

FINRA Rule 8312: *FINRA BrokerCheck Disclosure* Analysis by Bill Singer, *BrokeAndBroker.com Blog*

Bureaucracies love to promulgate rules. Rules that you must comply with. Rules that the bureaucrats enforce. Rules that will cost you big bucks in terms of fines. The thing is that those who draft the rules have a penchant for overly complicating simple propositions through the use of paragraphs, subparagraphs, parts, subparts, footnotes, and supplementary commentary. Such artifice renders it virtually impossible for anyone to ever quite understand what a given rule says and what it means. Not that I'm suggesting that there is an intelligence behind all this obfuscation but, you know, the more confused folks are about rules, the more violations occur, and, gee, go figure, the more gotcha fines the bureaucrats get to collect. Quite the cottage industry, no? In the end, you have to wonder whether it's all about regulation or building a toll road.

Saying It Concisely: Proof That It Can Be Done

Let's start with the proposition that Wall Street regulators have the in-house ability to draft clear, concise, and intelligible rules. For example, the Financial Industry Regulatory Authority operates the *BrokerCheck* disclosure system subject to the self-regulatory organization's Rule 8312, which is a prime example of how a fairly simple proposition is transformed by bureaucrats into an indecipherable swamp. We know that FINRA had the ability to write a readable and understandable Rule 8312 because the self-regulator published this commendable nugget of an explanation:

Pursuant to 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 10 years. In addition, *BrokerCheck* makes publicly available on a permanent basis information about former associated persons of a member firm who have not been associated with a member firm within the preceding 10 years, and (a) were ever the subject of a final regulatory action, or (b) were registered on or after August 16, 1999, and were (i) convicted of or pled guilty or nolo contendere to a crime; (ii) 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 (Civil Judicial Disclosures); or (iii) named as a respondent or defendant in an investment-related 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.

Beginning on June 23, 2014, FINRA will expand the categories of Civil Judicial Disclosures that are permanently included in *BrokerCheck*. Specifically, FINRA will permanently make publicly available in *BrokerCheck* information about former associated persons of a member firm who were registered on or after August 16, 1999, and who have been the subject of an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement, as reported to the CRD system via a uniform registration form.⁴

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FINRA will disclose through BrokerCheck information concerning such settlements, administrative information (e.g., employment and registration history), and information as to passed qualification examinations regarding these formerly registered individuals. FINRA also will provide the most recently submitted comment, if any has been provided by the formerly registered individual, presuming the comment is in the form, in accordance with the procedures established by FINRA, and relates to the information provided through BrokerCheck.

At Page 2 of "FINRA BrokerCheck SEC Approves Changes to Expand the Categories of Civil Judicial Disclosures Permanently Included in BrokerCheck and to Include in BrokerCheck Information About Member Firms and Their Associated Persons of Any Registered National Securities Exchange That Uses the CRD System for Registration Purposes Effective Date: June 23, 2014" (FINRA Regulatory Notice 14-08, February 2014).

Although the title of FINRA Regulatory Notice 14-08 is somewhat laughable, the three-paragraph extract above is concise, well-written, and intelligible. You may need to re-read it once or twice but it conveys the sum and substance of FINRA Rule 8312. There is no paragraph (a), (b) or (c). There is no subparagraph (1), (2) or (3). There is no subpart (A), (B) or (C). There isn't any sub-subpart (i), (ii) or (iii). Sadly, when you read the muddy mess that FINRA published below, you may be dazzled by the dark beauty of the regulator's wordsmithery.

FINRA Rule 8312: FINRA BrokerCheck Disclosure

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, FINRA shall release through FINRA BrokerCheck information regarding:

Bill Singer's Comment: The bulk of FINRA's release of *BrokerCheck* information occurs when someone logs on to the self-regulator's *BrokerCheck* website, enters search terms, and reviews the results; or, in response to calls to the regulator's 800 number. Why does the Rule pretend that FINRA acts as a rigid gatekeeper reviewing inquiries before releasing information from its locked, hidden, encrypted *BrokerCheck* vault?

Then there's the whole thing about responding to written, electronic or telephonic inquiries: Which begs the question as to the other form of inquiry exists. Beyond written, electronic, and telephonic forms of inquiry, what is it that FINRA will not respond to? Perhaps someone driving by FINRA's offices and yelling out queries from a car?

