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AN OVERVIEW OF BROKERCHECK AND THE CENTRAL REGISTRATION DEPOSITORY

Christine Lazaro¹ and Albert Copeland²

Securities brokers are governed by a unique regulatory framework, subject to both extensive state and federal statutory and regulatory regimes. The vast bulk of federal regulation and oversight of brokers and brokerage firms has been delegated to the Financial Industry Regulatory Authority (“FINRA”), a self-regulatory organization with the power to govern its members’ conduct. FINRA operates under the oversight of the Securities and Exchange Commission (the “SEC”), a federal agency established by the federal securities laws.

FINRA was created on July 26, 2007 through the consolidation of the National Association of Securities Dealers (“NASD”) and the member regulation, enforcement and arbitration operations of the New York Stock Exchange.³ Because these two different self-regulatory organizations had different rulebooks, FINRA has been gradually consolidating their rules into a single, governing FINRA rulebook.⁴

FINRA has established rules governing the conduct of brokers and brokerage firms, as well as the disclosure of certain information. It also provides an arbitration forum to resolve customer disputes, disputes between broker-dealer firms, and disputes between brokers and their firms. Notably, nearly every brokerage account opening agreement contains a pre-dispute arbitration clause requiring customers to submit their disputes through FINRA’s arbitration forum.

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3. For ease of reference, this article generally refers to the NASD as FINRA throughout unless the context requires otherwise.

4. This process has not yet been completed. Accordingly, FINRA maintains three rulebooks – FINRA Rules, NASD Rules and NYSE Rules. As NASD and NYSE Rules are consolidated, they are given FINRA Rule numbers and are then retired.

In contrast to actions filed in court, FINRA arbitrations are private proceedings. Because of this, there is limited amount of publicly available information about FINRA disputes. Pleadings and other documents and evidence filed in FINRA arbitrations are not public records. Thus, customers seeking information about a broker may not access the underlying documents filed in arbitration proceedings. This is why the FINRA mandated disclosures regarding complaints made by a broker's customers are crucial to the investing public. Without these disclosures, current and potential customers of a particular broker would not be able to determine whether, and how many, other customers have filed complaints against their broker. As such, public disclosures take on heightened importance.

This article will start with an overview of the Central Registration Depository (the "CRD"). It will then discuss FINRA's BrokerCheck® database and describe how the two databases work together. Next, it will provide an overview of a broker's BrokerCheck report and detail what information may be included, which can be quite useful to both current and prospective customers in vetting a broker. This information may also be useful to attorneys who are representing investors in connection with a complaint or arbitration claim.

I. THE DISCLOSURE SYSTEMS

A. *The Central Registration Depository*

Information about brokers comes from a national records database known as the CRD. FINRA and the North American Securities Administrators Association ("NASAA")⁵ jointly developed and implemented the CRD database in 1981. It "consolidated a multiple paper-based state licensing and regulatory process into a single, nationwide computer system. . . Its computerized database contains the licensing and disciplinary histories on

5. "Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico." NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, *About Us*, available at <http://www.nasaa.org/about-us/> (last visited June 30, 2021).

more than 630,000 securities professionals and 3,800 securities firms”⁶ and is used by brokerage firms, regulators, and self-regulatory organizations.⁷ Today, FINRA operates the CRD system pursuant to policies developed jointly with NASAA.⁸ FINRA has worked with NASAA, the SEC, brokerage firms and other members of the regulatory community to “establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD is accurate and complete.”⁹

Much of the CRD’s information comes from the registration forms filed on behalf of each FINRA registered broker, also known as an “associated person.”¹⁰ When a broker first becomes registered with FINRA, they must submit a Form U4, the Uniform Application for Securities Industry Registration or Transfer. Additionally, a Form U4 must be filed whenever a broker becomes registered with a new brokerage firm, also known as a “member firm.”¹¹ A new Form U4 is required whenever the broker changes employment and joins a different member firm. Brokers have an ongoing duty to amend and update the information contained within the Form U4 as changes occur.¹²

The Form U4 contains certain disclosure questions which require detailed answers. For example, question 14I is entitled “Customer Complaint/Arbitration/Civil Litigation Disclosure[,]” and requires the broker to answer a number of questions about customer complaints. Brokers must

6. See NASAA, *Industry Resources*, available at <http://www.nasaa.org/industry-resources/investment-advisers/crd-iard/> (last visited June 30, 2021).

7. See Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure to Establish Procedures for Arbitrators to Follow When Considering Requests for Expungement Relief, Exchange Act Release No. 58886, 94 SEC Docket 1445, at 2 n.8 (October 30, 2008).

8. *Id.* at 2.

9. *Id.*

10. This article will use the term broker throughout, rather than the more technical term, “associated person.” Although brokers are associated persons, not all associated persons are brokers. This article focuses on the rules and practices affecting brokers. In practice, each firm where a broker is licensed will file the requisite forms on behalf of the broker. This is generally done through a registration department at the firm.

11. For simplicity, this article will use the term brokerage firm, rather than the more technical term, “member firm.”

12. See FINRA, *Form U4 Instructions*, available at <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015111.pdf>.

disclose whether they have ever been named as a respondent in an investment-related, customer initiated arbitration or civil litigation or were the subject of such a complaint if the complaint (i) is still pending; (ii) resulted in an award or judgment against the broker; or (iii) was settled for \$15,000 or more.¹³ Brokers must also disclose any written customer complaints that allege sales practice violations and damages of greater than \$5,000 that have been made within the prior 24 months, as well as any written or oral customer complaints that have settled for \$15,000 or more.¹⁴

Question 14I requires detailed disclosure of investment-related, consumer-initiated arbitrations regardless of whether the broker has been named as a respondent in the proceeding. The disclosure must be made if there are any allegations within the body of the complaint that the broker was involved in sales practice violations, forgery, theft, misappropriation or conversion of funds or securities. The Form U4 also mandates disclosure of several other categories of information including criminal matters, regulatory actions, civil judicial matters, termination information, and financial issues.¹⁵

The Form U4 contains information provided by the broker; however, the form is filed on the broker's behalf by the brokerage firm.¹⁶ Brokers may have the ability to collaborate with the firms in terms of the information submitted, but ultimately, the firm determines the final language and submits the form initially, as well as any updates.

