31660 (December 28, 1992) (“Under the new system, broker-dealers will only be required to file one application for registration on Form BD with the NASD, which will enter the information into the CRD system and then electronically forward the data to the Commission for review. Form BD amendments and withdrawals from registration on Form BDW also will be filed through the CRD system.”).

<sup>36</sup> Exchange Act Release No. 67247 (June 25, 2012) (“The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations (“SROs”) to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA.”).

<sup>37</sup> Exchange Act Release No. 72649 (July 22, 2014) (“any information that is removed from CRD is no longer available through BrokerCheck.”). The complete CRD, subject to privacy redactions, is often available through open records requests under state law. See The Inequality of Investor Access to Information, Public Investors Arbitration Bar Association, March 6, 2014, available at [http://piaba.org/system/files/pdfs/PIABA%20Press%20Release%20\(March%206,%202014\).pdf](http://piaba.org/system/files/pdfs/PIABA%20Press%20Release%20(March%206,%202014).pdf) (some states provide “CRD Snapshot Reports” that “exclude only personal information such as social security numbers and home addresses”).

<sup>38</sup> See FINRA Rule 8312, available at [http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=3891](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3891) (defining the disclosure requirements for BrokerCheck).

<sup>39</sup> For instructions to the Form, see <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015111.pdf>

<sup>40</sup> BrokerCheck does not include liens or judgments that have been satisfied. See Jean Eaglesham, Wall Street’s Watchdog Doesn’t Disclose All Regulatory Red Flags: Finra Doesn’t Make Public All Its Information About Brokers, WSJ, Dec. 26, 2014, <http://www.wsj.com/articles/wall-streets-watchdog-doesnt-disclose-all-regulatory-red-flags-1419645494?KEYWORDS=Financial+Industry+Regulatory+Authority> (“The Journal’s analysis identified at least 21,255 brokers with old bankruptcies, satisfied judgments or liens or other personal financial issues that don’t show up on BrokerCheck.”). See also Jean Eaglesham and Rob Barry, Stockbrokers Fail to Disclose Red Flags, Wall St. J., Mar. 5, 2014, available at <http://www.wsj.com/articles/SB10001424052702304026804579411171593358690> (“WSJ Analysis Shows More Than 1,600 Stockbrokers Have Bankruptcies or Criminal Charges in Their Past That Weren’t Reported”).

<sup>41</sup> FINRA Rule 4530(e). To the extent not filed on a U5, the information will not appear in the CRD.

<sup>42</sup> Information is retained permanently for persons who are subject to a “final regulatory action,” were convicted or pled guilty/nolo contendere to a certain crime, were subject to a civil injunction or court finding related to investment-related activity brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement, or were named as defendants in certain investment or consumer related actions. For these persons, however, BrokerCheck provides a reduced amount of disclosure and does not include information on customer complaints, terminations, bankruptcies and unpaid liens. A final regulatory action on a U4 “may include any final action, including any action that is on appeal, by the SEC, the Commodity Futures Trading Commission, a

## 2. Investment Adviser Public Disclosure (“IAPD”)

The SEC operates the Investment Adviser Public Disclosure (“IAPD”), a searchable database for investment advisers (whether registered with the state or the SEC), certain exempt reporting advisers and adviser representatives.<sup>43</sup> The IAPD also includes data on persons formerly registered as advisers<sup>44</sup> and adviser representatives formerly registered with the states.<sup>45</sup> Investors can search the database from the SEC’s website<sup>46</sup> but FINRA develops and maintains the database that collects the relevant information.<sup>47</sup>

Information in the IAPD is derived in part from the Investment Adviser Registration Depository (“IARD”).<sup>48</sup> Modeled after the CRD,<sup>49</sup> the IARD is “an electronic filing system” for investment advisers sponsored by the SEC and NASAA and operated by FINRA.<sup>50</sup> The system collects information provided on Form ADV, including the brochure supplement (Part 2 of that form), and various uniform forms required by state law, including the U4.<sup>51</sup>

As with the CRD system, the IAPD includes only a subset of the information contained in the IARD. Unlike BrokerCheck, no explicit rule addresses the relationship between the information in the IARD and the information available in IAPD. These decisions are generally

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federal banking agency, the National Credit Union Administration, another federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization”). Exchange Act Release No. 62476 (July 8, 2010) (“Disclosure pursuant to the proposed rule change would not include other information in CRD, such as customer complaints, historic complaints, terminations, bankruptcies and liens.”).

<sup>43</sup> <http://www.adviserinfo.sec.gov/IAPD/Content/IAPDMain/SiteExplanation.aspx> (last visited Mar. 20, 2015).

<sup>44</sup> See <http://www.sec.gov/answers/iapd.htm> (“Information concerning investment advisers that are no longer registered with the SEC or states is made available on IAPD for several years after the adviser is no longer registered.”).

<sup>45</sup> Specifically, the IAPD includes investment adviser representatives that have been state-registered within the past decade or “(1) have ever been the subject of a final regulatory event, (2) convicted of or pled guilty or no contest to a crime, (3) have been the subject of a civil injunction or civil court finding involving a violation of any investment-related statute(s) or regulation(s), or (4) have been a respondent or defendant or the subject of an arbitration or civil litigation which resulted in an award, decision, or judgment for a customer that has been reported on a registration form.” <http://www.adviserinfo.sec.gov/IAPD/Content/IAPDMain/SiteExplanation.aspx>

<sup>46</sup> [http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd\\_Search.aspx](http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx) (last visited Mar. 20, 2015).

<sup>47</sup> See <http://www.iard.com/> (last visited Mar. 20, 2015) (explaining that “FINRA is the developer and operator of” the Investment Adviser Registration Depository).

<sup>48</sup> Section 204(c) of the Investment Advisors Act provides the Commission with the authority to create a system submitting filings and reports with an entity designated by the Commission and impose fees to recover the “reasonable costs” of such a system.

<sup>49</sup> Exchange Act Release No. 42620 (April 5, 2000) (“The IARD will be modeled on NASDR’s Web Central Registration Depository (CRD), which is used by broker-dealers to make filings with us, state securities authorities, and NASDR.”). NASDR is a predecessor to FINRA.

<sup>50</sup> See <http://www.iard.com/WhatIsIARD.asp> (last visited Mar. 20, 2015) (“FINRA does not have regulatory authority over Investment Advisers; however, it was chosen to develop, operate, and maintain the system because of its regulatory business and technical expertise and the success of its Web-based licensing and regulation system, Web CRD, deployed in 1999.”)

<sup>51</sup> <http://www.iard.com/WhatIsIARD.asp> (last visited Mar. 20, 2015) (“The IARD Program also provides for the registration of Investment Adviser Representatives (RAs) using the Individual Form Filing Functionality in Web CRD. In 2011, IARD was upgraded to accept reports from exempt reporting advisers.”).

determined through negotiations among FINRA, the states, and the SEC. As a practical matter, however, IAPD essentially duplicates the disclosure contained in BrokerCheck.<sup>52</sup>

The IAPD provides investors with access to the information contained in forms ADV,<sup>53</sup> including the brochure supplement.<sup>54</sup> The brochure supplement contains “information about the educational background, business experience, and disciplinary history (if any) of the supervised persons who provide advisory services to the client.”<sup>55</sup> In addition, the IAPD has, since 2010, included information provided by advisor representatives on Form U4. As with BrokerCheck, the IAPD contains some information on formerly registered advisers and investment adviser representatives.<sup>56</sup>

### 3. Database Issues

The securities databases suffer from a number of interrelated problems. First, the databases are under-utilized. Perhaps because adviser representatives were only recently (2010) added to the search function, the IAPD does not appear to be widely known or widely used.<sup>57</sup> Unlike brokers who are required to annually tell customers about BrokerCheck,<sup>58</sup> advisers have

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<sup>52</sup> Some differences, however, exist. Exchange Act Release No. 61927 (April 16, 2010) (“IAPD-I will include Historic Complaints that became Historic Complaints on or after March 18, 2002, which is the date IARD was established for investment advisor representative registration. As a result, when IAPD-I is deployed, BrokerCheck and IAPD-I may disclose slightly different information regarding Historic Complaints of those financial services professionals that are dually registered as brokers and investment advisers.”).

