



SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-69825; File No. SR-FINRA-2013-018)

June 21, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) as Modified by Amendment No. 1.

I. Introduction

On March 5, 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ a proposed rule change to amend FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information), which governs the release of disciplinary and other information by FINRA to the public. In addition, the proposed rule change would make conforming amendments to certain rules in the FINRA Rule 9000 Series (Code of Procedure) and add a provision to FINRA Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) regarding the effective date of sanctions. The proposed rule change was published for comment in the Federal Register on March 25, 2013.⁴ The Commission received five comment letters on the proposal.⁵ On June 17, 2013, FINRA responded to the comments⁶ and filed

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 69178 (March 25, 2013), 78 FR 17975 (“Notice”).

⁵ See Letters from William A. Jacobson, Associate Clinical Professor of Law and Ali N. Wright, Cornell Law Student, Cornell Law School, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated April 15, 2013 (“Cornell Letter”); David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, to Elizabeth M. Murphy, Secretary, Commission, dated April 15, 2013 (“FSI Letter”);

Amendment No. 1 to the proposed rule change.⁷ This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

As further described below, FINRA proposes to amend Rule 8313 to establish general standards for the release of disciplinary information to the public. The amendment would provide greater information regarding FINRA's disciplinary actions, clarify the scope of information subject to Rule 8313 and eliminate from the rule provisions that do not address the release of information by FINRA to the public. The proposed rule would also make conforming amendments to certain rules in the FINRA Rule 9000 Series and add a provision to FINRA Rule 9268 regarding the effective date of sanctions.

A. Disciplinary Complaints and Disciplinary Decisions

Rule 8313(a) currently provides that in response to a request, FINRA shall release any identified disciplinary complaint or disciplinary decision issued by FINRA (or any subsidiary or Committee thereof) to the requesting party. Absent a specific request for an identified complaint

Jenice L. Malecki, Malecki Law, to Elizabeth M. Murphy, Secretary, Commission, dated April 15, 2013 ("Malecki Letter"); Jason R. Doss, Executive Vice President/President-Elect, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated April 15, 2013 ("PIABA Letter"); Kevin M. Carroll, Managing Director and Associate General Counsel, to Elizabeth M. Murphy, Secretary, Commission, dated April 15, 2013 ("SIFMA Letter").

⁶ See Letter from Erika Lazar, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated June 17, 2013.

⁷ In Amendment No. 1, FINRA proposes to amend the proposed rule change to retain the requirement in Rule 8313(a) that in response to a request, FINRA will release a copy of any identified disciplinary complaint or disciplinary decision to the requesting party. FINRA proposed to eliminate this provision in light of the proposed adoption of general standards for the release of disciplinary complaints, disciplinary decisions, and other information to the public. However, FINRA believes that maintaining this provision in the proposed rule clarifies that FINRA will continue to respond to requests for, and provide access to, identified complaints and decisions. The amendment is technical and therefore not subject to notice and comment.

or decision, Rule 8313 provides publicity thresholds for the release of information with respect to disciplinary complaints and disciplinary decisions to the public.⁸

The publicity thresholds of Rule 8313(b)(1) currently require FINRA to make public information with respect to any disciplinary complaint that contains an allegation of a violation of a “designated” statute, rule, or regulation of the Commission, FINRA, or the Municipal Securities Rulemaking Board (“MSRB”), as determined by the FINRA Regulation Board of Directors (“Board”).⁹ In addition, FINRA may release to the public information with respect to any complaint or group of complaints that involves a significant policy or enforcement determination where release of the information is deemed by FINRA’s Chief Executive Officer (“CEO”) (or such other senior officer as the CEO may designate) to be in the public interest.

Pursuant to the current publicity thresholds of Rule 8313(c)(1), FINRA releases to the public information with respect to any disciplinary decision that: (1) imposes a suspension, cancellation, or expulsion of a member; (2) imposes a suspension or revocation of the registration of an associated person; (3) imposes a suspension or bar of a member or associated person from association with all members; (4) imposes monetary sanctions of \$10,000 or more upon a member or associated person; or (5) contains an allegation of a violation of a designated rule. FINRA may also release information with respect to any disciplinary decision or group of decisions that involves a significant policy or enforcement determination where its release is deemed by FINRA’s CEO, or his designee, to be in the public interest. Current Rule 8313(c)(1) contains an omnibus provision permitting FINRA to release information on any disciplinary or

⁸ Rule 8313 provides for the release of “information with respect to” disciplinary complaints and decisions in light of FINRA’s practice to issue, in addition to the complaints or decisions themselves, information, for example, in press releases or summaries of complaints and decisions that meet the current publicity thresholds, or are otherwise permitted to be released under the rule.

