

June 17, 2013

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

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

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing, a proposed rule change relating to Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) governing the release of disciplinary and other information by FINRA to the public.¹ Among other things, the proposed rule change would amend Rule 8313 to establish general standards for the release of disciplinary information to the public to provide greater information regarding FINRA’s disciplinary actions, clarify the scope of information subject to Rule 8313, and eliminate provisions that do not address the release of information by FINRA to the public. In addition, the proposed rule change would make conforming amendments to the FINRA Rule 9000 Series (Code of Procedure) and add a provision to FINRA Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) regarding the effective date of sanctions. The Commission received five comments in response to the proposed rule change.²

The comments received by the Commission on the proposal and FINRA’s responses to the comments are discussed in detail below.

A. Proposed Rule 8313(a) General Standards

Rule 8313(a) currently provides that in response to a request, FINRA shall release any identified disciplinary complaint or disciplinary decision issued by FINRA (or any subsidiary or Committee thereof) to the requesting party. Absent a specific

¹ See Securities Exchange Act Release No. 69178 (March 19, 2013), 78 FR 17975 (March 25, 2013) (Notice of Filing of SR-FINRA-2013-018) (the “proposal”).

² See Exhibit A for a list of comments received.

request for an identified complaint or decision, the rule provides publicity thresholds for the release of information with respect to disciplinary complaints and disciplinary decisions to the public. To further increase access to information regarding FINRA's disciplinary actions, the proposed rule change would eliminate the restrictions to publication of the specified actions by eliminating the publicity thresholds in Rules 8313(b)(1) and (c)(1) as well as the provision addressing the release of "identified" disciplinary complaints and disciplinary decisions in Rule 8313(a). In their place, the proposed rule change would adopt general standards for the release of disciplinary complaints, disciplinary decisions, and other information to the public.³

One commenter opposed the elimination of the requirement that FINRA release identified complaints and decisions to the requesting party because it removes the mandatory requirement for FINRA to release such information and makes FINRA's obligation to respond unclear.⁴ The commenter noted that some information can be obtained only by request, such as pre-2005 decisions that are not posted on the FINRA Disciplinary Actions online database ("FDA"), and, absent an express mechanism to access this information, investors will not be aware that they may request it directly from FINRA. As stated in the rule filing, FINRA would continue to respond to requests for, and provide access to, identified complaints and decisions, notwithstanding the proposed elimination of this requirement. However, in response to the commenter's concerns, FINRA proposes to amend the proposed rule change to retain the requirement in Rule 8313 that FINRA release identified complaints and decisions to the requesting party.

One commenter requested guidance on the meaning of the phrase "*at FINRA's discretion information with respect to*" in proposed Rule 8313(a)(1), (2) and (4) to clarify FINRA's specific obligations to the public regarding the release of such information.⁵ As stated in the rule filing, Rule 8313 currently provides for the release of "*information with respect to*" disciplinary complaints and decisions in light of FINRA's practice to issue, in addition to copies of the disciplinary complaints and decisions themselves, information, for example, in press releases or monthly summaries of complaints or decisions that meet the current publicity thresholds, or are otherwise permitted to be released under the rule.⁶ FINRA intends to continue its practice of releasing monthly summaries of complaints and decisions that are

³ In light of the elimination of the publicity thresholds, the proposed rule change also would delete from Rule 8313 the redaction standards made necessary by the publicity thresholds in current paragraphs (c)(1)(A) and (c)(1)(B).

⁴ PIABA.

⁵ Cornell.

⁶ See, e.g., FINRA's notice of Disciplinary and Other FINRA Actions Reported for June 2013.

permitted to be released under the proposed rule change. Similarly, with respect to the issuance of press releases in connection with disciplinary decisions, FINRA intends to continue to issue press releases in those situations where there is a significant policy or investor protection reason to do so. FINRA does not believe it necessary or appropriate to further delineate the specific circumstances when it may release such summary information or press releases.

One commenter suggested that dismissed or withdrawn complaints not be posted on the FDA and questioned the propriety of publicizing such complaints given that they draw attention to actions that pose reputational harm to firms and representatives, but were found lacking on the merits.⁷ FINRA, however, believes that including the subsequent decision or order helps to ensure that persons reviewing disciplinary and other information have a full understanding of the status of a filed disciplinary complaint. FINRA further notes that dismissed and withdrawn complaints are not removed from BrokerCheck, so they are already publicly available. Further, the proposal is consistent with SEC practice in the administrative proceeding forum. If an SEC administrative law judge (“ALJ”) or the SEC, on appeal, issues an opinion, or an ALJ grants a staff motion to withdraw a complaint, the original Order Instituting Proceeding is not removed from the public record.

One commenter opposed the proposal in Rule 8313(a)(5) to provide for permissive publication of exemption decisions or notices issued pursuant to the Rule 9600 Series (Procedures For Exemptions) and believes it should be mandatory.⁸ The commenter also suggested that FINRA should be required to identify and codify the criteria governing the exercise of its discretion to release exemption decisions. As stated in the rule filing, FINRA currently posts to its website exemption decisions for several rules listed in Rule 9610, in large part to provide guidance to members, investors, and other interested parties to assist them in understanding the rationale for the decisions to grant or deny requests for exemptive relief. FINRA does not believe that mandatory publication of all exemption decisions would benefit members, investors, and other interested parties because Rule 9610 covers a diverse set of rules, and the exemption decisions and notices generally are not disciplinary in nature, are often highly fact-specific, and may contain proprietary and confidential information.

