Sonn & Erez, PLC

ATTORNEYS & COUNSELORS
Broward Financial Centre
500 East Broward Blvd., Suite 1600
Fort Lauderdale, FL 33394
Telephone: (954) 763-4700
Facsimile: (954) 763-1866

JEFFREY SONN, ESQ.
JEFFREY EREZ, ESQ.
STEFAN APOTHEKER, ESQ.
ADAM A. NATIV, ESQ.
BRIAN B. PASTOR, ESQ., of counsel*
** admitted in Georgia and Florida*

OFFICES BY APPT:
ATLANTA, GA
ORLANDO, FL
MIAMI, FL

September 9, 2009

VIA E-MAIL TO: rule-comments@sec.gov

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

RE: File Number SR-FINRA-2009-050 - FINRA BrokerCheck Disclosure

Dear Ms. Murphy,

I write to comment on FINRA's proposed rule change that would materially decrease information to investors about brokers at a time that our nation has faced a near meltdown in the financial markets due in large part to reckless risk practices and fraud on Wall Street.

My law firm represents investors in securities litigation in arbitration, state and federal court. I have been practicing law since 1988, and have represented hundreds, if not thousands, of investors. My law firm has also served as Special Counsel to an SEC Receiver in securities litigation, served as lead or co-lead class action counsel in securities cases, and I served as a director of the Public Investors Arbitration Bar Association (PIABA). I have published articles on securities fraud related topics, and served as a speaker on securities fraud matters for the Florida Institute of Certified Public Accountants, the Practicing Law Institute and PIABA.

For a time, I served as a Wall Street fraud expert for the CNBC show, "On the Money," and provided insight and commentary on specific securities cases for documentaries such as "Bernie Madoff and the $50 Billion Dollar Heist," and news shows such as CBS' "Sunday Morning," NBC, ABC, and BBC Radio.

The CRD system (aka BrokerCheck) is the main database where American investors can research historical information about brokers, and former brokers, who are or may be in a position of trust. In 2000 Finra amended its BrokerCheck rules to deny the public access to records of ex- brokers who

were out of the industry for 2 years. Now they propose to give information access on these ex-brokers, but only as to final regulatory matters and only for ex-brokers who are working in investment related industries or positions of trust.

Finra's proposed change to the BrokerCheck rule wrongly limits important information that must be available to the public. BrokerCheck should not be limited, but in fact expanded to apply to all ex-brokers, and not just for those out of the business for 2 years. This is an artificial limit with no logical relevance. BrokerCheck should also require public disclosure of the same information provided for currently registered brokers.

Finra's obligation to protect investors clearly outweighs any responsibility it claims it may have to preserve the privacy of ex-brokers. Operating as an Associate Member of a registered broker-dealer is a privilege, not a right. Registered representatives, when they obtain their license, agree to have personal details be made available to the public, to protect the public from unscrupulous or negligent brokerage practices.

The right to charge for advice comes with it the responsibility to act prudently. If a broker does not act prudently, the public has a right to know. There is no "privacy right" in the law that protects a broker's history, once they become registered, and even after they leave the industry. Many brokers end up on positions of trust and confidence, and such historical information is crucial to the public's decision, whether to engage that broker or ex-broker.

It is irresponsible and against the professed responsibility of FINRA to protect investors, and thus FINRA must err on the side of protecting investors, and not claim that it must protect the "privacy rights" of brokers. Where do these "privacy rights" of brokers come from, according to FINRA? FINRA cannot cite one law that grants "privacy rights" to brokers once they become registered, or after they leave the industry. In fact, a broker's application is public information, and the broker knows this to be true. This is a knowing, voluntary and intelligent waiver of whatever "privacy right" the broker thinks he/she may have when they enter the industry. FINRA's argument of a "privacy right" has no legal basis, nor does it cite any.

In this time of financial crises, caused in large part by the greed and fraud of Wall Street, more, not less disclosure, is needed. Without transparency, the public loses its respect for Wall Street and our confidence in the markets. Right now, confidence in the integrity of our markets is at an all-time low, and now is not the time to engage in a cover-up of industry information.

The moral hazard of restricting access to information only reinforces the public perception that FINRA, the self-regulatory organization, is still the "fox guarding the henhouse." If anything, all historical information, about any broker, must be made available to the public.

Given the obvious inability of FINRA and the SEC to catch career criminals like Bernard Madoff and "Sir" Allen Stanford, even when red flags appeared or tips were given to these regulators, is proof positive that the public must have more, and not less, information about people in the financial services business with whom they entrust their life savings. FINRA and the SEC have proven that they cannot protect the public from every financial criminal. FINRA and the SEC simply lack the resources to protect the investing public from every crime, and/or lack the ability to do so. If anything, the public

must have maximum information about brokers so they can try to protect themselves as best they can.

Information about all brokers should and must be made permanently available. There is no legitimate excuse for less than full disclosure.

FINRA identifies the primary purpose of BrokerCheck as "help[ing] investors make informed choices about the individuals and firms with which they may wish to do business." FINRA further acknowledges that the purpose of the proposed rule change "would allow the public access to information about formerly registered persons who, 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."

FINRA, however, chose to limit the information that is permanently available only to final regulatory orders. There is no basis for this arbitrary decision.

This is troubling because there is important additional information disclosed through BrokerCheck for current registered representatives that would serve the purpose of the current proposal by providing relevant information to investors who utilize BrokerCheck to investigate former brokers.

