

with municipal securities brokers and municipal securities dealers meet minimum qualifications to perform their jobs. Given this purpose, these examinations seek to measure accurately and reliably the degree to which each candidate possesses the knowledge, skills and abilities necessary to perform his or her job. Currently, the Series 51 examination is 1½ hours and consists of 60 multiple-choice questions, and the Series 52 and Series 53 examinations are each 3 hours and each consists of 200 multiple-choice questions.

FINRA proposes to amend Section 4(c) of Schedule A to the FINRA By-Laws to add a reference to the fees assessed by FINRA for administering the Series 51, Series 52 and Series 53 examinations as follows: \$85 for the Series 51 examination, \$95 for the Series 52 examination, and \$95 for the Series 53 examination. The proposed rule change does not change the amount of the administration fee for the Series 51, Series 52 or Series 53 examination.<sup>6</sup>

FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to implement the proposed rule change on the date of filing of the proposed rule change.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which FINRA operates or controls. In light of FINRA's role in administering the Series 51, Series 52 and Series 53 examinations on behalf of the MSRB pursuant to Exchange Act Section 15B(c)(7)(A), FINRA believes it is appropriate to reflect the fees charged in connection with those examinations in the fee table in Schedule A to the FINRA By-Laws.

### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>10</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-016 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2010-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2010-016 and should be submitted on or before May 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61927; File No. SR-FINRA-2010-012]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

April 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 30, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>6</sup> As noted above, the MSRB develops, maintains and owns the Series 51, Series 52 and Series 53 examinations. The MSRB currently charges a \$60 fee for the development of each of these examinations. See Securities Exchange Act Release No. 61023 (Nov. 18, 2009), 74 FR 61402 (Nov. 24, 2009) (Notice of Filing and Immediate Effectiveness of New Rule A-16, on Examination Fees, SR-MSRB-2009-16). As a result, the total fee currently assessed for the Series 51, Series 52 and Series 53 examination is \$145, \$155 and \$155, respectively.

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(x) [sic].

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to (1) expand the information released through BrokerCheck, both in terms of scope and time disclosed; and (2) establish a process to dispute the accuracy of (or update) information disclosed through BrokerCheck.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The proposed rule change amends FINRA Rule 8312, which pertains to FINRA's BrokerCheck program. As described in more detail below, the proposed rule change would (1) expand the information released through BrokerCheck, both in terms of scope and time disclosed; and (2) establish a process to dispute the accuracy of (or update) information disclosed through BrokerCheck.

#### I. Expansion of Information Released through 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 members and their associated persons. In 1990, with FINRA's support, Congress passed legislation requiring FINRA to establish and maintain a toll-free telephone number to respond to inquiries about members and associated persons. In 1998, FINRA began providing certain

administrative information, such as registration and employment history, online via FINRA's Web site. FINRA again amended its rules pertaining to BrokerCheck in 2000 to establish a two-year period for disclosure of information about persons formerly registered with a FINRA member, increase the amount of information disclosed to investors through BrokerCheck, and refine the report delivery process. In 2007, FINRA expanded the types of information made available through BrokerCheck, made BrokerCheck more user friendly, introduced an educational component of the BrokerCheck report and Web site, and provided a compilation of selected data of FINRA members. Last year, FINRA expanded BrokerCheck to permanently make publicly available in BrokerCheck certain information about former associated persons of a member who were the subject of a final regulatory action.

As the above discussion demonstrates, FINRA has regularly assessed the scope and utility of the information provided to the public through BrokerCheck and, as a result, has made numerous changes to improve the program. Last year, in addressing the public comment letters submitted to the Commission in connection with its most recent BrokerCheck expansion proposal, FINRA noted that it would continue to evaluate all aspects of the BrokerCheck program and consider whether greater disclosure of information through BrokerCheck should be made in the future.<sup>3</sup> FINRA believes that such regular evaluation of the program is important due to FINRA's statutory obligation to make information available to the public, as well as the prominence that BrokerCheck has attained as an investor protection service.<sup>4</sup>

Late last year, FINRA evaluated the BrokerCheck program, including the

fundamental policies governing the disclosure of information through the program, as well as the types, the length of availability, and the value to the public of the information that is disclosed via BrokerCheck.

