

All submissions should refer to File Number SR–NYSEArca–2010–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–64 and should be submitted on or before August 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62476; File No. SR–FINRA–2010–012]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

July 8, 2010.

#### I. Introduction

On March 30, 2010, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”),

pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to (i) expand the information released through BrokerCheck, both in terms of scope and time; and (ii) establish a formal process to dispute the accuracy of, or update, information disclosed through BrokerCheck. The proposal was published for comment in the **Federal Register** on April 22, 2010.<sup>3</sup> The Commission received fourteen comments on the proposal.<sup>4</sup> FINRA responded to the comments on June 21, 2010.<sup>5</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

##### A. Expansion of Information Released through BrokerCheck

Pursuant to FINRA Rule 8312(b), BrokerCheck is an online application through which the public may obtain information regarding current and former members, associated persons and persons who were associated with a member within the preceding two years. Historic Complaints<sup>6</sup> regarding such persons are disclosed pursuant to Rule 8312(b) only if: (i) A matter became a Historic Complaint on or after March 19, 2007; (ii) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten years old; and (iii) the person has a total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became Historic Complaints on or after March 19, 2007), or any combination thereof (the “three strikes provision”).<sup>7</sup> In addition,

pursuant to FINRA Rule 8312(c), BrokerCheck allows the public to obtain certain limited information regarding formerly associated persons, regardless of the time elapsed since they were associated with a member, if they were the subject of any final regulatory action.<sup>8</sup>

In connection with its most recent change to BrokerCheck,<sup>9</sup> FINRA stated that it would consider whether to provide greater disclosure of information through BrokerCheck.<sup>10</sup> Based on its continued evaluation of the BrokerCheck program, FINRA proposes to (i) expand the BrokerCheck disclosure period for formerly associated persons of a member from two years to ten years and (ii) eliminate the conditions that must be met before Historic Complaints will be displayed in BrokerCheck (*i.e.* the three strikes provision) and, thereby, make publicly available in BrokerCheck all Historic Complaints that were archived after the implementation of Central Registration Depository (“CRD”<sup>®</sup> or “Web CRD”) on August 16, 1999.<sup>11</sup>

Additionally, FINRA proposes to make publicly available on a permanent basis information regarding formerly associated persons, regardless of the time elapsed since they were associated with a member, if they were convicted of or pled guilty or nolo contendere to a crime;<sup>12</sup> were the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation;<sup>13</sup> or were named as a respondent or defendant in an investment-related, consumer-initiated

<sup>8</sup> A “final regulatory action” includes any final action of the Commission, 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, including actions that have been appealed. See Questions 14C, 14D, and 14E on Form U4, as well as Question 7D of Form U5. See also Section 3(a)(39) of the Act.

<sup>9</sup> See Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (SR–FINRA–2009–050).

<sup>10</sup> See letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, dated October 15, 2009, in response to comments received regarding Securities Exchange Act Release No. 60462 (August 7, 2009), 74 FR 41470 (August 17, 2009) (SR–FINRA–2009–050); see also discussion of comments in Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (SR–FINRA–2009–050).

<sup>11</sup> See proposed FINRA Rule 8312(b).

<sup>12</sup> See Questions 14A(1)(a) and 14B(1)(a) on Form U4, as well as Questions 7C(1) and 7C(3) on Form U5.

<sup>13</sup> See Questions 14H(1)(a) and 14H(1)(b) on Form U4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 61927 (April 16, 2010), 75 FR 21064 (April 22, 2010) (SR–FINRA–2010–012) (“Notice”).

<sup>4</sup> See Exhibit A for a list of comment letters.

<sup>5</sup> See letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, FINRA, dated June 21, 2010 (“Response Letter”).

<sup>6</sup> Historic Complaints are customer complaints that were reported on a uniform registration form that are more than two years old and that have not been settled or adjudicated and customer complaints, arbitrations, or litigations that have been settled for an amount less than the specified dollar amount (identified on the customer complaint question) and are therefore no longer reportable on a uniform registration form. See FINRA Rule 8312(b)(7).

