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## FINRA Proposes to Include More and Older Information on BrokerCheck

Continuing its efforts to increase the amount of publicly available information on financial industry professionals, the Financial Industry Regulatory Authority (FINRA) announced last Wednesday its proposed plans to significantly expand the disclosure of customer complaints against current and former registered representatives (RRs).

FINRA's proposal, which it plans to submit to the Securities and Exchange Commission for approval in the coming weeks, would increase public access to records of complaints filed against RRs through BrokerCheck, FINRA's publicly accessible online database of information regarding RRs. The proposed expansion focuses on increasing the number of customer complaints reported publicly and also extends the disclosure period for certain types of information.

The proposed changes follow an earlier move by FINRA last November to make records of final regulatory actions against RRs publicly accessible forever rather than for two years after the RR left the securities industry.

Following on the theme of increased disclosure, this proposal specifically provides for:

- 1. Increasing the number of customer complaints publicly available by increasing the number of "historic" complaints disclosed.** "Historic" complaints are those customer complaints, arbitrations, or litigations more than two years old that have not yet been adjudicated or have settled for less than \$15,000. Currently, historic complaints are reported on BrokerCheck only when RRs have three or more regulatory actions or historic complaints that can be currently disclosed. The proposal calls for the disclosure of all historic complaints filed since 1999 for currently registered RRs or those whose registrations were terminated within the prior two years, regardless of the number of complaints that have been filed against an RR. (If the SEC approves all of FINRA's proposed expansions, the reporting of historic complaints would apply to brokers whose registrations were terminated within the preceding 10 years.)
- 2. Keeping disclosure of an RR's record and historic complaints available on BrokerCheck for a longer period.** Under the current system, an RR's record is publicly available for two years once he or she leaves the industry. The current system tracks FINRA's disciplinary jurisdiction over RRs, which expires two years after an RR leaves the industry. The proposal would increase the time during which an RR's record remains publicly available to 10 years.
- 3. Increasing the amount of information on a former RR that will be permanently available.** Following November 2009's changes to make regulatory actions permanently available information, the proposal would add criminal convictions or pleas of guilty or nolo contendere; civil injunctions or findings of involvement in a violation of any investment-related statute or regulation; and arbitration awards or civil judgments based on the individual's involvement in an alleged sales practice violation to the list of information permanently available to the public.

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FINRA’s proposal is aimed at providing investors with information on former RRs who may still work within the financial industry but who are no longer within FINRA’s regulatory and supervisory jurisdiction. FINRA Chairman and CEO, Rick Ketchum, explained that the proposed changes will provide “valuable information about persons who have left the securities industry, often not of their own accord, but who can still cause great harm to the investing public. Recent regulatory and criminal proceedings in the financial services sector reveal that former brokers have been engaging in fraud and other misconduct long after establishing themselves in other segments of the financial services industry.”

The proposal raises several considerations for former RRs. After last November’s expansion of disclosure, information on 15,000 RRs who had previously been removed from BrokerCheck was placed back online because those RRs had been the subject of a final regulatory action; those disclosures will remain on BrokerCheck permanently. This raises the question of whether those RRs who were placed back online will have their profiles reopened and historic complaints reposted. Similarly, formerly listed RRs whose records included information falling into the proposed broadened category of permanently disclosed information may have their information reposted – for good. Indeed, it is notable that FINRA seems interested in using BrokerCheck to put a permanent scar on the record of RRs long after they have left the industry and without any analysis of the seriousness of the alleged infraction or claim.



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