<sup>53</sup> <http://www.sec.gov/IARD> (last visited Mar. 20, 2015) (“Since September 25, 2001, investors have had Internet access to information contained in Form ADV electronic filings made by investment advisors . . .”); *see also* Investment Advisors Release No. 3308 (October 31, 2011) (“Information filed on Form ADV is made available to the public through the Investment Advisor Public Disclosure (IAPD) Web site.”).

<sup>54</sup> A brochure supplement consists of Part II of Form ADV. The supplement must be delivered to clients and prospective clients of advisors. *See* Rule 204-3, 17 C.F.R. § 275.204-3.

<sup>55</sup> Investment Advisers Act Release No. 3060 (Aug. 12, 2010). Much of the information required in the brochure supplement is already disclosed in the Form U4. *See id.* (“most states require that supervised persons of SEC-registered investment advisers that are investment adviser representatives file Form U4, which requires similar business background and disciplinary information as the brochure supplement.”). As a result, advisers filing the information are allowed to cross reference the information in the U4 where appropriate. *See id.* (allowing for the use of a hyperlink to BrokerCheck or IAPD).

<sup>56</sup> *See also* Exchange Act Release No. 61927 (April 16, 2010) (“In November 2010, the system was modified to retain information about advisory firms and investment advisor representatives that de-registered in the past ten years, mirroring changes, approved a few months earlier, to BrokerCheck for former registered representatives.”).

<sup>57</sup> Exchange Act Release No. 68700 (Jan. 18, 2013) (noting a 2009 study “that found that only 15 percent of respondents said that they had checked a financial advisor’s background with a state or federal regulator.”). The study is here: [Financial Capability in the United States](http://www.finrafoundation.org/web/groups/foundation/@@foundation/documents/foundation/p120536.pdf) (FINRA Investor Education Foundation, Dec. 1, 2009), available at <http://www.finrafoundation.org/web/groups/foundation/@@foundation/documents/foundation/p120536.pdf>.”).

<sup>58</sup> Exchange Act Release No. 68700 (Jan. 18, 2013) (“Subject to limited exceptions, FINRA Rule 2267(a) currently requires members to annually provide in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that includes information describing BrokerCheck.”). A proposal by FINRA to require that brokers include a link to, and disclosure of, BrokerCheck on their websites and in social media was withdrawn. *See* Exchange Act Release No. 69440 (April 24, 2013) (withdrawing proposed amendment to FINRA Rule 2267 (Investor Education and Protection) that would have required members to “include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their websites, social media pages, and any comparable Internet presence, and on websites, social media pages, and any comparable Internet presence relating to a member’s investment banking or securities business maintained

limited obligations to make investors aware of the information in IAPD.<sup>59</sup> Likewise, BrokerCheck may be underutilized.<sup>60</sup>

Second, although a search of either database draws information from both, this is not intuitively obvious from the names of the respective databases.<sup>61</sup> Third, the database quality is not consistent. The Commission recently approved a requirement that brokers verify the contents of the U4 when hiring a registered representative<sup>62</sup> in order to ensure “complete and accurate information in CRD, which is critical from both a regulatory and an investor protection standpoint.”<sup>63</sup> Although adviser representatives that are also registered as brokers will be subject to the verification requirement, approximately 12% of all adviser representatives, however, are not registered as brokers and so are not covered.<sup>64</sup>

Finally, the systems have significant gaps. A significant gap is that the two databases do not include unregistered firms or persons sanctioned by the SEC or state securities commissions,<sup>65</sup> even those sanctioned for operating as an unregistered broker or adviser.<sup>66</sup>

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by or on behalf of any person associated with a member.”). According to officials at FINRA, FINRA intends to repropose the requirement.

<sup>59</sup> “[W]hen there is new disclosure of a disciplinary event, or a material change to disciplinary information already disclosed,” advisers must provide clients with a Brochure Supplement (Part 2 of the Form ADV) that discloses, among other things, the disciplinary history of persons providing advice. *See* Item 3, Disciplinary Information, Instructions for Part 2B of Form ADV: Preparing a Brochure Supplement, <http://www.sec.gov/about/forms/formadv-part2.pdf> (requiring disclosure of material disciplinary events that have occurred over the prior ten years). The Form must include a link to IAPD. *See* Item 1 of Form ADV, Part 2, <http://www.sec.gov/about/forms/formadv-part2.pdf> (“Additional information about [your name] also is available on the SEC’s website at [www.advisorinfo.sec.gov](http://www.advisorinfo.sec.gov)”).

<sup>60</sup> Exchange Act Release No. 68700 (Jan. 18, 2013) (“Many of the participants stated that they had been unaware of the existence of BrokerCheck prior to their participation in the focus groups.”).

<sup>61</sup> Exchange Act Release No. 71196 (Dec. 27, 2013) (“FINRA stated that it implemented” recommendation to “unify search returns for BrokerCheck and the Investment Advisor Public Disclosure (IAPD) database.”).

<sup>62</sup> *See* FINRA Rule 3110(e). The requirement to investigate and verify applies to “any person prior to making such a certification in the application of such person for registration with this Association.” Verification includes “at a minimum” that the broker “provide for a national search of reasonably available public records to verify the accuracy and completeness of the information contained in an applicant’s Form U4.” *See* Exchange Act Release No. 73996 (Dec. 30, 2014) [80 Fed. Reg. 546, 547 (Jan. 6, 2015)] (adopting release). *See also* Exchange Act Release No. 73238 (Sept. 26, 2014) (proposing release).

<sup>63</sup> 80 Fed. Reg. 546, 547 (Jan. 6, 2015).

<sup>64</sup> *See* Richard G. Ketchum, Chairman & CEO of FINRA, Testimony Before the Committee on Financial Services U.S. House of Representatives (October 6, 2009), available at <http://www.finra.org/Newsroom/Speeches/Ketchum/P120108> (“there are approximately 4,500 firms that are dually registered as broker-dealers and investment advisors or have affiliated broker-dealers and investment advisors. Beyond that, a vast majority of registered investment adviser representatives also offer brokerage services. Approximately 88 percent of all registered advisory representatives are also registered representatives of a broker-dealer. Most of these representatives are employed by a firm that is dually registered.”). *See also* Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisors and Broker-Dealers, Staff of the Office of Investor Education and Advocacy, January 2011, available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf> (“Fewer than 20% of registered broker-dealers were also registered as an investment advisor in 2010, and approximately 5% of SEC-registered advisory firms were registered as broker-dealers.”).