<sup>7</sup> *Id.* In addition, if a person meets the three criteria established for disclosing Historic Complaints, only those Historic Complaints that became Historic Complaints after March 19, 2007 will be displayed through BrokerCheck.

<sup>13</sup> 17 CFR 200.30–3(a)(12).

arbitration or civil law suit which alleged that they were involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person,<sup>14</sup> in each case as reported to Web CRD on a uniform registration form.<sup>15</sup> For such formerly associated persons, FINRA proposes to disclose through BrokerCheck: (i) Information concerning any such disclosure event(s); (ii) certain administrative information, such as employment and registration history as reported on a registration form; (iii) the most recently submitted comment, if any, provided by the person, if the comment is relevant and in accordance with the procedures established by FINRA; and (iv) dates and names of qualification examinations passed by the formerly associated person, if available.<sup>16</sup> Disclosure pursuant to the proposed rule change would *not* include other information in CRD, such as customer complaints, historic complaints, terminations, bankruptcies and liens. In addition, the expanded disclosure under the proposed rule would *not* apply to formerly associated persons who exercised control over an organization that was convicted of or pled guilty or *nolo contendere* to a crime (Questions 14A(2) and 14B(2) on Form U4) or who had an investment-related civil action brought against them by a State or foreign financial regulatory authority, if the action was settled (Question 14H(1)(c) on Form U4).

### B. BrokerCheck Dispute Process

FINRA also proposes to adopt paragraph (e) of Rule 8312 to codify a process for persons to dispute the accuracy of, or update, the information disclosed through BrokerCheck. FINRA presently has an informal dispute process. Currently, upon the receipt of an inquiry from a person who believes that information about him contained in BrokerCheck is inaccurate, FINRA staff will review the alleged inaccuracy; if appropriate, contact the entity that reported the information; and make a determination as to whether the information is accurate or should be modified or removed from BrokerCheck.

Under proposed Rule 8312(e), in order to initiate a dispute regarding the accuracy of information contained in

BrokerCheck, an “eligible party”<sup>17</sup> must submit a written notice to FINRA, including all available supporting documentation.<sup>18</sup> After receiving the written notice, FINRA will determine whether the dispute is eligible for investigation. Proposed Supplementary Material .02 to Rule 8312 provides examples of situations that are not eligible for investigation, which include, but are not limited to, disputes that (i) involve information previously disputed under the dispute resolution process and that does not contain any new or additional evidence; (ii) are brought by an individual or entity that is not an eligible party; (iii) do not challenge the accuracy of information contained in a BrokerCheck report but seek to explain information; and (iv) involve information contained in the CRD that is not disclosed through BrokerCheck. FINRA will presume that a dispute involving factual information is eligible for investigation unless the facts and circumstances suggest otherwise.<sup>19</sup>

Under the proposed rule, if FINRA determines that a dispute is eligible for investigation, FINRA will add a general notation to the eligible party’s BrokerCheck report stating that the eligible party has disputed certain information included in the report,<sup>20</sup> which notation will be removed when FINRA resolves the dispute. If FINRA determines that a dispute is not eligible for investigation, it will notify the eligible party in writing.<sup>21</sup>

When a dispute is deemed eligible for investigation, FINRA will evaluate the written notice and supporting documentation and, if FINRA determines that it is sufficient to update, modify or remove the information that is the subject of the request, FINRA will make the appropriate change. When the written notice and supporting documentation do not include sufficient information upon which FINRA can

make a determination, FINRA will, under most circumstances, contact the entity that reported the information to the CRD and request that this reporting entity confirm the accuracy of the information. If the reporting entity acknowledges that the information is not accurate, FINRA will update, modify or remove the information, as appropriate, based on the information provided by the reporting entity. If the reporting entity verifies the accuracy of the information, or the reporting entity no longer exists or is unable to verify the accuracy of the information, FINRA would not change the information.<sup>22</sup>