Information obtained from the Form U4 appears within the CRD system. Certain information that has been disclosed on the Form U4 is then made available to the public through FINRA's BrokerCheck system.

B. The BrokerCheck System

Today, the public may access information about brokers and brokerage firms through FINRA's BrokerCheck system, an internet portal which

13. See FINRA, *Form U4*, available at <https://www.finra.org/sites/default/files/form-u4.pdf>. If the settlement occurred prior to May 18, 2009, it must be reported if it is for \$10,000 or more.

14. *Id.* Here, brokers must also disclose settlements of \$10,000 or more if the settlement occurred prior to May 18, 2009.

15. See FINRA, *Form U4*, question 14 generally.

16. See FINRA, *Form U4, Who Files a Form U4?*, available at <https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms/form-u4#u4-who>.

provides the public with access to some of the information contained in the CRD database.¹⁷

Before BrokerCheck existed, FINRA provided information through the Public Disclosure Program. FINRA began the Public Disclosure Program in 1988 in response to written inquiries from the public about brokers' disciplinary histories.¹⁸ FINRA established the Public Disclosure Program "to permit members of the public to have access to information that will help them to determine whether or not to conduct, or continue to conduct, business" with a broker or brokerage firm.¹⁹ It was created about a year after Black Monday and the 1987 stock market crash, during a time when investors had lost confidence in the markets and were having problems resolving complaints against their brokers.²⁰ At the same time, NASAA established a toll-free number that investors could call to get information about their brokers.²¹ Shortly thereafter, Congress passed legislation requiring FINRA to establish a toll-free number to respond to public inquiries about brokers and brokerage firms.²² In response, FINRA amended its rules to provide for the dissemination

17. See FINRA, *BrokerCheck*, available at <https://brokercheck.finra.org/>.

18. See GAO Letter Report, NASD Telephone Hotline: Enhancements Could Help Investors Be Better Informed About Brokers' Disciplinary Records (Letter Report, 08/19/96, GAO/GGD-96-171), available at <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GGD-96-171/html/GAOREPORTS-GGD-96-171.htm>. At the time, FINRA had amended Article V, Section I of the NASD Rules of Fair Practice, "Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions." See Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Related to Notice to Membership and Press of Suspension, Expulsions, Revocations and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons, Exchange Act Release No. 25604, 53 Fed. Reg. 14878 (April 20, 1988).

19. See *id.*

20. Nathaniel C. Nash, *Many Black Monday Cases Unheard*, N.Y. TIMES (October 10, 1988), available at <http://www.nytimes.com/1988/10/10/business/many-black-monday-cases-unheard.html>.

21. See NASAA Comment Letter in response to NASD Notice to Members 02-74, available at <http://www.nasaa.org/wp-content/uploads/2011/07/87-NASDPublicInformationReview.37627-43960.pdf> (January 6, 2003).

22. See NASD Notice to Members 02-74, *Public Information Review* (November 2002).

of information in response to both written requests and telephonic requests.²³ In 1993, FINRA began to include information about arbitration awards in the information it made available to the public.²⁴

Federal legislation has since evolved which now requires FINRA to maintain both a toll-free number and a “readily accessible electronic or other process” to respond to inquiries about brokers.²⁵ In 1998, FINRA began to make certain information available on-line through its website²⁶ and BrokerCheck was created.²⁷ BrokerCheck disclosures are governed not only by federal legislation but also by FINRA Rule 8312, which requires FINRA to make information available about a broker’s current registrations and exams passed, as well as summary information about arbitration awards, customer complaints and settled arbitrations.

C. Expungement of Information from the CRD and Brokercheck

Because BrokerCheck’s public disclosures come directly from the CRD database, its utility may be diminished by anything which reduces or pollutes the information within that database. To address possibly inaccurate information which may appear within BrokerCheck, Congress authorized FINRA to adopt rules establishing a process for brokers to dispute the accuracy of information maintained in the CRD that is provided in response to public

23. See Order Approving Proposed Rule Change Relating to Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons via Toll-Free Telephone Listing, Securities Exchange Act Release No. 30629, 51 SEC Docket 488 (April 23, 1992).

24. See Order Granting Accelerated Approval of Proposed Rule Change, Exchange Act Release No. 32568, 54 SEC Docket 957 (July 8, 1993).

25. See 15 USC §78o-3(i).

26. See Order Approving a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amended Interpretation of IM-8310-2 Concerning the Release of Additional Disciplinary Information, Exchange Act Release No. 39562, 66 SEC Docket 722 (January 20, 1998).

27. Initially, BrokerCheck was called the Public Disclosure Program. In 2003, FINRA renamed the program “NASD BrokerCheck.” See Notice of Filing of Amendment Nos. 4 and 5 to the Proposed Rule Change Relating to the Release of Information Through NASD BrokerCheck, Exchange Act Release No. 54053, 88 SEC Docket 958 (June 27, 2006).

inquiries.²⁸ FINRA has established this process within Rule 8312(e), FINRA BrokerCheck Disclosure.

A broker may dispute the accuracy of information pursuant to Rule 8312(e) by providing written notice to FINRA identifying the inaccurate information and by explaining the reason the information is inaccurate. FINRA will then investigate the claim of inaccuracy and make a determination. If FINRA determines the information is inaccurate, it will modify or remove the information from the CRD, as appropriate.

