



NASAA

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September 8, 2009

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: Release Number 34-60462; File Number SR-FINRA-2009-050

Dear Ms. Murphy:

The following comments are hereby submitted on behalf of the North American Securities Administrators Association (NASAA)<sup>1</sup> regarding the above referenced rule proposal. The proposed rule would expand the scope of the Financial Industry Regulatory Authority's (FINRA) public disclosure system, BrokerCheck. As a long-standing advocate of providing investors with important information when selecting an investment services professional, NASAA supports the proposed amendment to FINRA Rule 8312 and urges FINRA to take further steps to expand the information available to the public through BrokerCheck. In addition, NASAA would also encourage FINRA to proactively direct investors to their state regulators when making inquiries about financial services professionals given the restrictions on the information provided through BrokerCheck.

As explained in the Release, the proposed rule change will enable members of the public to access information about formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in other investment related fields. Under current BrokerCheck rules, all of the records of individuals who have been out of the industry for two or more years are excluded from public access. The proposed rule would change this by eliminating the two-year limit for those records that contain final regulatory actions and certain related information. The proposed rule would not expand access to other information that may be part of a former representative's record including customer complaints, bankruptcies, liens, criminal events or arbitration claims.

In support of its decision to limit the disclosure of this information, FINRA contends it is attempting to strike a balance between investor protection on one hand and personal privacy and fairness to formerly registered persons on the other. To the contrary,

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<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

NASAA contends that on whole, the type and amount of information available through BrokerCheck is in fact tilted in favor of associated persons, both current and former, of FINRA's members.

The current version of FINRA Rule 8312(c) governing the scope of BrokerCheck explains what information is not provided to the public and includes, for example, the reason for termination, examinations that have been failed, and information related to internal reviews. In addition to the information from CRD that is *not* disclosed, there are restrictions governing the information that *is* disclosed. For instance, the disclosure of historic complaints is limited to those matters that became historic on or after March 17, 2007, and then only when the registered person is subject to the "three strikes" rule.<sup>2</sup> This means that there are customer complaints that will never be disclosed to the public through BrokerCheck. Considering the data not disclosed, the limits on the information that is disclosed, and the FINRA sanctioned process for expunging both customer complaint information and certain types of employer/employee dispute information, the conclusion is inescapable that FINRA favors protecting the "*privacy and fairness*" interests of its members' associated persons over protecting members of the investing public.

To help address this imbalance, NASAA urges FINRA to amend its rule filing such that the information disclosed for formerly registered persons includes other disclosure actions such as criminal events, arbitration claims, customer complaints, bankruptcies, and liens. In fact disclosure of this information is by no means an extraordinary step since, as FINRA noted in its rule filing, much of this information is currently available from other public sources. It would, therefore, seem a matter of course that FINRA would also make it available to the public.

While NASAA commends FINRA for its plan to expand BrokerCheck, we cannot help but object to the narrowness of this proposal and urge FINRA to amend the rule to include the information described above. NASAA also urges FINRA to revisit all of Rule 8312 and consider removing the restrictions on the information currently disclosed. Furthermore, given the fact that state records will likely contain information excluded from BrokerCheck, NASAA suggests that FINRA also take steps to direct investors to their state regulator by including an alert or "pop up" screen within BrokerCheck that contains state regulator contact information and a suggestion that the investor contact their state regulator.

Now is the time for FINRA to propose a rule that offers complete disclosure of important information to the public. Continuing to conceal such information will not bolster investor confidence in our markets or in the professionals who provide important financial services.

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<sup>2</sup> According to Rule 8312(b)(7), in order for historic complaints dating from March 7, 2007, to be released through BrokerCheck, the most recent historic complaint or currently reported customer complaint must be less than ten years old and the registered person must have a total of three or more currently disclosable regulatory actions, customer complaints, arbitrations or litigations, or historic complaints or any combination of these.

Should you have any questions regarding our comments as expressed herein please contact Melanie Senter Lubin, Chair of NASAA's CRD/IARD Steering Committee. Ms. Lubin can be reached by phone at 410-576-6365 or email at [mlubin@oag.state.md.us](mailto:mlubin@oag.state.md.us).

Sincerely,

/s/ Rex Staples

Rex Staples  
General Counsel