B. Proposed Rule 8313(b) Release Specifications

Rule 8313(a) currently requires copies of, and information with respect to, disciplinary complaints and disciplinary decisions released to the public to be accompanied by disclosure statements regarding their status. One commenter opposed the proposed elimination of language from current Rule 8313(a)(1) that directs the

⁷ FSI.

⁸ PIABA.

recipient of a complaint to “*contact the respondent before drawing any conclusions regarding the allegations in the complaint*” because it provides notice to the public that firms are responsive to concerns relating to allegations and should be contacted with questions.⁹ FINRA, however, does not believe the inclusion of this language is necessary. The recipient of a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or any other item released pursuant to Rule 8313 has discretion to contact a respondent at any time. Further, FINRA does not believe that its rules should be the basis to provide notice to the public that firms are responsive to concerns relating to allegations in a complaint.

Not in response to any comment, FINRA notes that, following implementation of the proposed rule change, it will use the disclosure statements as amended by the proposed rule change when releasing disciplinary complaints and disciplinary decisions going forward, irrespective of the date of the action.

C. Proposed Rule 8313(c) Discretion to Redact Certain Information or Waive Publication

The proposed rule change would add a new provision in proposed Rule 8313(c)(1) that would permit FINRA, notwithstanding the requirements of proposed Rule 8313(a), to redact, on a case-by-case basis, confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. Similarly, the proposed rule change would adopt with minor changes a provision from current Rule 8313(c)(1) (as proposed Rule 8313(c)(2)) that provides FINRA with discretion to waive the requirement to release a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. Given the proposal to eliminate the publicity thresholds and expand the scope of disciplinary and other information released by FINRA, the proposed rule change would give FINRA discretion to waive the requirement to release any item under paragraph (a) of the proposed rule.

Three commenters raised concerns on proposed Rule 8313(c).¹⁰ One commenter requested guidance regarding the circumstances that would present an exercise of discretion by FINRA to redact information or waive publication and suggested accepting comment from members and the public on instances where the exercise of this discretion would be appropriate.¹¹ Another commenter stated that the

⁹ FSI.

¹⁰ FSI, Malecki and PIABA.

¹¹ FSI.

phrase “*violate fundamental notions of fairness or work an injustice*” is vague and seemed to present challenges for its uniform application; the commenter suggested that if FINRA exercises its discretion to waive publication, it should release the type of document or the information being withheld, the date of the document, and the reason for such withholding.¹² A third commenter opposed FINRA’s proposed discretionary authority to waive publication because the deterrent effect of publication of disciplinary information is undermined if certain information is withheld out of concern for firms and their associated persons.¹³

As stated in the rule filing, FINRA believes it is necessary in releasing information to the public to balance investor protection benefits with the harm that may result if confidential customer information or information that raises personal safety or privacy concerns is released to the public. The proposed rule change aims to broaden the types and amount of information released by FINRA to the public and to establish a principled basis for disclosure that meets FINRA’s investor protection objectives, yet fairly addresses privacy interests. The proposed authority to redact, on a case-by-case basis, confidential customer information or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns is consistent with FINRA’s approach with respect to the release of information in BrokerCheck under Rule 8312. Further, FINRA believes it should retain its current discretionary authority, as set forth in current Rule 8313(c)(1), to waive the requirement to release information to the public in the event FINRA is presented with truly unique circumstances where the release of information would violate fundamental notions of fairness or work an injustice.

D. Comments Outside the Scope of the Proposal

One commenter stated its objections to a provision in Rule 9554 that precludes a respondent from raising the inability-to-pay defense against a customer claimant, but not against an industry claimant.¹⁴ The comment is outside the scope of the proposed rule change and will not be addressed herein.

FINRA believes that the foregoing fully responds to the issues raised by the commenters to the rule filing. Please contact me at (202) 728-8013 if you have any questions.

¹² Malecki.

¹³ PIABA.

¹⁴ SIFMA.

Ms. Elizabeth M. Murphy

June 17, 2013

Page 6

Very truly yours,

A handwritten signature in blue ink, appearing to read "Erika L. Lazar". The signature is fluid and cursive, with a long horizontal flourish at the end.

Erika L. Lazar

Comments on FINRA Rulemaking

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.;
Notice of Filing of Proposed Rule Change Relating to FINRA Rule 8313 (Release of
Disciplinary Complaints, Decisions and Other Information)**

(Release No. 34-69178; File No. SR-FINRA-2013-018)

Total Number of Comment Letters Received – 5

1. David T. Bellaire, Esq., Financial Services Institute, dated April 15, 2013 (“FSI”)
2. Jason Doss, PIABA, dated April 15, 2013 (“PIABA”)
3. Jenice L. Malecki, Malecki Law, dated April 15, 2013 (“Malecki”)
4. William A. Jacobson, Cornell Law School, dated April 15, 2013 (“Cornell”)
5. Kevin M. Carroll, SIFMA, dated April 15, 2013 (“SIFMA”)