

April 15, 2013

Via Electronic and First Class Mail

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

JENICE L. MALECKI

ASSOCIATES

ADAM M. NICOLAZZO
ROBERT VAN DE VEIRE

OF COUNSEL
JALILA A. BELL

Re: Comment on File No. SR-FINRA-2013-018

Dear Ms. Murphy:

I write to provide a written comment regarding File No. SR-FINRA-2013-018, which proposes to amend Rule 8313 to establish general standards for the release of disciplinary information to the public. For the below reasons, I support the amendment, but believe that if FINRA exercises its discretion under proposed Rule 8313(c)(2) to withhold documents and/or information, FINRA should release the type of documents and/or information being withheld and the reasons for such withholding.¹

Amendment of FINRA Rule 8313

I support FINRA's efforts to amend FINRA Rule 8313 to provide greater information to the public. Regulation over the dealings between members of the securities industry and their customers is based largely on the premise of full disclosure with respect to the securities products being offered. The creation and launch of the FINRA Disciplinary Actions ("FDA") online database was a step in the right direction to promote full disclosure to customers, not only with respect to securities products that they purchase, but also with respect to the individuals/firms through whom these products are offered.

In my experience, one of the hardest things for victims of investment fraud to deal with is the emotions that overcome them after realizing that the broker they trusted had done the same or similar things to other customers in the past. A common sentiment expressed is "Had I known, I never would have let them touch my money." For this reason, I support FINRA's efforts to increase the amount of disclosure to the public regarding a registered person/member firm's history.

¹ In the past 20 years, I have served on the Board of Directors of the Public Investors Arbitration Bar Association (PIABA), and have been a member of the Securities Industry Association (now SIFMA), New York County Lawyers Association (NYCLA), Securities and Exchanges Committee, and the New York State Bar Association. I have taught classes at New York Law School and Brooklyn Law School, and have served as an NASD and NYSE (both now FINRA) arbitrator and chairperson. I have also spoken on several panels at and written articles for Practising Law Institute, NYCLA and PIABA. Through my career, I have represented both public customers and registered persons and firms in the securities industry.

These disclosures certainly will help investors make a more reasoned decision before trusting their investments to a broker with a checkered disciplinary past. Investors will likely be wary to entrust their savings to those registered persons with questionable disciplinary records, as they well should be. Notwithstanding, these public investors will still have a need for financial advice and will continue their search. These investors would then be seeking out brokers with clean disciplinary records, providing an influx of new business to such brokers, making such brokers more valuable to prospective employers. Accordingly, brokers will now have long term monetary incentives to follow the rules.

The Reason(s) For Which Copies Of Documents And/Or Related Information Otherwise Required To Be Released Under 8313(A) Are Being Withheld Under The Provisions Of 8313(C)(2) Should Be Specifically Identified Along With The Document Type and Date Of The Document

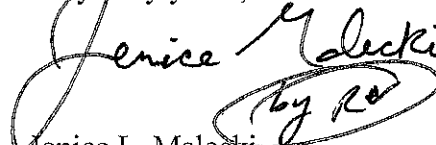
Under the proposed rule, FINRA staff would have the discretion to withhold the release of some disciplinary records that fall under 8313(a) in extreme circumstances when the release of such records “would violate fundamental notions of fairness or work an injustice.” However, this standard is vague on its face, and its inherent subjectivity seems to present challenges for its uniform application. Understandably, the creation of a new, more specific standard to determine when the withholding of information is appropriate may not be feasible since 8313(c)(2) applies only in the most unique and extreme of circumstances. Yet, such broad discretion may create the appearance of impropriety and concealment, when not justified.

To pre-emptively cure this potential problem, I suggest that in situations where documents and information are withheld under the provisions of 8313(c)(2), FINRA release the type of document and/or information, date of the document, and the reason the document and/or information is being withheld. This proposal would function similar to that of a privilege log used by attorneys in civil practice. By identifying the document type, date and reason for withholding, FINRA would be able to further the goal of full disclosure, while at the same time protecting the persons and interests 8313(c) was designed to protect.

Ultimately, the revision of Rule 8313 is a step in the right direction toward full and honest disclosure. The inclusion of the details of documents and information withheld under 8313(c) will server to further that goal, while offering the desired protections to those who need them.

Your time and attention to this matter is greatly appreciated.

Very truly yours,


Jenice L. Malecki