

BrokerCheck – The Inequality of Investor Access To Information Remains Unabated – An Update To PIABA’s March 2014 Report

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Acknowledgements²

Introduction

On March 6, 2014, the Public Investors Arbitration Bar Association (“PIABA”) issued a report titled “Inequality of Investor Access To Information,” written by then-PIABA president Jason Doss, and law school clinic directors Christine Lazaro and Ben Edwards (the “Report”). The Report was critical of the discrepancy of information available regarding stockbrokers in reports offered to the public by the Financial Industry Regulatory Authority (“FINRA”) and those offered by states given that both rely on the same source for information in the reports – the Central Registration Depository (“CRD”). The CRD system is a database maintained as a joint venture between FINRA and the states. FINRA’s reports, branded “BrokerCheck reports” are often far less complete than reports

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² The authors would like to thank the authors of PIABA’s original report: Jason Doss, Christine Lazaro, and Ben Edwards, for their hard work in bringing the issues underlying BrokerCheck to light in 2014. They would also like to thank Christine Lazaro for her valuable input on this update. Finally, they would like to thank PIABA’s executive director, Robin Ringo, for her continued and significant assistance in pursuing PIABA’s mission of protecting investors.

available from the states. PIABA called upon FINRA to harmonize its disclosures with those already being made by the states, thereby promoting investor protection.

Not only has FINRA failed to make meaningful changes to the BrokerCheck system, the problem has only grown worse since the Report was published in early 2014. We explore below what few changes have been made, describe how the problems continue to grow worse, and renew our call on FINRA to enhance the BrokerCheck system to provide as much background data on brokers as the least restrictive states already provide, thus increasing investor protection by providing a one-stop shop for stockbroker background research.

A Summary Of The Landscape in March 2014

Summary of Report

A single database provides the information reported by FINRA in its BrokerCheck reports and the various state reports. The CRD system, formed in 1981 as a joint venture between FINRA and the North American Securities Administrators Association (“NASAA”), is fueled by regular disclosures from brokers and firms under their ongoing obligation to keep registration information current.³ The Securities and Exchange Commission (“SEC”) mandates that the information maintained in the CRD system be made public upon inquiry.⁴ The SEC, however, also directs FINRA to adopt rules regarding the type, scope, and presentation of information to be provided in response to the inquiries.⁵

FINRA advertises the BrokerCheck reports as being “complete” and helpful to investors wanting to learn more about specific brokerage firms and financial advisors. The Report discussed the fact that, in reality, BrokerCheck reports often omit information about brokers that is highly relevant and necessary for investors to make informed decisions about who they may want to hire.⁶ By way of illustration, the PIABA report presented a number of examples of discrepancies between the information available from states’ reports and the BrokerCheck reports.

Summary of suggestions

The PIABA Report called for FINRA to enhance BrokerCheck and, at a minimum, harmonize it with whatever information was already available in the

³ See Doss, Lazaro, and Edwards, *Inequality of Investor Access To Information* at 2 & 6 (March 6, 2014).

⁴ Specifically, Section 14 of the Securities and Exchange act of 1934 mandates that FINRA shall make its members registration information readily available by phone and by electronic (or other) access.

⁵ 15 U.S.C.A. §78o-3(i).

⁶ *Inequality of Investor Access To Information* at 4.

public domain through the reports the States provide in response to investor requests for broker background information. The PIABA Report was not, however, the first to call upon FINRA to improve the BrokerCheck system. The Report explored in great detail the continuing demands for improvements made by the SEC, NASAA, and various commentators through the years. Notably, in 2010, the SEC *urged* FINRA to consider the commentators' comments and provide information already available from the states.⁷ A year later, the SEC renewed its recommendation to improve BrokerCheck by, among other things, including U5 notes regarding the reasons for broker employment termination, as well as historical filings going back more than 10 years.⁸

Given the fact that FINRA had not made any meaningful improvements to the information in BrokerCheck reports, and had largely ignored the chorus of public comments urging such improvements, the Report called for Congress to step in and legislate the necessary changes. Specifically, PIABA called for an amendment to §15A of the Exchange Act to further define the type and scope of information FINRA would be required to make available through BrokerCheck.