⁹ FINRA has identified the rules in NASD Notice to Members 97-42 (July 1997).

other decision issued pursuant to the Rule 9000 Series not specifically enumerated, regardless of the sanctions imposed, if the names of the parties and other identifying information is redacted. Rule 8313(c)(1)(A) and (c)(1)(B) currently sets forth redaction standards for the release of information with respect to disciplinary decisions where information regarding the decision has previously been released to the public in unredacted form, where only certain respondents in a decision on appeal meet one or more of the publicity thresholds, or where an underlying Office of Hearing Officers (“OHO”) decision meets a publicity threshold, but a later National Adjudicatory Council (“NAC”) decision on the matter does not meet a threshold.

The FINRA Disciplinary Actions online database (“FDA”) became available in May 2011. It provides interested parties with greater access to information regarding FINRA’s disciplinary actions.¹⁰ The FDA contains copies of FINRA’s disciplinary actions (dating back to early 2005) that are eligible for publication under Rule 8313. Interested parties may search the database to obtain copies of disciplinary complaints and disciplinary decisions as well as to find actions involving violations of a particular rule or statute, or other criteria of interest to them.¹¹ However, the publicity thresholds in Rule 8313 limit disciplinary information available for publication in the FDA (or otherwise available for release by FINRA).

FINRA proposes to eliminate the restrictions on publication by eliminating the provision addressing the release of “identified” disciplinary complaints and disciplinary decisions in Rule 8313(a) as well as the publicity thresholds in 8313(b)(1) and (c)(1).¹² In their place, the

¹⁰ The FDA is available at <http://www.finra.org/Industry/Enforcement/DisciplinaryActions/FDAS/>.

¹¹ The FDA also includes decisions issued by the SEC and federal appellate courts that relate to FINRA disciplinary actions that have been appealed.

¹² In light of the elimination of the publicity thresholds, the proposed rule change also would delete from Rule 8313 the redaction standards made necessary by the publicity thresholds in current paragraphs (c)(1)(A) and (c)(1)(B).

proposed rule change would adopt general standards for the release of disciplinary complaints, disciplinary decisions, and other information to the public. Specifically, under proposed Rule 8313(a) FINRA will release to the public a copy of, and in FINRA’s discretion, information with respect to any disciplinary complaint or disciplinary decision it issues.¹³ Subject to limited exceptions, FINRA would release such information in unredacted form.¹⁴

B. Temporary Cease and Desist Orders (“TCDOs”)

Rule 8313(c)(1) currently states that FINRA shall release to the public information with respect to any TCDO. The proposed rule change would retain this provision with minor changes as part of proposed Rule 8313(a)(2) to provide that FINRA will release to the public a copy of, and in FINRA’s discretion information with respect to, any order or decision issued by FINRA under the Rule 9800 Series.

C. Statutory Disqualification Decisions

Rule 8313 does not address the release of statutory disqualification decisions to the public. Pursuant to the omnibus provision in Rule 8313(c)(1), discussed above, FINRA currently releases information on statutory disqualification decisions issued by the NAC pursuant to the Rule 9520 Series with the names of members and associated persons redacted. In addition, FINRA currently does not disclose the identity of the statutorily disqualified individuals or member firms. Under proposed Rule 8313(a)(2) FINRA will release to the public unredacted copies of, and in FINRA’s discretion, information with respect to statutory disqualification decisions, notifications, and notices issued pursuant to the Rule 9520 Series by either the NAC or

¹³ The proposed rule change would eliminate as unnecessary references to “groups of” disciplinary complaints and disciplinary decisions. See Rule 8313(b)(1) and (c)(1). FINRA does not view the proposed rule change as distinguishing between the release of individual, versus groups of, disciplinary complaints and disciplinary decisions.

¹⁴ See Notice at 6.

FINRA's Member Regulation Department ("Member Regulation") that will be filed with the SEC.¹⁵

D. Expedited Proceeding Decisions

Rules 9552 through 9558¹⁶ currently provide a procedural mechanism for FINRA to address certain types of misconduct (e.g., a failure to pay fees or dues or a failure to meet eligibility or qualification standards) more expeditiously than would be possible using the FINRA disciplinary process.