(1) a current or former FINRA member or a current or former member of a registered national securities exchange that uses the Central Registration

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Depository ("CRD") for registration purposes ("CRD Exchange") (collectively, "BrokerCheck Firms"); or

(2) a current or former associated person of a BrokerCheck Firm.

Bill Singer's Comment: What we just learned from Rule 8312(a)(1) and (2) is that in response to queries, FINRA will disclose information about current/former FINRA member firms and their current/former associated persons. Did we really need a paragraph, a subparagraph, and two enumerated subparts to convey that minimal information?

(b)

(1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below for inquiries regarding a current or former BrokerCheck Firm, a person currently associated with a BrokerCheck Firm, or a person who was associated with a BrokerCheck Firm within the preceding ten years.

Bill Singer's Comment: It's hard not to feel some sympathy for that poor letter "b" just left hanging out there in the Rule 8312 margin,

As you begin to read Rule 8312(b)(1), you are immediately greeted with an admonition to stop dead in your tracks and detour to Rule 8312(d) and Rule 8312(b)(2), neither of which you have read yet. Not the best form of rule drafting to begin at Point A, then immediately reference Point C and then Point B, and then return the reader to Point A.

8312(b)(1) states that FINRA will release information about current/former BrokerCheck firms and their current/former associated persons, and for persons who were associated with a BrokerCheck firm within the past ten years. That means you're still subject to disclosure even if you left the business ten years ago. Of course, I'm still trying to figure out just exactly what is meant by a "BrokerCheck Firm." It's not a FINRA member firm, mind you, but a BrokerCheck Firm. When exactly did BrokerCheck become a FINRA member organization? Did I miss some Notice to Members or a new SEC-approved rule?

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

(A) any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively "Registration Forms");

Bill Singer's Comment: Rule 8312(b)(2)(A) informs us that FINRA will release "any" information as "most recently filed" on

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five specified registration forms. As such, word to the wise, stay on top of the forms and make sure that they are promptly amended and updated.

(B) currently approved registrations;

(C) summary information about certain arbitration awards against a BrokerCheck Firm involving a securities or commodities dispute with a public customer;

(D) 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;

Bill Singer's Comment: Rule 8312(b)(2)(D) is an often overlooked bit of ammunition for associated persons fighting back against unfair or untrue allegations. This is your shot to submit a comment relating to *BrokerCheck* information. Do you get to submit whatever you desire on whatever topic you wish? No. Your comment has to be in accordance with FINRA's dictates. Although your former firm and various regulators seem to have unfettered rights to pile on their negative comments about you, only your "most recently submitted comment" will find its way onto *BrokerCheck*. As such, your "next" comment may push a prior comment out of the queue. Be careful when you submit any updated, revised, or amended comments.

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

Bill Singer's Comment: Registration examination takers who either fail or score a relatively low number are often embarrassed by the disclosure of their shortcomings. Rule 8312(b)(2)(E) is a bone tossed to associated persons by FINRA, which discloses that you passed an exam but not the actual score or any failures.

(F) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member is subject to the provisions of Rule 3170 ("Taping Rule");

Bill Singer's Comment: [*FINRA Rule 3170: Tape Recording of Registered Persons by Certain Firms*](#) is designed to monitor the

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flow of personnel from "disciplined firms," which have been expelled from FINRA membership or had their registrations revoked. As a prophylactic measure, the *Taping Rule* mandates recordings by member firms who employ a specified number of registered persons who had been associated with a disciplined firm within the prior three years. Despite this pro-consumer initiative, FINRA will only disclose whether a member firm is subject to its *Taping Rule* in response to phone calls via a number listed on its *BrokerCheck* website? Reminds me of online brokerage firms requiring their disgruntled customers to telephone a Helpline, which greets you with 20 minutes of terrible hold-music, then requires you to punch in various numbers, then puts you on hold again, then puts you in touch with someone who has no idea of your name, account number, or the nature of your complaint. If you ask for a supervisor, it's amazing how often your call is disconnected . . . by accident . . . yeah, sure.

