

## **Reporting of State Regulatory Actions – *Request for Public Comment***

**Proposal # 2011-3**

**July 22, 2011 – September 20, 2011**

On behalf of the state regulatory agencies using NMLS, the State Regulatory Registry LLC (SRR) invited public comments on the “Reporting of State Regulatory Actions” functionality that is being developed in NMLS and NMLS Consumer Access to provide information about companies and individuals in one location to benefit the public at large and to fulfill the objectives and mandates of the SAFE Act. The new functionality will allow NMLS participating state agencies to post regulatory actions in the system and to make them available on *NMLS Consumer Access*. Seven individuals or organizations submitted comments during the comment period.

These six comments are contained in this document as received, without editing. Comments received in email format were copied exactly as submitted and pasted in the comments section of the table with the submitting individual’s name and company displayed. Comments received as an email attachment or via USPS are displayed as submitted in their original format. These comments are noted in the table and numbered accordingly as attachments.

Comments are listed in the order received.

All suggestions will be reviewed by the Regulatory Actions Working Group comprised of state regulators and discussed with all state regulators. The Regulatory Actions Working Group’s recommendations will be sent to the [Mortgage Licensing Policy Committee](#) for evaluation.

### REGULATORY ACTIONS ISSUE TRACKING

# & Date	Name & Company	Issue
1 9/19/2011	Craig Pizer DHI Mortgage	See Exhibit 1
2 9/20/2011	Danielle Fagre Arlowe American Financial Services Association	See Exhibit 2
3 9/20/2011	William Emerson Quicken Loans	See Exhibit 3
4 9/20/2011	California Mortgage Bankers Association Mortgage Bankers Association of Arkansas Colorado Mortgage Lenders Association Illinois Mortgage Bankers Association Mortgage Bankers Association of Kentucky Mortgage Bankers Association, National Maine Association of Mortgage Professionals Mortgage Bankers Association of Mississippi Ohio Mortgage Bankers Association Tennessee Mortgage Bankers Association Vermont Mortgage Bankers Association	See Exhibit 4
5 9/20/2011	Costas Avrakotos K&L Gates LLP	See Exhibit 5
6 9/21/2011	Robert Harcar BMO Harris Bank	In regards to item 9 (Policies), it states:  " A company or individual will be notified of the posting of a relevant regulatory action by a System-generated email and will be able to view in NMLS any publically posted actions

		<p>against it."</p> <p>However, there are no provisions for notification to the agency that the MLO is <u>currently</u> employed with. Notification should be made at the same time to the current employer (Account Administrator) at the same time the MLO is notified, such as the Registry currently does now when they move from "pending" to "active".</p> <p>This will allow the agency currently employing the MLO, to re-review the history of the MLO (if needed), not unlike the current RAP process. If the <u>current</u> employer is not notified, they may never know that an MLO has / had actions taken against them.</p>
<p><b>7</b></p> <p><b>9/22/2011</b></p>	<p>Glen Corso</p> <p>The Community Mortgage Banking Project</p>	<p>See Exhibit 6</p>



September 13, 2011

Conference of State Bank Supervisors  
Attn: Tim Doyle  
1120 20<sup>th</sup> Street NW, 9<sup>th</sup> Floor  
Washington, DC 20036

**\*\*Sent Via Email\*\***  
[comments@stateregulatoryregistry.org](mailto:comments@stateregulatoryregistry.org)

Re: Request for Public Comments - Reporting of State Regulatory Actions

DHI Mortgage Company, Ltd. (DHIM) appreciates the opportunity to comment on the Reporting of State Regulatory Actions issued by the Conference of State Bank Supervisors.

DHIM is a subsidiary of D.R. Horton, Inc. (DR Horton), the largest homebuilder in America by units closed for the last nine consecutive years. DHIM employs approximately 500 people in 20 states, while D.R. Horton employs approximately 2,400 employees in 25 states across the country. The primary mission of DHIM is to facilitate the financing and sale of new D.R. Horton homes, and provide a fair price, quality loan product, and excellent service experience for every consumer. D.R. Horton and DHIM consumers are primarily first time and first time move-up homebuyers.

It is understandable that the NMLS Consumer Access site might be the appropriate vehicle to be utilized as a resource where consumers could easily find information regarding regulatory actions taken against a company or individual, however there are certain concerns about how this functionality would be employed.

While there will be a standardized set of information (date, docket #, type of order, description, fine/penalty/restitution, etc...), simply listing actions on the site leaves no option for explanations or clarifications. An action listed independently in many instances could create an inaccurate perception in the mind of a consumer without proper context. This altered perception could be detrimental to the industry, company or individuals involved.

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The fact that all respondents named in an action will be included in the reporting to the System and the action will be tied to the record of the company and/or individuals named is also troublesome. As states may link any Control Person or Principals NMLS record to any action taken against the associated company, this may unjustly impact individuals without providing the opportunity for rebuttal or explanation.

This further raises concerns over protecting the privacy and security of personal information of individuals involved, either on their own or as a result of their association with the company. While details were not provided in the initial request for comment we respectfully ask for more details as to what safeguards will be in place to ensure there is no unauthorized use of personal information prior to any implementation of this process.

Additionally, there are no requirements for the information to be consistent between states. Each state will individually determine what is appropriate to post based upon their state statutes and regulations. The standardization that the SAFE Act was supposed to create is currently challenged due to the variances from state to state in regard to interpretation and implementation differences. This will create one more opportunity for inconsistencies.

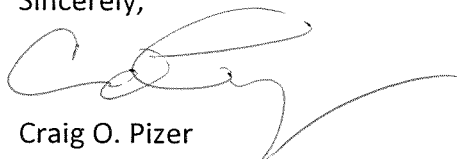
To address these concerns, our suggestion would be that the following be included as part of the implementation:

- Identification and standardization of which actions would be defined as reportable.
- Limitation of associating Control Persons/Principals to actions taken against a company.
- Ability for respondents to enter comments related to an action and to provide contact information for questions.
- Establishment of sufficient security to ensure protection of information.

Further, we recommend that, with the exception of license revocation, past regulatory actions against a licensee not be included. This will allow for the focus to be on actions which are deemed substantial enough to impact an entities ability to conduct business.

Thank you for the opportunity to comment.

Sincerely,



Craig O. Pizer  
V.P. Compliance Manager



Regulatory Actions Public Comments  
Attn: Tim Doyle, Vice President  
State Regulatory Registry  
Conference of State Bank Supervisors  
1129 20th Street, N.W.  
9th Floor  
Washington, DC 20036-3403

By email to [comments@stateregulatoryregistry.org](mailto:comments@stateregulatoryregistry.org)

September 20, 2011

Dear Tim,

**Re: Reporting of State Regulatory Actions**

Thank you on behalf of the American Financial Services Association (AFSA)<sup>1</sup> for the opportunity to comment publicly on Reporting of State Regulatory Actions functionality in the Nationwide Mortgage Licensing System & Registry (NMLSR). As we have consistently indicated, the NMLSR is having a significant impact on AFSA members.

Our initial comment is that the arrangements for reporting state regulatory actions go beyond what we could reasonably consider in the public interest, potentially exposing the subjects of actions to unfair prejudgment or criticism and adding to the management burden imposed by NMLSR. This is why we believe it is critical that the guiding principle for public reporting of state regulatory actions is to report only final actions. Only after all appeals, vindications and other mitigating procedures are complete should actions be publically reported to avoid unintentionally damaging the reputation of the parties involved.

