The PIABA FOUNDATION
Promoting investor education

PIABA
protecting public investors

PUBLICCITIZEN
Protecting Health, Safety and Democracy

July 14, 2015

VIA ONLINE SUBMISSION ONLY

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

Re: File No. 265-28

Dear Mr. Fields:

This letter is being submitted on behalf of the undersigned organizations in support of the Investor Advisory Committee's ("IAC") recommendation that the SEC:

• develop a disciplinary database for violations of the securities laws that will allow elders and other investors to easily conduct searches of any person or firm sanctioned for these violations;

• take steps to reduce the complexity of background searches by taking steps to simplify the search process, including steps to ensure comparable quality between BrokerCheck and IAPD and the development of an appropriately named site that will permit elders and other investors, through a single search, to access information in all databases supervised in whole or in part by the SEC;

• seek to obtain the agreement from other federal regulators, self-regulatory organizations, and state regulators for the development of a single site that will permit a search of all relevant databases that provide background information on financial market professionals.

We believe that creating a comprehensive, simple, and accurate one-stop-shop for consumers to conduct free background checks on their trusted financial professional(s) is critical to protecting investors. As a result, we applaud the IAC's recommendations to improve the quality and consistency of this important type of publicly available information.

The undersigned also recognize that carrying out the above recommended improvements will take time to accomplish. As a result, improvements can and should be made in the short-term that are consistent with the goal of improving the overall quality and consistency of information to the investing public, particular the elderly.

As described in more detail below, the undersigned organizations implore the IAC to recommend that the SEC exercise its regulatory authority to require FINRA to improve the disclosures contained in its BrokerCheck Reports. In March 2014, PIABA released a report

entitled *The Inequality of Investor Access To Information* ("PIABA Report"), which thoroughly explained how FINRA omits critical information from its BrokerCheck Reports even though the information is publicly available from some state securities regulators in the form of CRD Snapshot Reports. Importantly, the information contained in BrokerCheck Reports and CRD Snapshot Reports are derived from the same database. The PIABA Report provides real examples of how CRD Snapshots provide more complete information than FINRA's BrokerCheck Reports. See, e.g., pgs. 7-12, PIABA Report attached hereto. The PIABA Report correctly concludes that FINRA's BrokerCheck Reports should be harmonized with the reports from states that provide the most information so that all investors have equal access to the same important background information. A copy of the full PIABA Report is attached. Highlights from the PIABA Report as well as new information about FINRA's efforts to promote BrokerCheck are discussed below.

A. FINRA Markets BrokerCheck Reports As An Important And Comprehensive Tool For Investors To Obtain Background Information About Financial Professionals.

As the IAC is aware, FINRA holds out BrokerCheck as an important investor education and protection tool. FINRA actively markets BrokerCheck Reports to consumers as a way for investors to conduct due diligence in selecting financial professionals. In its online brochure about BrokerCheck Reports, FINRA states:

> Smart investing starts by selecting an investment professional or firm who is right for you. That's where BrokerCheck comes in.[1]

On June 1, 2015, FINRA launched a national ad campaign promoting BrokerCheck.[2] In its press release, FINRA described its BrokerCheck Reports as "FINRA's free online tool that allows investors to access information about every broker's employment history, certifications and licenses, as well as regulatory actions, violations or complaints made against them."[3] The release also boasts that BrokerCheck can be used to avoid hiring "bad brokers", saying that if investors are to avoid "leap-before-you-look mistakes when choosing a broker—they should use BrokerCheck."[4]

In a print advertisement available on FINRA's website, FINRA states:

> You wouldn't [e.g. select a hairdresser without checking first.] So why would you invest without checking BrokerCheck. Especially since BrokerCheck® by FINRA® is so easy. Simply visit the site and type in your broker's name. Then presto! You've got information on employment history, certifications, licenses and complaints. You can also get information about your broker's firm. These

[1] http://www.finra.org/sites/default/files/BrokerCheck_Card_4x9.pdf.
[2] http://www.finra.org/newsroom/2015/finra-launches-national-ad-campaign-promoting-brokercheck.
[3] *Id.*
[4] *Id.*

days, you check everything, so there's no reason not to check your broker with BrokerCheck®[5]

There is no question FINRA portrays BrokerCheck Reports as important, accurate and comprehensive. As explained in more detail below, despite FINRA marketing efforts, FINRA continues to omit material information about brokers in its BrokerCheck Reports even though this same CRD information is publicly available from many state securities regulators. FINRA does not alert investors that more complete information is available from other sources. The lack of complete information in FINRA's BrokerCheck Reports has the potential to mislead investors into believing that all relevant information has been disclosed when it has not.

B. States Make Information Available through a CRD Snapshot Reports

As the IAC is aware, information in BrokerCheck is derived from the Central Registration Depository ("CRD"), an online registration and licensing database. Operated pursuant to policies "developed jointly with the North American Securities Administrators Association," the CRD system consists of information reported by broker-dealers, associated persons, and regulatory authorities on uniform registration forms. Through the CRD, firms and individuals are able to register with multiple states and self-regulatory organizations.[6]

Broader access to the CRD system's information may be obtained from a number of states which disclose information about brokers licensed to do business in their state. These more comprehensive reports are commonly referred to as CRD Snapshot Report(s). Some states, such as Florida and Iowa, provide consumers with CRD Snapshot Reports that disclose substantially more information from the national CRD system than the FINRA BrokerCheck system discloses. These states' CRD Snapshot Reports exclude only personal information such as social security numbers and home addresses.

Assuming that consumers are even aware state regulators may provide more complete information about financial professionals, states differ on what information is provided in the CRD Snapshot Report because each state is governed by its state public records laws. In addition, most states only provides information about brokers licensed by that state. Therefore, consumers cannot always contact a state securities regulator such as Florida, which is governed by very broad public records laws, and obtain the more expansive CRD Snapshot Report.

Importantly, unlike BrokerCheck where the information is provided instantaneously and for free, CRD Snapshot reports requested from some states cost consumers money; must be requested either by telephone, by email, or through the state securities regulator's website; and may not be delivered for hours or days after the request.

---

[5] http://www.finra.org/sites/default/files/BrokerCheck_Ad.pdf.

[6] *Recommendation of the Investor as Owner Subcommittee: Empowering Elders and Other Investors: Background Checks in the Financial Markets* at pages 6-7.

All of this leads to the conclusion that FINRA's BrokerCheck Reports should be as comprehensive as the CRD Snapshot Reports provided by states such as Florida and Iowa so that all investors have equal access to the same crucial background information.