In addition to disputing the accuracy of information provided by BrokerCheck through the administrative process, a broker may also seek to expunge customer dispute information²⁹ from the CRD system through a court action or arbitration proceeding.³⁰ Since the inception of the CRD system in 1981, FINRA has expunged customer dispute information from the CRD system when a court order has directed it to do so. For some time, it has also honored *arbitrator*-ordered expungement of customer dispute information from the CRD system. However, in January 1999, after consultation with NASAA, FINRA imposed a moratorium on arbitrator-ordered expungements³¹ of customer dispute information because NASAA took the position that the CRD system contained state records and that state records could only be properly expunged with a court order.³²

28. See 15 USC §78o-3(i)(3).

29. "Customer Dispute Information" includes "customer complaints, arbitration claims, and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. This category of information contains allegations that a member or one or more of its associated persons has violated securities laws, regulations, or rules." Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System, Exchange Act Release No. 47435, 79 SEC Docket 2123 (March 4, 2003).

30. This removes the record of the dispute from BrokerCheck as well because BrokerCheck gets its information from the CRD system.

31. See NASD Notice to Members 99-09, *NASD Regulation Imposes Moratorium On Arbitrator-Ordered Expungements of Information From The Central Registration Depository* (February 1999).

32. See NASAA Comment Letter in response to Request for Comments 01-65 Proposed Rules and Policies Relating to Expungement of Information From The Central Registration Depository (December 31, 2001), *available at* <http://www.nasaa.org/wp-content/uploads/2011/07/95-Letter.37262-47637.pdf>.

NASAA plays an important role in the administration of the CRD system. As discussed above, FINRA operates the CRD system pursuant to policies developed jointly with NASAA.³³ Moreover, NASAA and FINRA are both parties to the CRD Agreement, which states that “data on CRD Uniform Forms filed with the CRD shall be deemed to have been filed with each CRD State in which the applicant seeks to be licensed and with [FINRA] and *shall be the joint property of the applicant, [FINRA], and those CRD States.*”³⁴ State laws generally do not permit information to be expunged once it has been filed on the CRD system without a court order explicitly directing the expungement.³⁵

Since imposing the moratorium in 1999, FINRA has required a two-step process when a broker seeks to expunge customer dispute information through the arbitration process. First, the broker may request that the arbitrator direct or recommend expungement of the customer dispute information from the broker’s CRD.³⁶ Then, the broker must confirm any arbitration award recommending expungement in a court of competent jurisdiction before FINRA will expunge the information from the CRD system.³⁷ After conducting a thorough review of its expungement procedures, in 2002 FINRA proposed adopting NASD Rule 2130 to govern the expungement of customer dispute information from the CRD system. In the proposed rule, FINRA sought to balance three competing interests:³⁸

(1) the interests of [FINRA], the states, and other regulators in retaining broad access to customer dispute information to fulfill their regulatory responsibilities and investor protection obligations; (2) the interests of the brokerage community and others in a fair process that recognizes their stake in protecting their reputations and permits expungement from the CRD system when appropriate; and (3) the interests of investors in having access to accurate and meaningful information about brokers with whom they conduct, or may conduct, business.

33. See Exchange Act Release No. 47435, 79 SEC Docket 2123 (March 4, 2003).

34. *Karsner v. Lothian*, 532 F.3d 876, 885 n.9 (D.C. Cir. 2008) (emphasis in original).

35. See Exchange Act Release No. 47435, 79 SEC Docket 2123 (March 4, 2003).

36. Oftentimes in the arbitration award, the arbitrator “recommends expungement.” Courts differ on whether this is a directive of expungement.

37. *Id.*

38. See Exchange Act Release No. 47435, 79 SEC Docket 2123, at 2 (March 4, 2003).

Foreseeing issues to come, FINRA stated that it was “cognizant of the importance of ensuring that the expungement policy does not have an overly broad chilling effect on the settlement process or inappropriately interfere with the arbitration process or arbitrators’ authority to award appropriate remedies.”³⁹

The SEC approved NASD Rule 2130 in December 2003. The rule codified the requirement that an arbitration award directing the expungement of customer dispute information be confirmed by a court of competent jurisdiction. The rule further required that FINRA be named as a party to the confirmation proceeding unless it waived the requirement. Pursuant to the rule, a broker would not be required to name FINRA as a party if certain requirements were met:⁴⁰

(1) Upon request, [FINRA] may waive the obligation to name [FINRA] as a party if [FINRA] determines that the expungement relief is based on affirmative judicial or arbitral findings that:

- (A) the claim, allegation or information is factually impossible or clearly erroneous;
- (B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or
- (C) the claim, allegation, or information is false.

(2) If the expungement relief is based on judicial or arbitral findings other than those described above, [FINRA], in its sole discretion and under extraordinary circumstances, also may waive the obligation to name [FINRA] as a party if it determines that:

- (A) the expungement relief and accompanying findings on which it is based are meritorious; and
- (B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.

This rule contemplates that FINRA may have a role in the broker’s request to confirm an arbitration award that contains an expungement directive. Additionally, the rule takes into consideration that the state regulators (in the states where the broker was registered) would also be notified whenever a broker sought FINRA waiver under the rule, and that the state regulators would have an opportunity to petition the court to intervene at the confirmation

39. *Id.*

40. *See* NASD Rule 2130(b).

stage.⁴¹ In 2009, NASD Rule 2130 was adopted as part of the Consolidated FINRA Rulebook as FINRA Rule 2080.⁴²

Importantly, this Rule falls within the “Duties and Conflicts” section of the FINRA Rulebook but not within the “Code of Arbitration Procedure for Customer Disputes” section. Indeed, until 2008, the Code of Arbitration Procedure did not even address expungement of customer dispute information. As a result, arbitrators and parties in customer dispute cases operated without any guidelines or rules governing the arbitrators or their consideration of expungement requests. NASD Rule 2130 only governed the process of confirming an arbitration award containing an expungement directive.⁴³ Its existence did however at least validate that arbitrators could direct expungement and suggested that expungement might be appropriate in the circumstances covered by NASD Rule 2130(1).