A specific concern relates to the eighth in the list of policies and processes at the bottom of page three, which states:

8. *All respondents named in an action will be included in the reporting to the System and the action will be tied to the record of the company and/or individuals named. States may link any Control Person or Principal's NMLS record to any action taken against the associated company.*

This public reporting of all respondents would unnecessarily name individuals who subsequently are shown not to be involved. This immediate reporting requirement should be replaced with a requirement only to report final actions.

Further to this, policy or process number four, on the bottom of page three, states:

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<sup>1</sup> The American Financial Services Association is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members are important sources of credit to the American consumer, providing approximately 20 percent of all consumer credit. AFSA member companies offer vehicle financing, cards, personal installment loans and mortgage loans. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

4. *Due to the importance of a consistent standard in the timeframe of posting actions, the MLPC recommends that the information should be posted promptly, but in no case more than 5 days after receipt of the final order by the state agency.*

We believe that this rushes the process and the mandated 5 days is unhelpfully brief, reducing the window of opportunity for corrections and appeals, again raising the potential for reporting individuals subsequently shown to be not involved. This problem would be eliminated if only final judgments, after appeals, were reported.

We also believe that the potential for incorrect posting is significant and we urge the development of an effective mechanism to address this possibility, immediately upon identification.

Finally, we understand that this public reporting of state regulatory actions will only apply to the mortgage industry, by authorization of the SAFE Act (12 U.S.C. 5101 - 5116). We request that the final policy clarify this understanding.

We respectfully request that you consider this input and adjust the proposal for the Reporting of State Regulatory Actions accordingly. We would be pleased to provide any further assistance that you should require in this matter. Please do not hesitate to contact me by phone 952-922-6500 or email [dfagre@afsamail.org](mailto:dfagre@afsamail.org).

Respectfully,



Danielle Fagre Arlowe  
Senior Vice President, State Government Affairs  
American Financial Services Association  
919 Eighteenth Street, NW, Suite 300  
Washington, DC 20006-5517  
Phone: 952-922-6500



September 20<sup>th</sup>, 2011

Regulatory Actions Public Comments  
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State Regulatory Registry  
Conference of State Bank Supervisors  
1129 20<sup>th</sup> Street, N.W.  
9<sup>th</sup> Floor  
Washington, D.C. 20036-3403  
[comments@stateregulatoryregistry.org](mailto:comments@stateregulatoryregistry.org)

**Re: NMLS and SRR's Request for Public Comments on Reporting of State Regulatory Actions**

Dear Mr. Doyle:

Quicken Loans Inc. ("Quicken Loans") is pleased to submit its comments on the Nationwide Mortgage Licensing System and Registry's ("NMLS") and the State Regulatory Registry LLC's ("SRR") request for public comments on the reporting of state regulatory actions. By way of background, Quicken Loans is an independent Detroit, Michigan-based conventional and FHA retail residential mortgage lender. We have been in business since 1985, and have approximately 4,000 employees. We do business in all 50 states and are one of the nation's five largest retail mortgage lenders, one of the three largest FHA mortgage lenders, and the largest online lender. We closed over \$28 billion in retail mortgages, helping over 135,000 homeowners in 2010.

We thank the NMLS and the SRR for the chance to comment on the proposed reporting of state regulatory actions. Though we support the underlying principals, we do have a few concerns about the current proposal.

Our primary concern is the information that will be posted to the NMLS's Consumer Access database. As currently proposed, the SRR will make available the public regulatory enforcement actions taken by state regulators through the Consumer Access database in the Spring of 2012. In October of 2011, functionality will be available in NMLS which will give state regulators the ability to post regulatory actions in the system that are connected to a mortgage company, control person, or MLO for sharing among state regulators. While we support the efforts of upholding the requirements



within Title V of the SAFE Act that NMLS “Provide(s) consumers with easily accessible information, offered at no charge...publicly adjudicated disciplinary and enforcement actions against, loan originators” [12 USCA § 5107 (7)], we believe further clarification is needed within the rule to explain exactly what kind of information can be posted in the Consumer Access database and how it will be presented.

We would urge the SRR to only post and include information related to final disciplinary actions and leave out pending investigations. As it stands, any consumer could file a complaint against a licensee and it could potentially end up posted in the database without a full investigation. This approach does not account for the large number of frivolous complaints that can be made against a company or its loan originators that would otherwise be weeded out during an adjudication process or through a simple investigation. Just one or two unfounded complaints posted to the web can have a damaging and long-lasting effect on a company’s or an individual loan originator’s reputation and image. This cloud of suspicion can linger for years even though a company has done nothing wrong. We believe NMLS and the SRR need to find a way to avoid posting complaints before the full adjudicatory process is complete.

If the SRR and NMLS do decide to include pending adjudicatory actions within the Consumer Access database, we believe it should be identified as such and there should be a process in which a licensee’s name can be cleared of any wrongdoing if the adjudication procedure clears them of charges. If a company is cleared and the complaint still appears in the database, will the complaint eventually be removed from the database? Will the complaint remain on the website with an annotation about the company being cleared of any wrongdoing? Will the complaint remain without any explanation? We believe that any complaints that are cleared by adjudication proceedings or by investigation should be removed from the database as to remove any uncertainty about the complaint and to clear the company’s name from the unfounded complaint.

As previously noted, posting information related to pending and adjudicated matters can have an adverse impact on a licensee and its reputation. With so many licenses being maintained on the system, there is always a chance that information related to one licensee may inadvertently be posted to the record of another. Consequently, in order to avoid unnecessary detrimental effects on licensees, it is imperative that some sort of process be put in place to ensure that disciplinary actions

are being posted to the appropriate records. Whether the system requires regulators to type in the licensee's name and NMLS ID twice as a confirmation tool, or whether the SRR implements some other sort of verification process, this will be a critical element. Likewise, prior to implementing the disciplinary reporting function on the NMLS, a process will also need to be adopted regarding the way in which erroneously reported information posted to a licensee's record will be handled. Once more, we propose that such information be removed immediately upon discovery of the error, and some sort of written confirmation regarding the error be sent to the licensee. Such written confirmation can serve to mitigate any damage that may have been caused by the erroneous posting in the event that a client ever has a question regarding information that may have previously been viewed on the system prior to its removal.

We thank you for this opportunity in allowing us to comment. Should you have any further questions, please contact Shawn Krause at (313) 373-7773 or at [ShawnKrause@quickenloans.com](mailto:ShawnKrause@quickenloans.com).



William Emerson  
CEO  
Quicken Loans



September 20, 2011

Regulatory Actions Public Comments  
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State Regulatory Registry  
Conference of State Bank Supervisors  
1129 20<sup>th</sup> Street, N.W. 9<sup>th</sup> Floor  
Washington, D.C. 20036-3403  
[comments@stateregulatoryregistry.org](mailto:comments@stateregulatoryregistry.org)

**Re: NMLS and SRR's Request for Public Comments on Reporting of State Regulatory Actions**

Dear Mr. Doyle:

The Mortgage Bankers Association<sup>1</sup> and the ten co-signatories listed below appreciate the opportunity to comment on the request for public comments on proposed procedures to provide state regulators, consumers and the public with information concerning regulatory actions taken by state regulators against companies and individuals through the Nationwide Mortgage Licensing System and Registry (NMLS).