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

Bill Singer's Comment: Now that's one hell of an opening parenthesis - can you find where it ends? Can you also find Waldo the FINRA regulator?

Let's step slowly through what constitutes "Historic Complaints" that are posted BrokerCheck. FINRA limits so-called "Historic Complaints" to matters that satisfy the definition on or after August 16, 1999. Such matters relate to:

1. customer-complaint information last reported on registration forms;
2. said complaints must be over two years old; and, finally,
3. these customer complaints are in limbo to the extent that they have not settled or gone to an adjudication.

If a customer complaint settled or became an arbitration or litigation that also settled, then such matters become "Historic Complaints" only if they settled for less than \$10,000/\$15,000 before/on or after May 18, 2009 respectively.

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Separate and distinct from the *BrokerCheck* policies are those promulgated for the [Uniform Application for Securities Industry Registration or Transfer](#) ("Form U4"), which asks under Item 14I, under the heading "Customer Complaint/Arbitration/Civil Litigation Disclosure:

1) Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which:

- (a) is still pending, or;
- (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;
- (c) was settled, prior to 05/18/2009, for an amount of \$10,000 or more, or;
- (d) was settled, on or after 05/18/2009, for an amount of \$15,000 or more?

2) Have you ever been the subject of an investment-related, consumer-initiated (written or oral) complaint, which alleged that you were involved in one or more sales practice violations, and which:

- (a) was settled, prior to 05/18/2009, for an amount of \$10,000 or more, or;
- (b) was settled, on or after 05/18/2009, for an amount of \$15,000 or more?

(3) Within the past twenty four (24) months, have you been the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported under question 14I(2) above, which:

- (a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or;
- (b) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?

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Note that the Form U4 asks about customer complaints "within the past twenty four (24) months" whereas Rule 8312 references "customer complaints that are more than two (2) years old." Think of Rule 8312 as something of a mirror image of the U4 item. Anyone remember *Bizarro World* from *Superman*?

(H) the name and succession history for current or former BrokerCheck Firms.

(c)

(1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below for inquiries regarding a person who was formerly associated with a BrokerCheck Firm, but who has not been associated with a BrokerCheck Firm within the preceding ten years, and:

Bill Singer's Comment: Again, we got a lonely paragraph letter "c" hanging all by itself in the margin. Why don't you at least say "hi" to Rule 8312(c)?

Sadly, no sooner do we come upon 8312(c) then we are directed to the still unread Rule 8312(d). Not the first time the drafters of this Rule made us stop and look ahead before continuing. Rule 8312(c)(1) is a frequent point of friction. All of the information that we painstakingly listed in 8312(a) and (b) will be released about you notwithstanding that you left the biz two, three, four, and up to ten years ago! That ten-year-trailing-legacy attaches if you satisfy the (A) and (B) provisions at the end of Rule 2312(c)(1).

At first blush, you may wonder just what is the difference between the provision of Rule 8312(b) and those to be presented in (c). It's a subtle difference but a very important one. 8312(c) only pertains to individuals who have "not been associated with a BrokerCheck Firm within the preceding ten years."

Reading through 8312(a), (b), and (c) we find that the disclosure moves from current to former to within-ten-years-former to beyond-ten-years-former associated persons. When you get to releasing information about folks who have been out of the biz for more than ten years, now we're talking about permanent disclosure because the endpoint is "more than ten years" but there is not cut-off such as "but not to exceed fifteen years."

Frankly, there are many bad actors who left Wall Street or were forced out of the industry and in their next incarnation. they become predators targeting vulnerable consumers. To the extent that you can look up someone's FINRA track record for a decade after they left that arena, it

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may serve as a warning against trusting that individual when they are pitching you a too-good-to-be-true investment opportunity.

Now, let's see what satisfies the all-important "and" at the end of Rule 8312(c)(1), which results in permanent disclosure after ten years out of the industry.

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

Bill Singer's Comment: You need to be a "subject" of a final regulatory action, which was reported to CRD.

(B) was registered with FINRA or a CRD Exchange on or after August 16, 1999, and any of the following applies, as reported to the CRD system 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, a civil court finding of involvement in a violation of any investment-related statute or regulation, or an investment-related civil action brought by a state or foreign financial regulatory authority that was dismissed pursuant to a settlement agreement; 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.