Rule 8313(c)(1) currently states that FINRA may release to the public information with respect to any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of a member, or a suspension or bar of the association of a person with a member, unless FINRA determines otherwise. Separately, the "Notice to Membership" provisions in Rules 9552 through 9556 and 9558 through 9559 currently state that FINRA shall provide notice of any final action it takes under the rules in the next notice of Disciplinary and Other FINRA Actions. The Notice to Membership provision in Rule 9557 requires notice when FINRA imposes a suspension pursuant to the rule, but does not reference final FINRA action because the

¹⁵ All statutory disqualification decisions issued by the NAC are filed with the Commission. In contrast, depending on the nature of the disqualifying event, Member Regulation may or may not have to file a notice of its approval of an application for relief (referred to as a 19h-1 notice or notification) with the Commission. For example, Member Regulation may approve the association of a person without filing a 19h-1 notice or notification with the SEC when the disqualifying event consists of an injunction that was entered more than 10 years ago. See also Rule 19h-1 under the Act.

¹⁶ See Rule 9552 (Failure to Provide Information or Keep Information Current), Rule 9553 (Failure to Pay FINRA Dues, Fees and Other Charges), Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution), Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders), Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties), and Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act).

procedural mechanisms in Rule 9557 differ from the other rules in the expedited proceedings series.

Proposed Rule 8313(a)(2) would require FINRA to release to the public information with respect to any suspension, cancellation, expulsion or bar that constitutes final FINRA action imposed pursuant to Rules 9552 through 9556 and 9558 and information with respect to any suspension imposed pursuant to Rule 9557. FINRA would also be required to release a copy of, and information with respect to, any decision issued pursuant to Rule 9559 (Hearing Procedures for Expedited Proceedings under the Rule 9550 Series) that constitutes final FINRA action. Accordingly, the proposed rule change would delete the “Notice to Membership” provisions in Rules 9552 through 9559.

E. Summary Actions

Rule 8313 currently does not specifically address the release of information regarding summary actions taken by FINRA pursuant to Rule 8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay). Proposed Rule 8313(a)(3) would codify FINRA’s practice by expressly requiring FINRA to release to the public information with respect to the summary suspension or expulsion of a member or the summary revocation of the registration of a person associated with a member for a failure to pay fines, other monetary sanctions, or costs pursuant to Rule 8320.

F. Membership and Continuing Membership Application (“MAP”) Appeals

Rule 8313(l) currently provides that FINRA shall release to the public, in the form issued by the NAC, information with respect to any MAP appeal decision issued by the NAC pursuant to NASD Rule 1015 (Review by National Adjudicatory Council). The NAC in its discretion may redact certain information from such decisions before they are issued.

Proposed Rule 8313(a)(4) would require FINRA to release to the public a copy of, and in FINRA's discretion, information with respect to any MAP appeal decision issued by FINRA pursuant to NASD Rules 1015 and 1016 (Discretionary Review by FINRA Board). The proposed rule would also require FINRA to release copies of, and information with respect to, such decisions to the public in redacted form; provided, however, the NAC or the Board, in its discretion, may determine to release such decisions and information in unredacted form.

G. Permissive Publication of Certain Decisions and Notices

FINRA does not currently publish decisions or notices issued pursuant to Rule 6490 and the Rule 9700 Series. However, if FINRA determines that there is public benefit to releasing a specific decision or notice issued under these rules to provide guidance to other firms or to alert the public to an investor protection issue, it would do so.¹⁷ The proposed rule change would add Rule 8313(a)(5) that would permit FINRA to release to the public a copy of, and information with respect to, any decision or notice issued pursuant to Rule 6490 (Processing of Company-Related Actions),¹⁸ the Rule 9600 Series (Procedures for Exemptions),¹⁹ the Rule 9700 Series

¹⁷ In general, FINRA does not release copies of, or information with respect to, decisions or notices addressing company-related actions or grievances concerning the automated systems.

¹⁸ Under Rule 6490, FINRA's Operations Department reviews and processes documents related to announcements for Exchange Act Rule 10b-17 Actions and Other Company-Related Actions to facilitate the orderly trading and settlement of OTC securities.

¹⁹ The Rule 9600 Series allows a member seeking exemptive relief, as permitted under certain FINRA and NASD rules and MSRB Rule G-37, to file a written application with the appropriate department or staff of FINRA. The proposed rule change would make conforming amendments to Rule 9620, which governs exemption decisions issued under the Rule 9600 Series, to reflect the permissive nature of proposed Rule 8313(a)(5).