Under the proposal, the State Regulatory Registry (SRR) will make available to the public regulatory enforcement actions taken by state regulators through the Consumer Access database in the spring of 2012. State regulators, through the NMLS, will have the ability to post regulatory actions in the system that are connected to a mortgage company, control person, or mortgage loan originator for sharing among state regulators. However, the undersigned are concerned that the proposal does not limit the inclusion of regulatory actions to those that are adjudicated and, in fact, leaves to the states to decide what actions are included.

While the undersigned appreciate efforts to increase the functionality of the NMLS and support reporting and public access to information regarding employment history and adjudicated violations by loan officers and companies consistent with the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), we strongly oppose the publication of complaints under investigation that have not been adjudicated. In our view, the release of investigative or similar information prior to adjudication denies fundamental due process and

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

risks substantial reputational damage to industry and consumers, which cannot be feasibly undone.

The SAFE Act explicitly provides that its purpose is to provide "consumers with easily accessible information, offered at no charge... [on] publicly adjudicated disciplinary and enforcement actions against, loan originators,"<sup>2</sup> but we do not believe the SAFE Act in any way requires that information on unadjudicated matters be made available to the public.

MBA believes that even the fact of a pending investigation will harm a lender's reputation in the eyes of consumers. Any benefits of the proposal are not outweighed by the value of making such claims public.

As the proposal stands, a consumer could maliciously file a complaint and very possibly have it posted in the database without validation. This type of an approach fails to take into account the large number of frivolous complaints made every day against companies that are weeded out during an adjudication process or through a simple investigation. Just one or two unfounded complaints posted to the Internet can result in long-lasting damage to a company's reputation. Only posting of adjudicated complaints will avoid this injustice.

By not clearly prohibiting unadjudicated complaints from the process, the harm to lenders in increased costs and the damage to the marketplace will ultimately hurt the very consumers the SAFE Act seeks to protect.

MBA urges the SRR to revise this proposal to assure that states may only post and include information related to final adjudications to Consumer Access and prohibit states from publicizing pending investigations on the system.

We would like to meet with you at your earliest convenience about this very important matter. Please contact Ken Markison at (202) 557-2930 or [kmarkison@mortgagebankers.org](mailto:kmarkison@mortgagebankers.org).

Sincerely,

**California Mortgage Bankers Association  
Mortgage Bankers Association of Arkansas  
Colorado Mortgage Lenders Association  
Illinois Mortgage Bankers Association  
Mortgage Bankers Association of Kentucky  
Mortgage Bankers Association, National  
Maine Association of Mortgage Professionals  
Mortgage Bankers Association of Mississippi  
Ohio Mortgage Bankers Association  
Tennessee Mortgage Bankers Association  
Vermont Mortgage Bankers Association**

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<sup>2</sup> 12 USCA § 5102(7).

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September 20, 2011

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Tim Doyle  
Vice President  
State Regulatory Registry  
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Washington, DC 20036-3403

Dear Mr. Doyle:

Thank you for the opportunity to provide comments in connection with the “State Regulatory Registry’s (“SRR”) Request for Public Comments on “Reporting of State Regulatory Actions” (the “Reporting Function”) (herein, the “Request”) dated July 22, 2011. Below we have highlighted certain of the Policies, and provided some of our thoughts, comments and questions as to the Policies.

We recognize the stated purpose of SRR in developing the Reporting Function, but without clear guidance, sufficient controls, and respect for due process considerations, we have concerns that certain aspects of the proposed Reporting Function will unfairly castigate licensees and jeopardize their ability to engage in their business activities. As the regulatory enforcement actions taken by state regulators will become publicly available through Consumer Access, considerably more thought and consideration must go into this Reporting Function, given its potential for damaging the reputation of companies and individuals. Although licensed companies and individuals may successfully defend an unfounded enforcement action, their mortgage lending business may be critically harmed from having been publicly “tarred and feathered” prior to defending or appealing the action. We briefly comment on a few of the issues we see with the Reporting Function and the proposed Policies, and respectfully request the opportunity to expand on our comments at a later date.

As a general matter, we note that one of the stated goals of regulators in creating the Reporting Function is “to provide a central source of standardized information concerning enforcement actions taken by state mortgage regulators against companies and individuals.” However, the implementation of the Reporting Function as set forth in the Request indicates that the Reporting Function will stray far from the stated goal. As set forth in the Request, the Implementation Working Group (IWG) of the Conference of State Bank Supervisors (“CSBS”) and the American Association of Residential Mortgage Regulators (“AARMR”) recommend that “each state, based on their state statutes or regulations, determine which disciplinary or enforcement actions will be publicly available through the NMLS.” The Reporting Function will not provide a source of standardized information concerning

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reporting functions if states can decide which matters should be reported. For example, among others, we have seen some state regulators take the position that issues arising out of a routine examination must be reported on the NMLS, whereas other state regulators do not believe examination findings need to be so reported. If the goal is to provide a source for reporting standardized information regarding enforcement actions, then the states should be reporting the same information in the same manner. If the states are free to report whatever they deem reportable, we do not believe the goal of providing a standardized source of information concerning enforcement actions will ever be met. Below we comment on certain of the Policies, with the Policy set forth before our comments.

**1. Each state regulatory agency participating in the NMLS will be responsible for inputting their enforcement actions into the NMLS. All information will be managed by the state agency that took the action and only the state regulator can update or change information concerning a regulatory act posted to the NMLS by their agency. SRR will not verify, validate, or amend any of the enforcement actions entered through the NMLS.**

**2. Each state will determine when to post an action based on their prevailing statutes and regulations. Each state will determine which regulatory actions will be available to other regulators through the NMLS and those which will be publicly available through the NMLS Consumer Access based on the same statutes and regulations.**

With respect to Policies 1 and 2, as we indicated in our introductory comments, we have concerns with the extent in which state regulators would have free reign to post enforcement actions, without standardization, uniformity or consistency among the states as to the information posted. Moreover, enforcement actions or regulatory actions are not defined in the Request. Does this mean newly initiated actions, final actions that have been adjudicated, or actions on appeal before an administrative law judge? Will the regulatory actions posted be consistent with the Regulatory Disclosure questions on a licensee's MU1 form? Will a licensee have an opportunity to post a reply to the matter being made publicly available by a state on Consumer Access? Posting actions before all appeals have been heard and decided or otherwise resolved may present significant issues for companies and could be particularly destructive economically once the information is accessible through Consumer Access. The issue is no longer specific to the state of jurisdiction, but can affect the ability of a company to deal with borrowers in other states. The posting of enforcement matters on Consumer Access should be afforded more serious consideration, given the effect it could have on a company in the marketplace.

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**3. The reporting of regulatory actions by state regulators to NMLS will not be limited to those actions that are public. Functionality will include the ability for a regulator to input, at their discretion, information to be shared only among regulators or only among the employees of the agency.**

As indicated in the Request, the SAFE Act: “[p]rovides consumers with easily accessible information, at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against loan originators. 12 USCA § 5101(7). Moreover, for purposes of determining whether the state requirements for licensing mortgage loan originators meet the SAFE Act, the state loan originator supervisory authority is required, among other things, “to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.” *Id.* § 5107(d)(3). The state loan originator supervisory authority also must have “a process in place for challenging information contained in the [NMLS]”. *Id.* § 5107(d)(3).