Bill Singer's Comment: Disclosure occurs if you were convicted of a crime, or if you pled guilty or pled *nolo contendere* to a crime. Disclosure also attaches for those civilly enjoined in connection with investment-related activity; and if a civil court found that you were involved in investment-related violations of statute/regulation. Similarly, disclosure occurs if you were the subject of a state/foreign regulatory settlement involving investment-related civil actions. Finally, disclosure continues if you were named as a respondent/defendant in an investment-related-consumer-initiated arbitration/litigation that resulted in an award/judgment against you and had alleged that you were personally involved in the cited sales practice violation.

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Now that you qualify for so-called permanent disclosure, let's consider what is forever provided to inquiring minds.

- (2) The following information shall be released pursuant to this paragraph (c):
- (A) information regarding the event(s) enumerated in paragraph (c)(1)(A) or (B) as reported on a Registration Form;
 - (B) administrative information, including employment history and registration history derived from information reported on a Registration Form;
 - (C) 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) 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).

Bill Singer's Comment: If you're an associated person, you read Rule 8312(d) and weep; if you're a public customer, read it and rejoice. BrokerCheck discloses final regulatory actions and a host of criminal, injunctive, and civil litigation matters as spelled out in Rule 8312(c)(1)(A) and (B). Add to that mix the associated person's employment and registration histories and any "most recently submitted comment" plus passed examinations.

Also note that a "final regulatory action" is further defined as including "any action on appeal" by specified regulators. This strikes some industry participants as unfair because if the matter is being appealed by a regulator, such circumstance typically means that the associated person prevailed below and is still being treated, in some sense, as "guilty."

(d) FINRA shall not release:

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(1) information reported as a Social Security number, residential history, or physical description, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority;

(3) "Internal Review Disclosure" information reported on Section 7 of the Form U5;

(4) "Reason for Termination" information reported on Section 3 of the Form U5;

(5) events reported on Section 7 of the Form U5 (other than an "Internal Review Disclosure" event) for three business days after FINRA's processing of the filing. However, if an event is reported on Form U5 and the same event is thereafter reported on Form U4 prior to the expiration of the three-business-day period, FINRA will release the Forms U4 and U5 information simultaneously upon processing. Under such circumstances, the three-business-day period may be curtailed;

(6) the most recent information reported on a Registration Form, if:

(A) FINRA has determined that the information was reported in error by a BrokerCheck Firm, regulator or other appropriate authority;

(B) the information has been determined by regulators, through amendments to the uniform Registration Forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred;

(7) information provided on Schedule E of Form BD.

Bill Singer's Comment: Make sure that you are aware of what FINRA is not supposed to disclose via *BrokerCheck*. Certain information that could be used to facilitate identity theft is excluded from disclosure. Section 7 information on the [Uniform Termination Notice for Securities Industry Registration](#) ("Form U5"), which tends to disclose subjects of investigations or internal reviews; criminal charges, convictions, or pleas;

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regulatory actions; investment-related, consumer-initiated sales practices complaints; and termination involving allegations of misconduct. Note that Rule 8312(d)(5) provides a three-business-day embargo before the release of U4/U5 processed information (subject to FINRA's discretion to release earlier). Similarly, note that under Rule 8312(d)(6)(A) there will be no release of "recent information reported on a Registration Form if FINRA deems said information to have been reported in error.

(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 BrokerCheck Firm;

(ii) any former BrokerCheck Firm, provided that the dispute is submitted by a natural person who served as the former BrokerCheck 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 BrokerCheck Firm ceased being registered with FINRA or a CRD Exchange; or

(iii) any associated person of a BrokerCheck Firm or person formerly associated with a BrokerCheck Firm 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

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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 CRD system 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

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(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.

Bill Singer's Comment: Rule 8312(e) allows Eligible Parties to pursue a grievance procedure in a "manner and format that FINRA may require."

See a copy of FINRA's "BrokerCheck Dispute Form."

Submitted disputes must plead your case with specificity as to what you allege is erroneous and why, and you must submit **WITH** said notice "all available supporting documentation." In other words, you have to move quickly, in writing, and not merely file a notice of your concerns but argue your entire case.

