



## PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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May 26, 2020

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
rule-comments@sec.gov

**Re: SR-FINRA-2020-012  
Proposed Rule Change to Amend FINRA Rule 8312 to Allow the  
Dissemination of IAPD Information Through BrokerCheck**

Dear Mr. Fields:

I write on behalf of the Public Investors Advocate Bar Association (“PIABA”), an international bar association comprised of attorneys who represent investors in disputes with the securities industry and financial advisors. Since its formation in 1990, PIABA has promoted the interests of the public investor in all dispute resolution forums, worked with legislators and regulators to craft the best laws and rules to protect investors while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews in order to protect the rights and fair treatment of the investing public.

FINRA proposed, by way of SR-FINRA-2020-012, an amendment to FINRA Rule 8312 to allow dissemination of the SEC’s Investment Adviser Public Disclosure (“IAPD”) information through FINRA’s BrokerCheck. In essence, the proposed rule would allow additional information to be displayed on BrokerCheck when the individual is dually licensed as both a FINRA associated person and investment advisory representative. PIABA supports the proposed rule and believes it would benefit the investing public to access more information on BrokerCheck and simplify investors’ ability to access public information on their potential financial advisor. The rule promotes inclusion of information that is already publicly available on the SEC’s website, and PIABA supports the inclusion of this information to be disseminated on BrokerCheck too.

While the rule proposal is a step in the right direction, PIABA continues to urge FINRA to go much further in the information it provides to the investing public concerning its registered representatives. Investors should be able to view all relevant information that is available in the CRD system about the firm and advisor with whom they choose to do business – which firm and advisor almost always serve as a trusted and exclusive source of investment information and advice. BrokerCheck currently excludes certain information

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that is contained in the CRD system, such as tax liens or bankruptcies that were filed more than 10 years ago, or how many times their advisor failed their examinations. This information can be accessed by the public in some cases, but only if the public knows how to navigate a labyrinthine system of varying state regulators. Florida, for example, provides a complete and thorough disclosure from the CRD system – one that is far more thorough than what FINRA provides through BrokerCheck. However, not all registered representatives are licensed in Florida, so this same information may not be available to an investor whose broker is only registered in Montana. As FINRA appears to acknowledge the value is providing publicly available information, we encourage, once again, FINRA to make *all* publicly available CRD information available via a BrokerCheck report so that information is easily accessible for all investors, regardless of their state or the state where their advisor and brokerage firm are registered.

PIABA also asks FINRA to include additional, more complete information concerning brokerage firms via BrokerCheck. Currently, FINRA’s BrokerCheck website provides very little relevant information for investors to check on the brokerage firm where they may be entrusting their life savings. For example, there are almost no references to customer complaints regarding firms published on BrokerCheck. There is also a complete dearth of information regarding how many of a firm’s registered representatives have customer complaints or regulatory events indicated on their own CRD records. Studies have shown that a firm maintaining a greater percentage of brokers with “red flags” indicated on their CRDs are more likely to face additional investor complaints in the future.<sup>1</sup> Providing more information to investors regarding the nature of the firms with whom they entrust their life savings can only be a good thing, and can only promote investor protection. Such disclosures would also surely encourage greater compliance with FINRA rules and investor protection as firms would be greatly incentivized to try and limit the number of disclosures on their report, thereby actually protecting investors before wrongdoing occurs.

Finally, PIABA notes that BrokerCheck or state disclosures are only as good as the information available within the CRD system itself. Unfortunately, there has been a wave of advisors using a variety of tools to obtain expungement of customer complaints from their records. While FINRA has recently suggested modest rule changes, nothing yet has been enacted. Moreover, the proposed changes put forth so far will do very little to stop the abuses of the expungement process. From 2016 to 2018, advisors were having complaints expunged in 81% of cases, even though FINRA deems that expungement should only be granted in “extraordinary” circumstances. When hundreds, if not thousands, of customer complaints are being expunged from the BrokerCheck system every year, a serious question arises whether they can or should rely on the information provided by BrokerCheck.

In summary, PIABA supports the proposed rule to provide the IAPD information on BrokerCheck, but urges FINRA to take further steps to enhance BrokerCheck and curb the abuses of the expungement process.

Very truly yours,



Sam Edwards

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<sup>1</sup> See, for example, *How Widespread and Predictable is Stock Broker Misconduct?*, McCann, Quin, Yan (June 2016)(available at <https://www.slcg.com/pdf/workingpapers/McCann%20Qin%20and%20Yan%20on%20BrokerCheck%20Final.pdf>).