

REPLY TO: CORPORATE OFFICES

FINRA Background Check Rule 3110:

What searches should be conducted to be compliant with this new rule effective July 1, 2015?

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The SEC (Securities and Exchange Commission) has approved the FINRA (Financial Industry Regulatory Association) rule which requires firms to conduct more due-diligence based background investigations on applicants seeking registration. The question that remains, however, is what specific searches must be conducted, and what does FINRA deem to be the “standard”. What is the goal of such a process? According to FINRA, its purpose is to provide clarity concerning what a firm must do to provide “reasonable efforts” aka due-diligence prior to hiring an investment advisor.

What does this mean to you?? Follow along and let’s see if we can dissect this for everyone’s benefit!

According to FINRA, Rule 3110(e) requires that each member “**ascertain by investigation the good character, business reputation, qualifications and experience** of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.” The rule requires firms conduct a mandatory search of “reasonable available public records” that currently include **at least** criminal records, bankruptcy records, judgments and liens.

As a registered investment advisor, or perhaps a Chief Compliance Officer of an organization that has to ensure FINRA compliance, how would you know what search(es) **MUST** be conducted that comply with the requirement of “reasonable available public records”? What else should you be concerned with aside from FINRA? We hope that this can provide some insight to you!

From our experience, the following should be considered as a basis and criteria in order to comply with FINRA Rule 3110.

STEP 1:

Compliance with the FCRA (Fair Credit Reporting Act) – this is critical! While you must be compliant with FINRA, when conducting background investigations in the course of an employment decision, the agency conducting the investigation must be a Consumer Reporting Agency and all information obtained in the course of a pre-employment investigation must be in compliance with the FCRA.

STEP 2:

Searches recommended in order to comply with FINRA rule 3110:

1. **SSN Verification with Address History** - It is important to verify an applicant's identity as well as address history within the past 7 years to attempt to confirm areas of residency, as well as possible alias name(s) utilized by an applicant.
2. **Criminal Convictions Research** – (All levels) There are various levels available depending on your firm location as well as the subject location. Be sure that this is comprehensive! A basic “National Criminal Search” will not suffice! Court levels include but are not limited to local, county, state, federal and national records.
3. **Credit Report / Financial** - Proceed with caution!! Currently ten (10) states have made the use of credit reports in the course of a hiring decision illegal. There are alternatives to this search that will provide the same final outcome. To learn more about the states that have made the use of credit reports illegal, click [here](http://www.ncsl.org/research/financial-services-and-commerce/use-of-credit-info-in-employ-2013-legis.aspx). (<http://www.ncsl.org/research/financial-services-and-commerce/use-of-credit-info-in-employ-2013-legis.aspx>)
4. **Good Character** - This is a broad scope, but our interpretation is that it should include a Comprehensive Reference Verification for each professional reference with whom a candidate has worked in the past.
5. **Qualifications** - We have identified the searches in this area to include Education Verification, (typically the highest degree obtained) as well Certifications/Endorsements (ie, Series 6, 7, CFP, etc.);
6. **Experience** - This should include but not be limited to the applicant's employment history within the Financial Services field. A comprehensive employment history with all possible verification should be completed.
7. **Driver's License** - This is not a mandatory search, however, this is telling of an applicant's ability to maintain a valid Driver's License as well as any possible infractions including but not limited to Driving While Intoxicated, Driving While Under Influence of Drugs/Alcohol, or Ability Impaired – all charges that may not appear under a standard criminal background check, but are relevant!

Based upon the Uniform Application for Securities Industry Registration or Transfer (U4) requirement, the above searches should be conducted within 30 days of a U4 being filed. In order to improve the level of due-diligence it is recommended that the above package be conducted to comply with the FINRA background check rule.

To learn more about how to become compliant with the FINRA Background Check Rule 3110, contact us today at sales@allianceinvestigative.com, or call (800) 579-2911.