<sup>65</sup> Thus, in a recent case, the Commission barred an individual from association with a broker, adviser, municipal securities dealer/advisor, transfer agent, and rating agency. *See* In re Thomas, Securities Act Release No. 9801 (admin proc June 3, 2015) (barring defendant “from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating

Google and other types of internet searches are not adequate substitutes for the presence of this type of information in the relevant data bases.<sup>67</sup> In addition, the databases do not supply information about municipal securities firms and professionals, whose regulation is shared by multiple regulators.<sup>68</sup> That information is not readily available anywhere else.<sup>69</sup> Omissions in

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organization”). Because the individual is not and has not been registered with FINRA as a broker or the SEC (or states) as an adviser, a search of BrokerCheck or IAPD will not reveal these sanctions.

<sup>66</sup> See, e.g., Charges Unregistered Securities Salesman for Selling Millions of Dollars in Oil-and-Gas Investments, Press Release No. 2014-98, May 15, 2014 (Behrooz Sarafraz; sanctioned under Section 15(a) for selling “millions of dollars in oil-and-gas investments without being registered with the SEC as a broker-dealer or associated with a registered broker-dealer.”).

<sup>67</sup> Searching a broker’s name through Google can produce a great deal of irrelevant information. A search of the defendant’s name in *In re Thomas*, Securities Act Release No. 9801 (admin proc June 3, 2015) immediately after the SEC’s action was made public did not disclose the SEC’s enforcement action until the bottom of the second page.

<sup>68</sup> Regulatory authority over the municipal markets and its professionals is shared among the Municipal Securities Rulemaking Board (MSRB), the SEC, FINRA, bank regulators, the Internal Revenue Service, and the states. For an overview, of the regulatory structure and registration requirements, see SEC, Report on the Municipal Securities Market, SEC, July 31, 2012, at 27-46, available at <http://www.sec.gov/news/studies/2012/munireport073112.pdf> [hereinafter “SEC Muni Report”]. Municipal securities dealers register with the MSRB on Form A-12.

<http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Administrative/Rule-A-12.aspx> (last visited Mar. 20, 2015). Non-bank dealers register with the SEC on Form BD, and bank dealers register with the SEC on Form MSD. See <https://www.sec.gov/about/forms/formbd.pdf> and <https://www.sec.gov/about/forms/formmsd.pdf>. Non-bank municipal securities dealers also register with FINRA, and their registered representatives execute Form U-4. See SEC Muni Report, at 37 (“Approximately 1,800 MSRB-registered broker-dealers are members of and examined by FINRA, with the remaining dealers registered with the SEC as municipal securities dealers and examined primarily by the various federal bank regulators.”). Associated persons of bank dealers file a Form MSD-4 with bank regulators. [http://www.federalreserve.gov/reportforms/forms/FR\\_MSD-420100430\\_f.pdf](http://www.federalreserve.gov/reportforms/forms/FR_MSD-420100430_f.pdf). Municipal advisors also register with the MSRB on Form A-12 and the SEC on Form MA, which is modeled after the ADV. See <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Administrative/Rule-A-12.aspx> and <https://www.sec.gov/about/forms/formma.pdf>. Municipal advisors also must file a Form MA-I for each natural person associated with the firm. See Form MA-I, available at <http://www.sec.gov/about/forms/formma-i.pdf>; see also Instructions to the Form MA Series, available at <http://www.sec.gov/about/forms/formmadata.pdf>. The form requires information similar to the information required on Form U-4. See Exchange Act Release No. 70462 (Sept. 20, 2013) (“The Commission notes that, in the context of broker-dealer regulation, Form U4, which is required of individual employees and asks for much the same information as Form MA-I, is generally filed by the employees’ firms.”). The Form requires disclosure of certain criminal actions, regulatory actions, and civil actions (including dismissals pursuant to settlements), certain customer complaints, and arbitrations/civil litigation. See Exchange Act Release No. 70462 (Sept. 20, 2013) (explaining that Form MA-I requires disclosure of customer initiated complaints and arbitrations/civil litigation “regarding investment-related or municipal advisor-related matters, which alleged that he or she was involved in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices”). Municipal advisors file their Forms MA and MA-I not through IARD but through EDGAR. Exchange Act Release No. 70462 (Sept. 20, 2013) (“After carefully considering the comments, the Commission has determined to require the forms to be submitted through EDGAR.”).

<sup>69</sup> The MSRB does not operate a search engine that permits an examination of the background of municipal dealers or advisors or their associated persons. MSRB maintains a list of municipal advisors. See <http://www.msrb.org/Registrants.aspx?listType=MA>. A search of a number of the advisors on the list in IAPD and BrokerCheck generated no results. Some firms in the database for other reasons listed the function under “types of business.” Because most MSRB dealers and their representatives are registered with FINRA, their information appears in BrokerCheck. Bank municipal dealers and their associated persons, however, do not appear in BrokerCheck. The MSRB makes available a library of municipal securities disclosure documents on Electronic Municipal Market Access (“EMMA”). See <http://emma.msrb.org/Search/Search.aspx>.

this area are significant because the municipal bond market is heavily dominated by individual and retail investors.<sup>70</sup>

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<sup>70</sup> Report on the Municipal Securities Market, SEC, July 31, 2012, at v, available at <http://www.sec.gov/news/studies/2012/munireport073112.pdf> (“Individuals, or “retail” investors, directly or indirectly hold more than 75% of the outstanding principal amount of municipal securities.”).

## Recommendations

Recommendation 1: The Investor Advisory Committee recommends that the SEC develop a disciplinary database for violations of the securities laws that will allow elders and other investors to easily conduct searches of any person or firm sanctioned for these violations.

In conducting background searches of financial market professionals, the most significant gap is the inability to uncover regulatory actions brought by the SEC or a state securities regulator against a person not registered as a broker or adviser. BrokerCheck only includes information on former or present FINRA members. IAPD only includes information on advisers registered or previously with the SEC or the states. As a result, neither search function permits searches of persons who were unregistered but sanctioned by securities regulators. The SEC should, therefore, develop and maintain an easily searchable database of all disciplinary actions that is easily searchable. The CFTC and FINRA maintain these types of databases.<sup>71</sup>

In addition, the SEC should work with NASAA to develop a similar database that permits a national search of state regulatory actions. States currently disclose regulatory actions brought against firms and individuals on Form U6.<sup>72</sup> As a result, the information is included in CRD and IARD, but it is not available in BrokerCheck or IAPD. CRD, therefore, has a body of information that has the potential to be converted into a national database for searching the background of market professionals. Moreover, because states file the Form for all actions, any database would include regulatory actions brought against unregistered persons sanctioned by the states.<sup>73</sup>

Development of these disciplinary databases will have a number of advantages. They will provide elders and other investors with a mechanism for uncovering violations by unregistered persons. They will facilitate the search of “bad actors” for purposes of statutory disqualifications under the securities laws.<sup>74</sup> They will be useful to regulators of other

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<sup>71</sup> See <http://smartcheck.cftc.gov/check/> (last visited Mar. 21, 2015) (“CFTC Disciplinary History is a searchable repository of the agency’s active investigations and past violations.”); CFTC, Disciplinary History, <http://www.cftc.gov/consumerprotection/disciplinaryhistory/index.htm> (last visited Mar. 21, 2015) (describing the CFTC database); Exchange Act Release No. 69825 (June 21, 2013) (“The FINRA Disciplinary Actions online database (“FDA”) became available in May 2011. It provides interested parties with greater access to information regarding FINRA’s disciplinary actions.”).