To provide guidance to parties and arbitrators, in March 2008, FINRA filed a proposed rule change with the SEC to adopt FINRA Rule 12805 to establish procedures for arbitrators considering expungement requests.⁴⁴ The SEC approved the Rule on October 30, 2008.⁴⁵ Under Rule 12805, arbitrators must do the following before granting an expungement request:

- (a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800 even if a customer did not request a hearing on the merits.⁴⁶

41. See Exchange Act Release No. 48933, 81 SEC Docket 2659 (Dec. 16, 2013).

42. See FINRA Reg. Notice 09-33, *SEC Approval and Effective Date for New Consolidated FINRA Rules* (June 2009).

43. As discussed above, confirmation of the arbitration award is a necessary step in having the information ultimately expunged from the CRD system.

44. See Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure to Establish Procedures for Arbitrators to Follow When Considering Requests for Expungement Relief, Exchange Act Release No. 58886, 94 SEC Docket 1445 (October 30, 2008).

45. *Id.*

46. Rule 12800 is the Simplified Arbitration Rule. Pursuant to Rule 12800, no hearing may be held unless the customer requests one. Rule 12805 modifies the rule to permit a hearing to be held for the limited purpose of determining the expungement issue.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the Rule 2080 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

In its discussion about the need for the rule proposal, FINRA commented that, in the case of settlements, it had expected arbitrators to review the terms and conditions of settlement, including the amount paid, before granting expungement.⁴⁷ Because arbitrators were not inquiring into the terms of settlement, FINRA adopted the rule to provide more guidance.⁴⁸ FINRA viewed this change as “part of its ‘continuing effort to ensure that arbitrators evaluate fully each request for expungement.’”⁴⁹

Yet, the new guidance in Rule 12805 did not cover all situations where a broker might legitimately seek to expunge a customer complaint from his or her record. Although FINRA Rule 12805 explains how *parties* to an arbitration may seek expungement, BrokerCheck also discloses customer dispute information even if the broker is not a party to the arbitration. For example, in certain cases a broker may be the subject of allegations of sales practice violations made in an arbitration claim but not named as a party to the arbitration. In such a case, the information about the arbitration claims is reportable on the broker’s CRD record pursuant to questions 14I(4) and (5) of the Form U4 as discussed above.⁵⁰

In cases where brokers have not been named in the arbitration, they may ask the firm to seek expungement on their behalf, or they may institute a separate action seeking expungement. Often when a broker files a separate action, they name their brokerage firm as the respondent, as they were the

47. *See id.*, at 4.

48. *Id.*

49. *Id.*, at 16.

50. *See* FINRA Reg. Notice 12-18, *FINRA Requests Comment on Proposed New In re Expungement Procedures for Persons Not Named in a Customer-Initiated Arbitration* (April 2012).

entity who made the disclosure. FINRA is presently considering adopting rules that further govern how a broker may seek expungement.

II. HOW TO USE BROKERCHECK TO RESEARCH INDIVIDUALS

As explained above, FINRA's BrokerCheck is a tool that helps investors research the professional backgrounds of brokers and brokerage firms, as well as investment adviser firms and advisers.⁵¹ The tool may also be used by attorneys who are representing investors in connection with a complaint or arbitration claim. As mentioned above, there is a lot of information disclosed about brokers through BrokerCheck. The information contained in BrokerCheck is sourced from certain information reported on uniform registration forms to the CRD,⁵² and the tool is accessible via the web, phone, mail and fax.⁵³ BrokerCheck's online tool, available at <https://brokercheck.finra.org/> provides investors with the most interactive and informational experience, as detailed below.

A. Using the Search Tool

To research an individual broker⁵⁴ on BrokerCheck, enter information on one or more of the following search fields: (a) name or CRD#, (b) firm name

51. "Investment adviser representative registration and disclosure information is now provided in BrokerCheck reports for registered brokers who are also current or former investment adviser representatives." FINRA, *BrokerCheck Release Notes*, available at <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck/release-notes>.

52. See FINRA Reg. Notice 10-34, *SEC Approves Changes to Expand the Information Released Through BrokerCheck and Establish a Process to Dispute (or Update) Information Disclosed Through BrokerCheck* (July 2010).

53. FINRA, *BrokerCheck FAQ*, available at <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck/faq> (Stating that a person may request a BrokerCheck Report by visiting www.finra.org/brokercheck, calling the toll-free Hotline at (800) 289-9999, faxing (240) 386-4750, or mailing P.O. Box 9495, Gaithersburg, MD 20898-9495).

54. This section details the BrokerCheck information for individuals who are registered within the last 10 years. For brokers whose registration ended more than 10 years ago, more limited disclosure information is available. See FINRA, *About*

and (c) city, state or zip. The firm name and city, state and zip search fields are optional, but may aid in locating the correct individual.⁵⁵ In response to a search request, BrokerCheck will display the searched broker or list of brokers reflecting the relevant search terms.⁵⁶ The default display provides the results in a list view, which shows summary information about each individual broker such as their name, CRD number, registration status, disclosures, and years of experience. Once the user locates their intended individual, click on the "More Details" button below their name to view the Individual Report on BrokerCheck.⁵⁷

B. BrokerCheck's Individual Report

Upon accessing the Individual Report, viewers will notice various displays, icons, and explanations throughout the report. FINRA has worked to improve investor access to and use of BrokerCheck information.⁵⁸

BrokerCheck, available at <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck>.