Fulfilling the mandate of the SAFE Act requires reporting of publicly adjudicated disciplinary and enforcement actions against loan originators. While it remains unclear how one extrapolates this mandate to apply to companies and control persons, we are all the more perplexed as to the authority to report through the NMLS actions that have not been adjudicated and have not been made public. Congress, in drafting the SAFE Act, specifically referred to publicly adjudicated disciplinary and enforcement actions. This would ensure that the party subject to the action be given an opportunity for a fair hearing or trial before the matter is reported through the NMLS. We have had a number of clients that were unwittingly accused of matters in the MARI database and suffered irreparable reputation damage as a result. Likewise, HUD’s publicly announced “probe” of certain mortgagees approximately two years ago put companies out of business, despite no formal or informal allegation of wrongdoing.

It is grossly unfair for the regulators to share “private” information that may allege wrongdoing or violations of law that a licensee has not been afforded any opportunity to address and that may predispose other regulatory agencies to view the licensee in negative light or prompt another state to take action against the licensee. We are unclear as to the purpose that is served by not informing a licensee that a state has reported non-public information to other states. There is a “star chamber” feel to such proceedings that belies any notion of transparency that the NMLS has attempted to promote. It is not unfathomable that a single regulatory agency could have a dispute or grievance with a licensee in a particular state that easily could be the result of a miscommunication, misinterpretation or an informal policy position, and licensees disputing a matter with a state agency should not be at risk that other state agencies will also take action against the licensee without notice that the matter with the first state has been reported to other states. A licensee should know when an action,

Tim Doyle  
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allegation, investigation, speculation, probe or other type of inquiry by one state is being reported to another state. Moreover, the SAFE Act expressly provides that a process must be in place for challenging information contained in the NMLS, without distinguishing between public and private information. The Policies do not address how information in the NMLS can be challenged. A first step would be to not post information privately that will be shared among regulators without notice to the affected licensee.

In addition, we would like to know whether any entity, regulatory body or GSE, other than an NMLS participating state mortgage finance regulatory agency, is currently eligible or may be eligible in the future to obtain “regulator” access, and thereby be afforded access to “private” information

**4. Due to the importance of a consistent standard in the timeframe of posting actions, the MLPC recommends that the information should be posted promptly, but in no case more than 5 days after receipt of the final order by the state agency.**

The NMLS instructions require that a licensee update its record within 30 days. This has been generally accepted by most states as meeting the timing requirements for updating a licensee's NMLS record. Concerns have been raised that state regulatory agencies will create deficiencies on a licensee's record prior to its obligation to amend its NMLS record and provide an explanation and/or supporting documentation regarding regulatory matters. As licensees have 30 days to amend their NMLS account record to reflect new regulatory matters that need to be disclosed, state regulators should not post matters in advance of this 30 day period, or if actions are posted within 5 days, then no state should post a deficiency on a licensee's record until 30 days after taking the final action.

**5. In posting an enforcement action, a standardized set of information will be required to be completed by each regulator posting information. This set of information is outlined below and indicates the fields that will be viewable in *NMLS Consumer Access* for a publicly-viewable action.**

**Name of agency issuing the action (i.e. “Posted on behalf of...”)**

**Date of action**

**Docket Number (state assigned, if applicable)**

**Type of Order**

**Description of Order**

**Fine/Penalty Amount**

**Restitution Amount**

**Multi-state Case Number (NMLS assigned)**

**Action ID (NMLS assigned)**

**PDF attachments of orders and other relevant documents**



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It would be beneficial to provide the company/control person/mortgage loan originator the opportunity to also attach a PDF document for state regulators to review when they view the posting. Often a company prepared summary statement provides state regulators with sufficient information regarding a regulatory action item to avoid additional questions which could potentially hold up new applications for licensure.

The action should disclose whether it arises from a self-reported matter, as well as from an investigation, a routine examination, or a multi-state examination, as seems to be the case with this policy. If a company discovers fraud as part of its quality control review or pursuant to its own due diligence, it may be relevant to the public to know that the company self-reported the matter and fully cooperated with officials to bring responsible parties to justice.

**7. With regard to past actions against a licensee, the MLPC recommends that for companies, the actions should be posted on a go forward basis only and that actions taken against loan originators since the effective date of each state's SAFE Act became effective should be posted. However, revocations of a MLO license should be posted regardless of the date of the revocation.**

Will the date that the state is using as the effective date of their state specific SAFE Act be made known? We ask as some state specific SAFE laws have multiple effective dates. Moreover, the issue of whether an employee of a mortgage loan servicer needs to be licensed in a state to conduct loan modification activities and the effective date of such a licensing obligation varies by state. Will the states clearly provide an answer as to whether such loan modification employees must be licensed as mortgage loan originators, and the effective date of licensing before taking action against the individual for not being licensed? In addition, does this policy apply to the licensed company? Will actions only be posted on a going forward basis for the licensee? Will license suspensions or revocation of a license be posted regardless of the date of revocation? We have very serious concerns with linking an enforcement action against a licensee with a control person, as described below. If a decision is made to link state enforcement actions against a licensee with a control person, then such matters should only be linked on a going forward basis as an individual serving as a control person may have declined a position if the potential existed that past acts of the licensee could now haunt a new control person.

In addition, it is unclear whether linking the state enforcement action to a control person or a principal is a feature for the "private" aspect of the Reporting Function or whether it is intended to be posted through Consumer Access. Given that control persons and principals are not identified in Consumer Access, we trust that a licensee's control persons and principals would not be posted in Consumer Access. Assuming this is the case, it is unclear

Tim Doyle  
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how a control person or principal would know the extent to which his or her record is or is not linked to other records.

**8. All respondents named in an action will be included in the reporting to the System and the action will be tied to the record of the company and/or individuals named. States may link any Control Person or Principal's NMLS record to any action taken against the associated company.**

As stated above, we are not aware of any express authority under the SAFE Act to extend the reporting provision to parties other than mortgage loan originators. Setting aside the question of whether such authority exists, what basis does the NMLS have to create a nexus between an action taken against a company and an entity or individual that is not specifically named in the actual order? Moreover, does this policy apply to a person who was a control person of a licensee, but was not a control person of the licensee when the enforcement action occurred? Will this regulatory action then follow a control person through each employment change? Is there any way for a control person to have a regulatory action removed from the NMLS record once the person is no longer in the employ of the affected entity? Does a state have authority to do this under its state law, regardless of what the NMLS provides?

This aspect of the Reporting Function raises significant due process issues and we would like to know whether those issues have been addressed by counsel for the SRR. We have serious concerns about a person being “tied to the record” of company when that person may have no knowledge whatsoever of the enforcement action. With the wide application of the definition of control person under the NMLS, the various definitions of a control person on a state by state basis that reach beyond the licensee, and the absence of a definition for the term “principal” a great number of individuals will be caught up in the net because they may have been identified as a control person on the NMLS or by a state.