FINRA's Response

FINRA largely ignored PIABA's calls for reform, just as it had ignored such calls in the past from NASAA, the SEC, and other commentators. The closest thing to a response from FINRA came in the form of an amendment to Rule 2210, "Communications with the Public." The amendment, which went into effect on June 6, 2016, requires that links to the BrokerCheck homepage be readily apparent on: (1) the initial Web page the member firm intends the public to see; and, (2) any other Web page that includes registered persons' professional profiles.⁹

Thus, although FINRA's revision to Rule 2210 does serve to reinforce the importance of a broker's background and qualifications, FINRA's conduct in promoting the BrokerCheck system as the only way to check those backgrounds and qualifications has imposed a disservice upon those investors using the system. The reality is that investors who may have once researched their brokers by contacting their state securities regulators have been led to believe they can simply rely on an online BrokerCheck report, which they can access themselves on the internet or through brokerage firm website links. Unless an investor is employed in, or otherwise familiar with the securities industry, the chances are negligible that they know that the BrokerCheck report may well be hiding relevant information.

⁷ SEC Release No. 34-62476; File No. SR-FINRA-2010-012, at 15.

⁸ SEC, *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers*, January 2011.

⁹ FINRA Regulatory Notice 15-50 (December 2015). The required link is only to the BrokerCheck homepage meaning that investors still have to search for specific brokers by name in order to view a BrokerCheck report.

PIABA's Report highlighted a perfect example of a BrokerCheck report's omission of relevant information. In that example, the state disclosed information from the national CRD system regarding the circumstances related to the broker's termination. The state's report revealed the following comment from the terminating brokerage firm, "We were preparing to terminate Mr. [REDACTED] after his May 21, 2003 audit. Mr. [REDACTED] submitted his letter of resignation on May 27, 2003 before his notice of termination letter was delivered on May 28, 2003." Such information would likely be relevant and important to an investor's analysis of the qualifications of a broker with whom the investor plans to invest. Yet, the BrokerCheck report for that same broker, based on the same national CRD system that produced the state's report, noted simply that the broker's employment had ended. Conspicuously absent from the BrokerCheck report was any mention of the firm's audit or its intent to fire the broker. While it may be technically true that the broker was not fired, the real truth is that something found in the firm's audit caused enough concern that the firm decided to terminate him and did not do so only because he quit one day before he would have received notice of his termination (and just six days after the bad audit result). FINRA, fully on notice of meaningful discrepancies between its BrokerCheck reports and state-produced CRD reports, has chosen to do nothing to improve the disclosure of information.

On October 18, 2016, the authors came across a near exact duplicate of the example set forth above. While investigating a potential client's claims against a broker and his firm, a review of the broker's BrokerCheck report revealed that he was the subject of five customer complaints, including three pending arbitrations. There was, however, no indication the broker left any of his employers under any adverse (or even questionable) circumstances. Rather, his BrokerCheck report simply indicated the broker left one of the firms with which he was employed in April 2015. The lack of any other information leaves the reader with the impression that the departure was voluntary. A review of the CRD information obtained from Florida, however, reveals a very different picture. The state CRD report notes that the broker was discharged from that employer and includes the comment: "Multiple violations of industry standards and firm policy relating to outgoing correspondence."

While it was true that the broker left his employer in April 2015, the Florida CRD also notes that, on May 20, 2015, the firm reported that it had started an investigation into the broker's conduct in April 2015 and concluded the investigation in May 2015. The firm reported:

A review was conducted in regards to the RR's outgoing email correspondence from January 2, 2015 to April 3, 2015. Approximately 415 messages to external email addresses were examined. The majority of the messages were sent to prospective and existing clients. Only one outgoing message, dated February 18, 2015, evidenced principal review and approval from the RR's supervisor. There were 14 messages that included non-approved

sales material specific to mutual funds and 7 messages included attachments that were generated exclusively by the RR without the knowledge of a supervising principal. It was also discovered that the RR neglected to report 2 non-sales practice complaints (dated January 9, 2015 and April 1, 2015) to his supervisor/compliance department. None of the unapproved emails resulted in any customer loss.