Upon making its determination, FINRA will notify the eligible party in writing that the investigation resulted in a determination that (i) the information is inaccurate or not accurately presented and has been updated, modified or deleted; (ii) the information is accurate in content and presentation and no changes have been made; or (iii) the accuracy of the information or its presentation could not be verified and no changes have been made. A determination by FINRA regarding a dispute, including whether to leave unchanged or to update, modify or delete disputed information, is not subject to appeal.<sup>23</sup>

### III. Summary of Comments and FINRA’s Response

The Commission received fourteen comment letters on the proposed rule change.<sup>24</sup> Most comments focus on three issues: (i) The proposed expanded disclosure of Historic Complaints through BrokerCheck and the format of such disclosure; (ii) limitations on information proposed to be disclosed via BrokerCheck; and (iii) the formalized process to dispute and/or update information in BrokerCheck.

#### A. Disclosure of Information in BrokerCheck

##### i. Expanded Disclosure of Historic Complaints

Eight comment letters generally support expanded disclosure through BrokerCheck, including the proposal to expand disclosure of Historic Complaints.<sup>25</sup> Three comment letters generally oppose any expanded disclosure of Historic Complaints.<sup>26</sup>

<sup>14</sup> See Question 14I(1)(b) on Form U4 and Question 7E(1)(b) on Form U5.

<sup>15</sup> See proposed FINRA Rule 8312(c). The proposal will apply only to those individuals registered with FINRA on or after August 16, 1999, which is the date that Web CRD was implemented.

<sup>16</sup> *Id.* The information would mirror the information currently disclosed permanently with respect to any formerly registered person who is the subject of a final regulatory action.

<sup>17</sup> Only an “eligible party” would be able to dispute the accuracy of information disclosed in that party’s BrokerCheck report. An “eligible party” includes any current member; any former member, provided that the dispute is submitted by a natural person who served as the former member’s Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Legal Officer or Chief Compliance Officer, or an individual with similar status or function, as identified on Schedule A of Form BD at the time the former member ceased being registered with FINRA; or any associated person of a member or person formerly associated with a member for whom a BrokerCheck report is available. See proposed FINRA Rule 8312(e)(1)(A).

<sup>18</sup> See proposed FINRA Rule 8312(e)(1)(B).

<sup>19</sup> See proposed FINRA Rule 8312(e)(2)(A).

<sup>20</sup> In circumstances where a dispute involves a court order to expunge information from BrokerCheck, FINRA will prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.

<sup>21</sup> See proposed FINRA Rule 8312(e)(2)(C).

<sup>22</sup> See proposed FINRA Rule 8312(e)(3)(A).

<sup>23</sup> See proposed FINRA Rule 8312(e)(3)(B) and (C).

<sup>24</sup> See *supra*, note 4.

<sup>25</sup> See comment letters from Caruso, Cornell, NASAA, PIABA, SIFMA, St. John’s, Syracuse and Welker.

<sup>26</sup> See comment letters from Cutter, MWA and Oster.

Three additional commenters take issue with the scope, time period and/or method of disclosure of Historic Complaints as set forth in the proposed rule change.<sup>27</sup> Four commenters believe that disclosure of all Historic Complaints will only serve to confuse investors.<sup>28</sup> One commenter suggests that customer complaints that are found to be without merit and closed without compensation to the investor should be subject to the current two-year disclosure period.<sup>29</sup> One comment letter argues that previously archived Historic Complaints should not be made available via BrokerCheck, and that Historic Complaints should only be reported under the ten-year disclosure period on a going forward basis.<sup>30</sup> Two commenters recommend that BrokerCheck only display Historic Complaints on or after March 18, 2002, the reporting date that the Investment Adviser Public Disclosure-Individual ("IAPD-I") database will use, as opposed to August 16, 1999, the date that Web CRD was implemented.<sup>31</sup>