55. Staff of the Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission, Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers (January 2011), available at <https://www.sec.gov/files/919bstudy.pdf>. Searching by zip code is a "near-term" recommendation since the current system did not easily permit investors to locate and compare nearby financial services providers because they lack a function that would allow investors to search for a broker-dealer or investment adviser by ZIP code or other indicator of location. A search by ZIP code function might be helpful to investors who are seeking to hire a financial services provider by identifying those financial services providers who are located close enough to visit in person, or to compare an individual they have hired already with others nearby providing similar services.

56. FINRA provides a User Guide for using the search tool, which contains helpful tips, glossary and FAQs, and other information to assist investors. In the User Guide, consult the Search Help tab, where you can view search tips for using BrokerCheck's tool. See, e.g., FINRA, *BrokerCheck Search Help*, available at <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck/search-help>.

57. See FINRA, *Ask and Check*, available at <https://www.finra.org/investors/protect-your-money/ask-and-check#tips>.

58. See, e.g., FINRA Reg. Notice 12-10, *FINRA Requests Comment on Ways to Facilitate and Increase Investor Use of BrokerCheck Information* (Feb. 2012). See

FINRA provides a number of different icons and hyperlinks within the BrokerCheck summary and detailed reports. FINRA also provides additional information, including that “State regulators are governed by their public records laws (not FINRA Rule 8312), and may provide information not in BrokerCheck, including information no longer required to be reported or updated on uniform registration forms due, for example, to its age or final disposition. You may contact your state regulator to request this additional information.”

a. Report Summary

The opening section of an individual’s BrokerCheck is the Report Summary. FINRA describes this section as a “brief overview of the broker and his or her credentials” and professional background and conduct.⁵⁹ Specifically, the Report Summary includes a recap of a broker’s qualifications, passed examinations, registration history and disclosure events. As the name describes, this introductory section is simply an overview of the more comprehensive information described in other sections and, most importantly, on the broker’s “Detailed Report.”

b. Broker Qualifications

The Broker Qualifications section includes a listing of a broker’s current registrations, licenses, industry exams they have passed, and professional designations.⁶⁰ The current registrations section provides the SROs and U.S. states/territories the broker is presently registered and licensed with, the category of each license, and the date on which it became effective. Also, this section provides the address of each branch of the brokerage firms where the broker is currently employed.

The industry exam subsection of the Broker Qualifications section includes all securities industry exams that the broker has passed. Before working as a securities professional, individuals must generally pass

also SEC, *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers* (Jan. 2011), available at <https://www.sec.gov/files/919bstudy.pdf>.

59. FINRA, *About BrokerCheck*, *supra* note 54.

60. *Id.*

qualifying securities examinations administered by FINRA to demonstrate competence in a particular securities activity.⁶¹ The Broker Qualification section will display all the passed exams, which pertain to the categories of Registered Representative, Principal/Supervisory and State Securities Law.⁶² FINRA does not make available, however, information relating to scoring or failed examinations.⁶³

If a broker has a professional designation, the Broker Qualifications section will detail that information. Professional designations are generally administered by an issuing organization that governs the requisite criteria to earn the designation (*e.g.* Chartered Financial Analyst designation set by Certified Financial Analyst Institute). However, users of BrokerCheck should not entirely rely on the professional designation listing on an individual's BrokerCheck. Though FINRA rules regulate how brokers communicate their credentials,⁶⁴ it appears to disclaim responsibility for verifying the accuracy or completeness of professional designation information.⁶⁵ As such, individuals

61. Under limited circumstances, FINRA can grant waiver or exemptions for qualification exams. *See* FINRA, *Qualification Exam Waivers and Exemptions*, available at <https://www.finra.org/registration-exams-ce/qualification-exams/exam-waivers-and-exemptions>.

62. For a list of Registered Representative exams, *see* FINRA, *Permitted Activities of Registered Representatives*, available at <https://www.finra.org/registration-exams-ce/qualification-exams/permitted-activities-registered-representatives>. For a list of Principal/Supervisory exams, *see* FINRA, *Permitted Activities of Registered Principals*, available at <https://www.finra.org/registration-exams-ce/qualification-exams/permitted-activities>.

63. *See* FINRA Rule 8312(b)(2)(E).

64. *See* FINRA Rule 2210; *see also* FINRA, *Professional Designations Rules and Resources*, available at <https://www.finra.org/investors/professional-designations/pd-rules-and-resources>.

65. *See* FINRA, *Professional Designations Disclaimer, Submissions and Updates*, available at <https://www.finra.org/investors/professional-designations/pd-disclaimer-and-submissions>.

should not only use both FINRA's tools⁶⁶ and resources⁶⁷ to investigate a broker's professional designation appearing on a BrokerCheck, but also confirm the designation with the appropriate issuing organization. For more information for how investors professional designations, consult the SEC's Investor Bulletins and FINRA's Investor Insights on the topic.⁶⁸

c. Registration and Employment History

Next, FINRA's BrokerCheck Report provides registration and employment history information. For the registration history, FINRA provides a list of registered securities firms where the broker is currently and/or was previously registered, including the start and end dates, firm name and its corresponding CRD number, and branch location. On the web, BrokerCheck graphically displays an individual's registration history through an interactive vertical timeline.⁶⁹ Registrations with a brokerage firm or investment advisor are marked by a circular "B" or "IA" icon, respectively, next to the relevant years on the timeline. For each registration, the entry will show the registering firm's name, CRD #, and time period next to the year.

Moreover, the employment history reports an individual's occupational experience both in and outside of the securities industry. FINRA obtains this

66. See, e.g., FINRA, *Professional Designations*, available at <https://www.finra.org/investors/professional-designations> (providing a tool to both interpret the letter combinations following a financial professional's name and learn more about the issuing organization.).