(Procedures on Grievances Concerning the Automated Systems),²⁰ and any other decision appealable to the Commission under Section 19(d) of the Act.

FINRA currently posts to its website exemption decisions for several rules listed in Rule 9610, in large part, to provide guidance to members, investors, and other interested parties to assist them in understanding the rationale for the decisions to grant or deny requests for exemptive relief.²¹ With respect to exemption decisions, the proposed rule change would permit exemption decisions issued under the Rule 9600 Series to be released to the public because Rule 9610, which governs the application for exemptive relief, authorizes members to request relief from a diverse set of member conduct rules. Proposed Rule 8313(a)(5) would also provide for the release of “any other decision” appealable to the Commission under Section 19(d) of the Act.

H. Publication of Information Deemed by FINRA’s CEO to be in the Public Interest

As discussed above, notwithstanding the existing publicity thresholds, FINRA Rule 8313(b)(1) and (c)(1) currently allows FINRA to release information with respect to any disciplinary complaint or disciplinary decision that involves a significant policy or enforcement determination where the release of such information is deemed by FINRA’s CEO to be in the public interest. Consistent with these provisions, proposed Rule 8313(a)(6) would allow FINRA to release to the public a copy of, and information with respect to, any complaint, decision, order, notification, or notice issued under FINRA rules, where the release of such information is

²⁰ The Rule 9700 Series sets forth procedures for redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by FINRA, or its subsidiaries, and approved by the SEC, not otherwise provided for by the FINRA rules.

²¹ Consistent with current practice under the Rule 9600 Series, FINRA will continue to consider statements included by an applicant to show good cause to treat a decision as confidential in whole or in part.

deemed by FINRA's CEO (or such other senior officer as the CEO may designate) to be in the public interest.

I. Release Specifications

Rule 8313 currently requires copies of, and information with respect to, disciplinary complaints and disciplinary decisions released to the public to be accompanied by certain disclosure statements regarding their status.²² Proposed Rule 8313(b)(1) would modify the disclosure to state that a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.

Similarly, Rule 8313(a)(2) through (a)(4) and (c)(2) currently requires copies of, and information with respect to, disciplinary decisions released to the public to be accompanied by disclosure statements. Proposed Rule 8313(b)(2) would require copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to Rule 8313(a) before the time period provided for an appeal or call for review has expired, to indicate that the findings and sanctions imposed therein are subject to review and modification by FINRA or the Commission. Disclosures relating to a pending appeal or call for review will include the same information.

J. Discretion to Redact Certain Information or Waive Publication

As discussed above, FINRA has determined that, subject to limited exceptions, disciplinary information should be released to the public in unredacted form. With respect to the limited exceptions, proposed Rule 8313(c)(1) would permit FINRA, notwithstanding the requirements of proposed Rule 8313(a), to redact, on a case-by-case basis, confidential customer

²² See Notice at 16.

information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. FINRA takes the same approach with respect to the release of information in BrokerCheck.²³

Similarly, proposed Rule 8313(c)(2) would adopt with minor changes a statement from current Rule 8313(c)(1) that provides FINRA with discretion to waive the requirement to release a disciplinary or other decision. The proposed rule change would expand this provision to give FINRA discretion to waive the requirement to release any item under paragraph (a) of the proposed rule. Accordingly, proposed Rule 8313(c)(2) would provide that notwithstanding paragraph (a) of the proposed rule, FINRA may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

K. Notification of Appeals of FINRA Decisions

Rule 8313(g) currently requires FINRA to provide notice to the membership and the press when a FINRA disciplinary decision that meets certain publicity thresholds has been appealed to the Commission. The notice must be released as soon as possible after the Commission notifies FINRA of the appeal and it must state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission. Proposed Rule 8313(d) would adopt this provision with minor changes eliminating the publicity thresholds and the limitation on notification to the membership and the press. Under the proposed rule FINRA must provide notice to the public when a disciplinary decision of FINRA

²³ See Rule 8312(d) (FINRA BrokerCheck Disclosure).

is appealed to the Commission and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the Commission.

The proposed rule change would delete Rule 8313(h) and (i) because they limit notice to the membership based on the publicity thresholds that would be eliminated under proposed Rule 8313(d). FINRA notes that the FDA includes decisions issued by federal appellate courts that relate to FINRA disciplinary actions that have been appealed.

