



SYRACUSE UNIVERSITY

COLLEGE OF LAW
OFFICE OF CLINICAL LEGAL EDUCATION

May 13, 2010

Via Electronic Filing: rule-comment@sec.gov

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

**RE: File Number SR-FINRA-2010-012
Proposed Rule Change to Amend FINRA Rule 8312
(FINRA BrokerCheck Disclosure)**

Dear Ms. Harmon:

The Syracuse Securities and Consumer Law Clinic (the “Clinic”) welcomes the opportunity to comment on the proposal (the “Rule Proposal”) of the Financial Industry Regulatory Authority (“FINRA”) to amend Rule 8312. The Clinic is a Syracuse University College of Law curricular offering that, among other things, assists investors in their disputes against brokerage firms, their registered representatives, and in disputes against financial professionals outside FINRA’s jurisdiction. Our securities cases generally involve investors who have relatively small damages and are who are unable to obtain private legal representation.

The Clinic supports the rule proposals and commends FINRA in its continued efforts to expand important disclosures available on BrokerCheck. The proposals reflect a thorough and thoughtful analysis of needed improvements. In addition, the Clinic suggests that the scope of disclosures be expanded further, in the interest of investor protection. Our comments are detailed more fully below.

I. Summary of Rule Proposal

Under the Rule Proposal, FINRA seeks to expand the amount of information available on the FINRA BrokerCheck (“BrokerCheck”) online service by: extending the

public disclosure period of a broker who leaves the industry from two years to 10 years; expanding the scope of information about former brokers permanently available, to include matters such as criminal convictions and certain civil and arbitration judgments; and to add additional disclosure of historical complaints for currently registered persons. Finally, the proposed rule change would establish a process to dispute the accuracy of information disclosed through BrokerCheck.

II. Comments

A. The Expansion of Information From Two to Ten Years For Formerly Registered Persons

FINRA's rule proposal in part would extend from two to ten years the public disclosure available on BrokerCheck for a formerly registered person. The Clinic supports this proposal. FINRA correctly acknowledges that formerly registered brokers may still work in other industries related to investments and securities, and hold fiduciary positions of trust in these undertakings. Although former brokers may not be required to register with any regulatory body, or they fail to do so, the nature of services they provide can be markedly similar to that when they were registered brokers. In some instances, former brokers who left the industry more than two years ago, precisely because of their own misconduct and attendant sales practice complaints, have been able to market themselves anew as financial advisors, or originators of new financial products, to an unwitting public. Accordingly, the extension of the disclosure period to ten years will promote investor protections in these situations.

The Clinic submits that the proposal could go further. Greater transparency would be achieved if all conduct related disclosures were extended indefinitely. The disclosure time frame for currently registered persons is by necessity, indefinite. We submit there is no compelling need to distinguish between currently or formerly registered persons as to the length of time for disclosures on BrokerCheck. Extending the time indefinitely will likely deter at least some brokers from engaging in misconduct, more so than the current two-year disclosure period and the proposed 10 year disclosure period might accomplish. In addition, there are instances where even after ten years, an investor would find the record of a former broker extremely relevant to a decision whether to deal with that person today. For example, if a former broker had received numerous complaints in the early 1990s for improper sales of illiquid limited partnerships to elderly investors in the 1980s, a current investor should be afforded at least the opportunity to inquire of the former broker before entrusting assets to him/her. The former broker, on the other hand, has the opportunity to comment on the disclosures, dispute the disclosures if warranted and explain his position.

In sum, although an expansion from two to ten years is a vast improvement, investors would be even better served by disclosures for an indefinite time.

B. Access to Increased Customer Complaints

Currently the Historical Complaints are available on BrokerCheck for formerly or currently registered persons when three conditions have been met: 1) A matter became a Historic Complaint¹ on or after March 19, 2007; 2) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than 10 years old; and 3) the person has three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, litigations, or historic complaints, or any combination thereof. Under the proposed rule amendment, these three conditions will be eliminated. The practical result will be disclosure of all Historic Complaints that to date have been deemed non-reportable and which arose after adoption of the Web CRD [i.e., on or after August 16, 1999]. The Clinic fully supports FINRA's proposal to delete the criteria that currently limit disclosure of Historical Complaints.

The Clinic also urges FINRA to consider expanding BrokerCheck disclosures for former or current representatives in a manner consistent with the Legacy CRD disclosures available through certain state securities regulators. Many investors, and likely many lawyers, are unaware of the more complete CRD reports available through state regulators. While FINRA refers to the state regulator resources on its website, the availability of more complete Legacy CRD from a state is not clearly explained. The Clinic submits that the full information available through a request to state regulators should likewise be made available directly through BrokerCheck. As FINRA notes in footnote 3 of its release, BrokerCheck is viewed as the 'premier tool' for researching investment professionals. Most investors we encounter would have no idea that additional information is available through a full CRD. Investors who do not have an attorney, or an attorney who is familiar with full CRD reports, can be unnecessarily deprived of easy access to relevant information. In this regard, the Clinic endorses the position set forth by PIABA in its comment letter to this rule proposal.

¹ "Historic Complaints are customer complaints that were reported on a uniform registration form that are more than two years old and that have not been settled or adjudicated and customer complaints, arbitrations, or litigations that have been settled for an amount less than the specified dollar amount (identified on the customer complaint question) and are therefore no longer reportable on a uniform registration form." FINANCIAL INDUSTRY REGULATORY AUTHORITY, PROPOSED RULE CHANGE TO AMEND FINRA RULE 8312 (BROKERCHECK DISCLOSURE) 11 (2010), <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p121191.pdf>.

C. Other Types of Information Should Be Permanently Available

The rule proposal seeks to make permanent for formerly associated persons certain categories of information including: 1) If the person was convicted of or pled guilty or nolo contendere to a crime; 2) If the person was the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement with in a violation of any investment related statute or regulation; or 3) If the person was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person. The Clinic supports these proposals as necessary to investor protection and as a deterrent against broker misconduct.

The Clinic further believes the rule proposal should include as permanently available information the following: bankruptcy filings, misdemeanor charges relating to fraud and other crimes bearing on a broker's veracity in financial and business matters. As discussed on page 2 above, many former brokers transition to an investment related business. These categories of information, which will not be permanently disclosed under the proposed rule, can be highly relevant to individuals who might entrust their funds or other assets to a former broker. When weighing the need of the investor or consumer against a former broker who willingly elects to continue in a career path he knows is blemished, the balance must tip in favor of the investor/consumer protection. The Clinic suggests that these additional categories of information be included with those categories of information that will be permanently disclosed.

D. Dispute Process Regarding Accuracy of Disclosures

The Clinic supports the proposal to codify procedures whereby brokers might dispute the accuracy of disclosures on their BrokerCheck record. This is a legitimate and important issue. We note with approval that FINRA will not permit the process to serve as a means to collaterally attack matters previously reported or otherwise infringe upon the reporting of customer complaints pursuant to FINRA Rule 2080.

Conclusion

The Clinic commends FINRA for this thorough and thoughtful rule proposal, and further notes with approval FINRA's diligence on this topic. The Clinic supports the amendments. We also suggest expansion of certain amendments as set forth above. Please do not hesitate to contact us if you have questions regarding these comments.

Thank you for your consideration and attention.

Respectfully Submitted,

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