C. FINRA Excludes Important Information from BrokerCheck

In contrast to the states with the most comprehensive disclosure of information, FINRA exercises it statutory authority to exclude information contained in CRD Snapshot Reports. To date, it appears FINRA's rationale for not disclosing the same amount of information as these states is based on "personal privacy and fairness" to FINRA members.[7] This rationale, however, is flawed given that the same information excluded from the BrokerCheck Reports is already publicly available from these states. Moreover, FINRA has designated itself as an advocate for investor protection, and, as a result, the SEC should mandate FINRA place the interests of the investing public above any vague notion of privacy or fairness to the financial advisors entrusted with clients' life savings and retirement accounts.

In January 2011, the SEC released a study pursuant to the Dodd Frank Act entitled, *SEC Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers*, January 2011 (the "SEC Study"). The SEC Study correctly states that not all information in the CRD is disclosed to the public through BrokerCheck.[8] The SEC Study stated:

- Reasons and Comments Related to Termination. In situations where a broker-dealer terminates a registered representative, BrokerCheck Reports exclude the reason for the termination and any comments from the former registered representative regarding the termination, although this information is reported on Form U5. FINRA also excludes from BrokerCheck, generally, information on Form U4 for registered representatives who have terminated registration more than ten years ago.[9]

It is important for consumers to know all reportable facts and circumstances surrounding brokers' terminations from their firms. For example, investors considering whether to hire a new broker to manage their life savings have a legitimate interest in knowing whether that person has been fired from a previous firm and the circumstances surrounding that termination. In addition, existing customers commonly follow terminated brokers to their new firm(s) and they certainly have a legitimate need to know this information to be able to determine whether the broker is trustworthy.

---

[7] *See* e.g. SEC Release No. 34-60462; File No. SR-FINRA-2009-050, August 7, 2009, Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA Rule 8312 (FINRA BrokerCheck Disclosure); ("FINRA believes this measured expansion of BrokerCheck strikes a balance between, on the one hand, investor protection interests, and on the other hand, personal privacy and fairness to former registered persons.")

[8] *See* SEC Study at p. 21 (internal citations omitted).

[9] *See* SEC Study at p. 21-22 (internal citations omitted); see also FINRA Rule 8312(d)(4).

- Formerly Reportable Information. Certain information that was, but is no longer required to be, reported through the registration and licensing process is not disclosed through BrokerCheck. This information includes, for example, judgments and liens originally reported as outstanding that have been satisfied and bankruptcy proceedings filed more than ten years ago.[10]

Reasonable investors would have good cause not to engage or hire a broker who has demonstrated that he or she cannot properly manage their own finances. For example, a reasonable investor would want to know whether their financial advisor has ever filed for bankruptcy, not just in the last 10 years. Similarly, reasonable investors would also want to know if their broker has ever had IRS tax liens levied against them or judgments that arise from, for example, a breach of duty. Once again, this information is publicly available on CRD Snapshot Reports regardless of whether, for example, an IRS tax lien was levied more than 10 years ago and/or has been satisfied.

- Examination Details. Scores on industry qualification examinations, and failed examinations, are also excluded from BrokerCheck Reports, although BrokerCheck displays industry examinations that a registered representative has passed.[11]

CRD Snapshot Reports include much more information about scores on industry qualification examinations including information about failed exams. Reasonable investors may believe this type of information speaks to the basic competency of their broker. If an investor decides this information is an important factor to consider when choosing a broker, they should be permitted to have access to the information in making a better and more informed decision.

Additionally, even though it was not discussed in the SEC Study, unlike CRD Snapshot Reports, BrokerCheck does not release "Internal Review Disclosure" information. Rule 8312(d)(3) states:

> FINRA shall not release "Internal Review Disclosure" information reported on Section 7 of the Form U5[.]

One of the questions in Section 7 contained in Form U-5 entitled, *Internal Review Disclosure*, asks:

> 7B. Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating *investment-related* statutes, regulations, rules or industry standards of conduct?

It is unimaginable that any reasonable investor would not want or need to know the answer to this question. Once again, this information, along with detailed descriptions about the nature of the investigated conduct under review, is publicly available from some state regulators.

---

[10] *See* SEC Study at 21-22*;* see also FINRA Rule 8312(b)(2).
[11] *Id; see also* FINRA Rule 8312(b)(2)(E).

Given that this information is already contained within the system, there is no reason that public investors located across the country should not have access to it, regardless of the state in which they reside. If a broker is not registered with Florida, or another state with a similar system, such information will continue to remain unavailable to the public absent an expansion of BrokerCheck.

D. Continuing Calls for Greater Access

For many years, PIABA, the SEC, multiple academics, and NASAA have recognized the problem and called on FINRA to more fully disclose the CRD's information through BrokerCheck.[12] In 2010, PIABA and others called for FINRA to harmonize the BrokerCheck system with the information disclosed by Florida, because it is inequitable for many investors to be denied access to information within a national database merely because their state has not implemented the same disclosure laws and procedures as Florida.[13]

Highlighting the issue's importance, the SEC approved certain changes to the BrokerCheck system in 2010 and encouraged FINRA to harmonize BrokerCheck's disclosures with those available from the states. It specifically stated that:

---

[12] *See* Cmt. Ltr., William A. Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic and Adisada Dudie, Cornell Law School, 2011, *available at* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-8.pdf ("In our comment to the Securities and Exchange Commission ("SEC") dated September 8, 2009 regarding File Number SR-FINRA-2009-050, the Clinic asked FINRA to modify its proposal and make the entire BrokerCheck record available indefinitely"); Cmt. Ltr., Lisa A. Catalano, Director, Associate Professor of Clinical Legal Education and Christine Lazaro, Supervising Attorney, Securities Arbitration Clinic, St. John's University School of Law, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-7.pdf ("Certain states, such as Florida, will make the broker's CRD available to investors that request it, while other states do not . . . We urge FINRA to consider expanding BrokerCheck to ensure that the investing public has equal access to the information available about brokers regardless of where they do business."); Cmt. Ltr., Joelle B. Franc, Student Attorney; Jonathan P. Terracciano, Student Attorney; and Birgitta K. Siegel, Esq., Visiting Asst. Professor; Securities Arbitration & Consumer Law Clinic, Syracuse University College of Law, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-10.pdf ("the full information available through a request to state regulators should likewise be made available directly through BrokerCheck."); Cmt. Ltr.,Scott R. Shewan, President, Public Investors Arbitration Bar Association, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-4.pdf ("Because FINRA is the gatekeeper for this information, it should endeavor to ensure that the investing public has equal access to the information available. Investors in Florida should not be more protected than investors in New York."); Cmt. Ltr., Melanie Senter Lubin, Maryland Securities Commissioner and Chair, NASAA CRD/IARD Steeling Committee, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-3.pdf ("We also remain concerned with FINRA's decision to exclude other critical information. . . ").

