



SECURITIES INDUSTRY PRACTICE

# ALERT

## FINRA OPENS UP BROKERS' CLOSETS EVEN FURTHER ... AND FOR LONGER

**SUMMARY:** The SEC just approved a significant set of amendments to FINRA Rule 8312 regarding reportable event disclosures of registered persons (RRs) through BrokerCheck (FINRA RN 10-34; SEC Rel. No. 34-62476 (July 8, 2010)). In brief, the main consequence of the rule amendment is that on August 23, 2010, and on November 6, 2010, RRs BrokerCheck information (basic registration information as well as customer complaints, arbitrations, criminal actions and other litigations heretofore removed from RRs public BrokerCheck) will now be publicly available via BrokerCheck either (1) anew, (2) for much longer than before, or (3) permanently.

This will be of great concern to the thousands of brokers (and former brokers) who will now have their past, nonpublic information put back into public view, or be greatly prolonged in its public availability. The rule amendments also create a more formal (but still very limited) process at FINRA for an RR to dispute the renewed public disclosure of certain reportable items on BrokerCheck.

[Click here for the FINRA Regulatory Notice](#) that discusses these changes.

**SHORT DISCUSSION:** Public disclosure of RRs Forms U4 and U5 registration information has been periodically expanded by FINRA since it first started in 1988 (at which time information was only accessible via an NASD 800 number). With the advent of WebCRD in

1999, FINRA has made increasingly more information about RRs available over the Internet.

Until now, FINRA policy regarding public disclosure of information about RRs was generally based on whether an RR was or could still be registered in the securities industry (i.e., for up to two years after an RRs last registered association with a FINRA, NYSE or other SRO member firm). But now, FINRA considers itself a guardian for the broader safety of public investors:

[T]he 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. (SEC Release No. 34-61927, dated April 16, 2010.)

Accordingly, FINRA is now greatly expanding the time frames for which various RR registration information will be publicly available. Categorically, the new disclosures can be broken down as follows:

- **Nonpublic Reportable Events Made Newly Public** - Currently, Historic Complaints as defined under Rule 8312 were not disclosed. Those included

unsettled/unadjudicated complaints more than two years old, and complaints, arbitrations and litigations settled for less than a relevant dollar amount (i.e., either \$10,000 or \$15,000, as applicable). But beginning August 23, 2010, all such Historic Complaints will become publicly available again on BrokerCheck.

• **Former RR Information Made Public on BrokerCheck for Much Longer Than Before -**

Currently, once an RR without a reportable event ceases to be associated with a FINRA member for two years, FINRA stops making public on BrokerCheck any information about that RR. Beginning November 6, 2010, such information will again become public on BrokerCheck for any former RR who has been associated with a FINRA member at any time in the 10 years prior to the date of a public inquiry on BrokerCheck.

• **More Reportable Events Made Permanently Public -** Currently, only the registration information of former RRs who were the subject of a formal, final regulatory action were permanently public on BrokerCheck. Beginning November 6, 2010, the

category of former RRs for which registration information will remain permanently public on BrokerCheck will be expanded to include former RRs who, among other things, (1) were convicted of a "crime" (i.e., any felony, and any misdemeanor involving investments, fraud, theft, perjury, etc.), (2) were found by a civil court to have violated investment-related laws or regulations, or (3) suffered an arbitration award or civil judgment for sales practice violations.

(The only former RRs who escape this renewed or prolonged public disclosure will be those who ceased being RRs prior to August 16, 1999, - the date WebCRD was implemented.)

Also effective August 23, 2010, FINRA's process for an RR to dispute BrokerCheck information shall be somewhat enhanced by the creation and provision of a "BrokerCheck Dispute Form," but types of information that may be disputed by an RR is very limited; FINRA staff will still make the final determination about the dispute; and FINRA staff's determinations will not be subject to any appeal.

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If you have any questions regarding the information in this alert, please contact:  
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