L. Provisions Outside the Scope of Rule 8313

Certain provisions in the current Rule 8313 are outside the purview of the rule, which is intended solely to address the release of disciplinary and other information by FINRA to the public. FINRA moved those provisions to other rules as appropriate.²⁴ FINRA has indicated that it would announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval, and that the effective date will be no later than 120 days following publication of the Regulatory Notice announcing Commission approval. Once effective, the proposed rule change will govern the release of disciplinary and other information for all new and pending matters.²⁵

III. Summary of Comment Letters and FINRA's Response

As noted above, the Commission received five comment letters on the proposed rule change.²⁶ The comment letters expressed general support for FINRA's initiative, but each

²⁴ See Notice at 21-22.

²⁵ Offers of settlement and AWCs are entered into with the express agreement that the publication of such items will be pursuant to Rule 8313. Accordingly, publication of any order accepting an offer of settlement or AWC entered into prior to the effective date of the proposed rule change would be governed by the version of the rule in effect as of the date of such offer or AWC.

²⁶ See note 5, *supra*. FINRA did not address the concerns raised by the SIFMA Letter that were outside the scope of the proposed rule.

comment letter raised concerns with particular aspects of the proposal. The comments and FINRA's response²⁷ thereto is summarized below.

A. Comments Relating to General Release Standards

One commenter opposed the elimination of the requirement that FINRA release identified complaints and decisions to the requesting party, arguing that removal of the requirement for FINRA to release such information makes FINRA's obligation to respond to requests unclear.²⁸ The commenter noted that some information can only be obtained by a request to FINRA, such as pre-2005 decisions that are not posted on the FDA, and that absent an express mechanism to access the information, investors will not be aware that they can request the information directly from FINRA.²⁹ In response to this concern, FINRA amended the proposed rule change to retain the requirement in Rule 8313 that FINRA release identified complaints and decisions to a requesting party.³⁰

Another commenter expressed concern about the discretion FINRA would have regarding whether to release information with respect to disciplinary complaints and disciplinary decisions to the public, and requested that FINRA provide guidance on its discretionary powers.³¹ In response, FINRA explained that its current practice is to issue information, such as press releases or monthly summaries of complaints or decisions, along with the disciplinary complaints and decisions it releases.³² FINRA stated that it intends to continue its practice of releasing monthly summaries of complaints and decisions, and with respect to the issuance of press releases in connection with

²⁷ FINRA Letter.

²⁸ See PIABA Letter, p. 3.

²⁹ Id.

³⁰ See FINRA Letter, p. 2.

³¹ See Cornell Letter, p. 2.

³² See FINRA Letter, p. 2.

disciplinary decisions, issue press releases in situations where there is a significant policy or investor protection reason to do so.³³ FINRA, however, stated that it does not believe that it necessary or appropriate to further delineate the specific circumstance when it may release such summary information or press releases.³⁴

Another commenter suggested that complaints that have been dismissed or withdrawn not be posted on FDA and questioned the propriety of publicizing such complaints given that it draws attention to actions that pose reputational harm to firms and representatives, but were found lacking on the merits.³⁵ In response, FINRA stated that it believes that including the subsequent decision or order helps to ensure the public has a full understanding of the status of a filed disciplinary complaint.³⁶ FINRA also noted that complaints that have been withdrawn or dismissed are not removed from BrokerCheck, so they are publicly available through that source.³⁷ In addition, FINRA noted that the Commission does not remove the original Order Instituting Proceedings from the public record when an Administrative Law Judge grants a staff motion to withdraw a complaint or when the Commission, on appeal issues an opinion.

One commenter opposed FINRA's proposal to provide for the permissive publication of exemptive decisions or notices issued pursuant to the Rule 9600 Series (Procedures for Exemptions), and argued that publication should be mandatory.³⁸ The commenter suggested that FINRA should be required to identify and codify the criteria governing the exercise of its discretion

³³ See FINRA Letter, p. 3.

³⁴ Id.

³⁵ See FSI Letter, p. 3.

³⁶ See FINRA Letter, p. 3.

³⁷ Id.