[13] *Id.*

> The Commission urges FINRA to consider the information as suggested by the commenters. This information is available from the individual states; however, it would be more accessible through BrokerCheck.[14]

To date, FINRA has ignored its critics and failed to provide more detailed information and, yet, FINRA continues to market BrokerCheck Reports as comprehensive.

E. The Need For Action

As illustrated above, FINRA actively encourages investors to use BrokerCheck so they can make informed decisions about their brokers. FINRA also requires firms to notify investors repeatedly about the availability of BrokerCheck. Nevertheless, FINRA then misleads investors into believing they are obtaining complete and adequate information about their brokers. FINRA has chosen not to further expand BrokerCheck in an effort to protect the interests of its members in the securities industry, rather than the investors it has promised to protect.

Accordingly, the SEC should exercise its regulatory authority and require FINRA to harmonize the information on BrokerCheck Reports with the information already publicly available from states similar to Florida with broad public records laws. BrokerCheck Reports should, like Florida, only exclude personal information such as social security numbers, home addresses, etc. There is simply no valid reason that the same CRD information is a public record at the state level but is not publicly available from FINRA.

Thank you in advance for your attention to this important matter.

Sincerely,

/s/
Jason R. Doss
President of PIABA Foundation
Co-author of PIABA Report

/s/
Christine Lazaro
Associate Professor of Clinical Legal Education
Director, Securities Arbitration Clinic
St. John's University School of Law
Co-author of PIABA Report

/s/
Joseph C. Peiffer
PIABA President

/s/
Christine Hines
Consumer and Civil Justice Counsel
Public Citizen, Congress Watch division

[14] SEC Release No. 34-62476; File No. SR-FINRA-2010-012, at 15.

THE INEQUALITY OF INVESTOR ACCESS TO INFORMATION

A Study Conducted By Public Investors Arbitration Bar Association[1] Demonstrating How FINRA BrokerCheck Reports Omit Critical Information That Harms The Investing Public And Proposing Needed Federal Legislative Change[2]

March 6, 2014

Introduction

Today, investors lack consistent access to complete information about the financial advisors managing their life savings. Much of this information is contained in the Central Registration Depository ("CRD"), a comprehensive national database containing registration, complaint and other information about stockbrokers and broker-dealer firms. FINRA maintains this database on its behalf and on behalf of the states, yet it makes only a small portion of the information contained within the database available to the public through its online system, BrokerCheck.

In contrast to the BrokerCheck reports, some state securities regulators use the same CRD information to provide investors with reports that more thoroughly detail registration and employment histories, exam information and complete customer complaint information available to the public for brokers registered in their states. Access to this information allows investors to make more informed decisions about whether they want to do business with and entrust their life savings to particular brokers. The differences in information available from state to state are attributable to differences in the states' public records, or "sunshine" laws. These differences in state public record laws and FINRA's less than complete disclosure of information on BrokerCheck results in uneven access to critical information across the country.

Despite this uneven access, FINRA has not harmonized its disclosures with the information disclosed by the states with the most robust public records laws. In failing to do so, FINRA has narrowly construed statutory instruction to make the CRD database's information public, ignored the requests of the Securities and Exchange Commission (the "SEC") to increase access, disregarded public requests from multiple academics for more information, neglected multiple requests from the North American Securities Administrators Association ("NASAA") , and turned a blind eye to requests from the Public Investors Arbitration Bar Association

[1] PIABA is an international, not-for-profit, voluntary bar association of lawyers who represent claimants in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect such investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights.

[2] This study was co-authored by Jason R. Doss, President of Public Investor Arbitration Bar Association; Christine Lazar, Director of the Securities Arbitration Clinic at St. John's University School of Law; and Benjamin P. Edwards, Director of the Investor Advocacy Clinic at Michigan State University College of Law.

("PIABA").

All investors should be able to obtain complete information about their brokers and firms. FINRA should be that source especially given that it maintains the information and it has marketed and continues to market its BrokerCheck reports as one of the primary ways that it protects investors. On its website, FINRA touts itself as dedicated to investor protection. It states that it works daily to ensure that "investors receive complete disclosure about . . . investment product[s] before purchase."[3] It should also be working diligently to ensure that investors receive the same level of disclosure about the individuals selling the investment products and to whom they are entrusting their life savings.

I. The CRD - National Registration Forms and Database

The CRD system is the securities industry on-line registration and licensing system. Brokers submit a variety of forms to the CRD, including the Uniform Application for Securities Industry Registration, the Form U4, and the Uniform Termination Notice for Securities Industry Registration, the Form U5. Notably, the CRD system also collects customer dispute information.[4]

The CRD was developed by FINRA[5] and NASAA[6] in 1981. The "CRD consolidated a multiple paper-based state licensing and regulatory process into a single, nationwide computer system . . . Its computerized database contains the licensing and disciplinary histories on more than 650,000 securities professionals and 5,200 securities firms[7] and is used by brokerage firms, regulators, and self-regulatory organizations.[8] FINRA operates the CRD system pursuant to policies developed jointly with NASAA.[9] FINRA has worked with NASAA, the SEC, brokerage firms and other member of the regulatory community to "establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD is accurate and complete."[10] Both NASAA and FINRA are parties to the CRD Agreement, which

---

[3] http://www.finra.org/AboutFINRA/

[4] "Customer Dispute Information" includes "customer complaints, arbitration claims, and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. This category of information contains allegations that a member or one or more of its associated persons has violated securities laws, regulations, or rules." SEC Release No. 34-47435 (March 4, 2003) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System, File No. SR-NASD-2002-168).

[5] On July 26, 2007, FINRA was created through the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration operations of the New York Stock Exchange. For ease of reference, this article generally refers to the NASD as FINRA throughout.

[6] "Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico." http://www.nasaa.org/about-us/.

[7] *See* http://www.nasaa.org/industry-resources/investment-advisers/crd-iard/.

[8] *See* SEC Release No. 34-58886 (October 30, 2008) (Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure to Establish Procedures for Arbitrators to Follow When Considering Requests for Expungement Relief, File No. SR-FINRA-2008-010).