For licensing purposes, the definition of control person was defined to include a natural person with a 10 percent indirect ownership interest in a distant parent company of the licensee, even though the person has no ability or authority to actually control the management or day-to-day activities of the licensee. Under this policy, such a mere 10 percent distant, indirect, natural person, passive investor in a licensee will be linked to an action taken against his or her investment, regardless of whether this person actually controls the licensee. The same could hold true for outside directors, or officers of a parent company of a licensee that a state wants identified as a control person of the licensee. Under this policy, many individuals who are “presumed” to be control persons but otherwise have absolutely no authority to exercise control over a licensee’s activities and no knowledge of any state action would be harmed by linking the action to them on the NMLS. This policy not only extends well beyond the scope and intent of the reporting provisions of the SAFE Act, but also circumvents many of the administrative procedural requirements applicable to the

Tim Doyle  
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state mortgage finance licensing law, and possibly constitutional safeguards. We strongly urge reconsideration of this policy, or obtaining a legal opinion from counsel that the policy does not violate any law.

**9. A company or individual will be notified of the posting of a relevant regulatory action by a System-generated email and will be able to view in NMLS any publicly posted actions against it. On the composite main page for a company or individual record, the System shall provide a clear indication that the entity has or does not have any regulatory actions. When a company or individual user views a publicly-viewable action through NMLS Composite, the System shall display the fields which are viewable in NMLS Consumer Access.**

Although notification of postings provided to the affected company/individual is appreciated, we are concerned that state regulators will utilize this system as a way of providing notification to the company/individual of the regulatory action, rather than contacting the company directly in advance of the action posting or formally serving them with notice.

**Policies 10 and 11 are not discussed.**

**12. The term “action” or “regulatory action” includes disciplinary and enforcement regulatory actions brought against a company or individual and recorded by a state regulator.**

Clear guidance as to what would be considered an “action” or “regulatory action” is necessary as each state views this differently. Will these definitions be consistent with the NMLS Guidebook, or will there be a separate set of definitions that will cloud the issue of what is to be reported? For example, the NMLS Policy Guidebook for Licensees expressly provides that certain matters are not subject to the regulatory action disclosures, yet item number two (2) from the suggested Policies outlined in the memo provides that **“Each state will determine when to post an action based on their prevailing statutes and regulations.”** The last thing the NMLS needs is another set of definitions that would create more ambiguity as to what regulatory matters must be reported by licensees or the states.

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In addition to the above, we have a few additional questions not addressed in the July 22, 2011 memo:

- What recourse will companies/control persons/MLO's have in the event that something is filed in error? Should the state regulator be contacted directly? What if the state regulator is non-responsive?

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- Will the instructions be made clear to determine at what point is an “order” entered into the System? For example, often times you have a chance to respond to an order before the order becomes “final.”
- How long will the information remain in the NMLS? The regulatory action disclosure questions from Form MU1 are clear as to whether the report must include matters for the “past ten years.” Will the system get scrubbed regularly and items removed after ten years?

We welcome the opportunity to have submitted comments to the State Regulatory Registry’s Request for Public Comments on Reporting of State Regulatory Actions. We trust our comments provide some value in finalizing the proposed Policies. As you can see, we believe the proposed Policies raise a number of significant issues that merit further consideration. Please let us know if you have any questions. Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Costas A. Avrakotos", with a stylized flourish at the end.

Costas A. Avrakotos

# COMMUNITY MORTGAGE BANKING PROJECT

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September 20, 2011

Regulatory Actions Public Comments  
Attn: Tim Doyle, Vice President  
State Regulatory Registry  
Conference of State Bank Supervisors  
1129 20<sup>th</sup> Street, N.W.  
9<sup>th</sup> Floor  
Washington, D.C. 20036-3403

Dear Mr. Doyle:

These comments are being submitted to you on behalf of the Community Mortgage Banking Project's 45 independent mortgage banking company members.<sup>1</sup> We appreciate the opportunity to comment.

In preparing our comments we reviewed the Request for Public Comments, dated July 22, 2011 as well as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). We noted that Sec. 1502 of the SAFE Act encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Mortgage Regulators (AAMR) to "(3) Aggregate and improve the flow of information to and between regulators" and "(7) Provide consumers with easily accessible information." This Congressional direction is with respect to information regarding licensed or registered mortgage loan originators (MLOs).

The purpose of the SAFE Act is to set out a framework for a state-operated system of licensing of MLOs, coupled with a state-operated and federally controlled registration system for MLOs employed by federally insured depository institutions. Nowhere in the SAFE Act is an authorization for the posting or sharing of information on the Nationwide Mortgage Licensing System & Registry (NMLS) regarding mortgage-lending companies.

In fact Section 1513 of the SAFE Act provides a grant of civil immunity to any such entity, its officers and employees "...while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators." (Emphasis added). We note that this grant of immunity does not extend to information regarding mortgage lending companies. Thus the entity, its officers and employees retain full civil liability for any actions taken with respect to information regarding mortgage lending companies, regardless of whether

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<sup>1</sup> The Community Mortgage Banking Project is a public policy organization representing the interests of independent mortgage bankers. For decades, the community-based mortgage banker has delivered value and choice to consumers by leveraging local market expertise, quality service, and lower costs for borrowers. The CMBP supports financial market reforms that promote consumer access, borrower and investor transparency, local competition and choice, and a value added mortgage chain. For more information visit [www.communitymb.com](http://www.communitymb.com).

# COMMUNITY MORTGAGE BANKING PROJECT

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the action was in the course of their employment, or taken in good faith, though the latter may be a defense in a civil action.

We believe this is a clear indication of Congressional intent that NMLS was meant to provide consumers easily accessible information on licensed and registered MLOs and to permit the aggregation of, and improvement to, the flow of information to and between state regulators regarding licensed MLOs. Moreover, it is also clear that the sharing of information regarding mortgage lending companies is beyond the scope of the authority granted by the SAFE Act, and is certainly beyond the grant of immunity specified in the statute.

Finally, we strongly object to the sharing between the regulators of *non-public* information regarding companies on NMLS. A key component of any examination or regulatory action includes allegations of fact and violations of laws/rules, which may or may not be contested during settlement negotiations or in the final examination report. Lenders should be able to take comfort in the knowledge that preliminary exam findings, responses, communications and settlement negotiations are confidential and not subject to disclosure to other regulators and/or employees not directly participating in the underlying examination or proceeding. The ability for regulators to share information behind the scenes will have a chilling effect on post-exam reviews with senior management and on future settlement discussions due to the uncertainty regarding what information and how such information will be disclosed and/or used during in licensing applications and renewals and in future examinations.

With these foundational concerns as a backdrop, we would like to move to our specific comments on the proposal.

