

FINRA BrokerCheck

SEC Approves Changes to FINRA's BrokerCheck Disclosure Rule to Retain and Make Publicly Available Information About Final Regulatory Actions Against Former Brokers

Effective Date: November 30, 2009

Executive Summary

Beginning November 30, 2009, information concerning final regulatory actions against brokers—as well as certain administrative information (e.g., employment and registration history) and information about qualification examinations, if available, and the broker's most recently submitted comment, if any—will be permanently available in BrokerCheck,[®] regardless of when they were employed in the securities industry.

The text of the amendments to FINRA Rule 8312 (FINRA BrokerCheck Disclosure)¹ is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or
- Stan Macel, Assistant General Counsel, Office of General Counsel, at (202) 728-8056.

Background & Discussion

FINRA Rule 8312 governs the information FINRA releases to the public via BrokerCheck. FINRA established BrokerCheck (then known as the Public Disclosure Program) in 1988 to provide the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. Via BrokerCheck, FINRA releases to the public certain information reported on uniform registration

November 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management

Key Topics

- BrokerCheck
- Central Registration Depository
- Form U4
- Form U5
- Form U6
- Regulatory Action Disclosure Questions

Referenced Rules & Notices

- FINRA Rule 8312

forms to the Central Registration Depository (CRD® or CRD System).² The primary purpose of BrokerCheck is to help investors make informed choices about the individuals and firms with which they may wish to do business.

Currently, as described in FINRA Rule 8312, BrokerCheck provides information regarding current and former member firms, as well as current associated persons and persons who were associated with a firm within the preceding two years. Starting on November 30, 2009, FINRA will expand BrokerCheck to provide public access to certain information about former associated persons, regardless of when they were associated with a firm, if they were the subject of any final regulatory action as defined in Form U4 that has been reported to CRD via a uniform registration form.³ For these purposes, a final regulatory action as defined in Form U4 may consist of any final action—including any action that is on appeal—by the SEC, Commodity Futures Trading Commission, a 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 (as those terms are used in Form U4).⁴ To illustrate, actions that are delineated in current Form U4 Questions 14C, 14D or 14E will be considered “final regulatory actions.” Similarly, actions that are detailed in current Form U5 Question 7D, and have a status of “final” or “on appeal,” will be considered “final regulatory actions” as such actions are also addressed in Form U4.⁵

The amendments will allow the public access to information about formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or attain other positions of trust and about whom investors may wish to learn relevant disciplinary information. Specifically, FINRA will disclose through BrokerCheck information concerning any final regulatory action(s), as well as certain administrative information (*e.g.*, employment and registration history) and information about qualification examinations, if available, regarding these formerly registered individuals. FINRA also will provide the most recently submitted comment, if any, provided by the subject person, presuming the comment is in the form and in accordance with the procedures established by FINRA and relates to the information provided through BrokerCheck. The amendments will not expand access to other information that may be part of the CRD System regarding the former registered person, such as customer complaints, bankruptcies, liens, criminal events or arbitration claims.

FINRA notes that the amount and format of information made available for this expanded category of individuals will depend in part on when the individuals left the securities industry, and whether their CRD data is available in a Web-based format. FINRA expects that the public will have access to information regarding final regulatory actions, employment and registration history, qualification examinations and most recent comment for a large majority of the individuals whose information will be available on BrokerCheck as a result of the amendments.

However, two conditions apply to a small percentage of individuals whose registration with FINRA ceased prior to 1999. First, since some of these individuals' records are not currently available in a Web-based format, BrokerCheck reports about these persons cannot be generated automatically. Instead, FINRA will, as promptly as practicable, prepare such reports manually before making them available on BrokerCheck.⁶ Second, for a very limited number of individuals whose records are not available in a Web-based format, not all of the administrative data and qualification information is available. In such situations, only the individual's name, information about any final regulatory action(s) and the most recent comment, if any, will be disclosed through BrokerCheck.