[9] *Id.*

[10] *Id.*

states that "data on CRD Uniform Forms filed with the CRD shall be deemed to have been filed with each CRD State in which the applicant seeks to be licensed and with [FINRA] and *shall be the joint property of the applicant, [FINRA], and those CRD States*."[11] NASAA has taken the position that CRD records are state records.[12]

II. Congress's Statutory Mandate to Make CRD Information Public

Section 15A of the Securities and Exchange Act of 1934 (the "Exchange Act") mandates that FINRA maintain the CRD database and make its information available to the public.[13] With respect to sharing the CRD database's information with the public, it provides that FINRA shall:

> (B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding--
>
> > (i) registration information[14] on its members and their associated persons; and
> >
> > (ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and
>
> (C) adopt rules governing the process for making inquiries and the **type, scope, and presentation of information to be provided** in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).[15] (emphasis added).

To comply with the statutory requirements, FINRA has established a toll-free telephone listing and the BrokerCheck system.

---

[11] Karsner v. Lothian, 532 F.3d 876, 885 n.9 (D.C. Cir. 2008) (emphasis in original).
[12] *See* NASAA Comment Letter in response to Request for Comments 01-65 Proposed Rules and Policies Relating to Expungement of Information From The Central Registration Depository (Dec. 31, 2001), available at http://www.nasaa.org/wp-content/uploads/2011/07/95-Letter.37262-47637.pdf.
[13] 15 U.S.C.A. § 78o-3(i).
[14] *Id.* In defining the term "registration information," Congress provided that:

> For purposes of this subsection, the term "registration information" means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.

[15] *Id.*

III. FINRA Markets BrokerCheck Reports As A Way For Investors To Conduct Comprehensive Due Diligence About Their Financial Professionals

Today, BrokerCheck provides information about approximately 1.3 million current and former FINRA-registered brokers and 17,400 current and former FINRA-registered brokerage firms.[16] According to a study released by the SEC in 2011, FINRA's BrokerCheck reports are widely utilized by the public to obtain background information about brokers and broker-dealers. For example, the SEC Study stated:

> In 1999, a year after FINRA began making records available on its Web site, FINRA received more than one million inquiries, and by 2002, it was fielding more than two million inquiries a year. Usage has increased since BrokerCheck was deployed in March 2007. More than 20 million searches were conducted on the BrokerCheck Web site in 2009, with approximately 18.5 million summary records viewed and approximately 3.8 million requests for detailed reports on a registered representative or a broker-dealer.[17]

FINRA holds out BrokerCheck as an important investor education and protection tool. FINRA actively markets BrokerCheck reports to consumers as a way for them to conduct due diligence in selecting financial professionals. For example, FINRA requires its member firms to provide customers with FINRA's BrokerCheck hotline number, as well as making customers aware that FINRA has a BrokerCheck brochure available for investors.[18]

In its BrokerCheck brochure, FINRA states, "To help you make informed decisions when choosing someone to manage your investments, FINRA provides BrokerCheck—an important tool that delivers critical information about FINRA-registered securities firms and brokers."[19] In its brochure, FINRA describes the database as "comprehensive" and states that it provides information about a broker's employment history, licensing status, criminal events, regulatory actions, investor complaint information, pending investigations and regulatory proceedings. In this brochure, FINRA does not inform investors that the information it provides is incomplete.

In addition, each BrokerCheck report that consumers receive includes a section entitled, *About BrokerCheck*. The *About BrokerCheck* section of the report states that "FINRA strongly

---

[16] *See* http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/ (last visited Jan. 14, 2014).

[17] *See* SEC Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers, January 2011 ("SEC Study"), pp. 22-23, available at http://www.sec.gov/news/studies/2011/919bstudy.pdf. (Internal citations omitted.)

[18] FINRA Rule 2267 states in relevant part:

2267. Investor Education and Protection

(a) Except as otherwise provided in this Rule, each member shall once every calendar year provide in writing (which may be electronic) to each customer the following items of information:

(1) FINRA BrokerCheck Hotline Number;

(2) FINRA Web site address; and

(3) A statement as to the availability to the customer of an investor brochure that includes information describing FINRA BrokerCheck.

[19] *See* "FINRA BrokerCheck, An Online Tool to Help Investors Check the Background of Individual Investment Professionals and Firms", available at http://www.finra.org/web/groups/investors/@inv/@tools/documents/investors/p009888.pdf.

encourages investors to use BrokerCheck to check out the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them." Just like the brochure described in the preceding paragraph, the *About BrokerCheck* section does not advise investors that more information than is provided in the BrokerCheck report is available from some state securities regulators. In fact, under the heading "Are there other resources I can use to check the background of investment professionals?", FINRA only states, "FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state."[20]

Most recently, on February 13, 2014, as a way to expand its dissemination of FINRA BrokerCheck reports, the FINRA Board of Governors authorized FINRA to seek public comments and consider amending FINRA Rule 2210 (Communications With the Public) "to require firms to include a readily apparent reference and link to BrokerCheck on any member firm's website that is available to retail investors. In addition, the proposal would require a firm to include a readily apparent reference and link to BrokerCheck in any online retail communication that includes a professional profile of, or contact information for, an associated person."[21]

IV. FINRA's BrokerCheck Reports Omit Material Information From Consumers That Is Already Publicly Available From Some State Securities Regulators and Harms Consumers

At present, the public may access CRD information through two different channels. Instant access to a culled subset of information may be obtained through FINRA's BrokerCheck system.[22] Notably, the Exchange Act granted FINRA limited discretion to determine the "type, scope, and presentation of information to be provided."[23] As explained in more detail below, despite the fact that FINRA markets BrokerCheck reports as a way for consumers to obtain comprehensive information about brokers and broker-dealers, FINRA exercises this statutory authority to omit material information about brokers in its BrokerCheck reports even though this same CRD information is publicly available from many states securities regulators. The lack of complete information in FINRA's BrokerCheck reports has the potential to mislead investors.

A. States Make Information Available through a CRD Snapshot

Broader access to the CRD system's information may be obtained from a number of states which disclose information about brokers licensed to do business in their state. These more comprehensive reports are commonly referred to as CRD Snapshot Reports. Some states,

---

[20] FINRA's website references that more information may be obtained from state regulators. However, it does not do so on its main BrokerCheck search page, the page most likely to be seen by investors. In addition, the same website also describes the BrokerCheck reports as comprehensive, which is misleading.