FINRA believes that implementing the proposed rule change to expand disclosure to include Historic Complaints will allow investors and other users of BrokerCheck to view information they may consider important and relevant.<sup>32</sup> In response to commenters who raise the above objections, FINRA notes that under the proposed rule change, Historic Complaints will be displayed for ten years following the termination of an individual's registration, rather than on a permanent basis,<sup>33</sup> as other commenters suggest.<sup>34</sup> FINRA also notes that Historic Complaints displayed on BrokerCheck will include information regarding the Historic Complaint's disposition and the individual's comments on the matter, if any.<sup>35</sup> Additionally, FINRA states that it is in the process of modifying the CRD system to allow firms to more easily update or otherwise provide context to Historic Complaints.<sup>36</sup> FINRA disagrees,

<sup>27</sup> See comment letters from FSI, Janney and NAIBD.

<sup>28</sup> See comment letters from Cutter, MWA, NAIBD and Oster. The comment letter from Oster argues that disclosing only those Historic Complaints made on or after August 16, 1999 will result in investors receiving biased data and drawing inappropriate conclusions therefrom.

<sup>29</sup> See comment letter from Oster.

<sup>30</sup> See comment letter from FSI.

<sup>31</sup> See comment letters from FSI and NAIBD.

<sup>32</sup> See Response Letter at 6.

<sup>33</sup> *Id.*

<sup>34</sup> See comment letters from Cutter and NAIBD.

<sup>35</sup> See Response Letter at 6.

<sup>36</sup> The Commission urges FINRA to ensure that firms do not, under the guise of providing context

therefore, that the expanded disclosure will confuse investors and believes investors and other users of BrokerCheck are, and in the future will be even better able to, put such complaints in the appropriate context.<sup>37</sup>

FINRA disagrees with the suggestion that archived Historic Complaints should not be made available via BrokerCheck, and that Historic Complaints should only be reported under the ten-year disclosure period on a going-forward basis. FINRA states that this would result in far fewer Historic Complaints being disclosed than would be under the proposal and would actually reduce the number of Historic Complaints currently disclosed under FINRA Rule 8312.<sup>38</sup>

With respect to timeframe, FINRA continues to believe that it should disclose all Historic Complaints that became non-reportable after implementation of Web CRD on August 16, 1999. FINRA believes it is not necessary or desirable to harmonize the disclosure date for Historic Complaints with the March 18, 2002 date used for complaint disclosure in the IAPD-I database, as suggested by some commenters.<sup>39</sup> FINRA notes that the two systems are separate, each system would note its respective time frame, and using the 1999 date will provide more information to investors than the 2002 date.<sup>40</sup>

Commenters also propose changes to the way Historic Complaints are displayed on BrokerCheck and argue that additional disclosure in BrokerCheck is necessary to clarify that the complaints are based on allegations and have not been finally resolved.<sup>41</sup> FINRA notes that similar disclosure already exists on each BrokerCheck report.<sup>42</sup> FINRA agrees, however, that customer complaint information should be clearly identifiable and states that it is in the process of revising the customer dispute disclosure section of BrokerCheck to provide further clarity, including adding a new heading to the report to identify customer disputes that a firm reports as closed with no action, withdrawn, dismissed or denied.<sup>43</sup>

## ii. Expanded Disclosure, Generally

Six commenters argue that all of the information contained in BrokerCheck

to Historic Complaints, alter the essence of the complaint.

<sup>37</sup> See Response Letter at 6.

<sup>38</sup> See Response Letter at 5.

<sup>39</sup> See comment letters from FSI and NAIBD.

<sup>40</sup> See Response Letter at 4-5.

<sup>41</sup> See comment letters from Cutter, FSI, Janney, MWA, NAIBD and SIFMA.

<sup>42</sup> See Response Letter at 3.