<sup>72</sup> See *In re the Application of Nicholass S. Savva*, Exchange Act Release No. 72485 n. 26 (June 24, 2014) (“Form U6 is used by SROs and state and federal regulators to report disciplinary actions against broker-dealers and associated persons.”). FINRA also uses the Form. <http://www.nasaa.org/industry-resources/investment-advisors/ia-links/iar-reports/> (“Regulators provide information through Form U6, which is used to report certain disciplinary history about investment advisor firms and IARs.”).

<sup>73</sup> NASAA already has taken steps to increase the sharing of enforcement related information among regulators. See Jean Eaglesham and Rob Barry, States Move to Share Data on Problem Brokers: Database Planned for Next Year Would Help Flag Clusters of Customer Complaints, WSJ, Nov. 13, 2014, [http://online.wsj.com/articles/states-move-to-share-data-on-problem-brokers-1415895613?mod=WSJ\\_hp\\_LEFTWhatsNewsCollection](http://online.wsj.com/articles/states-move-to-share-data-on-problem-brokers-1415895613?mod=WSJ_hp_LEFTWhatsNewsCollection) (discussing “Nemo” database operated by NASAA and noting that “State securities regulators are drawing up plans to allow information on problem stockbroker firms to be shared more effectively among them”).

<sup>74</sup> See Rule 506(d), 17 CFR 230.506(d). The SEC has noted that BrokerCheck is one source of information for determining whether a person is a “bad actor.” See Securities Act Release No. 9414 (July 10, 2013) (with respect to bad actor provisions, “in the case of a registered broker-dealer acting as placement agent—it may be sufficient to

industries.<sup>75</sup> Finally, these databases will facilitate the verification and accuracy of information otherwise self-reported to FINRA or the SEC.

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make inquiry of an entity concerning the relevant set of covered officers and controlling persons, and to consult publicly available databases concerning the past disciplinary history of the relevant persons”).

<sup>75</sup> Issues have arisen with brokers who lose their licenses but continue to operate as insurance agents. *See* Julie Steinberg, Regulators Tackle Insurance License Loophole: Brokers Barred From Securities Industry Had Been Able to Sell Insurance, WSJ, Dec. 28, 2014, available at [http://www.wsj.com/articles/regulators-tackle-insurance-license-loophole-1419802131?mod=WSJ\\_hp\\_LEFTWhatsNewsCollection](http://www.wsj.com/articles/regulators-tackle-insurance-license-loophole-1419802131?mod=WSJ_hp_LEFTWhatsNewsCollection) (“The Journal recently reviewed securities and insurance industry records for 395 brokers who in 2013 were permanently banned by Finra from the securities industry. As of Dec. 1, at least 13% of the barred brokers still retain their insurance licenses, the analysis showed.”). FINRA will provide reports of disciplinary actions to insurance commissioners. *See* Julie Steinberg, Regulators Tackle Insurance License Loophole: Brokers Barred From Securities Industry Had Been Able to Sell Insurance, WSJ, Dec. 28, 2014, available at [http://www.wsj.com/articles/regulators-tackle-insurance-license-loophole-1419802131?mod=WSJ\\_hp\\_LEFTWhatsNewsCollection](http://www.wsj.com/articles/regulators-tackle-insurance-license-loophole-1419802131?mod=WSJ_hp_LEFTWhatsNewsCollection) (“The Financial Industry Regulatory Authority said it would next month begin providing to state insurance regulators a monthly report of its disciplinary actions against securities brokers. Wall Street’s self-regulator currently sends the report, which details whenever a broker is barred or suspended, only to state securities regulators.”).

Recommendation 2: The Investor Advisory Committee recommends that the SEC take steps to reduce the complexity of background searches by taking steps to simplify the search process, including steps to ensure comparable quality between BrokerCheck and IAPD and the development of an appropriately named site that will permit elders and other investors, through a single search, to access information in all databases supervised in whole or in part by the SEC

The current system for assessing the background of a market professionals by elders and other investors is confusing. Two separate databases exist for ascertaining the background of advisers and brokers, but many elders and other investors do not know that the databases are available.<sup>76</sup> Even if aware, they may not know whether the advice or product offered is from an adviser or a broker.<sup>77</sup> Elders and other investors may not be aware that searches of one database also include results from the other.<sup>78</sup> Moreover, they may not know the gaps in the databases, including the absence of information on unregistered persons.

First, the SEC should take a number of steps designed to reduce the complexity and confusion with respect to these searches. First, the Commission should take steps to ensure greater awareness of, and access to, IAPD. Renaming the database would make the purpose more recognizable. For example, “AdviserCheck” might be a more meaningful name than “Investment Advisor Public Disclosure”.

Second, the SEC should also take steps to ensure that the data quality of IAPD is comparable to BrokerCheck. FINRA takes steps to verify the information in BrokerCheck that the SEC should take in connection with the IAPD.<sup>79</sup> Although SEC-registered advisers registered are required to file, provide to clients, and annually update a Part 2 of the ADV (the brochure supplement) that includes the disclosure of certain criminal actions involving the representative, advisers are not required to verify data for adviser representatives or conduct a criminal check at the time of hiring. The Commission should work with NASAA to ensure that advisers have similar obligations to verify and conduct criminal background checks as those imposed on brokers. The SEC staff could also direct SEC-registered advisers to access public databases to verify the content of Part II of Form ADV when hiring a representative.

Third, the SEC should develop a single, appropriately named site (for example, “InvestorCheck”) that permits investors to conduct a simultaneous search of all relevant databases. The site should include information from BrokerCheck, IAPD, EDGAR (to capture

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<sup>76</sup> To the extent investors are aware of IAPD, they may not know, given the name, that the site provides a mechanism for searching the background of advisors and their representatives. Serious consideration should be given to renaming the function “AdvisorCheck”.

<sup>77</sup> <http://www.sec.gov/investor/brokers.htm>

<sup>78</sup> This is noted on the FINRA site. *See* <http://www.finra.org/investors/about-brokercheck> (last visited Mar. 21, 2015) (“BrokerCheck is a free tool from FINRA that can help you research the professional backgrounds of brokers and brokerage firms, as well as investment adviser firms and advisers.”).

<sup>79</sup> As part of BrokerCheck, FINRA undertakes periodic verification of self-reported information. *See* <http://www.finra.org/Newsroom/NewsReleases/2014/P493588> (“Separately, FINRA also plans to perform an initial search of public financial records for all registered representatives. Additionally, FINRA will conduct a search of publicly available criminal records for all registered individuals who have not been fingerprinted within the last five years. Once these searches are completed, FINRA will conduct periodic reviews of public records to ascertain the accuracy and completeness of the information available to investors, regulators and firms. These efforts also better position FINRA to assess firm and registered individual compliance with reporting requirements.”).

municipal securities brokers and advisors), and any disciplinary action databases developed by the SEC or NASAA. In addition, consistent with Recommendation #3, the site should include information from other relevant databases. A single site would reduce investor confusion in selecting the appropriate search engine.<sup>80</sup> A single site would be utilized more frequently, because brokers and advisers would point investors to a single site. The proposed single site would include bodies of data currently not present in BrokerCheck or IAPD.

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<sup>80</sup> For similar reasons, the staff study of BrokerCheck required by Dodd Frank similarly recommended “maintain[ing] BrokerCheck and IAPD in their current forms, but creat[ing] a new Web site that would provide a single public disclosure gateway to them.” *See* Staff of the Office of Investor Education and Advocacy, Study and Recommendations on Improved Investor Access to Registration Information about Investment Advisors and Broker-Dealers, at 27 (Jan. 2011), available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf> The Study raised a number of concerns with the approach. *Id.* (“However, developing a new Web site would take additional resources, further time to acclimate investors to the new Web site as a source of information (particularly given the widespread use of BrokerCheck), and there would be questions to resolve, such as who would own and maintain the new Web site.”).