[21] *See* FINRA Email to Firms, "Update: FINRA Board of Governors Meeting," February 13, 2014, available at http://www.finra.org/Industry/Regulation/Guidance/CommunicationstoFirms/P445719.

[22] FINRA Rule 8312 governs the information FINRA culls from CRD before disclosing information through BrokerCheck. A copy of the current version of Rule 8312 is attached as Appendix 1.

[23] 15 U.S.C.A. § 78o-3(i)(1)(C).

such as Florida and Iowa, provide consumers with CRD Snapshot Reports that disclose substantially more information from the national CRD system than the FINRA BrokerCheck system discloses. These states' CRD Snapshot Reports exclude only personal information such as social security numbers and home addresses.

However, assuming that consumers are even aware that state regulators may provide more complete information about financial professionals, states differ on what information is provided in the CRD Snapshot Report because each state is governed by its state public records laws, which differ from state to state. In addition, most states only provides information about brokers licensed by that state. Therefore, consumers cannot always simply contact a state securities regulator such as Florida, which is governed by very broad public records laws, and obtain the more expansive CRD Snapshot Report unless the broker is licensed in Florida. Also, consumers cannot obtain CRD reports through a Freedom of Information Request from the Securities Exchange Commission because the SEC's response is that it is not in the possession of the requested information.[24]

Importantly, unlike BrokerCheck where the information is provided instantaneously and for free, CRD Snapshot reports requested from some states cost consumers money; must be requested either by telephone, by email, or through the state securities regulator's website; and may not be delivered for hours or days after the request.

B. FINRA Excludes Important Information from BrokerCheck

In contrast to the states with the most comprehensive disclosure of information, FINRA exercises it statutory authority described above to exclude information contained in CRD Snapshot Reports. To date, it appears that FINRA's rationale for not disclosing the same amount of information as these states is based on "personal privacy and fairness" to FINRA members.[25] This rationale, however, is flawed given that the same information excluded from the BrokerCheck reports is already publicly available from these states.

BrokerCheck provides public access to certain CRD registration data about broker-dealers and brokers.[26] The information on BrokerCheck regarding brokers is derived from the information on the Uniform Forms, including Forms U4, U5, and U6.[27] Information on formerly registered representatives is available for ten years after de-registration, and permanently for brokers who were the subject of a final regulatory action.[28]

---

[24] A true and correct copy of correspondence dated February 25, 2014 between Jason Doss and the SEC is attached as Appendix 2.

[25] See e.g. SEC Release No. 34-60462; File No. SR-FINRA-2009-050, August 7, 2009, Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA Rule 8312 (FINRA BrokerCheck Disclosure); ("FINRA believes this measured expansion of BrokerCheck strikes a balance between, on the one hand, investor protection interests, and on the other hand, personal privacy and fairness to former registered persons.")

[26] *See* SEC Study at p. 16 (internal citations omitted).

[27] *Id.*

[28] *Id.*

FINRA Rule 8312 governs the information that FINRA releases to the public regarding broker-dealers and brokers and requires them to keep their registration data accurate and up-to-date.[29] The rule has been revised several times in the past decade to increase the amount and type of information available to the public on BrokerCheck. Despite these incremental improvements, the BrokerCheck reports still omit important information about brokers.

For example, in January 2011, the SEC released a study pursuant to the Dodd Frank Act entitled, *SEC Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers*, January 2011 (the "SEC Study"). The SEC Study correctly states that not all information in the CRD is disclosed to the public through BrokerCheck.[30] The SEC Study stated:

- Reasons and Comments Related to Termination. In situations where a broker-dealer terminates a registered representative, BrokerCheck reports exclude the reason for the termination and any comments from the former registered representative regarding the termination, although this information is reported on Form U5. FINRA also excludes from BrokerCheck, generally, information on Form U4 for registered representatives who have terminated registration more than ten years ago.[31]

It is important for consumers to know all reportable facts and circumstances surrounding brokers' terminations from their firms. For example, investors considering whether to hire a new broker to manage their life savings have a legitimate interest in knowing both whether that person has been fired from a previous firm and the circumstances surrounding that termination. In addition, with regard to existing customers who may follow the terminated broker to his or her new firm, investors most certainly have a legitimate need to know this information to be able to determine whether the broker is trustworthy.

If investors in either of the above described circumstances were to conduct due diligence by reviewing FINRA's BrokerCheck report, they may be misled into believing that the broker left the firm on amicable grounds. In contrast, all reportable information surrounding the termination of a broker is publicly available on CRD Snapshot Reports. Most investors are unlikely to know this very important fact.

Below are quoted excerpts from actual CRD Snapshot and FINRA BrokerCheck reports for one former broker illustrating how these reports differ with regard to termination information that is reported to the public[32]:

---

[29] *See* Exchange Act Release No. 55127 (Jan. 18, 2007) [72 FR 3455 (Jan. 25, 2007)] (approving rule change relating to BrokerCheck disclosure (SR-NASD-2003-168)).

[30] *See* SEC Study at p. 21 (internal citations omitted).

[31] *See* SEC Study at p. 21-22 (internal citations omitted); see also FINRA Rule 8312(d)(4).

[32] The names of the individual brokers and firms in all of the examples displayed in this report have been redacted because the purpose of this study is not to single out a particular person or broker-dealer. The purpose of this study is to illustrate the systemic problems that exist today with the FINRA BrokerCheck reports.

CRD Snapshot Disclosure

Registrations with Previous Employer(s) From 06/28/2002 To 05/27/2003

[redacted] Reason for Termination

Termination Comment Permitted to Resign WE WERE PREPARING TO TERMINATE MR. [redacted] AFTER HIS MAY 21, 2003 AUDIT. MR [redacted] SUBMITTED HIS LETTER OF RESIGNATION ON MAY 27, 2003 BEFORE HIS NOTICE OF TERMINATION LETTER WAS DELIVERED ON MAY 28, 2003.

FINRA BrokerCheck Disclosure

Registration and Employment History

Registration History

This broker previously was registered with FINRA at the following firms:

Registration Dates	Firm Name
07/2002 - 05/2003	[redacted]

Another observation in the SEC Study was as follows:

- Formerly Reportable Information. Certain information that was, but is no longer required to be, reported through the registration and licensing process is not disclosed through BrokerCheck. This information includes, for example, judgments and liens originally reported as outstanding that have been satisfied and bankruptcy proceedings filed more than ten years ago.[33]

Reasonable investors would have good reason not to engage or hire a broker who has demonstrated that he or she cannot properly manage their own finances. For example, a reasonable investor would want to know whether their financial advisor has ever filed for bankruptcy, not just in the last 10 years. Similarly, reasonable investors would also want to know if their broker has ever had IRS tax liens levied against them or judgments that arise from, for example, a breach of duty. Once again, this information is publicly available on CRD Snapshot Reports regardless of whether, for example, an IRS tax lien was levied more than 10 years ago and/or has been satisfied.