<sup>43</sup> *Id.*

regarding currently and formerly registered individuals should be made available permanently;<sup>44</sup> one commenter argues against any expansion whatsoever.<sup>45</sup> Those commenters in favor of expanding disclosure to include all information available in BrokerCheck believe that information should not be removed from BrokerCheck for formerly associated persons after the ten-year disclosure period.<sup>46</sup> Four commenters argue that there is no compelling reason (including the justification espoused by FINRA<sup>47</sup>) to distinguish between currently and formerly registered persons with respect to the disclosure time period in BrokerCheck.<sup>48</sup> Two commenters believe that if FINRA will not eliminate the disclosure discrepancies between currently and formerly associated persons, at a minimum the information disclosed permanently should be expanded to include additional categories.<sup>49</sup> Three commenters believe that the information on BrokerCheck should be expanded to include all information made available through State securities regulators as well as in CRD.<sup>50</sup>

In response, FINRA notes that the events proposed to be permanently disclosed in BrokerCheck pursuant to the proposed rule change constitute final dispositions which, in most circumstances, have been determined by an impartial fact finder after the subject person has been given the opportunity to refute the allegations.<sup>51</sup> Finally, FINRA points out that much of the information proposed to be disclosed pursuant to the proposed rule change is already publicly available through other sources.<sup>52</sup>

<sup>44</sup> See comment letters from Caruso, Cornell, NASAA, PIABA, St. John's and Syracuse.

<sup>45</sup> See comment letter from MWA.

<sup>46</sup> *Id.*

<sup>47</sup> FINRA stated that each of the disclosure events proposed to be permanently included in BrokerCheck constitutes a final disposition. See Notice at 8.

<sup>48</sup> See comment letters from Caruso, PIABA, St. John's and Syracuse.

<sup>49</sup> See comment letter from NASAA, arguing that BrokerCheck should include on a permanent basis information on felony charges, misdemeanor charges involving an investment-related business, fraud, wrongful taking of property, bribery, perjury, forgery and other crimes of property, employment terminations relating to allegations of violations of investment-related statutes or fraud, bankruptcy and unsatisfied judgments or liens. See also comment letter from Syracuse, arguing that disclosure should be expanded to permanently include bankruptcy filings and misdemeanor charges relating to fraud and other crimes bearing on a broker's veracity in financial and business matters.

<sup>50</sup> See comment letters from PIABA, St. John's and Syracuse.

<sup>51</sup> See Response Letter at 9. See also Notice at 8.

<sup>52</sup> *Id.*

### C. Formalized Process To Dispute and/or Update Information in BrokerCheck

All comment letters generally supported FINRA's proposed codification of the process for disputing and updating information displayed on BrokerCheck. Two comment letters request that a timeline for submission and FINRA response be added to the rule, and these commenters also request that FINRA allow firms or associated persons to supplement descriptions of the incidents being reported.<sup>53</sup> Another commenter suggests that FINRA establish a standing national BrokerCheck Record Review Committee (or delegate responsibility to FINRA's National Adjudicatory Council) to investigate BrokerCheck inquiries and make determinations with respect to eligibility and removal or modification of information on BrokerCheck.<sup>54</sup>

FINRA represents that it will work diligently to process disputes as expeditiously as possible, and believes that it will be able to make determinations regarding disputes within a reasonable time frame.<sup>55</sup> FINRA does not believe that mandating time limitations for submitting and responding to disputes or establishing a committee to make determinations regarding disputes is necessary.<sup>56</sup> FINRA states that most disputes regarding the accuracy of information in BrokerCheck are straightforward and unambiguous and requiring a committee to review such disputes would increase the processing time.<sup>57</sup> Finally, FINRA believes it would be redundant to expand the dispute process to allow individuals to supplement descriptions on BrokerCheck, as the opportunity to provide context to a disclosed matter on BrokerCheck is already available to individuals.<sup>58</sup>

In response to a request for clarification regarding whether FINRA rules prohibiting false filings would

apply to the dispute process,<sup>59</sup> FINRA notes that submissions by firms and individuals in connection with the dispute process will be subject to FINRA rules.<sup>60</sup>

### IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comment letters, and the Response Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>61</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>62</sup> which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that expanding the information available through BrokerCheck about (i) persons who were previously associated with a member within the last two to ten years and (ii) formerly associated persons who were convicted of or pled guilty or nolo contendere to a crime, were the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation, or were named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil law suit which alleged that they were involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person, will help members of the public to protect themselves from unscrupulous people. The Commission believes that such information is relevant to investors and members of the public who wish to educate themselves with respect to the professional history of a formerly associated person. Formerly associated persons, although no longer in the securities industry in a registered capacity, may work in other investment-related industries, such as financial planning, or may seek to attain

other positions of trust with potential investors. Disclosure of such person's record while he was in the securities industry via BrokerCheck should help members of the public decide whether to rely on his advice or expertise or do business with him. Currently, Web CRD would indicate that no information is available for a formerly associated person, which could lead a person making an inquiry about a formerly associated person to conclude that the formerly associated person had a clean record. Expanding the disclosure period for formerly registered individuals to ten years, as well as expanding certain information made available through BrokerCheck on a permanent basis, will provide investors and other users of BrokerCheck information that should be useful and relevant regarding such formerly registered individuals' history. In addition, if registered persons are aware that their CRD information will be available for a longer period of time, it should provide an additional incentive to act consistent with industry best practices.

The Commission also believes that the aspect of FINRA's proposal that expands the information available through BrokerCheck regarding Historic Complaints will further help members of the public to evaluate an individual's record. The Commission believes that it is consistent with the Act for FINRA to conclude that customer complaints should be available to investors and members of the public who wish to educate themselves with respect to the professional history of a current or formerly associated person. Persons may take Historic Complaints filed against an individual in the securities industry into account in considering whether to do business with a current or former associated person. The Commission agrees with FINRA and believes that potential investors and members of the public who research a person with whom they are considering doing business are capable of evaluating Historic Complaints in the appropriate context.

Finally, the Commission believes that creating a formalized process for disputing and/or updating the information displayed through BrokerCheck is appropriate. The written guidelines proposed provide administrative transparency and should help persons better understand the procedure for disputing or updating information in BrokerCheck, ultimately allowing for greater efficiency keeping information in BrokerCheck accurate.

The Commission recognizes that the commenters make arguments with respect to the usefulness of the

<sup>53</sup> See comment letters from FSI and NAIBD. The FSI letter suggests requiring FINRA to make an eligibility determination within 30 days of receipt of notice, while the NAIBD letter suggests requiring FINRA to make a determination regarding update or removal of the disputed information within 30 days of the submission of supporting evidence.

<sup>54</sup> See comment letter from SIFMA.

<sup>55</sup> See Response Letter at 7. FINRA notes, however, that in certain circumstances the evaluation of a dispute will be outside of its control.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> See Response Letter at 8. FINRA points out that individuals can provide context to a matter disclosed on BrokerCheck through the submission of Forms U4 and U5. In a separate section of the Response Letter, FINRA also notes that firms and individuals may add or revise comments to, or update information regarding, Historic Complaints disclosed on BrokerCheck. See Response Letter at 4.

<sup>59</sup> See comment letter from NASAA.

<sup>60</sup> See Response Letter at 7-8.

<sup>61</sup> In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>62</sup> 15 U.S.C. 78o-3(b)(6).

additional information they seek to have disclosed regarding registered and formerly registered persons.<sup>63</sup> The Commission recognizes that the public's ability to access information, whether to inquire about a registered person or a formerly associated person, may serve to protect investors, the integrity of the marketplace, and the public interest. The Commission urges FINRA to consider expanding the information as suggested by the commenters. This information is available from the individual States; however, it would be more accessible through BrokerCheck. The Commission urges the public to utilize all sources of information, particularly the databases of the State regulators, as well as legal search engines and records searches, in conducting a thorough search of any associated person's activities.

