The rule proposed by the Financial Industry Regulatory Authority ("FINRA") would frustrate the overriding goal of the U.S securities laws: full disclosure. It would also undermine long-held judicial and common sense doctrine that the materiality of a fact is judged from the view of a reasonable investor, not the view of the industry trade group charged with protecting its members. The SEC should reject this proposed rule in its present form.

I am an attorney with 21 years of securities law experience. I have represented investors, investment professionals and privately held companies in a variety of proceedings, including industry-sponsored arbitration, court litigation, regulatory proceedings and in certain transactional matters. No matter from which direction one approaches any of the foregoing subspecialties of securities law, one precept which is beyond debate is that securities laws are premised on full disclosure. All participants in our securities industry should therefore welcome the opportunity to make full disclosure of all facts a reasonable investor is likely to consider material in making an investment decision. These material facts also include the regulatory, compliance and legal history of a person providing investment advice, including stockbrokers.

The Financial Industry **Regulatory Authority** now proposes curtailing the disclosure of material facts for certain securities industry participants who have not been registered with a FINRA member firm for more than two years. FINRA posits that an individual's bankruptcies, liens, criminal events and arbitration claims are only relevant to an investor who may prospectively choose to do business with that individual.

FINRA should not be the final arbiter of materiality. If an investment professional has declared bankruptcy before or while subject to reporting requirements, this should be disclosed in one central place, e.g., on that individual's CRD. The same is true if a judgment lien is asserted against that individual, or if that individual has engaged in criminal wrongdoing. "FINRA does not view reportable financial matters (e.g, bankruptcies and liens) as having the same degree of materiality as final regulatory actions such that they should continue to be disclosed on a permanent basis." But the "regulatory authority's" view of the *"degree* of materiality" appears somewhat arbitrary.

Once the individual voluntarily subjected her- or himself to disclose requirements, s/he agreed that this information would be available to the investing public without regard to any two-year cut-off. Second, many registered representatives morph themselves to other genres of investment professional or fiduciary that may not be subject to CRD-related reporting requirements. However, the disclosure of material information should not change based on how this person titles him- or herself. How such an individual denominates his role does not undo the concepts of disclosure or materiality.

FINRA takes issue with the effectiveness of its own mandatory arbitration system when it complains that the "subject person" may not be subject to procedures that allow the subject person to present arguments to a fact finder. With this statement, FINRA appears to object to the fact that certain claimants in a mandatory arbitration proceeding may name a FINRA member firm, but not the member firm's agent or registered representative, as a respondent. However, FINRA's aforementioned statement as to the procedures available in this instance is besides the point because the subject person may request that his member firm respondent to an arbitral proceeding call him or her to testify. (FINRA unfairly juxtaposes its roles as a trade group and regulatory authority when it asserts an argument as to arbitral fairness under the guise of a rule limiting disclosure.)

Ironically, FINRA touches on just one problem with its mandatory, industry-sponsored arbitration platform: that many arbitrators seemingly do not recognize control person statutes, FINRA rules applicable to supervision, or the well-established concepts of joint and several liability and *respondeat superior*. Because of this anomaly, claimants forced to industry-sponsored arbitration may not sue the actual broker. (This is just one reason why adhesive, pre-dispute arbitration clauses should be eliminated.)

If the guardians of our markets wish to rebuild trust and confidence in our securities markets and institutions, then implement rules and procedures to mandate full disclosure. Not only will this allow consumers the opportunity to become better informed, it will also benefit the majority of financial professionals who conduct themselves in accordance with the trust they have earned.

I recommend that the FINRA proposal be modified to apply to all ex-brokers and to require disclosure of information indefinitely as was the case prior to the 2000 amendment to Brokercheck. At the very least, disclosure should be allowed for a period of ten years following the broker's termination from the industry. Furthermore, disclosure with respect to ex-brokers should include the same information that is provided with respect to brokers who are currently registered.

Thank you for the opportunity to provide comments with respect to this proposal.

Respectfully submitted,

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