[33] *See* SEC Study at 21-22*;* see also FINRA Rule 8312(b)(2).

Below is a quoted excerpt from actual CRD Snapshot for a former broker who had an IRS tax lien levied against him more than 10 years ago. None of this information is reported on the same former broker's BrokerCheck report.

CRD Snapshot Disclosure

Judgment/Lien DRP DRP Version
10/2005

1. Judgment/Lien amount: $317,334.00

2. Judgment/Lien holder: FEDERAL INTERNAL REVENUE SERVICE

3. Judgment/Lien Type: Tax

4. Date filed/Explanation: 12/07/2001

5. Outstanding: Yes

Status date/Explanation:

Resolution:

6. Court Name, location, and Docket/Case #: CLERK OF SUPERIOR COURT
FULTON COUNTY
ATLANTA, GA 30303
SERIAL NUMBER: [SSN]

7. Comment: CURRENTLY HAS PENDING SETTLEMENT OF OFFER AND COMPROMISE FOR TAX YEARS '94, '95 & '96. IN LATE 1998 [redacted] HIRED AN ATTORNEY[redacted] TO HELP HIM SETTLE A DISPUTED BALANCE OWED TO THE IRS. A SETTLEMENT WAS REACHED IN THE AMOUNT OF $236,407. THE AGREEMENT WAS MADE BETWEEN [redacted] AND [redacted], AN IRS EMPLOYEE. THE SETTLEMENT COVERED 1994, 1995, & 1996 TAXES. PRIOR TO THE OFFER, [redacted] REDEEMED FUNDS OUT OF HIS RETIREMENT ACCOUNT TO HELP SETTLE THIS OFFER IN TWO CHECKS, $92,879.40 & $58,704.59. ALL OF THESE FUNDS WERE PAID TO THE IRS TO BE APPLIED TO THE SETTLEMENT. [redacted] WAS GIVEN THE IMPRESSION THIS WOULD BE APPLIED TO THE SETTLEMENT AMOUNT. CONSEQUENTLY, [redacted] AND [redacted] AGREED TO THE SETTLEMENT. [redacted] THEN THOUGHT HIS BALANCE WAS $84.823.01. [redacted] HAS ATTEMPTED TO COMPLY WITH HIS RECENT TAX MATTERS HAVING PAID YEAR 2000 TAXES AND MADE ESTIMATES FOR 2001.

The SEC Study also states:

- Examination Details. Scores on industry qualification examinations, and failed examinations, are also excluded from BrokerCheck reports, although BrokerCheck displays industry examinations that a registered representative has passed.[34]

CRD Snapshot Reports include much more information about scores on industry qualification examinations including information about failed exams. Reasonable investors may believe that this type of information speaks to the basic competency of their broker. If an investor decides this information is an important factor to consider when choosing a broker, they should be permitted to do so.

Below are quoted excerpts from actual CRD Snapshot and FINRA BrokerCheck reports for one former broker illustrating how these reports differ with regard to how his exam score information is reported to the public:

CRD Snapshot Disclosure

Exam	Enrollment ID	Exam Status	Status Date	Exam Date	Grade	Score	Window Dates
S6	25518193	Official Result	03/09/2006	03/08/2006	Passed	74	03/02/2006-6/30/2006
S7	25518203	Window Expired	11/21/2011				07/23/2011-11/20/2011
S7	25518202	Window Expired	07/18/2011				03/19/2011-07/17/2011
S7	25518202	Official Result	07/12/2011	07/12/2011	Late Cancel		03/19/2011-07/17/2011
S7	25518200	Window Expired	06/05/2006				02/04/2006-06/04/2006
S7	25518199	Official Result	01/01/2006	12/22/2005	Failed	56	08/26/2005-12/24/2005
S63	25518198	Window Expired	12/07/2009				08/07/2009-12/05/2009
S63	25518197	Window Expired	07/06/2009				03/05/2009-07/03/2009
S63	25518196	Window Expired	03/03/2009				11/02/2008-03/02/2009
S63	25518195	Official Result	10/06/2008	10/03/2008	Failed	55	06/06/2008-10/04/2008
S63	25518194	Window Expired	05/26/2008				01/26/2008-05/25/2008
S65	34115427	Official Result	02/06/2014	02/06/2014	Passed	73	11/12/2013-03/12/2014

[34] *Id; see also* FINRA Rule 8312(b)(2)(E).

FINRA BrokerCheck Disclosure

Broker Qualifications

Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below. FINRA should not be permitted to pick and choose which information investors can consider, and by failing to disclose publicly available information on this topic, FINRA arguably makes the disclosures misleading to investors.

This individual has passed 0 principal/supervisory exams, 1 general industry/product exam, and 1 state securities law exam.

Principal/Supervisory Exams	**Category**	**Date**
Exam		
No information reported.		

General Industry/Product Exams	**Category**	**Date**
Exam		
Investment Company Products/ Variable Contracts Representative Examination	Series 6	03/08/2006

State Securities Law Exams	**Category**	**Date**
Exam		
Uniform Investment Adviser Law Examination	Series 65	02/06/2014

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.

Additionally, even though it was not discussed in the SEC Study, unlike CRD Snapshot Reports, BrokerCheck does not release "Internal Review Disclosure" information. Rule 8312(d)(3) states:

> FINRA shall not release "Internal Review Disclosure" information reported on Section 7 of the Form U5[.]

One of the questions in Section 7 contained in Form U-5 entitled, *Internal Review Disclosure*, asks:

> 7B. Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating *investment-related* statutes, regulations, rules or industry standards of conduct?

It is unimaginable that any reasonable investor would not want or need to know the answer to this question. Once again, this information, along with detailed descriptions about the nature of the investigated conduct under review, is publicly available from some state regulators.

Below is a quoted excerpt from actual CRD Snapshot of a broker whose former firm conducted an internal review beginning within a month of the broker voluntarily leaving the firm. The internal review involved alleged sales practices violations related to the sale of non-variable insurance products. None of this information is available on the same broker's FINRA BrokerCheck report.

