



October 12, 2022

Submitted by SEC Webform (<http://www.sec.gov/rules/submitcomments.htm>)

J. Matthew DeLesDernier
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: File No. SR-FINRA-2022-015: Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Release Information on BrokerCheck Relating to Firm Designation as a Restricted Firm

Dear Mr. DeLesDernier:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am writing in response to U.S. Securities and Exchange Commission (“SEC” or the “Commission”) Release No. 34-95791, *Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Release Information on BrokerCheck Relating to Firm Designation as a Restricted Firm*.² NASAA has consistently advocated for public disclosure of a firm’s status as a Restricted Firm under FINRA Rules 4111 and 9561.³ Accordingly, NASAA supports FINRA’s proposal to provide this information on BrokerCheck and we urge the Commission to approve the proposed rule change.

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² The Order Instituting Proceedings is available at <https://www.sec.gov/rules/sro/finra/2022/34-95791.pdf>. See also Notice of Filing of Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Release Information on BrokerCheck Relating to Firm Designation as a Restricted Firm, SEC Rel. No. 34-95092 (June 13, 2022), available at <https://www.sec.gov/rules/sro/finra/2022/34-95092.pdf>.

³ See NASAA Letter to SEC re: File No. SR-FINRA-2020-041 (Dec. 28, 2020), available at <https://www.nasaa.org/wp-content/uploads/2020/12/NASAA-Comment-Letter-SR-FINRA-2020-041.pdf>; NASAA Letter to FINRA re: Regulatory Notice 19-17 (July 1, 2019), available at <https://www.nasaa.org/wp-content/uploads/2019/07/NASAA-Reg.-Notice-19-17-Comment-Letter-7-1-19.pdf>.

High-risk brokers present perennial risks to investors and are routinely the subject of investigations and regulatory actions taken by NASAA members. Rule 4111 is an important step forward in efforts to address the potential harm that high-risk firms pose to investors. The rule does this by creating a category of “Restricted Firms” that FINRA deems to pose a heightened risk based on objective criteria and a demonstrated pattern of prior misconduct by their associated persons. Designation as a Restricted Firm should be public information. Such disclosure would advance investor protection and transparency (consistent with the purpose of BrokerCheck), be consistent with FINRA’s general standards for public disclosure under FINRA Rule 8312, and help regulators more efficiently allocate resources.

I. Public Disclosure Advances Investor Protection and Transparency.

BrokerCheck is designed to help investors make informed choices about the firms and associated persons with whom they conduct business. It does this by providing important information about the professional background, business practices, and disciplinary histories of FINRA member firms and their associated persons.⁴ Public disclosure of a firm’s status as a Restricted Firm is consistent with the purpose of BrokerCheck, and would advance this goal and protect investors.

Studies have shown that past disclosures can be powerful indicators of future misconduct.⁵ Investors deserve to know whether they are doing business with, or are about to do business with, a firm that poses a heightened risk of misconduct. Releasing a firm’s status as a Restricted Firm on BrokerCheck would serve as a clear, simple, and warranted notice to investors to think carefully before doing business with these firms and their associated persons. By encouraging caution, the disclosure of Restricted Firm status on BrokerCheck may help investors avoid financial harm before it occurs.

Moreover, requiring public disclosure of Restricted Firm status could facilitate remediation of underlying issues. For example, firms may be incentivized to be more proactive in taking remedial measures, such as one-time staff reductions involving associated persons with larger numbers of disclosures, to avoid being designated as a Restricted Firm. The prospect of public disclosure would also provide an incentive for firms to tighten internal oversight to prevent the kinds of behaviors that might cause them to become designated in the first place.

⁴ See *Notice of Filing of Proposed Rule Change*, *supra* note 2, at 5; Regulatory Notice 12-10: FINRA BrokerCheck, FINRA (Feb. 2012), available at <https://www.finra.org/sites/default/files/NoticeDocument/p125621.pdf>.