## Specific Comments

1. We object to the inclusion of any information in the NMLS system, whether viewable by the public or viewable by regulators only, on mortgage lending companies on the grounds that the inclusion of such information is beyond the scope of the SAFE Act, which is the basic authorizing legislation for the NMLS.
2. Should the State Regulatory Registry LLC (“SRR”) acting on behalf of the state regulatory agencies using NMLS, include company information we recommend the following:
  - a. That a mechanism be built into the NMLS to provide companies with 60 days written notice prior to posting any company information on the NMLS. Such notice shall include the specific details on the nature of the information to be posted, and whether it will be posted in the consumer access section or in a “regulator only” view of the NMLS;
  - b. That this mechanism provide companies the means, during the 60 day period of prior notice, to review and file comments on that information, including objections with the state regulator(s) proposing to file the company-specific information on NMLS. For an example of such a mechanism for disputing information posted on an electronic system, we direct your attention to a recent Securities and Exchange

**108 NORTH PAYNE STREET, ALEXANDRIA VA 22314**

# COMMUNITY MORTGAGE BANKING PROJECT

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Commission (SEC) Regulatory Notice, 10-34, and specifically pages 5 – 7, that set out how stock brokers and stock brokerage companies may dispute information concerning them that is posted on the Financial Industry Regulatory Authority's (FINRA) BrokerCheck website. BrokerCheck is a website accessible to the consumers where they can check the background of a stockbroker or stock brokerage companies. A copy of Regulatory Notice 10 – 34 is attached;

- c. That this opportunity to review and file comments extend both to information that is publicly viewable on NMLS as well as that information that will be viewable by regulators only;
  - d. That the information in the publicly viewable section of NMLS be limited to information on finally adjudicated matters only (i.e. matters that have resulted in a final judgment, decree or order);
  - e. That no information from company examinations, or any other regulatory action or consent agreement where the parties have agreed to keep the matter confidential, will be viewable on the public section of the NMLS;
  - f. That state regulators be encouraged to provide explanatory material to consumers on the severity of the company infractions so consumers can distinguish between minor and severe infractions;
  - g. Further that consumers be provided with explanatory information to the effect that each state determines, under its own law, what information is posted on NMLS regarding MLOs and mortgage lending companies and how it is posted. In addition consumers should be informed that state laws on reporting such information vary and that this lack of uniformity may lead to disparities in the information that each state posts on MLOs or mortgage lending companies that are licensed in, or operate in, more than one state.
3. We question the authority for the statement in #6 of the Request for Comments that a state regulator may "...post an action against a company or individual that is not state licensed or registered through NMLS." We see no authorization in the SAFE Act for the posting of such information. Is this statement meant to indicate that actions against companies that employ individuals who act as MLOs, but who are not licensed or registered, will be posted on the NMLS as well as the actions against those unlicensed/unregistered individuals as well? If that is the case then the statement should be clarified.
  4. We believe that this statement in item #9:  
 "A company or individual will be notified of the posting of a relevant regulatory action by a System-generated email and will be able to view in NMLS any publicly posted actions against it." falls well short of SAFE Act requirements, and must be revised before being made final. Section 1508(d)(4) of the SAFE Act states that in order for the Secretary to find that a State law meets the requirements of the

# COMMUNITY MORTGAGE BANKING PROJECT

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SAFE Act one of the findings must be: "The State loan originator supervisory authority has in place a process for challenging information contained in the Nationwide Mortgage Licensing System and Registry."

This SAFE Act provision does not draw any distinction between information in the publicly viewable area of NMLS and information in the area viewable only by regulators. The requirement extends to the entire NMLS. Therefore we respectfully request that the final version of this item be re-written to grant companies access to view and rebut all information regarding them that will be posted in NMLS with a 60 day prior notice as set forth in comment 2 a – 2 e above.

5. Item 12 in the Request for Public Comments sets out a definition for the terms "action" or "regulatory action" as including disciplinary or enforcement regulatory actions brought against a company or individual and recorded by a state regulator. We suggest amending that definition to include the phrase "finally adjudicated" to make it clear that no preliminary actions will be posted on the NMLS.

Thank you very much for the opportunity to comment. We will be happy to provide more detail or answer any questions you might have.

Sincerely,



Glen S. Corso  
Managing Director



# Regulatory Notice

## 10-34

### FINRA BrokerCheck

#### SEC Approves Changes to Expand the Information Released Through BrokerCheck and Establish a Process to Dispute (or Update) Information Disclosed Through BrokerCheck

**Effective Date—Historic Complaints and Dispute Process:**  
August 23, 2010

**Effective Date—Disclosure Period and Permanently Available Information:** November 6, 2010

#### Executive Summary

The SEC approved amendments to FINRA Rule 8312, which governs the release of information through BrokerCheck.<sup>1</sup> The amendments:

- (1) make publicly available in BrokerCheck all historic customer complaints that became non-reportable after the implementation of Web CRD;
- (2) permanently make publicly available in BrokerCheck information about former associated persons of a member firm, as reported to CRD on a uniform registration form if they were (a) convicted of or pled guilty or no contest to certain crimes; (b) subject to a civil injunction involving investment-related activity or found in a civil court to have been involved in a violation of investment-related statutes or regulations; or (c) named as a respondent or defendant in an arbitration or civil litigation in which they were alleged to have committed a sales practice violation, and which resulted in an award or civil judgment against them;
- (3) expand the BrokerCheck disclosure period for former associated persons of a member firm to 10 years from two years; and
- (4) codify FINRA's current process for disputing the accuracy of (or updating) information disclosed through BrokerCheck.

**July 2010**

#### Notice Type

- Rule Approval

#### Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management

#### Key Topics

- BrokerCheck
- BrokerCheck Dispute Process
- Central Registration Depository
- Historic Complaints
- Uniform Registration Forms

#### Referenced Rules & Notices

- FINRA Rule 8312

The amendments involving the public availability of historic customer complaints and the process for disputing the accuracy of information disclosed through BrokerCheck become effective on August 23, 2010. The effective date for the amendments pertaining to the expansion of the disclosure period for former associated persons and the permanent public availability of certain information about former associated persons of a member firm is November 6, 2010.

The text of the amendments to FINRA Rule 8312 is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or
- Stan Macel, Assistant General Counsel, Office of General Counsel, at (202) 728-8056.

## Background & Discussion

FINRA Rule 8312 governs the information FINRA releases to the public via BrokerCheck. FINRA established BrokerCheck (formerly known as the Public Disclosure Program) in 1988 to provide the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. Via BrokerCheck, FINRA releases to the public certain information reported on uniform registration forms to the Central Registration Depository (CRD® or Web CRD).<sup>2</sup> Among other things, BrokerCheck helps investors make informed choices about the individuals and firms with which they may wish to do business.

The SEC recently approved amendments to FINRA Rule 8312. As discussed in more detail below, the amendments:

- make publicly available in BrokerCheck all historic customer complaints that became non-reportable after the implementation of Web CRD;
- expand the BrokerCheck disclosure period for former associated persons of a member firm to 10 years from two years;
- permanently make publicly available in BrokerCheck certain information about former associated persons of a member firm if any of the following applies, as reported to CRD on a uniform registration form: (i) the person was convicted of or pled guilty or nolo contendere to a crime; (ii) the person was 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

- (iii) the person was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person; and
- codify FINRA's current process for disputing the accuracy of (or updating) information disclosed through BrokerCheck.

The amendments involving the public availability of historic customer complaints and the process for disputing the accuracy of information disclosed through BrokerCheck become effective on August 23, 2010. The effective date for the amendments pertaining to the expansion of the disclosure period for former associated persons and the permanent public availability of certain information about former associated persons of a member firm is November 6, 2010.