³⁸ See PIABA Letter, p. 2.

to release exemption decisions.³⁹ In response, FINRA stated that it does not believe that mandatory publication of all exemption decisions would benefit members, investors, and other interested parties because Rule 9610 covers a diverse set of rules, and the exemption decisions and notices generally are not disciplinary in nature, are often highly fact-specific, and may contain proprietary and confidential information.⁴⁰

B. Comments Relating to Release Specifications

One commenter opposed the proposed elimination of language from current Rule 8313(a)(1) that directs the recipient of a complaint to “contact the respondent before drawing any conclusions regarding the allegations in the complaint.”⁴¹ The commenter stated that this language is important because it provides notice to the public that firms are responsive to concerns relating to allegations and should be contacted with questions.⁴² FINRA disagreed with the commenter, and asserted that the language is unnecessary because the recipient of information released pursuant to Rule 8313 can contact a respondent at any time.⁴³ Further, FINRA stated that it does not believe that its rules should be the basis to provide notice to the public that firms are responsive to concerns relating to allegations in a complaint.⁴⁴

C. Comments Relating to Discretion to Redact Information or Waive Publication

Three commenters raised concerns about FINRA’s proposed Rule 8313(c)(1) that would permit FINRA to redact, on a case-by-case basis, confidential customer information, and would provide FINRA with the discretion to waive the requirement to release a disciplinary or other

³⁹ See PIABA Letter, p. 2-3.

⁴⁰ See FINRA Letter, p. 3.

⁴¹ See FSI Letter, p. 3.

⁴² Id.

⁴³ See FINRA Letter, p. 4.

⁴⁴ Id.

decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.⁴⁵ More specifically, one commenter requested guidance regarding the circumstances under which FINRA would exercise the discretion to redact information or waive publication, and suggested accepting comment from members and the public on instances where the exercise of such discretion would be appropriate.⁴⁶ Another commenter stated that the phrase “violate fundamental notions of fairness or work an injustice” in the Rule is vague and could present challenges for uniform application.⁴⁷ The commenter suggested that if FINRA exercises its discretion to waive publication, it should release the type of document or the information being withheld, the date of the document, and the reason for withholding.⁴⁸ A third commenter opposed FINRA’s discretion to waive publication stating that the deterrent effect of publication of disciplinary information would be undermined if certain information is withheld out of concern for firms and their associated persons.⁴⁹

In response to these comments, FINRA stated that it believes it is necessary to balance investor protection benefits with the harm that might result if confidential customer information or information that raises personal safety or privacy concerns is released to the public when considering whether to release information.⁵⁰ FINRA believes that its proposed authority to redact, on a case-by-case basis, confidential customer information or information that raises identity theft, personal safety or privacy concerns that do not outweigh investor protection considerations is consistent with FINRA’s approach with respect to the release of information in BrokerCheck

⁴⁵ See FSI Letter, p. 4; Malecki Letter, p. 2; and PIABA Letter, p. 1.

⁴⁶ See FSI Letter, p. 4.

⁴⁷ See Malecki Letter, p. 2.

⁴⁸ Id.

⁴⁹ See PIABA Letter, p. 1.

⁵⁰ See FINRA Letter, p. 5.

pursuant to Rule 8312.⁵¹ FINRA further believes that it is appropriate for it to retain its current discretionary authority to waive the requirement to release information to the public in the event FINRA is presented with truly unique circumstances where the release of information would violate fundamental notions of fairness or work an injustice.⁵²

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association.⁵³ In particular, the Commission finds that the proposed rule change is consistent with Section 15(b)(6) of the Act,⁵⁴ which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

The Commission believes that the proposed rule change promotes transparency, consistency across FINRA's programs, and clarity regarding the information FINRA releases to the public and will provide greater access to information regarding FINRA's disciplinary actions. As stated in the proposal, FINRA's current rules are inconsistent regarding release of information given that some information not disclosed under the current rule is publicly available through other resources. For example, BrokerCheck reports include unredacted summary

⁵¹ See FINRA Letter, p. 4.

⁵² Id.

⁵³ In approving the proposed rule change, the Commission has considered the impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁴ 15 U.S.C. 78q(b)(6).

information regarding a FINRA disciplinary action that FINRA is not permitted to release in the monthly notice of Disciplinary and Other FINRA Actions or in the FDA under the current publicity thresholds contained in Rule 8313.⁵⁵ FINRA believes that providing greater access to information regarding its disciplinary actions is in the public interest and will provide valuable guidance to members, associated persons, other regulators and the public. Accordingly, the Commission believes that it is appropriate for FINRA to provide general standards for the release of disciplinary and other information to the public, clarify the scope of Rule 8313 and eliminate provisions that do not relate to the release of information by FINRA to the public.