⁵ See, e.g., Mark Egan *et al.*, *The Market for Financial Adviser Misconduct*, at 3, 12-15, and 52 Fig. 4 (Feb. 2016), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739590; Hammad Qureshi & Jonathan Sokobin, *Do Investors Have Valuable Information About Brokers?*, at 17 (FINRA Office of the Chief Economist Working Paper, Aug. 2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2652535.

II. Public Disclosure of Restricted Firm Status is Consistent With FINRA's General Standards for Public Disclosure Under FINRA Rule 8312.

Firms are already required to publicly disclose similar information on BrokerCheck regarding restrictions on their behavior under the Taping Rule.⁶ Designation as a Restricted Firm is closely analogous to being designated a Taping Firm under FINRA Rule 3170. This provides investors and regulators with easy access to this valuable information. The underlying purposes of the Taping Rule are the same as those behind Rule 4111; namely, both rules seek to identify high-risk FINRA member firms and to impose additional regulatory and compliance safeguards on them.⁷ Public disclosure of a firm's status as a Restricted Firm is appropriate here for the same reasons that it is appropriate under the Taping Rule. Investors should be able to know whether and how the firms they deal with are restricted by regulators in order to decide whether to do business with them. BrokerCheck is an appropriate vehicle to achieve this goal because, among other reasons, both FINRA and NASAA encourage investors to use BrokerCheck for information about financial professionals.⁸

III. Public Disclosure Would Help Regulators Allocate Resources More Efficiently.

Regulatory coordination and collaboration are important mainstays of deterrence and oversight, and will be particularly relevant with respect to Restricted Firms. Public disclosure of Restricted Firm status would allow state securities regulators to more efficiently allocate their audit and examination resources to facilitate more effective regulatory oversight of high-risk firms.

Any restriction on a firm's ability to do business – particularly because a firm has demonstrated high-risk behavior – is material to state regulatory risk evaluation and examination planning. High-risk firms may require different and enhanced examination procedures. Conversely, if a state is unaware that a firm deemed by FINRA as high-risk is operating within its borders, it may not extend the elevated level of regulatory scrutiny appropriate for such a firm.

Further, a Restricted Firm may also be subject to limitations on certain assets held in its Restricted Deposit Account.⁹ Without access to information about the firm's status as a Restricted Firm, a state examiner's review of the firm's compliance with net capital requirements could be skewed because the restricted funds would not be readily available to meet creditors' calls or

⁶ See FINRA Rule 8312(b)(2)(F). NASAA supported this requirement when it was proposed. See NASAA Letter to FINRA re: Regulatory Notice 18-16 (Aug. 1, 2018), available at https://www.finra.org/sites/default/files/18-16_NASAA_Comment.pdf.

⁷ See, e.g., Notice to Members 05-46: Taping Rule, NASD (July 2005) (describing the purpose of the Taping Rule), available at <http://www.finra.org/sites/default/files/NoticeDocument/p014653.pdf>.

⁸ See, e.g., FINRA, *Ask and Check* (last visited Oct. 4, 2022), <https://www.finra.org/investors/protect-your-money/ask-and-check>; NASAA, *How to Check Out Your Broker or Investment Adviser* (last visited Oct. 4, 2022), <https://www.nasaa.org/2709/how-to-check-out-your-broker-or-investment-adviser/>.

⁹ See FINRA Rule 4111(f), (i)(14).

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liquidity requirements. Direct access to this information by state securities regulators would enhance risk assessments, simplify examinations, and alleviate potential misunderstandings and wasted effort during examinations.

IV. Conclusion

In sum, we commend FINRA's recognition of the importance of public disclosure regarding Restricted Firm status. Public disclosure of this information will further empower regulators to protect investors, and investors to protect themselves. As such, we urge the Commission to approve the proposed amendments to FINRA Rule 8312.

Thank you for considering these views. NASAA looks forward to continuing to work with the Commission and FINRA in the shared mission to protect investors. Should you have questions, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Hartnett".

Andrew Hartnett
NASAA President
Deputy Administrator for Securities
Iowa Insurance Division