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October 16, 2014

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

Re: SR-FINRA-2014-038
Proposed Rule Change Relating to Responsibility
of Member to Investigate Applicants for Registration

Dear Mr. Fields:

On behalf of the Public Investors Arbitration Bar Association ("PIABA")¹, I thank the Commission for the opportunity to comment on the proposed adoption of FINRA Rule 3110(e) in the consolidated rulebook, which would clarify and enhance existing rules regarding a FINRA member's obligations to review information contained in an applicant's initial or transfer Form U4 application for accuracy and completeness.

As an organization dedicated to assisting the investing public in disputes with the securities industry, PIABA supports comprehensive, accurate reporting on the Central Registration Depository (CRD). The information reported on the U4 includes an applicant's work and registration histories, investment-related complaints and certain civil, criminal, and regulatory disclosures. Accurate U4 information is critical to FINRA's own regulatory review of an applicant, as well as for customers, whose primary source of public information on a prospective firm or broker is through FINRA's BrokerCheck database. BrokerCheck derives its information from the CRD.

Currently, members are required to certify when signing an applicant's U4 that the firm "has taken appropriate steps to verify the accuracy and completeness of the information contained in and with this application." See Rev. Form U4 (05/2009), Section 15B (Firm/Appropriate Signatory Representations). While FINRA places no upper limit on a lawful review prior to filing the Form U4, it has not required firms to establish written procedures regarding the review of U4 information submitted by an applicant. Without mandated written procedures, such discretion by the reviewing firm inherently opens the door for inadequate review of the U4 and frustrates tracking whether a firm has fulfilled its supervisory duties.

¹ PIABA is a national, not-for-profit bar association comprised of attorneys, including law professors and regulators, both former and current, who devote a significant portion of their practice to representation of public investors in securities arbitrations.

The main feature of proposed FINRA Rule 3110(e) would require members to adopt written procedures reasonably designed to verify the U4 information for accuracy and completeness no later than 30 days after the form is filed with FINRA. Under the proposed rule this include that the procedures, at a minimum, must require a search of reasonably available public records.

PIABA supports this change, and makes the following to suggestions to improve accurate background verification and CRD reporting.

I. Under certain circumstances, foreign public records should be included in the mandatory public records search.

The current rule proposal requires that, at minimum, a firm's written procedures regarding verifying U4 information include a public records search. However Footnote 12 to the proposal says that "[t]he requirement to conduct a public records search would be limited to a national search; it would not extend to public records searches in foreign jurisdictions."

Under certain circumstances, it would be appropriate to require a firm to search foreign public records as well as domestic public records. In particular, if an applicant had ever been registered with a foreign country's securities regulator, for example the Investment Industry Regulatory Organization of Canada, pursuant to written procedures a firm should have to search Canadian public records.

The U4 already requires disclosure of residential history for the past 5 years, and employment history for the past 10 years. If an applicant had resided in a foreign country, it would be reasonable to extend the mandated public records search to that country. Likewise, the U4 also requires disclosure of regulatory actions by any "foreign financial regulator" and criminal or civil disclosure relating to a foreign court. Written procedures should mandate a firm to conduct, at minimum, a public records search in the foreign country where an applicant makes any affirmative response to those disclosures.

II. The written procedures should be clear that if a firm is unable to complete the verification process within 30 days after the Form U4 is filed with FINRA it must demonstrate to FINRA that it has made reasonable efforts to do so.

FINRA notes in the rule proposal, page 11, that it recognizes that "there will on occasion be circumstances beyond a firm's control that prevent completion of the verification process" within the 30 days, and in those cases the firm's written procedures "should provide that the verification should be completed as soon as it practical." The example provided is when submitted fingerprints are too illegible to run a criminal records check and must be resubmitted by the applicant. This allowance beyond the 30 days should be only under extraordinary circumstances. Any delay in correcting faulty public information about a broker may harm the public relying on BrokerCheck. FINRA should amend the

current proposal to bring the U4 verification requirement in line with deadlines to review a form U5, and require that written procedures provide that if a firm is unable to verify the U4 information within 30 days of filing it must demonstrate to FINRA that it has made reasonable efforts to do so and explain the cause for the delayed verification.

III. FINRA should provide guidance to firms that it still requires investigation of an applicant *prior* to filing the U4.

Proposed Rule 3110(e) continues the requirement that “[e]ach member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant **before** the member applies to register that applicant with FINRA and **before** making a representation to that effect on the application for registration.” (emphasis added). This rule is in line with the U4 certification by the member firm’s signature. So long as the investigation is conducted lawfully, FINRA places no upper limit on this duty to investigate which may include all available information, including the U4, U5, fingerprints, credit reports, etc. See RN 07-55 (reminding member firms that “a critical part of the hiring process in the securities industry is the background investigation of prospective personnel”).

FINRA should issue clear guidance that the new requirement under Rule 3110(e) to have written procedures mandating verification of the U4 information within 30 days of filing does not supplant a firm’s duty to investigate an applicant *prior* to certifying and filing the U4, and that, like former NASD Rule 3010, new FINRA Rule 3110 does not place any limits on the scope of such lawful background investigation.

IV. Conclusion

Investor education and confidence in FINRA’s regulatory function depends heavily on the accuracy of BrokerCheck’s public information on firms and individuals. “Final responsibility for proper supervision shall rest with the member,” FINRA Rule 2110(a), and those supervisory duties begin even before an applicant is approved for registration with a firm. PIABA supports the proposed rule change with the recommended improvements described above.

Sincerely,



Joseph C. Peiffer, PIABA
Vice-President / President-Elect