Recommendation 3: The Investor Advisory Committee recommends that the SEC seek to obtain the agreement from other federal regulators, self-regulatory organizations, and state regulators for the development of a single site that will permit a search of all relevant databases that provide background information on financial market professionals.

The SEC should act as the catalyst for the construction of a single site that would provide for searches of databases maintained by itself and other financial regulators. Where possible, the site function should provide for a single search that produces results from all databases. To the extent, however, that this is not possible for some databases, the SEC should, in the short term, develop a comprehensive site that includes a single search for as many databases as possible and then provides, on the same site, the ability to search the other relevant databases.

As discussed earlier, searches of BrokerCheck and IAPD may be incomplete. Elders and other investors will not find information in the databases about persons who have never been registered as advisers or brokers, but have been disciplined for securities violations. Investors will not find information about persons selling securities or other financial products who are registered, but not as a broker-dealer or investment adviser. Persons selling financial products may be registered with other regulators as mortgage originators, commodities brokers/advisors, and insurance originators.

Any site designed to assist elders and other investors in determining the background of market professionals should include searches of databases maintained by these other regulators, such as Background Affiliation Status Information Center (“BASIC”) and NMLS Consumer Access. In the insurance context, a unique opportunity exists to facilitate background searches of companies and producers. The newly formed National Association of Registered Agents and Brokers (“NARAB”) will be operated by a Board of Directors consisting of representatives of state insurance commissioners and private sector participants who are appointed by the President with the advice and consent of the Senate.<sup>81</sup> The NARAB Board has, as one of its charges, the development of a publicly available national database for licensing and disciplinary information on insurance agents. The Commission is therefore in a position to interact with the NARAB Board in developing the requisite data base with the goal of providing access to licensing and disciplinary information to purchasers of insurance products.

The Commission is particularly well positioned to coordinate these efforts.<sup>82</sup> At its simplest, the SEC could act unilaterally to construct a site that links to all available non-SEC supervised databases.<sup>83</sup> The SEC already maintains a page that notes the existence of a number

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<sup>81</sup> Creation of the NARAB Board is being supported by the Federal Insurance Office. See Statement by Michael Michael McRaith, Director, Federal Insurance Office, March 23, 2015, *available at* <http://www.treasury.gov/connect/blog/Pages/Establishing-the-NARAB-Board-of-Directors.aspx> (“Treasury’s Federal Insurance Office, in its role as advisor to the Secretary on major domestic insurance policy issues, is supporting the effort to establish the NARAB Board of Directors and implement the Act.”).

<sup>82</sup> Remarks of Commissioner Luis A. Aguilar, Securities & Exchange Commission, Meeting of the Investor Advisory Committee, Washington, DC, July 10, 2014 (“Clearly, as the primary regulator of the capital markets, the Commission has a lot to offer to a coordinated federal effort to address elderly financial abuse, especially with regard to the problem of the financial exploitation of older adults.”)

<sup>83</sup> Linked databases include BrokerCheck, Investment Adviser Public Disclosure, professional designations, BASIC, CFTC Disciplinary History, SmartCheck, and Electronic Municipal Market Access (EMMA). *See*

of databases, but a model like the CFTC's SmartCheck would work even better.<sup>84</sup> Launched in November 2014, SmartCheck walks investors through searches of BASIC, BrokerCheck, the CFTC Disciplinary History Database, EDGAR, and the Internet. Investors, however, must search each database individually. The SEC could spearhead a more cooperative approach with the active participation of other regulators. Such an approach would likely yield a number of benefits. The format of searches and search results could be made more comparable. Similarly, the information contained in the different databases could be made more uniform.

A centralized source for searching the background of anyone offering a financial product would have a number of advantages. First, it would enable elders and other investors to see red flags that are evident in only one database. Indeed, the SEC has encouraged investors to examine sources of background information other than IAPD and BrokerCheck, including "each state where the firm had done business"<sup>85</sup> and other "legal search engines and record searches".<sup>86</sup>

Second, such a site would help ensure the accuracy of information in the relevant database. A search function that included other databases would at least sometimes act as a check on self-reported information.<sup>87</sup>

Third, providing for simultaneous database searches addresses the real concern that persons with a record of regulatory violations will move to other "investment-related" businesses. As the SEC has observed, formerly registered securities professionals "although no longer in the securities industry in a registered capacity, may work in other investment-related industries, such as financial planning, or may seek to attain other positions of trust with potential investors."<sup>88</sup>

Fourth, the non-appearance of a market professional in a comprehensive database will alert investors to the need for additional due diligence. A database that included brokers, and

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<http://investor.gov/researching-managing-investments/researching-investments/ask-check#> (last visited Mar. 21, 2015). The site also provides a link to a list of state securities regulators, SIPC, and EDGAR.

<sup>84</sup> <http://smartcheck.cftc.gov/> (last visited Mar. 18, 2015).

<sup>85</sup> Exchange Act Release No. 55127 (Jan. 18, 2007) ("While BrokerCheck is a valuable tool for an investor to use to get information about a firm or a registered person with whom the investor is considering doing business, the Commission would urge investors to check with each state where the firm has done business or where the sales person has been registered to obtain a complete picture of his or her disciplinary history.").

<sup>86</sup> Exchange Act Release No. 62476 (July 8, 2010) ("The Commission urges the public to utilize all sources of information, particularly the databases of the state regulators, as well as legal search engines and records searches, in conducting a thorough search of any associated person's activities."). The CFTC makes similar recommendations. See, e.g., [http://www.cftc.gov/PressRoom/PressReleases/fraudadv\\_binaryoptions](http://www.cftc.gov/PressRoom/PressReleases/fraudadv_binaryoptions) ("Finally, before investing, use [FINRA's BrokerCheck](#) and the [National Futures Association's Background Affiliation Status Information Center \(BASIC\)](#) to check the registration status and background of any firm or financial professional that you are considering.").

<sup>87</sup> For example, brokers and their representatives are required to self-report any regulatory violations found by the CFTC. In the CFTC database, BASIC, information on these disciplinary proceedings are not self-reported. Instead, the regulatory bodies report the proceedings directly to BASIC. Indeed, commodities brokers and their representatives have no obligation to self-report the information because it is already there. If, therefore, a broker did not report a disciplinary action brought by the CFTC in BrokerCheck, it would appear in a search of BASIC.

<sup>88</sup> Exchange Act Release No. 62476 (July 8, 2010) ("The Commission believes that such information is relevant to investors and members of the public who wish to educate themselves with respect to the professional history of a formerly associated person. Formerly associated persons, although no longer in the securities industry in a registered capacity, may work in other investment-related industries, such as financial planning, or may seek to attain other positions of trust with potential investors.").

their representatives, commodities and municipal brokers and their representatives, investment advisers and commodities and municipal advisers and their representatives, insurance agents and loan originators will capture most categories of persons licensed to offer financial products.<sup>89</sup>

Fifth, a common search engine would also provide regulators and employers with a useful tool in making licensing and hiring decisions.<sup>90</sup> A database that contained all information regulatory actions would make it easier for a regulator in one area to learn about infractions in another.

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<sup>89</sup> The list is not complete. It does not include accountants or lawyers who recommend investments.

