

Enhanced Dispute Process for BrokerCheck Codified

August 5, 2010

Starting August 23, 2010, FINRA will be adjudicating in a new procedure codified in FINRA Rule 8312 - a dispute process whereby eligible parties¹ may challenge certain information disclosed through BrokerCheck (information from uniform registration forms, such as an associated person's Form U-4 and/or Form U-5, that FINRA releases to CRD via BrokerCheck). An associated person's use of this new dispute process could be a prelude to a future action by that person challenging a disclosure by a member firm; if a challenge is rejected by FINRA, that fact and any explanation provided by FINRA could possibly raise additional defenses for the member firm in any subsequent action; or, perhaps, if FINRA is able to resolve the alleged inaccuracy, the dispute process could alleviate the need for a future action.

The dispute process is limited, and eligible parties may only challenge information that was incorrect when filed, or that became incorrect due to events subsequent to filing, *and* if it is factual information, not subjective in nature or subject to interpretation. In Regulatory Notice 10-34, FINRA provides a list of examples that it will *not* investigate as part of the dispute process, including:

- A dispute that involves information previously challenged under the process which does not contain any new or additional evidence; and
- A dispute that constitutes a collateral attack on or otherwise challenges the allegations underlying a previously reported matter, such as a regulatory action, customer complaint, arbitration, civil litigation, or termination.

Disputes must be submitted on a BrokerCheck Dispute Form, which will be available on FINRA's website. The form will require the aggrieved party to specify which information is inaccurate, explain why it is inaccurate, and submit existing documentation in support of the contentions being made. If FINRA decides that the party submitting the matter is not an eligible party or that the matter is not eligible for investigation, FINRA will notify the party why an investigation will not ensue. The disputing party cannot appeal that decision.

If FINRA determines it will investigate the matter, the following process applies:

- FINRA will add a general notation to the eligible party's BrokerCheck report that the eligible party has disputed certain information included in the report;
- FINRA will evaluate the Dispute Form and supporting documentation;
- If FINRA determines the documentation provided is sufficient to establish the disclosure is inaccurate, it will make appropriate changes to BrokerCheck;
- If FINRA concludes the documentation provided is insufficient, FINRA may contact the entity who reported the information on CRD (member firm, other regulator, FINRA department, etc.)

and request that the entity verify the information is accurate (unless another reporting entity is involved, in which case FINRA will defer to that entity);

- FINRA will modify or remove the information if the reporting entity acknowledges it is inaccurate. If the reporting entity does not acknowledge the information's inaccuracy, or the reporting entity no longer exists, FINRA will not change the information;
- FINRA will notify the disputing party in writing at the conclusion of its investigation with its determination of whether the information in question is accurate, inaccurate, or could not be verified, and whether changes to BrokerCheck have been made. The disputing party cannot appeal that decision; and
- Lastly, FINRA will remove the dispute notation from the eligible party's BrokerCheck report.

FINRA Rule 8312 will govern the dispute process to challenge the accuracy of information disclosed through BrokerCheck or to update that information. See Regulation Notice 10-34 (July 2010), available at

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p121765.pdf>.

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¹ The Rule defines an eligible party as a former or current associated person or a former or current member firm.