67. See, e.g., FINRA, *Professional Designations Rules and Resources*, *supra* note 61 (providing rules, regulations, and hyperlinks to SEC and FINRA resources regarding understanding professional designations).

68. See SEC, *Investor Bulletin: Financial Professionals' Use of Professional Honors – Awards, Rankings, and Designations* (Sept. 14, 2017), available at https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_professionalthonors; SEC & NASAA, *Making Sense of Financial Professional titles* (Sept. 2013), available at https://www.sec.gov/files/ib_making_sense.pdf; and FINRA, *Choosing an Investment Professional; 3 Things to Know About Financial Designations* (Oct. 10, 2017), available at <https://www.finra.org/investors/insights/financial-designations>.

69. FINRA implemented this feature on BrokerCheck in 2013 in an effort to allow "investors to more quickly access and more intuitively understand the professional background of investment professionals." FINRA, *FINRA Releases Enhanced Version of BrokerCheck* (Nov. 12, 2013), available at <https://www.finra.org/media-center/news-releases/2013/finra-releases-enhanced-version-brokercheck>.

information from the broker on the Form U4.⁷⁰ The phrase “employment history” for purposes of BrokerCheck includes not only a broker’s full-time work, but also part-time work, self-employment, military service, unemployment, and full-time education.⁷¹

However, the employment information on BrokerCheck may not always be accurate. Since brokers are only required to provide employment information while registered with FINRA or a national securities exchange, employment history for formerly brokers may not be up to date.⁷²

d. Disclosure Section

Individuals registered to sell securities or render investment advice must disclose information regarding customer disputes, disciplinary events, and certain criminal and financial matters.⁷³ FINRA publicizes this information through the Disclosure Section of BrokerCheck. Below is a description of the types of disclosures contained in this section.

i. Customer Disputes

Customer dispute information on BrokerCheck comes from a broker’s CRD record. Specifically, the source information comes from Forms U4 and U5 relating to complaints, arbitrations, and civil litigations.⁷⁴ A broker need not be named as a Respondent to an arbitration for a customer complaint to appear on an individual’s BrokerCheck report.⁷⁵

70. See FINRA, *About BrokerCheck*, *supra* note 54.

71. *Id.*

72. A broker’s detailed report contains the following statement: “Please note that the broker is required to provide this information only while registered with FINRA or a national securities exchange and the information is not updated via Form U4 after the broker ceases to be registered. Therefore, an employment end date of “Present” may not reflect the broker’s current employment status.”

73. See FINRA, *About BrokerCheck*, *supra* note 54.

74. See FINRA, *Form U4* at Section 14I, and FINRA, *Form U5* at Section 7D.

75. Beginning in May 2009, FINRA expanded its rules to require CRD reporting of customer complaints even if the financial advisor is not named as a party to the arbitration. See FINRA Reg. Notice 09-23, *SEC Approval of Proposed Changes to*

There are several components to a customer dispute disclosure on BrokerCheck. Those components include a narrative description of the customer's allegation, date of allegation, status (*e.g.* pending, settled, closed, withdrawn), and, if applicable, the damage amount requested and settlement amount.

Customer dispute disclosures might also contain Broker Comments.⁷⁶ The Broker Comment field results from FINRA's Broker Comment Process, which permits eligible individuals to provide an update or additional context to information that is disclosed on their Individual Report in BrokerCheck.⁷⁷ As noted above, the brokerage firm files the Form U4 on behalf of the broker. However, both current and formerly registered brokers can provide Broker Comments.⁷⁸ Currently registered brokers provide their comments to their firm that is filing the Form U4 on their behalf.⁷⁹ Formerly registered brokers may submit their comments directly to FINRA.⁸⁰ However, FINRA maintains discretion of whether to accept or reject Broker Comments, and only those Broker Comments that meet certain eligibility requirements will be posted to an Individual Report on BrokerCheck, which generally occurs 30 business days after the receipt of a sufficient submission.⁸¹ Once posted, the Broker Comment will remain displayed as long as the individual's BrokerCheck report is available to the public.⁸²

If a public customer is awarded damages in a FINRA arbitration, information relating to that award is summarized in the disclosure section of

Forms U4 and U5 and FINRA Rule 8312 (FINRA BrokerCheck Disclosure) (May 2009).

76. Under FINRA Rule 8312(b)(2)(D), a broker may provide a comment to FINRA about a customer complaint.

77. See FINRA, *Guidelines for Broker Comments on BrokerCheck*, available at <https://www.finra.org/registration-exams-ce/individuals/guidelines-broker-comments-brokercheck>.

78. See, *e.g.*, FINRA, *Broker Comment Request Form*, available at <https://www.finra.org/sites/default/files/2020-04/Broker-Comment-Request-Form.pdf>.

79. *Id.*

80. *Id.*

81. See FINRA, *Guidelines for Broker Comments on BrokerCheck*, *supra* note 77.

82. *Id.*

BrokerCheck.⁸³ BrokerCheck will display several details regarding a final arbitration award, including the case or docket number, allegation summary, requested damages, disposition date, status and final outcome. In alignment with FINRA's mission to provide more access and education to investors through BrokerCheck, the disclosure section includes a hyperlinked arbitration case or docket number in the report, which will take the user to FINRA Arbitration Awards Online.⁸⁴

ii. Regulatory Events

BrokerCheck's disclosure of regulatory actions is based on what has been reported to the CRD via a uniform registration form.⁸⁵ FINRA Rule 4530(a) requires firms to promptly report specified events like regulatory events.