<sup>90</sup> Exchange Act Release No. 72649 (July 22, 2014) (“FINRA, state regulators, and other regulators use this information in connection with their licensing and regulatory activities. Firms also use the information when making hiring decisions.”). Some states already require securities regulators to notify insurance regulators within the same state of any denials, suspensions or revocations. *See, e.g.*, C.G.S.A. § 38a-702t (“The Banking Commissioner shall provide monthly to the Insurance Commissioner, a list of the names and corresponding Social Security numbers of broker-dealers, agents associated with a broker-dealer or an issuer, investment advisers and investment advisor agents, . . . who have had their registrations denied, suspended or revoked pursuant to section 36b-15 during the preceding ten years.”). These actions can, in turn, be a basis for revocation of an insurance license. *See* C.G.S.A. § 38a-702s. Additional grounds for denial of producer licenses.

## Appendix 1:

### A Sample of Relevant Databases

Many financial market professionals are not subject to SEC oversight. The SEC does not supervise commodities brokers, loan originators, or insurance agents. As a result, background searches for these persons require resort to other databases.<sup>91</sup> In some cases, the databases are operated by a non-governmental regulator, subject to regulatory supervisions, or a trade association. In some cases, national databases are available to regulators but not investors. Many of these databases are incomplete in terms of the time periods, persons, and actions covered. This appendix provides a brief overview of several relevant databases.

#### A. Background Affiliation Status Information Center (“BASIC”)

The NFA,<sup>92</sup> a self-regulatory organization for the futures industry, maintains the Background Affiliation Status Information Center (“BASIC”) database.<sup>93</sup> Begun in 1990s,<sup>94</sup> it “is a repository of data consolidated from 16 contributors which include NFA, the CFTC and the U.S. futures exchanges.”<sup>95</sup> BASIC includes disciplinary<sup>96</sup> and financial information regarding persons and firms registered with CFTC, members of the NFA, persons previously involved in the futures industry, and unregistered person who were sanctioned for futures industry

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<sup>91</sup> Some will appear in SEC databases. To the extent a commodities broker is also a member of FINRA, it will appear in BrokerCheck. Commodities advisers also registered with the SEC or under state law as investment advisers will appear in IAPD. Only about 25% of commodities advisers are registered as investment advisers with the SEC. Only about 7.5% of commodities brokers are also registered as brokers with the SEC.

<sup>92</sup> <http://www.nfa.futures.org/> The NFA “is the industrywide self-regulatory organization for the U.S. futures industry.” <https://www.nfa.futures.org/nfa-investor-information/publication-library/basic.pdf> See also [http://www.nfa.futures.org/footer/NFA\\_Applications\\_Suite\\_PIA\\_FINAL.pdf](http://www.nfa.futures.org/footer/NFA_Applications_Suite_PIA_FINAL.pdf) (“NFA is a not-for-profit membership corporation formed in 1976 to become a futures industry self-regulatory organization under Section 17 of the Commodity Exchange Act (CEA). NFA’s formal designation as a “registered futures association” was granted by the CFTC in 1981 and NFA’s regulatory operations began in 1982.”).

<sup>93</sup> See <http://www.nfa.futures.org/basicnet/> (last visited Mar. 21, 2015) (“BASIC contains Commodity Futures Trading Commission (CFTC) registration and NFA membership information and futures-related regulatory and non-regulatory actions contributed by NFA, the CFTC and the U.S. futures exchanges.”).

<sup>94</sup> The precursor to BASIC began in 1991. See Notice and Order, Performance of Certain Functions by the National Futures Association With Respect to Regulation 9.11, CFTC, 64 FR 39912 (July 23, 1999) (“In January 1991, the NFA created its Clearinghouse of Disciplinary Information (“CDI”) database, a central repository for information regarding disciplinary actions taken by the NFA, the Commission, and the exchanges.”). The database arose out of the need for a centralized location for disciplinary proceedings. Id. (“The need for a resource of this kind became evident following the 1989 joint Commission and Federal Bureau of Investigation undercover investigation of floor trading practices at the Chicago Board of Trade and the Chicago Mercantile Exchange. Members of the media found that they had to contact several different organizations to obtain disciplinary history and registration information regarding individuals allegedly involved in illegal trading practices.”).

<sup>95</sup> [http://www.nfa.futures.org/basicnet/Help.aspx#help\\_data](http://www.nfa.futures.org/basicnet/Help.aspx#help_data) (“About the Contributors”) (last visited Mar. 21, 2015).

<sup>96</sup> Specifically, BASIC includes “firm directories, registration forms, business addresses, telephone numbers, registration categories, biographical supplements (except for any confidential information on supplementary attachments to the forms), effective dates of registration, registration status, and disciplinary action taken concerning futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, swap dealers, major swap participants and retail foreign exchange dealers and their associated persons.” Privacy Act of 1974 System of Records Notice, CFTC, 79 FR 58752 (Sept. 30, 2014).

violations.<sup>97</sup> The NFA operates BASIC through delegated authority from the CFTC and under the oversight of the CFTC.<sup>98</sup>

The database includes self-reported and regulator-reported information. Entities and individuals registering with the NFA must complete a registration form (Form 7-R for entities; Form 8-R for individuals).<sup>99</sup> The forms include disclosure of criminal matters, even if unrelated to the futures industry, certain disciplinary actions, and certain actions by a bankruptcy trustee. The reports must be accurate when made and timely updated to correct inaccuracies.<sup>100</sup> Actions by the CFTC, the exchanges, and the NFA are reported directly to BASIC and therefore need not be reported by brokers and individuals.<sup>101</sup>

## B. NMLS Consumer Access

NMLS (the Nationwide Multistate Licensing System) is a database that facilitates searches on state-licensed financial services companies, branches, and individuals licensed and registered through NMLS.<sup>102</sup> Under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“SAFE Act”), all individuals originating mortgages must be either licensed under state law or registered under federal law.<sup>103</sup>

Created in 2008 and overseen by the Conference of State Bank Supervisors (“CSBS”) and the American Association of Residential Mortgage Regulators (“AARMR”),<sup>104</sup> the NMLS was intended to facilitate registration and licensing of the mortgage industry.<sup>105</sup> Although

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<sup>97</sup> <https://www.nfa.futures.org/nfa-investor-information/publication-library/basic.pdf> (database includes persons “that either are now, or have been, involved in the futures industry.”).

<sup>98</sup> Advisory, CFTC, Alternative Methods of Compliance With Requirements for Disclosure of Exchange Disciplinary Information and Access Denial Actions, 64 FR 39915 (July 23, 1999) (“This Advisory, in conjunction with the accompanying Notice & Order, gives the NFA the responsibility of maintaining BASIC, an electronic clearinghouse of all exchange, NFA, and Commission disciplinary actions.”).

<sup>99</sup> National Futures Assoc., Templates and Forms, <https://www.nfa.futures.org/nfa-registration/templates-and-forms/index.HTML> (last visited Mar. 21, 2015)

<sup>100</sup> <https://www.nfa.futures.org/nfa-registration/templates-and-forms/8rFormentire.pdf> (“acknowledgement that the applicant or principal is responsible at all times for maintaining the information in the Form 8-R in a complete, accurate and current manner by promptly notifying the sponsor whenever any of the information on the Form 8-R is no longer complete, accurate or current and authorizing the sponsor to electronically file updates to correct the information”). See also 17 CFR § 3.31 Deficiencies, inaccuracies, and changes, to be reported.

<sup>101</sup> See Instructions to Form 8-R, <https://www.nfa.futures.org/nfa-registration/templates-and-forms/8rFormentire.pdf> (“Regulatory actions taken by the Commodity Futures Trading Commission, NFA or domestic futures exchanges do not need to be disclosed since NFA is already aware of them once they are entered into NFA’s BASIC system.”).