### Revisions Regarding Historic Customer Complaints

Pursuant to FINRA Rule 8312, Historic Complaints are customer complaints that were reported on a uniform registration form, 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. FINRA Rule 8312 currently provides that Historic Complaints be displayed in BrokerCheck only after the following conditions have been met: (1) a matter became a Historic Complaint on or after March 19, 2007; (2) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than 10 years old; and (3) 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. Unless all three conditions are met, a person's Historic Complaints are not disclosed through BrokerCheck.<sup>3</sup>

Effective August 23, 2010, FINRA will eliminate the conditions set forth in FINRA Rule 8312 that must be met before Historic Complaints will be displayed in BrokerCheck. Eliminating these conditions will result in the disclosure of all Historic Complaints via BrokerCheck that became non-reportable after the implementation of Web CRD (*i.e.*, on or after August 16, 1999).

In conjunction with this change, FINRA will simplify the process by which member firms may add or revise comments to, or otherwise update information pertaining to, Historic Complaints.<sup>4</sup> Currently, a member firm must contact FINRA and request that a Historic Complaint be “un-archived” if the member firm wants to change the information that it reported with respect to that Historic Complaint. After the member firm makes the necessary changes, the Historic Complaint is once again “archived,” if appropriate.

FINRA will simplify the process to amend Historic Complaints by allowing member firms to amend “archived” Historic Complaints without first contacting FINRA.<sup>5</sup> With this change, member firms will be able to amend Historic Complaints in the same manner that they currently amend other reported disclosure events.

### **Expansion of the Disclosure Period for Former Associated Persons and the Information Permanently Available in BrokerCheck**

Currently, as described in FINRA Rule 8312, BrokerCheck provides information regarding current and former member firms, as well as current associated persons and persons who were associated with a member firm within the preceding two years (*i.e.*, a two year “post-registration disclosure period”). In addition, BrokerCheck makes publicly available on a permanent basis certain information about former associated persons of a member firm who were the subject of a final regulatory action as defined in Form U4 that has been reported to CRD via a uniform registration form.

Beginning November 6, 2010, FINRA will expand the post-registration disclosure period to 10 years from two years. Furthermore, FINRA will permanently make publicly available in BrokerCheck certain information about former associated persons of a member firm who were registered on or after August 16, 1999, if any of the following applies, as reported to CRD on a uniform registration form: (1) the person was convicted of or pled guilty or *nolo contendere* to a crime;<sup>6</sup> (2) the person was 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>7</sup> or (3) the person was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person.<sup>8</sup>

FINRA will disclose through BrokerCheck information concerning any of the disclosure events described above, as well as certain administrative information (e.g., employment and registration history) and information as to qualification examinations, if available, regarding these formerly registered individuals. FINRA also will provide the most recently submitted comment, if any has been provided by the subject person, presuming the comment is in the form and in accordance with the procedures established by FINRA and relates to the information provided through BrokerCheck.

### BrokerCheck Dispute Process

FINRA occasionally receives telephonic and written inquiries from persons subject to BrokerCheck who believe that information disclosed about them through BrokerCheck is inaccurate. When FINRA receives these inquiries, FINRA typically reviews the alleged inaccuracy and, if appropriate, contacts the entity that reported the information to determine whether the information is accurate. Once FINRA obtains all of the available pertinent information, FINRA determines whether the information is still accurate or whether the information should be modified or removed from BrokerCheck.

Effective August 23, 2010, FINRA will enhance and codify this process, which will allow individuals and firms to dispute the accuracy of information displayed through BrokerCheck. The dispute process will be available both for challenges alleging the information was incorrect when filed and challenges asserting that the information has become incorrect due to events subsequent to filing.

Under the dispute process, only an “eligible party” will be able to dispute the accuracy of information disclosed in that party’s BrokerCheck report. An eligible party consists of any current member firm, any former member firm (subject to a condition discussed below), and any associated person of a member firm or person formerly associated with a member firm for whom a BrokerCheck report is available. With respect to former member firms, a dispute may be submitted only by a natural person who served as the former member firm’s Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Legal Officer or Chief Compliance Officer, or individual with similar status or function, as identified on Schedule A of Form BD at the time the former member firm ceased being registered with FINRA.

To dispute the accuracy of BrokerCheck information, an eligible party must submit a BrokerCheck Dispute Form, which will be available on FINRA’s website. The eligible party must identify the information that the party alleges is inaccurate and provide an explanation as to the reason the information is believed to be inaccurate. Additionally, the eligible party must submit with the BrokerCheck Dispute Form all available supporting documentation (if any exists).

After receiving the BrokerCheck Dispute Form, FINRA will determine whether the dispute is eligible for investigation. To be eligible for investigation, the dispute must pertain only to factual information and not to information that is subjective in nature or a matter of interpretation. FINRA will presume that a dispute involving factual information is eligible for investigation; however, the following non-exhaustive list of situations will be ineligible for investigation, even if they involve factual information:

- a dispute that involves information that was previously disputed under this process and that does not contain any new or additional evidence;
- a dispute that is brought by an individual or entity that is not an eligible party;
- a dispute that does not challenge the accuracy of information contained in a BrokerCheck report but only provides an explanation of such information;
- 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;
- a dispute that consists of a general statement contesting information in a BrokerCheck report with no accompanying explanation; and
- a dispute that involves information contained in CRD that is not disclosed through BrokerCheck.

If FINRA determines that a dispute is not eligible for investigation, it will notify the individual or firm of this determination in writing, including a brief description of the reason for the determination. A determination by FINRA that a dispute is not eligible for investigation is not subject to appeal.

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>9</sup> FINRA will evaluate the BrokerCheck Dispute Form and supporting documentation submitted by the eligible party. If FINRA concludes that the documentation submitted is sufficient to make a determination regarding the information that is the subject of the request, FINRA will make the appropriate change(s), if any. If, however, the BrokerCheck Dispute Form 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 CRD (*i.e.*, a firm, other regulator or FINRA department (the "reporting entity")) and request that the reporting entity verify that the information is accurate.<sup>10</sup> Where a reporting entity other than FINRA is involved, FINRA will defer to

that reporting entity regarding the accuracy of the information provided to FINRA and disclosed through BrokerCheck.<sup>11</sup> 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 will not change the information.

Upon making its determination, FINRA will notify the disputing eligible party in writing that the investigation resulted in a determination that (1) the information is inaccurate or not accurately presented and has been updated, modified or deleted; (2) the information is accurate in content and presentation and no changes have been made; or (3) the accuracy of the information or its presentation could not be verified and no changes have been made. In addition, FINRA will remove the dispute notation from the eligible party's BrokerCheck report. A determination by FINRA regarding a dispute, including a determination to leave unchanged or to update, modify or delete disputed information, will not be subject to appeal.<sup>12</sup>

