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September 24, 2009

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

VIA EMAIL ONLY TO [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: SR-FINRA-2009-050 – BrokerCheck**

### **BrokerCheck and the CRD: The Broader Picture**

Dear Ms Murphy:

Thank you for the opportunity to comment regarding FINRA's proposed modification to BrokerCheck embodied in SR-FINRA-2009-050. Meaningful access to broker histories is a subject of great interest and importance to me. I have represented numerous public investors in securities arbitration proceedings during the last seventeen years and have depended upon the public record in the course of that representation. I also am concerned that burying and whitewashing the public record deprives savers and investors of information that would help them to safeguard their life savings and prevent the need to consult investor counsel in the first place.

Let's step back for a moment and have a look at the forest instead of the trees. What is the larger problem with BrokerCheck? False advertising. FINRA – a membership association of the securities industry – does two problematic things with BrokerCheck:

1. It provides users with significantly less information that they would receive if they requested a CRD printout from a state securities regulator; and
2. It broadly advertises BrokerCheck to the public, undoubtedly tricking large numbers of savers and investors into obtaining only the BrokerCheck information and believing it is all that is available.

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Now FINRA is going to the SEC and offering a slight improvement to BrokerCheck. But even with the proposed improvement, BrokerCheck will be akin to a paramedic van arriving at the scene of an accident equipped only with a small box of Band-Aids. Would the Band-Aids help the accident victim? Perhaps. But what would help far more would be a real paramedic van with real medical equipment. State regulators – who walk the walk when it comes to investor protection – provide such a van in the form of a real, complete CRD printout.

It is bad that FINRA does not provide the public with a real, complete CRD. It is far worse that FINRA advertises its inferior, incomplete product to the public. There undoubtedly are enormous numbers of savers and investors who never will learn more than what BrokerCheck makes available to them. Some will trust people they should not trust and will lose their savings and endure poverty in their old age.

Others, who already have lost their savings and might have had a chance to recover their losses, will believe that the whitewashed picture BrokerCheck paints is a complete one. Those investors may fail to bring a claim against a broker who appears to be clean, his true rogue status concealed by BrokerCheck. In that situation, the primary beneficiaries may not be the rogue broker, who may not have assets available to compensate his victims anyway, but rather the FINRA member firms who employed the rogue broker and will face fewer claims as a result.

Thus, ironically, the primary usefulness of SR-FINRA-2009-050 may be its role as a reminder of the importance and indispensability of state securities regulators, and of the weaknesses inherent in allowing the industry to regulate itself. Without state regulation, hoards of savers and investors would have little protection or none at all.

No legitimate regulatory authority can allow the BrokerCheck game of bait-and-switch to continue. The Commission should insist upon modification of the proposed rule to require FINRA to provide complete CRD information to the public.

Thank you for your attention to this important matter.

Respectfully submitted,

Scot Bernstein

SDB:maw