

Restricted Firms

FINRA Adopts Amendments to FINRA Rule 8312 to Release Information on BrokerCheck Relating to Designation as a Restricted Firm

Effective Date: June 1, 2023

Summary

FINRA has adopted amendments to Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular current or former member firm is currently designated as a Restricted Firm pursuant to FINRA Rules 4111 (Restricted Firm Obligations) and 9561 (Procedures for Regulating Activities Under Rule 4111).¹

The new rule amendments become effective on June 1, 2023.

The amended rule text is available in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Kosha Dalal, Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-6903 or [email](#); or
- ▶ Michael Garawski, Associate General Counsel, Office of General Counsel, at (202) 728-8835 or [email](#).

Background & Discussion

Rule 4111 (Restricted Firm Obligations) is designed to protect investors and the public interest by strengthening tools available to FINRA to address the risks posed by member firms with a significant history of misconduct. The rule establishes an annual process to identify and designate as Restricted Firms member firms that present a high degree of risk to the investing public. This multi-step, annual process imposes on Restricted Firms a Restricted Deposit Requirement² or, in addition or in the alternative, conditions or restrictions on the member firm's operations that are necessary or appropriate to protect investors and the public interest.³ FINRA believes the rule also creates incentives for member firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm.⁴ Rule 9561 establishes an expedited proceeding to implement Rule 4111.

May 2, 2023

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations

Key Topics

- ▶ BrokerCheck
- ▶ Restricted Firms

Referenced Rules & Notices

- ▶ FINRA Rule 4111
- ▶ FINRA Rule 8312
- ▶ FINRA Rule 9559
- ▶ FINRA Rule 9561
- ▶ Information Notice 2/1/22
- ▶ Regulatory Notice 21-34

Rules 4111 and 9561, as well as related amendments to FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), became effective on January 1, 2022.⁵ The first annual Rule 4111 process, which used a June 1, 2022, Evaluation Date, commenced in July 2022.⁶

BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary history to investors at no charge.⁷ FINRA requires member firms to inform their customers of the availability of BrokerCheck.⁸ To enhance the investor-protection benefits of Rule 4111, FINRA has amended Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561. Releasing this information will alert investors to research more carefully the background of the firm. It also will create additional incentives for firms with a significant history of misconduct to change behaviors and activities to reduce risk.

Information that a firm is a Restricted Firm will display on BrokerCheck on a firm's summary and detailed BrokerCheck reports while that firm is designated as a Restricted Firm.⁹

The amendments to Rule 8312 become effective on June 1, 2023, which is also the Evaluation Date for the second annual Rule 4111 cycle. After the effective date of the new rule amendments, FINRA will release the relevant information on BrokerCheck beginning with the firms that are designated or re-designated as Restricted Firms in the second annual Rule 4111 cycle.

Endnotes

1. See Securities Exchange Act Release No. 96798 (February 3, 2023), 88 FR 8494 (February 9, 2023) (Order Approving File No. SR-FINRA-2022-015).
2. See Rule 4111(i)(15) (definition of “Restricted Deposit Requirement”).
3. See Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925, 42932 (August 5, 2021) (Order Approving File No. SR-FINRA-2020-041, as Modified by Amendment Nos. 1 and 2 (“Rule 4111 Order”); *see also* Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 49589 (September 3, 2021) (Order Approving File No. SR-FINRA-2020-041) (Correction).
4. See Rule 4111 Order, 86 FR 42925, 42926, 42932.
5. See [Regulatory Notice 21-34](#) (September 2021).
6. See Rule 4111(i)(5) (definition of “Evaluation Date”); [Information Notice 2/1/22](#) (FINRA Announces Rule 4111 (Restricted Firm Obligations) Evaluation Date).
7. The BrokerCheck website address is <https://brokercheck.finra.org>.
8. See FINRA Rules 2210(d)(8) and 2267.
9. The information also will be displayed on BrokerCheck during the course of any Rule 9561 expedited proceeding to review a Department of Member Supervision (“Department”) decision that designates a firm as a Restricted Firm, because the effectiveness of the Department decision will not be stayed during a Rule 9561 expedited proceeding. See Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements). However, when a firm has requested a hearing in a Rule 9561 expedited proceeding, the firm’s BrokerCheck reports also will indicate, while the expedited proceeding is pending, that the firm’s Restricted Firm designation is on appeal.

Attachment A

New and Amended Rule Text

New language is underlined; deletions are in brackets.

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Text of New FINRA Rule

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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) No Change.

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

(A) through (F) No Change.

(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]

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

(l) information as to whether a particular current or former member is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561.

(c) through (g) No Change.

••• Supplementary Material: -----

.01 through .03 No Change.

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