In what I find to be an overly ominous and excessively threatening tone, the *BrokerCheck Dispute Form* requires that you acknowledge that:

I understand that FINRA will consider any BrokerCheck Dispute Form submitted to be a communication to FINRA and, as such, to be conduct covered by FINRA Rule 2010, which requires members to observe just and equitable principles of trade and high standards of commercial honor. Accordingly, FINRA will consider disciplinary or other appropriate action against an individual or firm that, for example, willfully makes a false or misleading statement in a BrokerCheck Dispute Form.

Not having done enough to intimidate those who have genuine grievances concerning *BrokerCheck* disclosures, FINRA then announces this fairly user-unfriendly protocol for submitting your forms:

Please mail this signed form along with all supporting documentation to:

**Registration and Disclosure-Regulatory Review and Disclosure (RR&D)
FINRA
9509 Key West Avenue**

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Rockville, Maryland 20850-3329

FINRA will not accept requests sent via facsimile.

**Questions: Call FINRA's Gateway Call Center at (301)
590-6500**

Seriously? BrokerCheck is an online database but you have to snail-mail in your forms and you can't even use that quaintly outdated fax transmission. And, oh, by the way, you can telephone with any questions about filing the *BrokerCheck Dispute Form* but you still can't send it in via email or through the convenience on an online interface. Once you print out the form, what the hell are you supposed to do with this hard copy? Anyone still have a typewriter? Do the geniuses at FINRA really lack the imagination and ability to design an online interface by which you could electronically fill out this form? Would the regulatory world crumble if FINRA were to accept disclosure disputes by way of emails submissions with attached PDF files of its forms or via a secure, online interface?

(f) Upon written request, FINRA may provide a compilation of information about FINRA members, subject to terms and conditions established by FINRA and after execution of a licensing agreement prepared by FINRA. FINRA may charge commercial users of such information reasonable fees as determined by FINRA. Such compilations shall consist solely of information selected by FINRA from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the SEC.

Bill Singer's Comment: *Ka-Ching! Ka-Ching!* If you want a compilation of information about FINRA members, you have to execute a licensing agreement and be prepared to pay "reasonable fees as determined by FINRA." Not, mind you, a "reasonable fee" but one that FINRA gets to say is reasonable. The compilations are only drawn from "information that is otherwise publicly available from the SEC.

*** Supplementary Material: -----

.01 Availability and Format of Information Regarding Persons Associated with a Member Prior to 1999. Certain types of information about some persons formerly associated with a member, but who have not been associated with a member since January 1, 1999, may not be available through BrokerCheck. Types of information that may be unavailable for these persons may include the following: administrative information (e.g., employment and registration history) and information as to qualifications examinations. In addition, FINRA may release a composite report that includes information from multiple Registration Forms for such persons.

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Bill Singer's Comment: If you haven't been associated with a FINRA member firm for about 18 years, "certain types" of information about you may not be available through *BrokerCheck*. Wow, there's a bonus!

.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 CRD system that is not disclosed through *BrokerCheck*.

.03 Availability of Information Regarding Firms and Associated Persons Registered Exclusively With a CRD Exchange. Information about firms and associated persons that have been registered exclusively with a CRD Exchange is available through *BrokerCheck* only if the firm or associated person has been registered with a CRD Exchange on or after August 16, 1999.

Conclusion

I stop at this point out of exhaustion. I offer this admission: After 35 years on Wall Street, after 32 years of practicing law, after a career in which I was employed as an industry regulatory attorney and an in-house lawyer and as counsel to both public customers and industry clients, I still can't quite explain Rule 8312 or have confidence that I have broken its baffling code. And it's not just Rule 8312, it's many if not most of FINRA's rules -- and that of all the other regulators.

The problem is that I am a veteran industry lawyer. FINRA's rules are not supposed to be written for lawyers. The rules are supposed to be written for associated persons, most

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of whom lack law school training. You may laugh at my above exercise in translating bureaucratic doublespeak. You may blow off my effort as hyperbole and grandstanding. To some extent, I will concede the point. On the other hand, go ahead, take your best shot. You explain Rule 8312 to a random associated person. We're all listening.