The broker left the investigating firm and joined a new one while the former firm's investigation was underway. Obviously, the broker left under a cloud of suspicion of misconduct, but an investor relying on a BrokerCheck report alone would have no idea of the broker's propensity to ignore policies and procedures, which should at least be considered before hiring that broker. There are now three pending arbitrations related to the broker's conduct at the new firm, and more claims are being investigated.

Even though FINRA has not improved the quality of the BrokerCheck reports, it has spent significant resources promoting the system. It issued a press release on June 1, 2015, trumpeting its new promotion of the system:

The ads, created by Ogilvy & Mather, feature humorous examples of people taking action without conducting any background research, including:

a bride surprised by her organist's song choice;

a man too late in reading the listed side effects of the medication he has taken; and

a truck driver blissfully ignorant of a road's clearance restrictions.

Viewers are urged not to make the same type of leap-before-you-look mistakes when choosing a broker—they should use BrokerCheck.¹⁰

It is no coincidence that one of FINRA's public governors, Shelly Lazarus, has been the Chairman Emeritus of Ogilvy & Mather – the firm that created the BrokerCheck ads – since July 2012.

FINRA boasted that the 15 second pro-BrokerCheck spots would run for 5 weeks across a number of outlets, including: CNBC, Bloomberg, CNN, MSNBC, Fox Business, Fox News, ESPN, Discovery, The History Channel, and HGTV.

¹⁰ FINRA, *FINRA Launches National Ad Campaign Promoting BrokerCheck*, (June 1, 2015); available at <https://www.finra.org/newsroom/2015/finra-launches-national-ad-campaign-promoting-brokercheck>.

FINRA also said that pro-BrokerCheck print ads would run in the Wall Street Journal and appear digitally on sites including Bloomberg, CNBC, Fortune, Reuters, TubeMogul, the Undertoon Network, and the Wall Street Journal. For good measure, FINRA also advocated for the use of BrokerCheck via Google, Bing/Yahoo, and YouTube.¹¹

The exact amount FINRA spent on the media blitz is impossible to state with certainty. It was first reported that FINRA spent \$3.5 million on the initial campaign.¹² It seems, however, that the total sum spent is greater than that. FINRA's 2015 annual report indicates an increase of \$27.4 million dollars in its annual professional and contract services, which it explained as follows:

Professional and contract services increased due to enhancement efforts and our advertising campaigns in 2015. Enhancement efforts were driven by FINRA's use of outside contractors to implement market regulation applications using cloud technologies in order to contain escalating platform costs and improve operational efficiency. Additionally, FINRA launched two five-week advertising campaigns designed to promote BrokerCheck as a useful free tool to obtain information about brokers and firms.¹³

It is impossible to determine how much of the \$27.4 million was spent with outside contractors to implement market regulation applications and how much was spent on the advertising campaign.

Regardless, it seems apparent that FINRA spent considerable resources to promote the flawed BrokerCheck system and that the marketing has been successful in driving more traffic to the BrokerCheck site. FINRA reported 71 million reviews of broker or firm records in 2015, up from 29 million the year before.¹⁴

¹¹ A summary of the video and print ads can be found: <http://jeffleaf.com/brokercheck/>.

¹² Mark Schoeff Jr., *FINRA launches ad campaign for BrokerCheck*, (June 1, 2015), available at <http://www.investmentnews.com/article/20150601/FREE/150609993/finra-launches-ad-campaign-for-brokercheck> .

¹³ FINRA 2015 Year in Review and Annual Financial Report, 20, available at https://www.finra.org/sites/default/files/2015_YIR_AFR.pdf .

¹⁴ See Hammad Qureshi & Jonathan Sokobin, *Do Investors Have Valuable Information About Brokers*, FINRA Office of the Chief Economist, August 2015, 2 (available at <https://www.finra.org/sites/default/files/OCE-Working-Paper.pdf>); Alessandra Malito, *Finra's BrokerCheck link mandate for adviser websites effective today* (June 6, 2016), available at <http://www.investmentnews.com/article/20160606/FREE/160609951/finras-brokercheck-link-mandate-for-adviser-websites-effective-today> .