Endnotes

- 1 See Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (Order Approving SR-FINRA-2009-050).
- 2 The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration) and Form U6 (Uniform Disciplinary Action Reporting Form).
- 3 Because the information disclosed through BrokerCheck is derived from the CRD System, BrokerCheck will only disclose information regarding regulatory actions that have been reported to CRD via a uniform registration form.
- 4 A final regulatory action does not include any action limited to the revocation or suspension of an individual's authorization to act as an attorney, accountant or federal contractor (current Form U4 Question 14F).
- 5 FINRA staff also will review responses to all Regulatory Action Disclosure questions and Disclosure Review Pages on the Forms U4 and U5 (including the predecessor questions in this area), as well as information filed on Form U6, to determine whether a former associated person is subject to a final regulatory action and should therefore be included in BrokerCheck. FINRA may disclose a final action that is reported by a regulator on a Form U6 even if that action has not been reported by an individual on a Form U4 because, for example, the individual was not registered at the time the final regulatory action was reported.
- 6 Once a report has been manually prepared, it will be available immediately to subsequent requesters.

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Attachment A

Below is the text of the amendments. New language is underlined; deletions are in brackets.

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8000. Investigations and Sanctions

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8300. Sanctions

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8312. FINRA BrokerCheck Disclosure

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, FINRA shall release information regarding a current or former member[, an] or current or former associated person[, or a person who was associated with a member within the preceding two years,] through FINRA BrokerCheck.

(b) For inquiries regarding a current or former member, a current associated person, or a person who was associated with a member within the preceding two years, [E]except as otherwise provided in paragraph ([c]d) below, FINRA shall release:

- (1) any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively “Registration Forms”);
- (2) currently approved registrations;
- (3) summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer;
- (4) the most recently submitted comment, if any, provided to FINRA by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included;
- (5) information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations;
- (6) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member is subject to the provisions of NASD Rule 3010(b)(2) (“Taping Rule”);

(7) Historic Complaints (i.e., the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and that have not been settled or adjudicated, and customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 prior to May 18, 2009 or an amount less than \$15,000 on or after May 18, 2009 and are no longer reported on a Registration Form), provided that:

(A) any such matter became a Historic Complaint on or after March 19, 2007;

(B) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and

(C) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after March 19, 2007), or any combination thereof; and

(8) the name and succession history for current or former members.

(c) For inquiries regarding a person who (1) was formerly associated with a member, but who has not been associated with a member within the preceding two years, and (2) was the subject of a final regulatory action as defined in Form U4 that has been reported to CRD on a Registration Form, except as provided in paragraph (d) below, FINRA shall release, to the extent available:

(1) information regarding the final regulatory action as reported on a Registration Form;

(2) administrative information, including employment history and registration history derived from information reported on a Registration Form;

(3) the most recently submitted comment, if any, provided to FINRA by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included; and

(4) information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations.

For purposes of this paragraph (c), a final regulatory action as defined in Form U4 may include any final action, including any action that is on appeal, by the SEC, the Commodity Futures Trading Commission, a 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 (as those terms are used in Form U4).

(d) FINRA shall not release:

(1) information reported as a Social Security number, residential history, or physical description, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority;

(3) "Internal Review Disclosure" information reported on Section 7 of the Form U5;

(4) "Reason for Termination" information reported on Section 3 of the Form U5;

(5) Form U5 information for fifteen (15) days following the filing of such information;

(6) the most recent information reported on a Registration Form, if:

(A) FINRA has determined that the information was reported in error by a member, regulator or other appropriate authority;

(B) the information has been determined by regulators, through amendments to the uniform Registration Forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred;

(7) information provided on Schedule E of Form BD.

[(d)e] Upon written request, FINRA may provide a compilation of information about FINRA members, subject to terms and conditions established by FINRA and after execution of a licensing agreement prepared by FINRA. FINRA may charge commercial users of such information reasonable fees as determined by FINRA. Such compilations shall consist solely of information selected by FINRA from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the SEC.

• • • Supplementary Material: -----

.01 Availability and Format of Information Regarding Persons Associated with a Member Prior to 1999. Certain types of information about some persons formerly associated with a member, but who have not been associated with a member since January 1, 1999, may not be available through BrokerCheck. Types of information that may be unavailable for these persons may include the following: administrative information (e.g., employment and registration history) and information as to qualifications examinations. In addition, FINRA may release a composite report that includes information from multiple Registration Forms for such persons.

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