CRD Snapshot Disclosure

Internal Review DRP DRP Version 05/2009

Part I

1. Notice received from: [redacted]

2. Date initiated/Explanation: 02/16/2012

3. Details: FIRM CONDUCTED AN INVESTIGATION OF REPRESENTATIVE'S INSURANCE SALES PRACTICES AFTER ALLEGATIONS WERE MADE THAT HE MISREPRESENTED CERTAIN FEATURES AND TRANSACTIONS RELATED TO NON-VARIABLE INSURANCE POLICIES.

4. Internal review pending: No

5. Resolution details:

A. Date concluded/ Explanation: 04/17/2013

B. Internal review resolution: FIRM'S REVIEW RESULTED IN MULTIPLE CANCELLATIONS AND RESCISSIONS OF POLICIES SOLD BY REPRESENTATIVE.

In its brochure on BrokerCheck, FINRA does not inform investors that the information it provides is incomplete. Rather, as discussed above, it labels the information it provides through BrokerCheck as "comprehensive." As outlined above, it is anything but comprehensive.

The analysis above weighs in favor of consumers being able to obtain the same comprehensive information whether they request it from states or FINRA. Given that each state is governed by different state public records laws, the most efficient way to accomplish this goal is for FINRA to expand the information available on BrokerCheck to mirror the information that is provided by states such as Florida and Iowa. Historically, FINRA has been resistant to expanding the information provided on BrokerCheck reports through the rule making process, because the Exchange Act provides FINRA with limited discretion to define the "type, scope, and presentation of information to be provided." As such, when determining what information it will disclose in the BrokerCheck reports, FINRA, a self-regulatory trade association, gives great weight to the "personal privacy and fairness" interests of its members (brokers and broker-dealers), who have a vested interests in not disclosing important information that could be detrimental to their own businesses. FINRA's conflict between the competing interests of protecting investors and protecting its members in the name of "personal privacy and fairness" leads to the absurd result that FINRA BrokerCheck reports omit material information on the basis of privacy when the same information is already publicly available from some state regulators.

The information that FINRA omits in its reports is objectively important to investors seeking to make an informed decision about selecting a broker. The result is that consumers who use the BrokerCheck system to conduct their due diligence may make an incorrect assumption that all relevant information has been disclosed and may opt to rely on a broker they would have avoided had they known more information.

C. FINRA Chooses not to Harmonize BrokerCheck

On December 13, 2013, NASAA filed a comment letter in support of a FINRA rule proposal to expand the categories of civil judicial disclosures permanently included in BrokerCheck reports.[35] In its comment, NASAA stated:

> In addition to supporting FINRA's proposal, NASAA encourages the Commission and FINRA to consider making additional information available through BrokerCheck. For example, NASAA believes that BrokerCheck Reports should include such information as broker's educational background, continuing educational history, and CRD/IARD filing history as well as the reason for and comments related to broker's termination. In addition, NASAA believes that FINRA should discontinue the practice of placing a 10-year time limit on the inclusion of bankruptcies in BrokerCheck reports.

On December 27, 2013, in approving FINRA proposed rule change, the SEC agreed with NASAA's recommendation and stated:

[35] *See* Cmt Ltr, NASAA, 2013, Release No. 34-70876, File No. SR-FINRA-2013-48, available at http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-Release-34-70876-12132013.pdf

> Finally, as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck, reviewing what additional information could be disclosed, such as the additional information that NASAA suggested in its comment letter, because BrokerCheck is a valuable tool for the public to use in deciding whether to work with a firm or an industry member.[36]

In November 2013, in connection with the above-described rule proposal, FINRA publicly acknowledged the importance of the disclosure but in the end continued to be reluctant to expand the information contained in the BrokerCheck reports. For example, FINRA stated:

> FINRA's belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation [pursuant to Section 15A(i) of the Exchange Act; 15 U.S.C. 78o-3(i)] to make information available to the public, FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program.[37]

In the same document, however, in connection with recommendations from commentators to expand the time frames for disclosing information on BrokerCheck, FINRA stated:

> Ten of the 71 comment letters received addressed the general expansion of the time frame for providing information through BrokerCheck. In general, these comment letters suggested that there should be no time limits on the inclusion of disclosure events in BrokerCheck (e.g., information about a bankruptcy is no longer disclosed through BrokerCheck after 10 years) and that all information about associated persons should be included in BrokerCheck on a permanent basis. FINRA is not prepared at this time to propose that all BrokerCheck information should be available on a permanent basis.[38] (emphasis added).

As explained below, calls by commentators, academics and regulators, demanding greater access to information on BrokerCheck reports have been largely ignored by FINRA for many years. FINRA has made marginal improvements over the last ten years but its continued hesitance to simply provide all CRD information that is already publicly available from state regulators illustrates that change through the regulatory rule making process has proven to be ineffective. Immediate legislative change is needed to prevent consumers from being misled into believing that the BrokerCheck reports are comprehensive when they are not.

---

[36] See SECURITIES AND EXCHANGE COMMISSION, Release No. 34-71196; File No. SR-FINRA-2013-048, available at http://www.sec.gov/rules/sro/finra/2013/34-71196.pdf.
[37] See SECURITIES AND EXCHANGE COMMISSION, Release No. 34-70876; File No. SR-FINRA-2013-048, November 14, 2013 at page 3, available at http://www.sec.gov/rules/sro/finra/2013/34-70876.pdf.
[38] Id. at p. 7-8.

The most efficient way to harmonize the information on BrokerCheck reports with the information already publicly available is for federal legislators simply to amend §15A of the Exchange Act to define the type and scope of information that FINRA would be required to make available through BrokerCheck so that, similar to Florida and other states with broad public records laws, FINRA would only be permitted to exclude personal information such as social security numbers, home addresses, etc. There is simply no reason that the same CRD information is a public record at the state level but is treated as non-public by FINRA.