Additionally, FINRA considered the role that BrokerCheck plays as an investor protection service and the significant shift in the financial services landscape that has occurred during the past few years and continues to this day.

Based on the results of its evaluation, FINRA has determined that further expansion of the BrokerCheck program is warranted. As such, FINRA is proposing to amend FINRA Rule 8312 to (1) expand the BrokerCheck disclosure period for former associated persons of a member to ten years from two years; (2) permanently make publicly available in BrokerCheck certain information about former associated persons of a member if any of the following applies, as reported to the Central Registration Depository ("CRD" or "Web CRD") on a uniform registration form: (i) The person was convicted of or pled guilty or nolo contendere to a crime; (ii) the person was the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation; or (iii) the person was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person; and (3) make publicly available in BrokerCheck all historic customer complaints that were archived after the implementation of Web CRD. FINRA has concluded that these proposals, as described in more detail below, are a logical extension of the BrokerCheck program that will help protect investors and other users of BrokerCheck, and make BrokerCheck a more effective tool in combating fraud across the financial services sector.

#### Expansion of the BrokerCheck Disclosure Period for Former Registered Persons

Currently, as described in FINRA Rule 8312, BrokerCheck provides certain information regarding current associated persons and persons who were associated with a member within the preceding two years (*i.e.*, a two year "post-registration disclosure period").<sup>5</sup>

<sup>5</sup> BrokerCheck also provides public access to certain information about formerly associated persons, regardless of when they were associated

<sup>3</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, dated October 15, 2009, in response to comments received regarding Securities Exchange Act Release No. 60462 (August 7, 2009), 74 FR 41470 (August 17, 2009) (Notice of Filing File No. SR-FINRA-2009-050). See also discussion of comments in Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (Order Approving File No. SR-FINRA-2009-050).

<sup>4</sup> Approximately 18.5 million records were viewed last year on BrokerCheck, and the program is routinely mentioned in news articles and investor education materials as a premier tool for researching investment professionals. The Commission has also recognized BrokerCheck as a valuable tool for the public in deciding, among other things, whether to do business with an industry member. See Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (Order Approving File No. SR-FINRA-2009-050).

This information is derived from the uniform registration forms.<sup>6</sup>

When FINRA proposed implementing the two year post-registration disclosure period over a decade ago, it noted that such a disclosure period was appropriate because it generally coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to FINRA's jurisdiction.<sup>7</sup> Since that time, the purpose of BrokerCheck has broadened from helping investors make informed choices about the individuals and firms with which they may wish to do business to also include providing the public with 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 may seek to attain other positions of trust with potential investors and about whom investors may wish to learn relevant information. Consequently, FINRA believes that the reasons initially set forth for the two year post-registration disclosure period are no longer as compelling as when the disclosure period was initially established.

Therefore, FINRA is proposing to expand the post-registration disclosure period to ten years from two years. FINRA believes that a ten year post-registration disclosure period is now more reasonable since it may take individuals some time after leaving the securities industry to establish themselves in another investment-related industry or to attain other positions of trust with potential investors. A ten year post-registration disclosure period will provide investors and other users of BrokerCheck with a longer period of time to consider relevant and important information about such formerly registered individuals. FINRA believes that a ten

with a member, if they were the subject of a final regulatory action as defined in Form U4 that has been reported to CRD via a uniform registration form. As discussed below, FINRA also is proposing to broaden the scope of information made permanently available to the public via BrokerCheck.

<sup>6</sup> The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), 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).

<sup>7</sup> See Securities Exchange Act Release No. 42402 (February 7, 2000), 65 FR 7582 (February 15, 2000) (Order Approving File No. SR-NASD-99-45).

year post-registration disclosure period will accomplish this goal without unduly burdening or infringing on the reputational or privacy interests of those individuals whose FINRA registrations have terminated.