<sup>102</sup> <http://www.nmlsconsumeraccess.org/>

<sup>103</sup> <http://mortgage.nationwidelicencingsystem.org/SAFE/NMLS%20Document%20Library/SAFE-Act.pdf>

<sup>104</sup> <http://mortgage.nationwidelicencingsystem.org/about/Pages/default.aspx> (“CSBS is the nationwide organization of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Further, most state banking departments also regulate a variety of non-bank financial services providers, including mortgage lenders. AARMR is the national organization representing state residential mortgage regulators. AARMR's mission is to promote the exchange of information between and among the executives and employees of the various states who are charged with responsibility for the administration and regulation of residential mortgage lending, servicing and brokering.”).

<sup>105</sup> <http://mortgage.nationwidelicencingsystem.org/about/Pages/default.aspx> (“NMLS is the legal system of record for licensing in all participating states, the District of Columbia, and U.S. Territories. In these jurisdictions, NMLS is

operated by the CSBS, the CFPB has “back up authority” to adopt a registry system to the extent that the NMLS fails to provide a “comprehensive licensing, supervisory, and tracking system for loan originators”.<sup>106</sup> The NMLS is currently also used by over half of the states to manage additional license authorities through the System in the money services business, debt and consumer finance industries.

The SAFE Act mandated that NMLS provide consumers with easily accessible information, offered at no charge, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, state-licensed and federally registered mortgage loan originators. This has been done through the creation of NMLS Consumer Access.<sup>107</sup> Consumer Access “is an online public database disclosing the licensing information of firms and individuals, which also includes information on state enforcement history.”<sup>108</sup>

The database includes “information concerning state-licensed companies, branches, and individuals licensed and registered through NMLS.”<sup>109</sup> Loan originators submit forms that require disclosure of residential information, employment history, and certain criminal offenses, regulatory actions, and civil suits.<sup>110</sup> Disclosure includes any “financial services-related consumer-initiated arbitration or civil litigation” that is pending, resulted in a judgment or settled. Most states report to the NMLS public regulatory actions taken against persons they

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the official and sole system for companies and individuals seeking to apply for, amend, renew, and surrender licenses managed in the NMLS on behalf of the jurisdiction’s governmental agencies. NMLS itself does not grant or deny license authority.”).

<sup>106</sup> See 12 US §5108 (“If at any time the Director determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this chapter for a comprehensive licensing, supervisory, and tracking system for loan originators, the Director shall establish and maintain such a system to carry out the purposes of this chapter and the effective registration and regulation of loan originators.”). The CFPB also has the authority to impose “reasonable fees” to cover the costs of maintaining the NMLS system although fees may not be “charged to consumers for access to such system and registry.” 12 USC 5109.

<sup>107</sup> <http://mortgage.nationwidelicencingsystem.org/about/Pages/default.aspx> (NMLS Consumer Access is owned and operated by the State Regulatory Registry LLC (SRR), a wholly owned non-profit subsidiary of the CSBS); *see also Id.* (“The SRR Board of Managers is responsible for all system development, operations, and policy matters concerning NMLS.”).

<sup>108</sup> <http://www.csbs.org/srr/Pages/AboutSRR.aspx>

<sup>109</sup> <http://mortgage.nationwidelicencingsystem.org/about/pages/nmlsconsumeraccess.aspx>. The database does not include persons not yet approved by a state, does not include those seeking federal registration until the registration “is in an active status,” and contains information that is “self-reported to regulatory agencies or an individual’s employment institution”.

<http://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/Information%20about%20NMLS%20Consumer%20Access.pdf>.

<sup>110</sup> Mortgage originators registering with the CFPB must submit a Form MU4R; <http://fedregistry.nationwidelicencingsystem.org/Resources/MU4R%20Fields.pdf> those seeking to be licensed under state law are required to file a Form MU4. *See*

<http://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%20Individual%20Form.pdf>

regulate.<sup>111</sup> States may also report actions taken against unlicensed persons. Information is not provided by all states and actions before 2012 are generally not part of the database.<sup>112</sup>

### C. Criminal Databases

The National Crime Information Center (“NCIC”) database consists of criminal arrest and conviction information submitted by local, state, and federal agencies.<sup>113</sup> It is not uncommon for market professionals to be required to submit fingerprints as part of a licensing/registration process.<sup>114</sup> The NCIC is not available to elders and other investors interested in checking the criminal history of a market professional.

The Bureau of Prisons operates a publicly accessible database that provides basic information about inmates incarcerated in a federal prison.<sup>115</sup> The database is very limited and includes only persons actually incarcerated from 1982 to the present. The data provided includes the inmate’s Register Number, race, gender, age, location, and release date. Even such limited information can be useful.<sup>116</sup>

### D. State Insurance Regulators

State insurance regulators do not maintain a single, nationwide database for consumers to search information about insurance companies and insurance producers. The National Association of Insurance Commissioners (NAIC), a “standard-setting and regulatory support organization” for insurance regulators,<sup>117</sup> makes available a search function that provides “key financial data” with respect to insurance companies (but not individuals).<sup>118</sup> The database also provides data on the number of closed complaints by state, but does not include any specific

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<sup>111</sup> See [http://fedregistry.nationwidelicingsystem.org/Resources/Manage\\_MLO\\_Registrations\\_FR.pdf](http://fedregistry.nationwidelicingsystem.org/Resources/Manage_MLO_Registrations_FR.pdf) (“Individuals must provide details and a .pdf file containing supporting documents for each Disciplinary Action”).

<sup>112</sup> <http://www.nmlsconsumeraccess.org/> (“While some state agencies may add actions taken in previous years against a licensee, the majority are adding only new actions from 2012 or later. To view complete information regarding regulatory actions posted by the [state agency](#), visit the state’s website.”).

<sup>113</sup> <http://www.fbi.gov/about-us/cjis/ncic>

<sup>114</sup> FINRA, the CFPB, and the NFA have such requirements. See <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p005283.pdf>; [http://files.consumerfinance.gov/f/201203\\_cfpb\\_update\\_SAFE\\_Act\\_Exam\\_Procedures.pdf](http://files.consumerfinance.gov/f/201203_cfpb_update_SAFE_Act_Exam_Procedures.pdf); <https://www.nfa.futures.org/nfa-registration/fingerprint-cards.HTML>. Fingerprinting requirements apply to only a subset of investment adviser representatives. There is no requirement for a criminal background check imposed by the SEC. Only a “small number of state” require a criminal background check. See <http://www.wsj.com/articles/SB10001424127887323501004578386371689938186>.

<sup>115</sup> <http://www.bop.gov/inmateloc/>

<sup>116</sup> In 2014, the US Attorney in Chicago brought criminal charges against a “purported investment advisor” for securities and wire fraud. <http://www.justice.gov/usao/nys/pressreleases/June14/WesselStevenArrestPR.php>. A story in the WSJ revealed that the individual “had a previous fraud conviction.” See <http://www.wsj.com/articles/investment-adviser-arrested-on-federal-fraud-charges-1403719508> While a Google search did not reveal the existence of the previous conviction, a search of the database maintained by the Bureau of Prisons did disclose that someone with the defendant’s name had been incarcerated.