The Commission notes that FINRA stated it would continue to evaluate all aspects of the BrokerCheck program to determine whether future circumstances should lead to greater disclosure through BrokerCheck.<sup>64</sup> FINRA has a statutory obligation to make information available to the public<sup>65</sup> and, as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck because it is a valuable tool for the public in deciding whether to work with an industry member.<sup>66</sup> The changes proposed in this filing will enhance BrokerCheck by including more information that should prove useful to the general public and by maintaining the accuracy of such information. In addition, the disclosure of this additional information may serve as a deterrent to questionable and fraudulent activity.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>67</sup> that the proposed rule change (SR-FINRA-2010-012), be, and hereby is, approved.

<sup>63</sup> See page 4, which notes information in CRD that will not be made available as a result of this rule change.

<sup>64</sup> See Response Letter at 9.

<sup>65</sup> See Section 15A(i) of the Act.

<sup>66</sup> See, e.g., Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (SR-FINRA-2009-050).

<sup>67</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>68</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

## Exhibit A

### List of Comment Letters Received for SR-FINRA-2010-012

1. Andrew Oster, President and CEO, Oster Financial Group, LLC, dated May 4, 2010 ("Oster").
2. Pamela Fritz, CSCP, AIRC, FFSI, FIC, Chief Compliance Officer, MWA Financial Services, Inc., dated May 6, 2010 ("MWA").
3. Lisa Roth, National Association of Independent Brokers-Dealers, Inc. Member Advocacy Committee Chair, and CEO and COO, Keystone Capital Corporation, dated May 6, 2010 ("NAIBD").
4. Melanie Senter Lubin, Maryland Securities Commissioner and Chair, North American Securities Administrators Association, Inc. CRD/IARD Steering Committee, dated May 11, 2010 ("NASAA").
5. Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated May 11, 2010 ("PIABA").
6. Kelly R. Welker, Branch Manager, LPL Financial, dated May 12, 2010 ("LPL").
7. Deborah Castiglioni, CEO and CCO, Cutter Company, Inc., dated May 12, 2010 ("Cutter").
8. Lisa A. Catalano, Director, Associate Professor of Clinical Legal Education and Christine Lazaro, Supervising Attorney, Securities Arbitration Clinic, St. John's University School of Law, dated May 13, 2010 ("St. John's").
9. William A. Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic and Adisada Dudic, Cornell Law School, 2011, dated May 13, 2010 ("Cornell").
10. E. John Moloney, President and CEO, Moloney Securities Company, Inc. and Chairman, Securities Industry and Financial Markets Association Small Firms Committee, dated May 13, 2010 ("SIFMA").
11. Joelle B. Franc, Student Attorney; Jonathan P. Terracciano, Student Attorney; and Birgitta K. Siegel, Esq., Visiting Asst. Professor; Securities Arbitration & Consumer Law Clinic, Syracuse University College of Law, dated May 13, 2010 ("Syracuse").

<sup>68</sup> 17 CFR 200.30-3(a)(12).

12. John M. Ivan, Senior Vice President, General Counsel, Janney Montgomery Scott, LLC, dated May 14, 2010 ("Janney").
13. Dale E. Brown, President and CEO, Financial Services Institute, dated May 19, 2010 ("FSI").
14. Steven B. Caruso, Maddox Hargett Caruso, P.C., dated May 25, 2010 ("Caruso").

[FR Doc. 2010-17190 Filed 7-14-10; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62468; File No. SR-NASDAQ-2010-074]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 4753(c) as a Six Month Pilot in 100 NASDAQ-Listed Securities

July 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 18, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 25, 2010, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to adopt Rule 4753(c) as an initial six month pilot in 100 NASDAQ-listed securities.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

4753. Nasdaq Halt and Imbalance Crosses

(a)-(b) No change.

(c) *Beginning August 1, 2010, for a period of six months, [B]etween 9:30 a.m. and 4 p.m. EST, the System will*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of NASDAQ found at <http://nasdaq.cchwallstreet.com>.