Currently, under FINRA Rule 8312, an investor who wishes to investigate a broker's history is able to ascertain the following, so long as the broker is registered, or has been within the previous two years:
• Customer complaints
• Arbitration actions filed against the broker
• Bankruptcies
• Liens
• Certain criminal complaints and charges made against a broker

FINRA’s reasons for limiting information is illogical and self-serving. FINRA reasons that the expansion of the time during which final regulatory actions will be available through BrokerCheck is appropriate because final regulatory actions are available to the public anyway. All of the other categories of information identified above, except for customer complaints made to a broker's employer, are also publicly available through any number of sources, but not necessarily to the public investor who uses BrokerCheck.

FINRA's justification makes no sense in light of its failure to include other categories of publicly available information. Moreover, arbitration actions, bankruptcies, liens, and especially criminal actions would all be of extreme importance to an investor who uses BrokerCheck to gather information on an individual who may be handling his or her money, or who may be gaining access to an investor's assets through a position of trust.

FINRA also claims that final regulatory orders "are subject to procedures that allow an opportunity for the subject person to present arguments to a fact-finder about the allegations prior to the final disposition of the matter." FINRA also claims that arbitration claims, unlike final regulatory actions, "may not be subject to procedures that allow an opportunity for the subject person to present arguments to a fact-finder about the allegations prior to final disposition." All parties named as respondents in an

arbitration action, however, are given opportunity to respond to the allegations asserted against them, and are entitled to appear at all hearings, just as in regulatory enforcement proceedings.

Moreover, as previously noted, FINRA Rule 8312 allows individuals to submit a comment that addresses any disclosed information, thereby alleviating any cries of unfairness regarding the procedures related to arbitration actions.

FINRA comments that its refusal to include criminal charges and convictions is related to the possibility that such charges and convictions "subsequently may have a different disposition, which may significantly change the meaning of the matter as originally reported." This assertion seems illogical. A criminal charge is a criminal charge. Form U-4 requires the disclosure of celiain criminal convictions and charges, not only such charges as ultimately resulted in a conviction. Moreover, such information is already disclosed for currently registered individuals and for those who have been registered within the last two years. FINRA has determined that this information is relevant and furthers its objectives in providing information to investors. Finally, if a conviction met with a subsequent different disposition, such as being overturned on appeal or sealed for some reason, then it may not even be subject to disclosure.

FINRA finally claims that certain financial information, such as bankruptcies or liens, are not material enough to warrant disclosure. Such information, however, may shed light on an individual's level of financial responsibility and may be absolutely material to an investor who seeks to determine whether he or she wishes to entrust money or personal affairs to a formerly registered person. FINRA explains more than once that a broker has an opportunity to submit a statement regarding any disclosed events. The ability for a broker to offer his or her own statement addressing disclosed information more appropriately achieves the balance between fairness to the individual and disclosure to the public of adverse information that FINRA claims to seek.

FINRA's current proposal does not go far enough to achieve the balance between the two interests, instead tipping the scales in favor of hiding otherwise relevant and important information regarding former registered representatives.

In this rule proposal, FINRA has focused almost exclusively on the needs of investors to learn about their brokers before they invest. However, FINRA's mission must also include the protection of investors who have gotten into a dispute with their broker or former broker.

It is not unusual for aggrieved investors to seek out a lawyer and file an arbitration claim several years after the events which gave rise to their losses. In fact, the FINRA Code of Arbitration Procedure makes claims eligible for submission to arbitration for up to six years after the event or occurrence giving rise to the claim. (FINRA Customer Code of Arbitration Procedure, Rule 12206(a).)

Currently, in many instances attorneys consult BrokerCheck to procure information about a broker who wronged their clients, only to learn that the broker left the industry more than two years earlier. This makes it difficult to learn important facts (which may, for example show that the brokers engaged in similar misconduct) about the brokers which were previously public record. There is no reason to remove these disclosures from the public record; doing so is antithetical to FINRA's mission of

protecting investors.

This state of affairs leads to a somewhat ridiculous result. An aggrieved investor has more trouble learning about a broker whose misconduct led to his termination by a reputable firm than he has learning about a broker whose conduct was not serious enough to want termination. This makes no sense. Moreover, it makes no sense for FINRA to be jumping through hoops to protect the "privacy rights" of these bad brokers, to the detriment of the investors which it is supposed to protect.

As an attorney who represents aggrieved investors in FINRA arbitration proceedings and in court, I believe that all of the information which is disclosed for current FINRA members and associated persons should remain in the public domain indefinitely. If there were a bona fide need to balance competing interests, the period should be lengthened to at least 6 years, to coincide with the arbitration eligibility rule.

Brokers are in a position of trust with access to client funds. A client would reasonably want to know the full extent of the person's prior history, and should be entitled to that information if it has previously been available to the public.

The instant proposal should not be limited just to final regulatory orders, but should include all information now subject to disclosure for currently registered individuals in order to accomplish FINRA's stated objective of allowing investors access to relevant information that they need to make an informed decision. Expanding the scope of disclosed information also serves the overarching objective of FINRA of investor protection, even at the risk of potential inconvenience to associated persons who may properly be asked to make public disclosure as a condition of the ptivilege of obtaining
securities licenses.

Any move to disclose information to the public that is not currently available is a positive step. Accordingly, the current proposal should not be rejected, but revised in scope to increase disclosure to allow public access to information that is not covered by the proposal.

For the reasons set forth above, I recommend that the current rule proposal be approved subject to revisions to increase disclosure with the inclusion of the categories outlined above.

Please do not hesitate to contact me should you require additional information or wish to discuss this important topic.

Sincerely,

Jeffrey Sonn, Esq.