



PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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April 15, 2013

Via Email Only - rule-comments@sec.gov

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

Re: SR-FINRA-2013-018—Proposed Rule Change Relating to FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions, and Other Information)

Dear Ms. Murphy,

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"). PIABA is an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in FINRA rules relating to both investor protection and disclosure.

PIABA supports FINRA's efforts to increase the public's access to disciplinary and other relevant information. It shares FINRA's belief that greater public access to information regarding its disciplinary actions provides valuable guidance and information to members, associated persons, other regulators, and investors.

Current Rule 8313 governs and limits the public release of disciplinary and other information by FINRA. However, current Rule 8313 sets forth different standards for the release of such information depending on the underlying violation or applicable rule. In addition, the standards in current Rule 8313 may prohibit FINRA from releasing information that is publicly available from other sources. Accordingly, FINRA proposes amending Rules 8313, 9268, 9552-9558 and 9620 to clarify the scope of publicly-accessible disciplinary and other information establish general standards for its public dissemination.

With a few exceptions, PIABA strongly supports the Rule amendments proposed in SR-FINRA-2013-018. Specifically, PIABA supports the proposed amendments to Rule 8313 providing for mandatory disclosure of un-redacted copies of (and discretionary disclosure of information related to) disciplinary decisions and complaints, temporary cease-and-desist orders ("TCDOs"), statutory disqualification decisions, summary actions, and membership appeals. Public dissemination of disciplinary information serves to deter future misconduct, improve overall business standards in the industry, and empower investors by providing them with relevant disciplinary information concerning firms and associated persons.

PIABA supports and opposes in part the proposed amendments to Rule 8313(c). PIABA believes that FINRA should have the discretion to redact confidential customer information or information that raises significant identity theft, personal safety, or privacy concerns (which are not outweighed by investor protection concerns) from disciplinary and other publicly-available information on a case-by-case basis. However, PIABA does not believe that FINRA should have the discretion to waive the requirement to publicly release disciplinary complaints or decisions "under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice." FINRA has not identified examples of extraordinary circumstances that would outweigh the benefit for publicly releasing disciplinary information. The deterrent effect of public dissemination is undermined if disciplinary decisions and information are withheld by FINRA out of concern for the disciplined firm or associated person. In the case of third parties, any unfairness or injustice resulting from public dissemination could be ameliorated by redaction.

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PIABA supports in part and opposes in part the proposed amendments to Rule 8313(a)(5), which make permissive the release of certain decisions and notices under Rules 6490 (Processing of Company Related Action), 9610-9630 (Procedures for Exemptions) and 9710-9770 (Procedures on Grievances Concerning the Automated Systems). FINRA does not currently release decisions and notices issued pursuant to Rules 6490 and 9710-9770. Because these rules do not serve investor protection or education functions, PIABA has no opinion on the proposed changes.

However, PIABA is opposed to the proposed changes to existing Rule 9620, which would make the publication of exemption applications and decisions permissive in FINRA's discretion. Instead, PIABA believes that exemption applications and decisions should be subject to mandatory publication to protect and educate the investing public.

Rules 9610-9630 provide procedures for members and associated persons to be exempted from certain FINRA rules. Under current Rule 9620, all exemption "application[s] and decision[s] shall be publicly available unless FINRA staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part." The proposed rule would amend Rule 9620 to permit FINRA to make public disclosure of exemption applications and decisions at its discretion.

Exemptive relief is currently available to firms and associated persons to relieve them of compliance with certain FINRA and NASD investor protection rules. Thus, the proposed rule changed would afford FINRA unfettered discretion to make public (or keep private) exemption applications and decisions geared toward investor protection. Examples of such applications and decisions include, but are not limited to:

- A waiver of qualification examinations and registration requirements (NASD Rules 1021, 1050 1070);
- A waiver of a member's obligation to file certain public communications aimed at public investors with FINRA (FINRA Rule 2210);
- A waiver of a member's obligation to review certain issuer information before recommending over-the-counter equity securities to the member's customers (FINRA Rule 2210);
- A waiver of the requirements for issuing, underwriting, or participating in Direct Participation Programs (FINRA Rules 2310, 5122);
- A waiver of the requirements for participation in a public offering of securities when a member is operating under a conflict of interest (FINRA Rule 5121);
- A waiver of the requirement to file a sales materials with FINRA in connection with the sale of certain private placements exempt from registration under the Securities Act of 1933 (FINRA Rule 5123);
- A waiver of certain restrictions on a member's purchase and sale of initial equity public offerings (FINRA Rule 5130); and
- A waiver on the standardized rules and procedures for transferring customer accounts (FINRA Rule 11870).

Beyond stating that the member conduct rules for which exemptive relief is available have "differing benefits to publication," FINRA provides no explanation for why decisions exempting firms from complying with investor protection and business conduct rules should no longer be presumptively public and should be publicly disseminated only in the exercise of FINRA's discretion.

PIABA believes that FINRA should publicly disseminate all decisions granting firms exemptions from investor protection and business conduct rules. Such a rule is consistent with FINRA's stated commitment to ensuring greater public access and protecting and empowering public investors.

Furthermore, to the extent that FINRA would reserve to itself the discretionary authority to publicly disseminate exemption application and decisions, PIABA believes that FINRA should be required to identify and codify criteria governing the

exercise of its discretion in this regard. Adoption of such criteria serves to promote transparency and accountability, prevent arbitrary conduct, and reassure public investors of FINRA's even-handedness and integrity.

Finally, PIABA strongly opposes the proposed rule's deletion of current Rule 8313(a), which provides for the release of identified disciplinary complaints and decisions to a requesting party. In a footnote to SEC Release No. 34-69178, FINRA represents that, notwithstanding the deletion of this provision, it will continue to respond to requests from the general public for such matters.

The proposed change to Rule 8313(a) is unsatisfactory. Current Rule 8313 makes FINRA's response to specific requests for information mandatory. By omitting any provision requiring a response to specific requests for information, the extent and scope of FINRA's obligation to respond becomes unclear. Certain disciplinary information can only be obtained from FINRA by request because the decisions and complaints in FINRA's online database date back only to early 2005. Absent an express mechanism for requesting information in proposed Rule 8313, public investors will not be aware that they may request otherwise publicly-available information directly from FINRA. This is plainly inconsistent with FINRA's stated goal of giving investors greater access to disciplinary and other information. If FINRA intends to continue responding to specific information requests, then this provision should be harmonized with the changes to Rule 8313, not eliminated.

In summary, PIABA appreciates and supports FINRA's commitment to investor protection and education and to provide greater public access to disciplinary and other decision-making by FINRA. Although Rule 8313 is not perfect, it is a step in the right direction. PIABA hopes that FINRA will take the opportunity to use this process to not only afford public investors with greater information concerning members and associated persons, but to increase the transparency and accountability of its decision-making processes. PIABA thanks the Securities and Exchange Commission for the opportunity to comment on this proposal.

Very truly yours,



Jason R. Doss
Executive Vice-President/President-Elect

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