#### *Expansion of BrokerCheck To Permanently Include Additional Information*

As previously mentioned, currently under FINRA Rule 8312, BrokerCheck generally provides information about individuals who are registered with FINRA or who were associated with a member within the preceding two years. Last year, BrokerCheck was expanded to permanently make publicly available in BrokerCheck certain information about former associated persons of a member who were the subject of a final regulatory action as defined in Form U4 that has been reported to CRD via a uniform registration form.<sup>8</sup> This change was designed to allow the public to access information about formerly registered persons who may work in other investment-related industries or may otherwise seek to attain positions of trust with potential investors.

As a result of its evaluation of the BrokerCheck program, FINRA now believes that BrokerCheck should permanently make publicly available additional information about certain former associated persons of a member. FINRA is proposing to permanently make publicly available in BrokerCheck certain information about former associated persons of a member<sup>9</sup> if any of the following applies, as reported to CRD on a uniform registration form: (1) The person was convicted of or pled guilty or nolo contendere to a crime;<sup>10</sup> (2) the person was the subject of a civil injunction in connection with investment-related activity or a civil

<sup>8</sup> See Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (Order Approving File No. SR-FINRA-2009-050).

<sup>9</sup> The proposal will apply only to those individuals registered with FINRA on or after August 16, 1999, which is the date that Web CRD was implemented. Since FINRA launched the Web CRD system, it has used the information in the Web CRD database to generate BrokerCheck reports. Such information is available in a Web-based format and therefore can be easily used to generate BrokerCheck reports. Although the Web CRD database contains information regarding all persons that have been registered with FINRA since the implementation of the Legacy CRD system (the predecessor to Web CRD) in 1981, certain data limitations apply to the information available for some individuals who were no longer registered at the time Web CRD was established. Therefore, the proposal will not apply to those individuals whose FINRA registration terminated prior to August 16, 1999.

<sup>10</sup> This information is currently elicited by Questions 14A(1)(a) and 14B(1)(a) on Form U4 and Questions 7C(1) and 7C(3) on Form U5.

court finding of involvement in a violation of any investment-related statute or regulation;<sup>11</sup> or (3) the person was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person.<sup>12</sup> FINRA is proposing to provide through BrokerCheck information concerning any such disclosure event(s),<sup>13</sup> as well as certain administrative information (e.g., employment and registration history) and information as to qualification examinations passed by these formerly registered individuals. FINRA is also proposing to make available the most recently submitted comment, if any, provided by the 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.<sup>14</sup> Other disclosure matters that may be disclosed pursuant to FINRA Rule 8312 for associated persons and during the post-registration period (e.g., reportable customer complaints or Historic Complaints, criminal charges, terminations, bankruptcies, liens) would continue not to be disclosed after the post-registration period expires.

FINRA believes that this proposal will allow the public access to relevant and important 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 may seek to attain other positions of trust with potential investors and about whom investors may wish to learn relevant information. FINRA believes that this information should be included on a permanent basis, rather than for only ten years following the termination of an individual's FINRA registration,

<sup>11</sup> This information is currently elicited by Questions 14H(1)(a) and 14H(1)(b) on Form U4.

<sup>12</sup> This information is currently elicited by Question 14I(1)(b) on Form U4 and Question 7E(1)(b) on Form U5.

<sup>13</sup> Under the proposed rule change, FINRA will provide information regarding any of the enumerated disclosure events that is reported on Form U6 even if the event has not been reported by an individual on Form U4 or Form U5, as referenced above, because, for example, the individual was not registered at the time the event was reported.

<sup>14</sup> The proposed information to be disclosed permanently (i.e., administrative information, examination information and the most recently submitted comment) mirrors the information currently disclosed permanently with respect to any formerly registered person who is the subject of a final regulatory action.

because, like final regulatory actions (which are included permanently in BrokerCheck), each of the disclosure events that is proposed to be permanently included in BrokerCheck constitutes a final disposition. In addition, in most circumstances, these disclosure events allow the subject person an opportunity to present arguments to an impartial fact-finder about the allegations prior to such final disposition. Furthermore, much of the information that would be subject to release pursuant to the proposal may be available through other public sources. For example, information regarding arbitration awards is available on FINRA's Arbitration Awards Online database,<sup>15</sup> and information regarding civil and criminal proceedings is provided to the public via numerous state Web sites.