The extent of regulatory event information contained in BrokerCheck will slightly vary depending on the status of the broker. For brokers currently associated with a brokerage firm or a broker who was associated with a brokerage firm within the preceding ten years, any regulatory action information reported on the most recently filed registration forms will appear on the individual BrokerCheck. This information is sourced from Form U4 and U5, and includes details such as the reporting source, sanctions, initiation date, docket or case number, employing firm when activity occurred which led to the regulatory event, allegations, current status, resolution, resolution date, and sanction information (*e.g.*, monetary sanction information, regulator statement, *etc.*).⁸⁶

However, the regulatory action disclosures on BrokerCheck for formerly registered brokers who no longer work in the securities industry in a registered capacity contain slightly different information. Under FINRA Rule 8312(c)(1), for a broker who was formerly associated with a brokerage firm, but who has not been associated with a brokerage firm within the preceding ten years, FINRA releases information on that category of brokers who were

83. See FINRA Rule 8312(b)(2)(C).

84. See FINRA, *BrokerCheck FAQ*, *supra* note 53.

85. See FINRA Reg. Notice 09-66, *SEC Approves Changes to FINRA's BrokerCheck Disclosure Rule to Retain and Make Publicly Available Information About Final Regulatory Actions Against Former Brokers* at fn 3 (Nov. 2009).

86. See, *e.g.*, FINRA, *Form U4*, pp. 34-39; and FINRA, *Form U5*, at pp. 18-23.

subject of a “final regulatory action.”⁸⁷ The phrase “final regulatory action” means “any final action—including any action that is on appeal—by the SEC, Commodity Futures Trading Commission, a federal banking agency, the National Credit Union Administration, another federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority or a self-regulatory organization.”⁸⁸

In other words, the primary difference in BrokerCheck disclosures between the two groups – that is, between formerly registered brokers who have not been associated with a brokerage firm in past ten years, and brokers associated with a brokerage firm within the last ten years – pertains to (1) regulatory complaints or proceedings and (2) investigations.

If a broker who has been associated with a brokerage firm in the past ten years has been notified, in writing, that they are the subject of any (1) regulatory complaint or proceeding⁸⁹ that could result in affirmative responses to any disclosure questions posed in any part of section 14C (SEC and CFTC), section 14D (Other federal regulatory agencies, state regulatory agencies or foreign financial regulatory authorities), or section 14E (SROs), then the corresponding Disclosure Reporting Page responses on Form U4 will be included on the BrokerCheck report.⁹⁰ Moreover, if such person has received written notice that they are subject of any investigation⁹¹ that could result in affirmative responses to any disclosure questions posed in any part of the criminal disclosure questions in Sections 14A and 14B, as well as Section 14C – E, the Disclosure Reporting Page responses are included.⁹²

Moreover, regulatory actions involving formerly registered brokers might also appear on BrokerCheck. Specifically, regulatory actions involving a formerly registered broker that were initiated after that person has left the firm,

87. See FINRA Reg. Notice 09-66, *supra* note 85.

88. As described in FINRA Regulatory Notice 09-66 and accompanying footnotes, Sections 14C, 14D or 14E of Form U4 are viewed as “final regulatory actions,” as well as actions detailed in Question 7D on Form U5 that have a status of “final” or “on appeal.” See FINRA Reg. Notice 09-66, *supra* note 85 at footnotes 4-5.

89. See FINRA, *Form U4 Explanation of Terms*, available at <https://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf> (includes definition of “proceeding”).

90. See FINRA, *Form U4* at 12-13.

91. See FINRA, *Form U4 Explanation of Terms*, *supra* note 89 (includes definition of “investigations”).

92. See FINRA, *Form U4* at 12-13.

but that were initiated based on events that occurred while the individual was employed by or associated with the firm, should appear on BrokerCheck, if the firm has actual notice of an action that is required to be reported on Form U5.⁹³

However, not every regulatory action appears on an individual's BrokerCheck. For example, FINRA will not release information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority.⁹⁴ Moreover, incorrectly reported information by a brokerage firm will likewise not be displayed on BrokerCheck.⁹⁵

iii. Criminal Events

Section 14A and 14B of Form U4 contains questions brokers must answer and amend regarding criminal disclosure. A criminal event is only disclosed if a law enforcement agency files formal charges against a broker. For the parameters of what constitutes disclosure of criminal events, FINRA Form U4's Explanation of Terms and Form U4 and U5 Interpretative Guidance defines "charged" as being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).⁹⁶

Criminal disclosures involving pardons and, in some cases, set-aside convictions, appear on BrokerCheck. If a broker is convicted of a crime and is subsequently pardoned, firms are required to continue reporting the event on Form U4, and therefore, it will be available to view on BrokerCheck. Convictions that are set aside, however, may not be on a BrokerCheck.⁹⁷

Moreover, criminal actions of formerly registered brokers might also appear on BrokerCheck. Specifically, criminal actions involving a formerly registered broker that were initiated after that person has left the firm, but that

93. See FINRA, *Form U4 and U5 Interpretive Questions and Answers* at p. 12-13, available at <https://www.finra.org/sites/default/files/Interpretive-Guidance-final-03.05.15.pdf>.

94. See FINRA Rule 8312(g)(2); see also FINRA, *Form U4 and U5 Interpretive Questions and Answers*, *supra* note 93 at p. 2.

95. See FINRA Rule 8312(g)(6)(A).

96. See FINRA, *Form U4 Explanation of Terms*, *supra* note 89, see also FINRA, *Form U4 and U5 Interpretive Questions and Answers*, *supra* note 93.