The Problems With BrokerCheck Have Become More Evident

FINRA Continues To Mislead Investors Regarding the Utility of BrokerCheck

While the fact that more people are turning to BrokerCheck to investigate their brokers is a good thing in the abstract, the fact that the reports upon which the investors are relying are often deficient is problematic. FINRA's new marketing push for BrokerCheck makes it appear to an unwitting investor that the system is the proverbial "one stop shop." Conspicuously absent from the heavily-promoted BrokerCheck homepage is any reference to the value of contacting state securities regulators for CRD reports. FINRA describes BrokerCheck's scope:



Check out your broker with BrokerCheck

FINRA oversees the people and firms that sell stocks, bonds, mutual funds and other securities. Simply type in your current or prospective broker's name to see employment history, certifications, and licenses—as well as regulatory actions, violations or complaints you might want to know about. You also can get information about your broker's firm. There's no reason not to check.

BrokerCheck can tell you...

...if a broker or brokerage firm is registered.

Individuals and firms can be registered as brokers or investment advisers—or both. Individuals with these designations have particular knowledge and take on legal responsibilities. Individuals and firms must be registered with FINRA (for brokers), the SEC (for certain investment advisers), and in those states where required by law.

...what has been disclosed to regulators.

From the time they register—and throughout their careers in the securities industry—individuals and firms must inform FINRA if certain events occur; these events include regulatory actions, criminal convictions, and for brokers, customer complaints.

...about a broker's experience.

BrokerCheck provides an overview of a broker's work history, as well as brokerage firm history.

...about what a broker or brokerage firm is able to do.

Brokers and investment advisers are qualified to perform certain tasks for clients, based on the exams they have passed and state licenses they hold. Individuals and firms must register in each state where they have customers.

There is nothing on the BrokerCheck homepage that tells an investor looking at it for the first time that they should also contact their state securities regulator for more information.

This lack of sufficient disclosure about the limited scope, detail and/or time frames included in BrokerCheck reports is made worse by the additional

language contained on the homepage under the heading, “BrokerCheck cannot tell you . . .” For example, even where FINRA does inform an investor about something that may not be in a broker’s report (*e.g.*, due to the removal of some information from BrokerCheck after a certain amount of time), there is no explanation for what is omitted or removed from a broker’s report at any given time. This could leave an investor assuming that certain omitted or removed information is neither relevant, nor available, from other sources. Instead, BrokerCheck merely states the following:

BrokerCheck cannot tell you...

...FINRA’s opinion of a broker or brokerage firm.

No opinions, no recommendations, just facts. FINRA can’t tell you if someone is a “good” broker—but BrokerCheck gives you information about that person’s experience, credentials, and history so you can make an informed decision.

...how well your money will be managed.

FINRA can’t guarantee that a broker or firm will perform well for you. Do your homework and make sure you’re actively involved with managing your money.

...info that’s older or from other financial industries.

Some information is removed after a certain time period, such as bankruptcies over 10 years old. It’s also possible that a broker has worked in other parts of the financial services industry (for example, insurance or banking). BrokerCheck may not have information about those industries.

...information that FINRA has not received.

Brokers and brokerage firms are required to update their professional and disciplinary information, generally within 30 days. BrokerCheck does not have information until it is reported. Under most circumstances, information reported to FINRA is available in BrokerCheck by the next business day. If you are aware of missing or incorrect information in BrokerCheck, please contact us.

FINRA ‘s BrokerCheck homepage misleads investors when it fails to put them on notice that there is additional relevant information, not identified, that is missing from BrokerCheck reports.

Exacerbating FINRA’s omissions is other language on the BrokerCheck homepage (under “Data”) that gives the illusion that BrokerCheck’s information is drawn from multiple sources and includes all manner of information if it exists (without any meaningful limitation):

More about BrokerCheck

BrokerCheck is a free tool which is part of FINRA's ongoing efforts to help investors make informed choices about brokers and brokerage firms. BrokerCheck also provides information about formerly registered brokers who, although no longer registered in the securities industry, may work in other financial services industries. These individuals could still seek to gain the trust of potential investors, so we feel it's important to include them here.

The Data

The information contained in BrokerCheck is collected through FINRA's registration process. The information is drawn from filings by regulators, firms and investment professionals. It includes current licensing status and history, employment history and, if any, reported regulatory, customer dispute, criminal and other matters.