#### *Disclosure of Historic Complaints*

Pursuant to FINRA Rule 8312, Historic Complaints are customer complaints that were reported on a uniform registration form that are more than two 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 the specified dollar amount (identified on the customer complaint question) and are therefore no longer reportable on a uniform registration form. Currently, FINRA Rule 8312 provides that Historic Complaints be displayed in BrokerCheck only after the following conditions have been met: (1) A matter became a Historic Complaint on or after March 19, 2007; (2) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten years old; and (3) the person has a total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became Historic Complaints on or after March 19, 2007), or any combination thereof. Unless all three conditions are met, a person's Historic Complaints are not disclosed through BrokerCheck.<sup>16</sup>

FINRA established the "three or more" standard for the release of Historic Complaints so as to allow public investors "to determine for themselves whether a particular associated person has demonstrated a pattern of conduct

over the years and the significance, if any, they should attach to the Historic Complaint information."<sup>17</sup> Following its recent evaluation of the BrokerCheck program, however, FINRA no longer believes that such a standard is prudent. In this regard, FINRA is concerned that the standard may discourage public investors from making a qualitative assessment of a current or former associated person based on all of the potentially relevant information available regarding that individual. FINRA believes that, rather than allowing public investors to determine for themselves whether an individual has demonstrated a pattern of conduct, the standard may actually suggest to investors that any individual who meets the standard has in fact demonstrated a pattern of (mis)conduct (*i.e.*, three events constitutes a pattern of conduct, otherwise the rule would not have established such a threshold). FINRA is also concerned that the standard, along with the current date limitation for Historic Complaints that are eligible for display, may limit the ability of public investors to place Historic Complaints in the appropriate context or to otherwise accurately evaluate a current or former associated person's entire record.

Therefore, FINRA is proposing to amend FINRA Rule 8312 to eliminate the conditions set forth in the rule that must be met before Historic Complaints will be displayed in BrokerCheck. Eliminating these conditions will result in the disclosure of all Historic Complaints via BrokerCheck that became non-reportable after the implementation of Web CRD on August 16, 1999.<sup>18</sup>

This proposed change will allow investors and other users of BrokerCheck to determine for themselves the significance, if any, they should attach to the Historic Complaints on an individual's record based on all available customer complaint information and to put such complaints in the appropriate context based on the entire BrokerCheck record for the

individual.<sup>19</sup> Additionally, FINRA believes that the proposed change will allow investors seeking to do business with investment professionals—whether associated persons of securities firms or advisers—to have similar information available to them.<sup>20</sup>

#### *II. BrokerCheck Dispute Process*

The proposed changes described above will result in BrokerCheck disclosing additional information about current and former associated persons. This underscores the need for a formalized process for disputing the accuracy of (or updating) information displayed through BrokerCheck. FINRA recognizes, for example, that there may be an increased possibility that information disclosed through BrokerCheck for former associated persons may have become inaccurate (*i.e.*, a disposition reported previously may have changed). Additionally, Congress amended Section 15A(i) of the Exchange Act with the enactment of the Military Personnel Financial Services Protection Act to require FINRA, as a registered securities association, to adopt rules establishing an administrative process for disputing the accuracy of information provided through BrokerCheck in response to inquiries regarding "registration information" <sup>21</sup> on its members and their associated persons. Therefore, FINRA is proposing to codify its current process for disputing the accuracy of (or

<sup>19</sup> In conjunction with the implementation of the proposed rule change, FINRA will revise the educational component of BrokerCheck with respect to Historic Complaints to help readers view these disclosures in the appropriate context and give them the appropriate weight when evaluating an associated person.

<sup>20</sup> The Investment Adviser Public Disclosure-Individual ("IAPD-I") database (currently scheduled to be deployed in June 2010) will provide to the public registration and licensing information on natural persons who are registered as investment advisers with the states. IAPD-I will disclose all Historic Complaints that became non-reportable after the individual first became registered through the Investment Adviser Registration Depository ("IARD") system. Accordingly, 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 adviser 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>21</sup> For purposes of Section 15A(i), "registration information" is defined to mean "the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information."

<sup>15</sup> See <http://finraawardsonline.finra.org/>.

<sup>16</sup> In addition, even if a person meets the criteria established for disclosing Historic Complaints, only those Historic Complaints that became Historic Complaints after March 19, 2007, will be displayed through BrokerCheck.