## Endnotes

- 1 See Securities Exchange Act Release No. 62476 (July 8, 2010), 75 FR 41254 (July 15, 2010) (Order Approving File No. SR-FINRA-2010-012).
- 2 The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form).
- 3 In addition, even if a person meets the criteria established for disclosing Historic Complaints, only those Historic Complaints that became Historic Complaints after March 19, 2007, currently are displayed through BrokerCheck.
- 4 FINRA will also revise the customer dispute disclosure section of the BrokerCheck report to identify those customer disputes that were reported by a member firm as closed with no action, withdrawn, dismissed or denied. FINRA will continue to evaluate all aspects of its BrokerCheck program, including whether additional changes to the BrokerCheck report format should be implemented to make the reports easier to read and understand.
- 5 FINRA will continue to review all changes made to Historic Complaints to determine if further action is warranted.
- 6 In those circumstances where a dispute involves a court order to expunge information from BrokerCheck, FINRA will, as it does today, prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.
- 7 FINRA will not contact the reporting entity if the entity is unlikely to have information regarding the disputed information.
- 8 If the reporting entity obtained its information from a third party (*e.g.*, a firm reported to CRD that an associated individual had declared bankruptcy based on information from a consumer reporting agency), FINRA will not contact the third party (in this example, the consumer reporting agency) to try to verify the accuracy of the information. The reporting entity will have the responsibility of verifying the accuracy of the information it received from the third party.
- 9 Although FINRA determinations under the dispute process will not be subject to appeal, individuals and firms will continue to have the ability to challenge BrokerCheck information they believe to be inaccurate through other processes that are available today (*e.g.*, an arbitration or court proceeding).
- 10 This information is currently elicited by Questions 14A(1)(a) and 14B(1)(a) on Form U4 and Questions 7C(1) and 7C(3) on Form U5.
- 11 This information is currently elicited by Questions 14H(1)(a) and 14H(1)(b) on Form U4.
- 12 This information is currently elicited by Question 14I(1)(b) on Form U4 and Question 7E(1)(b) on Form U5.

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## Attachment A

New language is underlined; deletions are in brackets.

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### 8000. Investigations and Sanctions

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### 8300. Sanctions

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#### 8312. FINRA BrokerCheck Disclosure

(a) No Change.

(b) (1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below ~~f~~[F] or inquiries regarding a current or former member, a current associated person, or a person who was associated with a member within the preceding ten ~~ten~~ [two] years~~;~~, except as otherwise provided in paragraph (d) below, FINRA shall release:]

(2) The following information shall be released pursuant to this paragraph (b):

[(1)] (A) any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively “Registration Forms”);

[(2)] (B) currently approved registrations;

[(3)] (C) summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer;

[(4)] (D) the most recently submitted comment, if any, provided to FINRA by a person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included;

[(5)] (E) information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations;

[(6)] (F) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member is subject to the provisions of NASD Rule 3010(b)(2) (“Taping Rule”);

[(7)] (G) Historic Complaints (i.e., the information last reported on Registration Forms relating to customer complaints that are more than two (2) 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 \$10,000 prior to May 18, 2009 or an amount less than \$15,000 on or after May 18, 2009 and are no longer reported on a Registration Form), provided that any such matter became a Historic Complaint on or after August 16, 1999; and [:]

[(A) any such matter became a Historic Complaint on or after March 19, 2007;]

[(B) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and]

[(C) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after March 19, 2007), or any combination thereof; and]

[(8)](H) the name and succession history for current or former members.

(c) (1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below f[F]or inquiries regarding a person who [(1)] was formerly associated with a member, but who has not been associated with a member within the preceding ten [two] years, and:

(A) [(2)] was ever the subject of a final regulatory action as defined in Form U4 that has been reported to CRD on a Registration Form; or

(B) was registered with FINRA on or after August 16, 1999, and any of the following applies, as reported to CRD on a Registration Form:

(i) was convicted of or pled guilty or nolo contendere to a crime;

(ii) was 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

(iii) was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person.

[, except as provided in paragraph (d) below, FINRA shall release, to the extent available:]

(2) The following information shall be released pursuant to this paragraph (c):

(A) [(1)] information regarding the [final regulatory action] event(s) enumerated in paragraph (c)(1)(A) or (B) as reported on a Registration Form;

(B) [(2)] administrative information, including employment history and registration history derived from information reported on a Registration Form;

(C) [(3)] the most recently submitted comment, if any, provided to FINRA by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included; and

(D) [(4)] information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations.

For purposes of this paragraph (c), a final regulatory action as defined in Form U4 may include any final action, including any action that is on appeal, by the SEC, the 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 (as those terms are used in Form U4).

(d) No Change.

(e) Eligible parties may dispute the accuracy of certain information disclosed through FINRA BrokerCheck pursuant to the administrative process described below:

(1) Initiation of a Dispute

(A) The following persons (each an “eligible party”) may initiate a dispute regarding the accuracy of information disclosed in that eligible party’s BrokerCheck report:

(i) any current member;

(ii) 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 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

(iii) any associated person of a member or person formerly associated with a member for whom a BrokerCheck report is available.

(B) To initiate a dispute, an eligible party must submit a written notice to FINRA, in such manner and format that FINRA may require, identifying the alleged inaccurate factual information and explaining the reason that such information is allegedly inaccurate. The eligible party must submit with the written notice all available supporting documentation.

## (2) Determination of Disputes Eligible for Investigation

(A) FINRA will presume that a dispute of factual information is eligible for investigation unless FINRA reasonably determines that the facts and circumstances involving the dispute suggest otherwise.

(B) If FINRA determines that a dispute is eligible for investigation, FINRA will, except in circumstances involving court-ordered expungement, add a general notation to the eligible party’s BrokerCheck report stating that the eligible party has disputed certain information included in the report. The notation will be removed from the eligible party’s BrokerCheck report upon resolution of the dispute by FINRA. In disputes involving a court order to expunge information from BrokerCheck, FINRA will prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.

(C) If FINRA determines that a dispute is not eligible for investigation, it will notify the eligible party of this determination in writing, including a brief description of the reason for the determination. A determination by FINRA that a dispute is not eligible for investigation is not subject to appeal.

(3) Investigation and Resolution of Disputes

(A) If FINRA determines that the written notice and supporting documentation submitted by the eligible party is sufficient to update, modify or remove the information that is the subject of the request, FINRA will make the appropriate change. If the written notice and supporting documentation do not include sufficient information upon which FINRA can make a determination, FINRA, under most circumstances, will contact the entity that reported the disputed information (the “reporting entity”) to the Central Registration Depository and request that the reporting entity verify that the information, as disclosed through BrokerCheck, is accurate in content and presentation. If a reporting entity other than FINRA is involved, FINRA will defer to the reporting entity about whether the information received is accurate. 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 confirms that the information is accurate in content and presentation or the reporting entity no longer exists or is otherwise unable to verify the accuracy of the information, FINRA will not change the information.

(B) FINRA will notify the eligible party in writing that the investigation has 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.

(C) A determination by FINRA, including a determination to leave unchanged or to modify or delete disputed information, is not subject to appeal.

Existing paragraph (e) to be re-designated as paragraph (f).

• • • Supplementary Material: -----

.01 No Change.

**.02 Disputes Not Eligible for Investigation.** For purposes of paragraph (e) of this Rule, examples of situations in which FINRA will determine that a dispute is not eligible for investigation include, but are not limited to:

(a) a dispute that involves information that was previously disputed under this process and that does not contain any new or additional evidence;

(b) a dispute that is brought by an individual or entity that is not an eligible party;

(c) a dispute that does not challenge the accuracy of information contained in a BrokerCheck report but only provides an explanation of such information;

(d) 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;

(e) a dispute that consists of a general statement contesting information in a BrokerCheck report with no accompanying explanation; and

(f) a dispute that involves information contained in the Central Registration Depository that is not disclosed through BrokerCheck.

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