<sup>117</sup> [http://www.naic.org/index\\_about.htm](http://www.naic.org/index_about.htm)

<sup>118</sup> <https://eapps.naic.org/cis/>

information about the nature of the complaints. The site acknowledges that the data may be incomplete.<sup>119</sup> With respect to licensing information and disciplinary proceedings for state-licensed insurance producers, the NAIC provides links to the insurance department of each state<sup>120</sup> and the enforcement actions<sup>121</sup> or market conduct examination reports provided by each state.<sup>122</sup>

The NAIC maintains a publicly accessible complaint database and a database consisting of regulatory actions brought by insurance departments. Closed complaints are submitted “voluntarily supplied by state insurance departments and compiled and coded by the NAIC.”<sup>123</sup> Because some states do not participate, the site cautions that “this database does not contain a complete record of all complaints filed and should not be used as the sole basis for insurance decisions.”<sup>124</sup> The NAIC’s Regulatory Information Retrieval System (RIRS), which contains “adjudicated state regulatory actions” against companies or individuals,<sup>125</sup> is, however, only available to insurance companies and state regulators.<sup>126</sup>

In January 2015, Congress adopted The National Association of Registered Agents and Brokers Reform Act (“Act”).<sup>127</sup> Under the Act, a non-profit association will facilitate the multi-state registration of insurance agents. Agents can obtain licenses in multiple states but need only be subject to the regulatory requirements of a home state and the National Association of Registered Agents (“NARA”). NARA has the authority to “establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.”<sup>128</sup>

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<sup>119</sup> See <https://eapps.naic.org/cis/> (“No consumer complaints information was found for some states. This could be because a state does not report the information to the NAIC.”).

<sup>120</sup> [http://www.naic.org/state\\_web\\_map.htm](http://www.naic.org/state_web_map.htm)

<sup>121</sup> <https://eapps.naic.org/cis/fileRIRSMaP.do> Search functions at the state level are not uniform. Some states list enforcement actions and, other than an undifferentiated search engine for the entire site, do not allow for electronic searches.

<sup>122</sup> <https://eapps.naic.org/cis/fileETSMaP.do>

<sup>123</sup> [http://www.naic.org/Releases/2009\\_docs/complaints\\_2008.htm](http://www.naic.org/Releases/2009_docs/complaints_2008.htm) (“The NAIC collected the data through its centralized electronic Complaint Database System (CDS), through which states voluntarily report ‘closed’ complaints. A closed complaint is a complaint that has been investigated and resolved to the satisfaction of the state or jurisdiction in which it is filed. First established in 1990, the CDS was significantly expanded in 1998 and now houses data on more than 2 million complaints.”). Not all states submit complaints. See

[https://eapps.naic.org/documents/cis\\_aggregate\\_complaints\\_by\\_reason\\_codes.pdf](https://eapps.naic.org/documents/cis_aggregate_complaints_by_reason_codes.pdf) (“Data reflected in this report is voluntarily submitted to the NAIC proprietary Complaints Database System (CDS) by state insurance departments. Not all states provide all of their complaint data to the NAIC”).

<sup>124</sup> <https://eapps.naic.org/cis/>

<sup>125</sup> Scandal Highlights Need for Strengthened Regulatory Oversight, GAO Report 00-198 (Sept. 19, 2000).

<sup>126</sup> [http://www.nipr.com/documents/2012\\_NIPR\\_Annual\\_Report.pdf](http://www.nipr.com/documents/2012_NIPR_Annual_Report.pdf) (“Regulators have access to the Regulatory Information Retrieval System (RIRS) through the NAIC’s SPLD and industry, through PDB, has access to RIRS to provide a more comprehensive producer profile.”).

<sup>127</sup> A copy of the legislation, which was part of the Terrorism Risk Insurance Program Reauthorization Act of 2015, is available here: <http://thomas.loc.gov/cgi-bin/query/z?c114:H.R.26>

<sup>128</sup> Sec. 322(j)(4).

## Appendix 2:

### Glossary

7-R, Form:	Registration form for membership with the NFA for entities
8-R, Form:	Registration form for membership with the NFA for individuals.
A-12, Form:	Consolidated registration form for municipal securities dealers and advisors registering with the MSRB.
AARMR	American Association of Residential Mortgage Regulators
ADV, Form:	Uniform form “used by investment advisers to register with both the Securities and Exchange Commission (SEC) and state securities authorities.” <sup>129</sup>
BASIC:	Background Affiliation Status Information Center, a database that contains CFTC registrations and “NFA membership information and futures-related regulatory and non-regulatory actions.”
BD, Form:	Uniform Application for Broker-Dealer Registration
BrokerCheck:	An online tool maintained by FINRA that “enables the public to check the professional backgrounds of current and former FINRA registered brokerage firms and representatives.”
Bur. of Prisons Data Base:	A database that contains the names of persons actually incarcerated from 1982 to the present.
CFPB:	Consumer Financial Protection Bureau (officially the Bureau of Consumer Financial Protection).
CFTC:	Commodity Futures Trading Commission
CRD:	Central Registration Depository, an online registration and licensing database consisting of information reported by broker-dealers, associated persons, and regulatory authorities on uniform registration forms and used to allow for registration with multiple states and self-regulatory organizations.
CSBS:	Conference of State Bank Supervisors
EDGAR:	Electronic Data Gathering, Analysis, and Retrieval system that “performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission”
EMMA	Electronic Municipal Market Access

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<sup>129</sup> <http://www.sec.gov/answers/formadv.htm>

FBI: Federal Bureau of Investigation

FINRA: Financial Industry Regulatory Authority

IAPD: Investor Adviser Public Disclosure, a database that permits the search of investment advisers (whether registered with the Commission or the states) and investment adviser representatives.

IARD: Investment Adviser Registration Depository, a database modeled after the CRD that is an “electronic filing system for Investment Advisers.

MA, Form: The registration form for municipal advisors used to register with the SEC. The Form is modeled on the Form ADV.

MA-I, Form: The form filed by municipal advisors with the SEC for each natural person associated with the firm.

MSD, Form: The form filed by bank municipal dealers to register with the SEC.

MSD-4, Form regulators. Associated persons of bank dealers file a Form MSD-4 with bank regulators.

MSRB: Municipal Securities Rulemaking Board

MU4, Form: Uniform Individual Licensure Form for mortgage loan originators employed by an institution licensed or registered in a state

MU4R, Form: Uniform Individual Registration Form for mortgage loan originators employed by a federal agency-regulated institution

NARAB: National Association of Registered Agents

NAIC: National Association of Insurance Commissioners

NCIC: National Crime Information Center

NASAA: North American Securities Administrators Association

NFA: National Futures Association

NMLS: Nationwide Mortgage Licensing System & Registry

NMLS Consumer Access: A database for consumers that “[c]ontains licensing/registration information on mortgage, consumer finance, debt, and money services companies, branches, and individuals licensed by state regulatory agencies participating in NMLS. It also contains information regarding federal agency-regulated institutions and their mortgage loan originators who are registered with NMLS.”

RIRS: Regulatory Information Retrieval System, an NAIC database that contains “adjudicated state regulatory actions” against companies or individuals.

SAFE Act:	Secure and Fair Enforcement for Mortgage Licensing Act of 2008
SEC:	Securities and Exchange Commission
SmartCheck:	A site operated by the CFTC that provides in one place access to the search engines that permit searches of BASIC, BrokerCheck, the CFTC Disciplinary History Database, EDGAR, and the Internet.
U4, Form Transfer	Uniform Application for Securities Industry Registration or
U5, Form	Uniform Termination Notice for Securities Industry Registration
U6, Form	Uniform Disciplinary Action Reporting Form