<sup>17</sup> See Securities Exchange Act Release No. 51915 (June 23, 2005), 70 FR 37880, 37884 (June 30, 2005) (Notice of Filing File No. SR-NASD-2003-168).

<sup>18</sup> FINRA is proposing to limit the Historic Complaints eligible for display in BrokerCheck to those that became non-reportable after the implementation of Web CRD in 1999, because the Web CRD system (unlike Legacy CRD) contains the specific reason that a matter was archived. Therefore, FINRA will be able to determine whether a matter was archived because it was no longer reportable on a uniform registration form (and therefore qualifies as a Historic Complaint) or whether it was archived for a different reason (*e.g.*, the matter was filed in error).

updating) information disclosed through BrokerCheck.<sup>22</sup>

Under FINRA's current dispute process, FINRA staff occasionally receives telephonic and written inquiries from persons subject to BrokerCheck who believe that information disclosed about them through BrokerCheck is inaccurate. Upon the receipt of such an inquiry, FINRA staff typically reviews the alleged inaccuracy and, if appropriate, contacts the entity that reported the information to determine whether the information is accurate. Once it has obtained all of the available pertinent information, FINRA staff determines whether the information is still accurate or whether the information should be modified or removed from BrokerCheck. FINRA is proposing to enhance and codify this process, which will allow individuals and firms to dispute the accuracy of information being displayed through BrokerCheck. The dispute process will be available both for challenges alleging the information was incorrect when filed and challenges asserting that the information has become incorrect due to events subsequent to filing.

FINRA is proposing to establish a dispute process under which only an "eligible party" would be able to dispute the accuracy of information disclosed in that party's BrokerCheck report. An eligible party would consist of any current member, any former member (subject to a condition discussed below), and any associated person of a member or person formerly associated with a member for whom a BrokerCheck report is available. Regarding former members, the proposal would require that a dispute be submitted by a natural person who served as the former member's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Legal Officer or Chief Compliance Officer, or individual with similar status or function, as identified on Schedule A of Form BD at the time the former member ceased being registered with FINRA. This requirement on the submission of disputes by former member firms is intended to ensure that only authorized representatives of former firms are able to submit disputes.

To dispute the accuracy of BrokerCheck information, an eligible party would be required to submit a

written notice to FINRA, in such manner and format that FINRA may require, identifying the information that the party alleges is inaccurate and providing an explanation as to the reason the information is believed to be inaccurate. Additionally, the eligible party would be required to submit with the written notice all available supporting documentation (if any exists).

After receiving the written notice, FINRA would determine whether the dispute is eligible for investigation. To be eligible for investigation, the dispute would need to pertain only to factual information and not to information that is subjective in nature or a matter of interpretation. For example, a dispute involving allegations made in a customer complaint or a firm's determination that a customer complaint is required to be reported would not be eligible for investigation.

FINRA would presume that a dispute involving factual information is eligible for investigation. Nevertheless, the proposed rule change would specifically identify in Supplementary Material to FINRA Rule 8312 the following non-exhaustive list of situations as ineligible for investigation, even if they may involve factual information:

(a) A dispute that involves information that was previously disputed under this process and that does not contain any new or additional evidence;

(b) A dispute that is brought by an individual or entity that is not an eligible party;

(c) A dispute that does not challenge the accuracy of information contained in a BrokerCheck report but only provides an explanation of such information;

(d) A dispute that constitutes a collateral attack on or otherwise challenges the allegations underlying a previously reported matter such as a regulatory action, customer complaint, arbitration, civil litigation or termination;

(e) A dispute that consists of a general statement contesting information in a BrokerCheck report with no accompanying explanation; and

(f) A dispute that involves information contained in CRD that is not disclosed through BrokerCheck.

If FINRA determines that a dispute is eligible for investigation, FINRA would add a general notation to the eligible party's BrokerCheck report stating that the eligible party has disputed certain information included in the report.<sup>23</sup>

<sup>23</sup> In those circumstances where a dispute involves a court order to expunge information from

The notation would be removed from the eligible party's BrokerCheck report upon resolution of the dispute by FINRA. If FINRA determines that a request is not eligible for investigation, it would notify the eligible party of this determination in writing, including a brief description of the reason for the determination. A determination by FINRA that a dispute is not eligible for investigation would not be subject to appeal.

