



Securities Arbitration Clinic
St. Vincent DePaul Legal Program, Inc.

8000 Utopia Parkway
Queens, NY 11439
Tel (718) 990-6930
Fax (718) 990-6931
www.stjohns.edu

VIA E-MAIL

September 8, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Proposed Changes to FINRA Rule 8312 (FINRA BrokerCheck Disclosure)
SR-FINRA-2009-050

Dear Ms. Murphy:

The Securities Arbitration Clinic at St. John's University School of Law is very pleased to accept this opportunity to comment on the proposed change to Rule 8312 concerning the amount of information disclosed through the FINRA BrokerCheck system. The Clinic strongly supports the expansion of BrokerCheck to include information about whether formerly registered individuals were the subject of final regulatory action. However, we believe that additional changes should be made to BrokerCheck to provide even greater protection for investors.

In addition to representing aggrieved investors, the Securities Arbitration Clinic is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing the public disclosure of information about brokers, and ensuring that investors have sufficient information available to them to make informed decisions when choosing an appropriate investment professional.

The purpose of BrokerCheck is to help investors make informed choices about individuals and firms with which they may want to do business. Through BrokerCheck, the public can gain information about the professional background, business practices, and conduct of FINRA members and registered individuals. Investors especially benefit

from access to this type of information because it can preemptively protect them from dishonest brokers.

The proposed rule change will expand BrokerCheck to include information about formerly registered individuals. Currently, an individual's information is not available to the public if the person has not been registered with FINRA in the prior two years. FINRA recognizes that formerly registered individuals, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or attain other positions of trust and about whom investors may wish to learn relevant disciplinary information. Specifically, FINRA proposes to disclose through BrokerCheck information concerning any final regulatory action(s), as well as certain administrative information (e.g., employment and registration history) and information as to qualification examinations, if available, regarding these formerly registered individuals. The proposed rule change would not expand access to other information that may be part of the CRD System regarding the formerly registered individual, such as customer complaints, bankruptcies, liens, criminal events or arbitration claims.

While the Clinic supports the expansion of BrokerCheck to include information about formerly registered individuals, we believe that FINRA could provide greater investor protection by increasing the scope of available information. The proposed expansion does not include access to other information already in the system, such as liens, bankruptcies, criminal events, and arbitration claims. We believe that this information is just as significant as information about a final regulatory action. This information is reportable for registered individuals because it may be relevant to investors. In light of the fact that formerly registered individuals may still be interacting with the investing public, it follows that this information would continue to remain relevant. This type of information serves as a red flag to investors and may deter them from investing with a financial professional with questionable character. FINRA cites a need for broker privacy as the reason to restrict this information, but this justification is unfounded. The information it seeks to protect is publicly available through other means; cataloging it in a central location would provide a substantial benefit to the public.

Further, there is little need to limit the inclusion of records for formerly registered individuals to only those with a final regulatory action on their record. We believe purging the records of persons who have been unregistered for a two-year period is harmful to investors and the practice should be eliminated. BrokerCheck is a system designed to protect investors and reducing the amount of available information undermines that purpose. Investors will inevitably be harmed by formerly registered individuals who move on to other roles in the financial industry. By removing the individual's records from the BrokerCheck system, it is unduly burdensome for an investor to determine if that individual had any prior disclosable events. Additionally, the burden on FINRA to maintain these records is very low, compared to the benefit they provide to the public.

The expansion of BrokerCheck to include formerly registered individuals is an important step for increased investor protection. Without readily available records, investors are at a severe disadvantage because they are forced to choose a financial

professional without full information. There are many different ways a financial professional may interact with an investor, and it is not always necessary that the individual be registered. If the person has no negative events on their record, then they should have no objection to their records remaining accessible by the public. If the individual does have a negative history, whether it is a final regulatory action, or a slew of arbitration awards against the individual, then the need to protect the public is that much greater. The individual should not benefit from an arbitrary two year rule, after which time their record no longer exists in the public realm and they are free to menace the public in some other capacity.

We support the current rule proposal by FINRA, however, we believe it is possible to protect investors further by eliminating the restriction on the information that will be provided about formerly registered individuals and keeping records on all formerly registered individuals publically available indefinitely. We ask that FINRA continue to consider other changes to BrokerCheck to address the protection of public investors. Thank you for your consideration of this important matter.

Respectfully,

/s/ Peter J. Harrington
Peter J. Harrington
Legal Intern

/s/Lisa A. Catalano
Lisa A. Catalano
Director, Securities Arbitration Clinic

/s/Christine Lazaro
Christine Lazaro
Supervising Attorney, Securities Arbitration Clinic