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May 11, 2010

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

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

RE: **File No. SR-FINRA-2010-012**
Proposed Rule Change to Amend FINRA Rule 8312 (FINRA
BrokerCheck Disclosure)

Dear Ms. Murphy:

On behalf of the Public Investors Arbitration Bar Association (“PIABA”), I thank the Commission for this opportunity to comment on the above-referenced rule change proposal that would amend FINRA Rule 8312 to expand the information released through BrokerCheck, and to provide for BrokerCheck dispute process. PIABA is a national, not-for-profit bar association comprised of more than 460 attorneys, including law school professors and former regulators, who devote a significant portion of their practice to the representation of public investors in securities arbitrations. Accordingly, our members and their clients have a strong interest in FINRA rules that protect public investors, particularly those that impact the scope of information available to the public.

PIABA supports the current rule proposal in its endeavor to expand BrokerCheck. Any proposal to increase the ease with which investors may gain information about those with whom they are doing business is a positive one. However, there is still room for the rule to go further.

As stated in its release, FINRA established BrokerCheck in 1988 to provide the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. In 2000, BrokerCheck was expanded to include formerly registered persons whose registration had terminated within two years. This past year, FINRA expanded BrokerCheck again to make certain information about formerly registered persons who have been the subject of a final regulatory action permanently available. FINRA has recognized the expanding role BrokerCheck now plays in the context

of investor protection. Accordingly, FINRA proposes to: (1) expand the BrokerCheck disclosure period for formerly registered persons from two years to ten years; (2) permanently make publicly available certain information about former associated persons if any of the following applies: (i) the person was convicted of or pled *nolo contendere* to a crime; (ii) the person was the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation; or (iii) 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; and (3) make publicly available all historic customer complaints that were archived after the implementation of Web CRD.

Expansion of BrokerCheck Information Concerning Formerly Registered Persons

PIABA supports each of these amendments. BrokerCheck is no longer used solely to check on presently registered persons with whom investors are doing business. Moreover, FINRA recognizes that certain information should remain permanently available, regardless of when the formerly registered person left the industry. FINRA's main argument for making the information available centers around the potential that registered persons may move into other investment related industries, or otherwise remain in positions of trust with potential investors. This argument is well founded. We have witnessed time and again situations where a broker with numerous complaints leaves the securities industry, only to have the broker resurface and cause harm to unsuspecting consumers in yet another investment business. This scenario becomes more likely if the broker's record becomes unavailable to the public after two years. Accordingly, we urge the Commission to approve the proposal.

However, FINRA does not make a compelling argument as to why certain information should remain available permanently and why certain information should be removed after ten years. FINRA argues that the information proposed to be included permanently constitutes a final disposition; and that much of the information is available publicly through other means. While this may be true, it is not a compelling reason to exclude the remainder of the information from BrokerCheck after ten years. FINRA clearly recognizes that information about formerly registered persons remains relevant to the investing public. FINRA has instituted procedures whereby formerly registered persons may make comments on information appearing on BrokerCheck; therefore, the fact that the information FINRA proposes to remove after ten years does not constitute a final disposition is not a compelling concern. All of the information contained within BrokerCheck should remain available permanently. PIABA does fully support the expansion of the rule to eliminate the conditions on the reporting of historic customer complaints.

Uniformity of Available Information

PIABA does believe there is still room for further expansion of BrokerCheck. According to FINRA, “The CRD system is an online registration and licensing system for the U.S. securities industry, state and federal regulators, and self-regulatory organizations (SROs). The CRD system contains broker/dealer information filed on Forms BD and BDW and information on associated persons filed on Forms U4 and U5. The CRD system also contains information filed by regulators via Form U6. The CRD system contains administrative information (e.g., personal, organizational, employment history, registration, and other information) and disclosure information (e.g., criminal matters, regulatory disciplinary actions, civil judicial actions, and information relating to customer disputes) filed on these forms. FINRA operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association (NASAA). FINRA works with the SEC, NASAA, other members of the regulatory community, and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained on the CRD system is accurate and complete.”¹

FINRA makes certain information contained in the CRD system available to the public through BrokerCheck. The public may either go to FINRA or to their state securities regulator to get information about firms or registered persons. If a member of the public contacts a state regulator for information about a registered (or formerly registered) person, the state may either use BrokerCheck itself, or provide the individual with a different CRD report. For example, if an individual contacts the Florida Office of Financial Regulation, the agency will provide the individual with a CRD report for any registered person who, at any point, was registered with Florida. The report that Florida generates is more expansive than the report that BrokerCheck generates. The CRD report contains more expansive information about registrations with previous employers, including the reason for termination, any termination comment, as well as which registrations the individual held while employed with the firm. The report also details the position the individual had with each firm and whether the employment was investment related. The CRD report provides all exam information, including whether or not the individual has failed any exams. BrokerCheck simply tells the public which exams the individual has passed. The CRD report also indicates whether or not the individual has satisfied the continuing education requirements. To the extent the CRD provides access to historical or archived customer complaints, the current rule proposal has not addressed the discrepancy.

¹ See, Notice to Members 04-16, “NASD Adopts Rule 2130 Regarding Expungement of Customer Dispute Information From The Central Registration Depository”

In sum, the information about registered (or formerly registered) persons is not uniform. In certain states, the public has access to a much broader spectrum of information. Because FINRA is the gatekeeper for this information, it should endeavor to ensure that the investing public has equal access to the information available. Investors in Florida should not be more protected than investors in New York.

BrokerCheck Dispute Process

With regard to the formalization of a process by which individuals may dispute information contained within BrokerCheck, PIABA supports the proposal. To the extent the process is already occurring, it should be codified. However, the process should not in any way apply to the reporting of customer complaints, the dispute of which should be covered by FINRA Rule 2080. PIABA recognizes the need for a formalized mechanism whereby FINRA may fulfill its obligation to ensure the accuracy of the CRD system, and by extension, BrokerCheck.

Conclusion

As FINRA recognizes, there are many different ways a financial professional may interact with an investor. To limit information available to the public because an individual has not worked in a registered capacity within the past ten years is somewhat arbitrary. If the person has a checkered past, the need to protect the public is that much greater. Therefore, PIABA urges FINRA to consider expanding the information permanently available to include all of the information otherwise available on BrokerCheck, and to consider expanding BrokerCheck to align it with the information made available by certain of the states.

We welcome any questions you may have regarding our position. Please do not hesitate to contact me should you have any questions or wish to discuss this matter.

Respectfully submitted,
PUBLIC INVESTORS ARBITRATION
BAR ASSOCIATION

/s/
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President

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