If a dispute is deemed eligible for investigation, FINRA would evaluate the written notice and supporting documentation submitted by the eligible party. If FINRA determines that the written notice and documentation submitted is sufficient to update, modify or remove the information that is the subject of the request, FINRA would make the appropriate change. For example, if an eligible party disputed a criminal conviction being displayed through BrokerCheck and submitted a valid court order expunging the matter, FINRA would remove any information referencing the criminal conviction from BrokerCheck. If, however, the written notice and supporting documentation do not include sufficient information upon which FINRA can make a determination, FINRA would, under most circumstances, contact the entity that reported the information to CRD (*i.e.*, a firm, other regulator, or FINRA department, defined in the proposed rule change as a "reporting entity") and request that this reporting entity verify that the information is accurate.<sup>24</sup> Where a reporting entity other than FINRA is involved, FINRA would defer to that reporting entity regarding the accuracy of the information provided to FINRA and disclosed through BrokerCheck.<sup>25</sup> If the reporting entity acknowledges that the information is not accurate, FINRA would update, modify or remove the information, as appropriate, based on the information

BrokerCheck, FINRA would, as it does today, prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.

<sup>24</sup> FINRA would not contact the reporting entity if the entity is unlikely to have information regarding the disputed information. For example, if the previously mentioned eligible party disputing a criminal conviction failed to provide a valid court order, FINRA would not contact the securities firm that reported the conviction since the firm is unlikely to have the court order in its possession.

<sup>25</sup> If the reporting entity obtained its information from a third party (*e.g.*, a firm reported to CRD that an associated individual had declared bankruptcy based on information from a consumer reporting agency), FINRA would not contact the third party (in this example, the consumer reporting agency) to try to verify the accuracy of the information. The reporting entity would have the responsibility of verifying the accuracy of the information it received from the third party.

<sup>22</sup> While the dispute process will be available to currently, as well as formerly, registered individuals, FINRA anticipates that most disputes will be brought by the latter because a mechanism already exists for currently registered individuals to update information (*i.e.*, through the filing of an amended Form U4).

provided by the reporting entity. If the reporting entity verifies the accuracy of the information or the reporting entity no longer exists or is unable to verify the accuracy of the information, FINRA would not change the information.<sup>26</sup>

Upon making its determination, FINRA would notify the disputing eligible party in writing that the investigation resulted in a determination that (1) the information is inaccurate or not accurately presented and has been updated, modified or deleted; (2) the information is accurate in content and presentation and no changes have been made; or (3) the accuracy of the information or its presentation could not be verified and no changes have been made. A determination by FINRA regarding a dispute, including a determination to leave unchanged or to update, modify or delete disputed information, would not be subject to appeal.<sup>27</sup>

As noted above, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. FINRA will implement the proposal in phases, with full implementation occurring no later than 180 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>28</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change, among other things, would enhance investor protection by expanding the information disclosed to investors and other users of BrokerCheck.

<sup>26</sup> The principle guiding FINRA's proposed approach is that because information in BrokerCheck is derived from the information filed on the uniform registration forms, it is presumed accurate as filed. FINRA expects that the dispute process will be used principally to address genuine filing errors, which FINRA expects to be rare, or those instances where an event displayed through BrokerCheck has a changed disposition subsequent to it being filed on a uniform registration form.

<sup>27</sup> Although FINRA determinations under the proposed dispute process would not be subject to appeal, individuals and firms would continue to have the ability to challenge BrokerCheck information they believe to be inaccurate through other processes that are available today (e.g., an arbitration or court proceeding).

<sup>28</sup> 15 U.S.C. 78o-3(b)(6).

## B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-012 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2010-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

submission,<sup>29</sup> all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2010-012 and should be submitted on or before May 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-9282 Filed 4-21-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61926; File No. SR-NASDAQ-2010-049]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

April 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to

<sup>29</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

<sup>30</sup> 17 CFR 200.30-3(a)(12).

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

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