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Via Electronic Filing

Florence E. Harmon  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**RE: File Number SR-FINRA-2009-050**  
**Proposed Rule Change to Amend FINRA Rule 8312**  
**(BrokerCheck Disclosure)**

Dear Ms. Harmon:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on the proposal (the "Rule Proposal") of the Financial Industry Regulatory Authority ("FINRA") to amend FINRA Rule 8312. The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, see <http://securities.lawschool.cornell.edu>.

Under the Rule Proposal, FINRA seeks to expand the amount of information available on FINRA BrokerCheck ("BrokerCheck") regarding formerly registered persons who have not been registered with a member for more than two years. If the Rule Proposal is enacted, information regarding "final regulatory actions" and some other administrative information will remain available on BrokerCheck beyond two years after a person is no longer registered. As set forth below, FINRA should modify the Rule Proposal and make the entire BrokerCheck record available indefinitely

**A. Investors May Better Protect Themselves If**  
**The Full BrokerCheck Record Is Kept Online**

The Clinic supports FINRA's conclusion that investors are better off when the BrokerCheck record is kept online for a longer term, however, the Clinic believes that the amount of information that FINRA proposes to keep available is too limited based on FINRA's own reasoning expressed in the Proposed Rule Change. In the Proposed Rule Change, FINRA notes that investors may continue to have an interest in the relevant disciplinary information available on BrokerCheck because formerly registered persons may continue to work in investment-related industries or otherwise attain positions of trust. Based on this interest, the

Clinic believes public investors are best protected when the full BrokerCheck record is available online indefinitely.

The potential risks that investors face include fraudulent investment schemes such as affinity frauds and Ponzi schemes. Not only is FINRA aware of these risks, it has taken steps to counter these problems. According to the FINRA Chairman and CEO's prepared remarks for a speech given on June 17, 2009 to The Exchequer Club of Washington, DC, the newly formed Office of the Whistleblower has received tips on Ponzi schemes, affinity frauds, and other abusive activities.<sup>1</sup> Since FINRA is aware of the risks associated with these types of schemes, FINRA should take steps to identify policies that best address these risks. For BrokerCheck, FINRA can maximize investor protection by keeping formerly registered persons' full records online indefinitely.

## **B. FINRA Fails To Identify Any Compelling Interests Meriting Removal Of Any Part Of The BrokerCheck Records**

FINRA claims the Rule Proposal results from balancing the interests of the investing public with the privacy and fairness interests of formerly registered persons. FINRA's approach is inappropriate because FINRA's mission is to protect the investing public and is not to balance this goal with the needs or interests of formerly registered persons. Even if balancing were a legitimate concern, the whole BrokerCheck record should still be kept online indefinitely because formerly registered persons lack any relevant privacy or fairness interests.

FINRA has failed to demonstrate a compelling reason that would merit removing information from BrokerCheck. FINRA makes two arguments regarding why some information should be removed from BrokerCheck two years after a formerly registered person has left the industry. First, the Proposed Rule Change states that the continued policy of removing information regarding formerly registered persons' bankruptcies, liens, criminal events, and arbitration claims is the result of balancing FINRA's mission of investor protection with formerly registered persons' privacy and fairness interests. Second, the Proposed Rule Change states that the kind of information that will be removed is of greater relevance to an investor or potential customer "when the individual is registered or was recently registered (i.e. within two years)."

With regard to privacy concerns, FINRA fails to demonstrate why removing selective information from BrokerCheck will better protect the privacy of formerly registered persons. Since individuals are free to enter and exit the securities industry voluntarily, registered and formerly registered persons understand that the privilege of operating in this industry is accompanied by costs that include agreeing to make some personal information available for the benefit of the investing public. Given that all of the information that FINRA proposes to remove was previously publicly available and some of it continues to be available on other databases only available to lawyers and other professionals such as Westlaw and Lexis, there are no substantial privacy or fairness concerns stemming from keeping this information available to the investing public for a longer term.

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<sup>1</sup> <http://www.finra.org/Newsroom/Speeches/Ketchum/P119009>

With regard to FINRA's second argument that the information it plans to remove after a person has not been registered for two years is somehow of less relevance to the investing public, FINRA fails to address its own statement in the Proposed Rule Change that keeping information available on BrokerCheck will enable the public to learn about formerly registered persons who may now operate in investment-related industries. In its only supporting argument delineating problems stemming from leaving information available for a longer period, FINRA argues that certain types of information, such as an arbitration record where a firm may elect to settle a claim for business reasons without any input from a registered person, unfairly tarnish the record of formerly registered persons. The Clinic believes FINRA overstates this potential fairness issue because FINRA provides currently and formerly registered persons an opportunity to submit comments for publication in BrokerCheck in response to information provided through BrokerCheck.

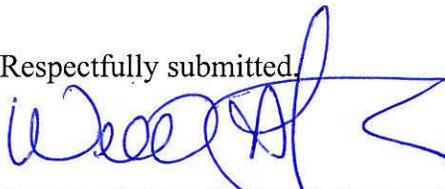
**C. Keeping Information On BrokerCheck May Deter Registered  
Persons From Committing Fraud Or Other Securities Violations**

Extending the current two-year period for keeping information regarding formerly registered persons on BrokerCheck will have a deterrent effect because formerly registered persons will act more carefully when their records remain publicly available throughout their careers. The Clinic believes keeping all material on BrokerCheck indefinitely would promote a safer environment for public investors.

**Conclusion**

The Clinic greatly appreciates the opportunity to comment on this Rule Proposal. The Clinic applauds FINRA's recognition of the value of keeping information available on BrokerCheck for longer than two years after an individual is no longer registered. The Clinic, however, urges FINRA to re-consider its proposal to remove some information from BrokerCheck two years after a person is no longer registered. The Clinic believes the proper policy is to keep the entire BrokerCheck record available to the public indefinitely.

Respectfully submitted,



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