97. See FINRA, *Form U4 and U5 Interpretive Questions and Answers*, *supra* note 93 at p. 1.

were initiated based on events that occurred while the individual was employed by or associated with the firm, should appear on BrokerCheck, if the firm has actual notice of an action that is required to be reported on Form U5.⁹⁸

However, similar to other displays of disclosures in BrokerCheck, the online summary page for an individual's BrokerCheck does not contain all information on a criminal event, and one must open the "Detailed Report" to discover additional information. For example, the disclosure online will show the person's charges and disposition, but other details like the court location, docket or case #, plea and sentencing, for example, can only be viewed in the Detailed Report.

iv. Civil Events

Section 14H of Form U4 contains questions related to civil judicial disclosures. A broker must disclose if any domestic or foreign court (a) enjoined them in connection with any investment-related activity; (b) found that they were involved in a violation of any investment-related statute(s) or regulation(s); or (c) dismissed, pursuant to a settlement agreement, an investment-related civil action brought against them by a state or foreign financial regulatory authority. Additionally, the broker must disclose if any such action is currently pending.

v. Termination Events

Section 14J of the Form U4 requires that a broker disclose whether they have ever voluntarily resigned, been discharged or permitted to resign after allegations were made that accused the broker of: (a) violating investment-related statutes, regulations, rules, or industry standards of conduct; (b) fraud or the wrongful taking of property; or (c) failure to supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct.

Brokerage firms file a Form U5 to terminate a broker's registration with FINRA, other self-regulatory organizations, states and/or jurisdictions. Among other disclosures, Form U5 requires firms to report the reason for an individual's termination. Specifically, Form U5 includes five checkboxes for an individual's termination type: (1) discharged, (2) other, (3) permitted to

98. *See id.* at p. 12-13.

resign, (4) deceased and (5) voluntary.⁹⁹ If a firm selects discharged, other or permitted to resign, the firm is required to write an explanation.¹⁰⁰

However, explanations for these type of terminations do not appear on an individual's BrokerCheck. Under FINRA Rule 8312(g)(4), BrokerCheck does not include the "Reason for Termination" information reported on Section 3 of the Form U5. Instead, BrokerCheck only shows termination type, termination date, reporting source, allegation, and product type. An individual's BrokerCheck could technically include a "Comment" field, but the field is optional per the Form U5 Disclosure Reporting Page.¹⁰¹ As such, the authors recommend individuals obtain copies of a broker's Form U5 to view explanations for terminations.

vi. Financial Events

Section 14K of the Form U4 requires a broker to disclose certain financial events if they occurred within the past ten years. For example, brokers must disclose whether they or any company they controlled has ever made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition. Brokers must also disclose whether any broker-dealer over which they had control was subject to an involuntary bankruptcy petition or SIPC proceeding. Brokers must also disclose if a bonding company ever denied, paid out, or revoked a bond, regardless of when it happened. Last, brokers must disclose any unsatisfied judgments or liens.

C. What's Not Included in BrokerCheck

Although BrokerCheck is fairly comprehensive, certain information is not included on the report. FINRA Rule 8312(g)(3) states that BrokerCheck will not display "Internal Review Disclosure" information reported on Section 7 of the Form U5. Additionally, BrokerCheck will not include information that has been determined by regulators, through amendments to the uniform Registration Forms, to be no longer relevant to securities registration or

99. See FINRA, *Form U5* at p. 2.

100. *Id.*

101. See FINRA, *Form U5* at p. 24.

licensure, regardless of the disposition of the event or the date the event occurred.¹⁰²

Additionally, FINRA will not include information that a broker has not reported or is not required to report. This may include “(1) non-investment-related civil litigation, including, for example, civil protective orders; (2) customer complaints that do not allege sales practice violations, fraud or theft; (3) certain personal or confidential information (for example, Social Security Numbers, residential addresses); or (4) arrests that did not result in a charge or conviction, and misdemeanor charges or convictions that are not investment-related or do not involve theft or a “breach of trust,” including, for example, disorderly conduct or assault.”¹⁰³ FINRA will also remove previously reported information that is no longer required to be reported (such as judgments or liens that have been satisfied).¹⁰⁴

FINRA recommends that investors do an Internet search to obtain additional information about “civil litigation not involving investments, civil protective orders, criminal matters unless they are felonies, or misdemeanors that are investment-related or involve theft or a ‘breach of trust.’”¹⁰⁵

Finally, “FINRA reserves the right to exclude confidential customer information, offensive and potentially defamatory language or information that raises significant identity theft or privacy concerns that are not outweighed by investor protection concerns.”¹⁰⁶ FINRA does not explain how it determines if information meets these criteria.

D. State CRDs

In addition to reviewing information about a broker on FINRA’s BrokerCheck, the public may also request information directly from state regulators. In fact, FINRA tells investors to check with these regulators.¹⁰⁷ Certain states will make all information within a broker’s CRD, with the exception of personal data, for any brokers currently or previously registered with the state available to the public upon request. For example, Florida’s

102. See FINRA Rule 8312(g) (6)(B).

103. See FINRA, BrokerCheck FAQ, *supra* note 53.

104. See *id.*

105. FINRA, *BrokerCheck*, *supra* note 17.

106. *Id.*

107. See, e.g., FINRA, *Ask and Check*, *supra* note 57.

Office of Financial Regulation, Division of Securities will make available current and archived information from a broker's CRD for brokers who have been registered with Florida. Significantly, it does exclude any information which has been expunged from a broker's record. To determine whether a state makes any information available beyond BrokerCheck, one should contact the state securities regulator.

CONCLUSION

There is a lot of important information available about brokers through the BrokerCheck summary and detailed reports and through their CRDs, available in many states. This information can prove valuable to investors when initially vetting a broker. Additionally, the information may be valuable to attorneys who are advocating for an investor in a complaint or arbitration. The information on BrokerCheck may be helpful to determine whether a firm had prior notice of a broker's propensity for misconduct, and it may also be relevant in assessing the brokerage firm's system of supervision. Without these public disclosures, the investing public, as well as attorneys advocating for the investing public, would be kept in the dark.