V. Continuing Calls for Greater Access

For many years, PIABA, the SEC, multiple academics, and NASAA have recognized the problem and called on FINRA to more fully disclose the CRD's information through BrokerCheck.[39] In 2010, PIABA and others called for FINRA to harmonize the BrokerCheck system with the information disclosed by Florida, because it is inequitable for many investors to be denied access to information within a national database merely because their state has not implemented the same disclosure laws and procedures as Florida.[40]

Highlighting the issue's importance, the SEC approved certain changes to the BrokerCheck system in 2010 and encouraged FINRA to harmonize BrokerCheck's disclosures with those available from the states. It specifically stated that:

> The Commission urges FINRA to consider the information as suggested by the commenters. This information is available from the individual states; however, it would be more accessible through BrokerCheck.[41]

In the same Release, the SEC indicated that it understood that FINRA would continue to improve the range of information available through BrokerCheck when it stated that:

---

[39] *See* Cmt. Ltr., William A. Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic and Adisada Dudie, Cornell Law School, 2011, *available at* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-8.pdf ("In our comment to the Securities and Exchange Commission ("SEC") dated September 8, 2009 regarding File Number SR-FINRA-2009-050, the Clinic asked FINRA to modify its proposal and make the entire BrokerCheck record available indefinitely"); Cmt. Ltr., Lisa A. Catalano, Director, Associate Professor of Clinical Legal Education and Christine Lazaro, Supervising Attorney, Securities Arbitration Clinic, St. John's University School of Law, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-7.pdf ("Certain states, such as Florida, will make the broker's CRD available to investors that request it, while other states do not . . . We urge FINRA to consider expanding BrokerCheck to ensure that the investing public has equal access to the information available about brokers regardless of where they do business."); Cmt. Ltr., Joelle B. Franc, Student Attorney; Jonathan P. Terracciano, Student Attorney; and Birgitta K. Siegel, Esq., Visiting Asst. Professor; Securities Arbitration & Consumer Law Clinic, Syracuse University College of Law, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-10.pdf ("the full information available through a request to state regulators should likewise be made available directly through BrokerCheck."); Cmt. Ltr.,Scott R. Shewan, President, Public Investors Arbitration Bar Association, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-4.pdf ("Because FINRA is the gatekeeper for this information, it should endeavor to ensure that the investing public has equal access to the information available. Investors in Florida should not be more protected than investors in New York."); Cmt. Ltr., Melanie Senter Lubin, Maryland Securities Commissioner and Chair, NASAA CRD/IARD Steeling Committee, *available at:* http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-3.pdf ("We also remain concerned with FINRA's decision to exclude other critical information. . . ").

[40] *Id.*

[41] SEC Release No. 34-62476; File No. SR-FINRA-2010-012, at 15.

> The Commission notes that FINRA stated it would continue to evaluate all aspects of the BrokerCheck program to determine whether future circumstances should lead to greater disclosure through BrokerCheck. FINRA has a statutory obligation to make information available to the public and, as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck because it is a valuable tool for the public in deciding whether to work with an industry member.[42]

When the SEC released its *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers* in January 2011, it once again recognized the importance of the disclosure of information through BrokerCheck:

> The Commission has long expressed the view that registration information about financial services providers is key to making sound investment decisions. . . . BrokerCheck . . . provide[s] investors important data about the financial services providers on whom they will rely in helping to meet their investment goals. While the Commission has stated that BrokerCheck is "a valuable tool for an investor to use to get information about a firm or a registered person with whom the investor is considering doing business," the Commission nonetheless has "***urge[d] investors to check with each state where the firm has done business or where the sales person has been registered to obtain a complete picture of his or her disciplinary history.***" Moreover, the Commission previously has encouraged FINRA to consider increasing the amount of information available on BrokerCheck.[43] (Emphasis added.)

In its Study, the Staff of the SEC made intermediate recommendations, advising FINRA to continue to examine the feasibility of expanding BrokerCheck:

> For example, BrokerCheck excludes information reported on Form U5 concerning the reason for a registered representative's termination and any comments from the former registered representative regarding that termination reported on Form U5. Also, as discussed, FINRA excludes from BrokerCheck, generally, information on Form U4 for registered representatives who have terminated registration more than ten years ago. Historical filings are another type of content that may be of interest to investors. BrokerCheck . . . provide[s] only the most recent filings by broker-dealers . . . and their associated persons; they do not provide access to previous filings. Expanding BrokerCheck . . . to include registration data from previously filed registration forms, or amendments to them, would permit investors to review a firm's filing history and the changes the firm has undergone over time.[44]

---

[42] *Id.* at 16.
[43] *See* SEC Study at p. 43 (internal citations omitted).
[44] *See* SEC Study at p. 44 (internal citations omitted).

VI. The Need for Action

As illustrated above, FINRA actively encourages investors to use BrokerCheck so that they can make informed decisions about their brokers. FINRA requires firms to notify investors repeatedly about the availability of BrokerCheck. FINRA then misleads investors into believing that they are obtaining complete and adequate information about their brokers. In an effort to protect the interests of its members in the securities industry, FINRA has purposely chosen not to further expand BrokerCheck.

To ensure that the BrokerCheck system functions as intended, Congress needs to act to ensure that the public has complete and uniform access to the national CRD database. Congress could achieve uniform disclosure by requiring FINRA to harmonize its disclosures with the disclosures available from the states with the most robust public records laws. As discussed above, in 2010, the SEC urged FINRA to consider harmonizing the information it makes available with the information the states make available to investors. Notwithstanding that more than three years have passed, FINRA has not acted to do so. More than a decade ago, NASAA requested that FINRA make this information available:

> Almost all the information filed on forms U-4, U-5, U-6, BD and BD-W is public information under state freedom of information or sunshine laws. Investors should be able to view all of this public information in one easy to access site. Because [FINRA] operates Web CRD, it is in the optimal position to manage this central gateway for investors and potential investors to access public information.[45]

FINRA has chosen not to do so because it is a self-regulatory trade association that is driven in part by the "personal privacy and fairness" interests of its members (brokers and broker-dealers), who presumably prefer to have less information provided to the investing public. Accordingly, Congress must step in and act where FINRA and the regulatory process has failed.

After hearings allowing interested parties to voice their concerns, Congress should harmonize national access to the national CRD database by amending the Exchange Act to explicitly require FINRA to match the disclosures available from certain states or by explicitly detailing additional disclosures to be made. The most efficient way to harmonize the information on BrokerCheck reports with the information already publicly available is for federal legislators simply to amend §15A of the Exchange Act to define the type and scope of information that FINRA would be required to make available through BrokerCheck so that, similar to Florida and other states with broad public records laws, it would only be permitted to exclude personal information such as social security numbers, home addresses, etc. There is simply no reason that the same CRD information is a public record at the state level and not publicly available from FINRA.

---

[45] *See* NASAA Comment to NASD Notice to Members 02-74, Public Information Review, available at http://www.nasaa.org/wp-content/uploads/2011/07/87- NASDPublicInformationReview.37627-43960.pdf.