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If the SEC Knows It, Should You?

Should investors have access to the same information as regulators when reviewing a financial adviser's work record? A recent Securities and Exchange Commission staff study says maybe they should.

At issue is the Central Registration Depository, or CRD, a database about brokers and brokerage firms that is used by the Financial Industry Regulatory Authority, or Finra, the SEC and state regulators.

The data in the depository comes from forms the industry uses for licensing and disciplinary actions, among other things. Securities firms can view information about applicants, as well as current and former employees.

Investors can access some of the CRD data—but not all of it—through Finra's BrokerCheck online service.

The SEC study suggests that all the information in CRD and a similar SEC database for registered investment advisers, the Investment Adviser Registration Depository, be made publicly available. The study, which was required by the Dodd-Frank Act, recommends getting input from investors about the possible disclosure expansion by January 2012.

Information available via CRD, but not BrokerCheck, includes explanations of certain broker terminations and criminal charges that didn't result in convictions. CRD also includes details that brokers and firms are no longer required to report, such as formerly outstanding judgments and liens that have since been paid and bankruptcy proceedings filed more than 10 years ago.

Those details "could be material to an investor's decision about whether to hire, fire or pursue a legal action against a broker," says Raymond Moss, a lawyer for Sims Moss Kline & Davis LLP in Atlanta.

Finra says it has been expanding the scope of publicly available information since it launched its public-disclosure program in 1988. The records of brokers who leave the industry are now available on BrokerCheck for 10 years instead of two. Information about criminal convictions and certain civil judgments and arbitration rulings are now permanently available, as are final regulatory actions against brokers, such as bars, suspensions and fines imposed by multiple regulators.

Amid the push for additional disclosure, the privacy rights of financial advisers have become a concern.

Some information isn't relevant to customer relationships and shouldn't be made public, says Richard Roth, a securities lawyer for The Roth Law Firm in New York. For example, disclosing that a broker was terminated for creating a hostile work environment for women is "not relevant to whether he's a good adviser," says Mr. Roth.

Advisers also worry about trumped-up charges. "It's relatively easy to load up disclosures with baseless arbitrations and comments from firms that decide to play dirty when someone gets fired," says Patrick Burns, who heads the Law Offices of Patrick J. Burns Jr., PC in Beverly Hills, Calif. Trying to remove that information is often difficult to impossible, he says.

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