As discussed above, three commenters raised concerns with the proposed general standards for the release of information pursuant to Rule 8313(a). One commenter opposed the elimination of FINRA's current Rule 8313(a) which required FINRA to provide any identified disciplinary complaint or disciplinary decision to a requesting party.⁵⁶ In response to this comment, FINRA proposes to amend a portion of the proposed rule change to maintain the current requirement that FINRA release the requested information.⁵⁷ The commenter also opposed FINRA's discretion to publish exemption decisions or notices issued pursuant to the Rule 9600 Series.⁵⁸ Another commenter requested guidance for the meaning of "at FINRA's discretion" and "information with respect to" in Rule 8313(a)(1), (2) and (4) related to FINRA's discretion to release information with respect to any disciplinary complaint or decision issued by

⁵⁵ The information about members and registered persons made available through BrokerCheck is derived from the Central Registration Depository (CRD[®]). Information in the CRD system is obtained through the uniform registration forms (i.e., Forms U4, U5, and U6, and Forms BD, BDW, and BR).

⁵⁶ See PIABA Letter, p. 3.

⁵⁷ See FINRA Letter, p. 2 and Amendment No. 1, supra note 7.

⁵⁸ See PIABA Letter, p. 2.

FINRA.⁵⁹ A third commenter opposed FINRA's proposal to post dismissed and withdrawn complaints on the FDA.⁶⁰

First, the Commission agrees with FINRA's decision to maintain the explicit requirement to release disciplinary complaints and decisions in Rule 8313(a), as this will ensure that FINRA's intent to release disciplinary complaints and decisions upon request is clear. Second, the Commission believes it is appropriate for FINRA to have discretion to decide whether to publish exemption decisions because certain exemption decisions contain proprietary details and are not disciplinary in nature. Third, although FINRA does not delineate the specific circumstances in which it may release disciplinary information or press releases, the Commission supports FINRA's intention to continue to release monthly summaries of complaints and press releases as it deems appropriate. The Commission notes that the decisions will be public. Fourth, the Commission believes it is appropriate for FINRA to release complaints that have been withdrawn or dismissed as such documents are publicly available on BrokerCheck. The Commission notes that any decision to withdraw or dismiss a disciplinary complaint or decision would be released as well, therefore, persons reviewing disciplinary information should have a complete understanding of the status of a filed disciplinary complaint. The Commission believes that FINRA responded adequately to the commenters' concerns regarding proposed changes to Rule 8313(a).

As detailed above, four commenters raised concerns related to Rule 8313(b) and (c). One commenter opposed the removal of language recommending that a recipient of a complaint contact the respondent regarding allegations made in a complaint.⁶¹ The same commenter

⁵⁹ See Cornell Letter, p. 2.

⁶⁰ See FSI Letter, p. 3.

⁶¹ See FSI Letter, p. 4.

requested guidance on when FINRA would exercise discretion to redact information.⁶² Another commenter indicated that the phrase “violate fundamental notions of fairness or work an injustice” is vague and may not be universally applied.⁶³ A third commenter opposed FINRA’s authority to use discretion in waiving publication.⁶⁴

The Commission agrees that the inclusion of the disclosure statement language in Rule 8313(b) is not necessary because a recipient of a complaint may contact a respondent at any time. FINRA’s proposal to remove the disclosure statement does not change a recipient’s ability to contact a respondent for information. The Commission believes that FINRA should have discretion to redact information in disciplinary complaints and decisions and waive publication under certain circumstances in order to effectively balance investor protection benefits with the harm that may result from not redacting certain confidential information before releasing to the public. FINRA has had this authority since the 1990’s and the Commission believes that FINRA will continue to exercise it appropriately.

Accordingly, for the reasons stated above, the Commission finds that FINRA’s proposal is consistent with Section 15A(b)(6) of the Act.⁶⁵

⁶² Id.

⁶³ See Malecki Letter, p. 2.

⁶⁴ See PIABA Letter, p. 2-3.

⁶⁵ 15 U.S.C. 78o-3(b)(6).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁶⁶ that the proposed rule change (SR-FINRA-2013-018), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁷

Jill M. Peterson
Assistant Secretary

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⁶⁶ 15 U.S.C. 78s(b)(2).

⁶⁷ 17 CFR 200.30-3(a)(12).