[Learn more about BrokerCheck](#)

PIABA agrees with FINRA that it is important that investors educate themselves about their brokers and brokerage firms. But it is crucial that FINRA be straightforward with investors regarding BrokerCheck's limitations and the manner in which investors can and should try to fill the gaps.

To be fair, PIABA acknowledges that FINRA's website does state that investors should learn as much as possible about their investment professionals and that "[i]n addition to using BrokerCheck, FINRA encourages investors to also consult their state securities regulator."¹⁵ The problem is that this important caveat of the need to supplement a BrokerCheck report is not stated any place on the most recent version of the BrokerCheck homepage. Instead, it is buried on a page about state securities regulators that investors may never find. Notably, the reference to the importance of checking with state securities regulators isn't found through any direct link from any BrokerCheck-related web page. Rather, an investor would have to start with the FINRA homepage, click on the "Protect your money" link, then select the "Ask and Check" link, and read the page to see what to do if a salesperson says they are a broker:

¹⁵ See <http://www.finra.org/investors/state-securities-regulators>.

Ask and Check

Check Out the Seller


If a salesperson is trying to sell you an investment, check them out by following these steps.

Step 1: Ask "Are you licensed to sell me this investment?"

Legitimate investment professionals—including brokers, investment advisers and insurance agents—must be licensed with the Financial Industry Regulatory Authority (FINRA), the Securities and Exchange Commission (SEC) or your state securities or insurance regulator before they can sell you anything. If they say they aren't licensed, say good bye—and don't buy.

Step 2: Check.

If they say they are licensed, check them out as follows:

If They Say They Are a ...	Look Here	Helpful Hints
Broker	<ul style="list-style-type: none">Visit FINRA BrokerCheck or call FINRA at (888) 295-7422.Also contact your state securities regulator.	<ul style="list-style-type: none">If you find the individual on BrokerCheck, click the "Get Details" button to the right of their name to view their summary report. The summary report provides information on the individual's employment history, qualifications, disclosure events and more. You can also download a detailed report on the individual.To interpret what you find, see FINRA BrokerCheck Tips below.Use both FINRA BrokerCheck and contact your state. There's helpful information in both places.

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(See <http://www.finra.org/investors/ask-and-check>). According to FINRA, if an investor is solicited to invest money, the investor should first ensure the broker is licensed.

To find out if the broker is licensed, investors are told to first look at BrokerCheck or call FINRA. Investors are then told "Also contact your state securities regulator." The "state securities regulator" is a hyperlink. Only if the investor happens to follow the pages and links all the way to the "state securities regulators" page would they have a chance of seeing the statement, "In addition to using BrokerCheck, FINRA encourages investors to also consult their state securities regulator."

In the continued spirit of full disclosure, PIABA also notes that the last item in the "helpful hint" column on the "Ask and Check" page states, "Use both FINRA BrokerCheck and contact your state. There's helpful information in both places." Notably absent from FINRA's "helpful hints" though is an explanation of the difference between the "helpful information" available from BrokerCheck and the state. There is also no clear warning to investors that there may be some "helpful information" that investors can *only* obtain from the states (because FINRA declines to provide it in BrokerCheck).

Notably, in direct contrast to what seems like FINRA's effort to bury notice of and/or access to relevant information, the SEC's website clearly describes the best way to investigate a broker or brokerage firm.¹⁶ The SEC states in unequivocal terms:

¹⁶ See <https://www.sec.gov/investor/brokers.htm>.

You can ask your state securities regulator or the Financial Industry Regulatory Authority (FINRA) to provide you with information from the CRD. Because your state securities regulator may provide more comprehensive information from the CRD than FINRA, especially when it comes to investor complaints, you may want to check with your state securities regulator first.

As discussed above, the need for FINRA to mimic the SEC's clear and definitive language is particularly critical given FINRA's success in driving more investors to the BrokerCheck site over the past few years.

In 2014, 29 million broker searches were conducted, with 18.9 million summary records viewed, and 7 million downloads of detailed broker reports.¹⁷ In 2015, FINRA reported that the number of investors viewing BrokerCheck more than doubled to 71 million.¹⁸ While the increased use of BrokerCheck is positive and means that the public is now beginning to understand the need to investigate their brokers, it also heightens PIABA's concern that those people who account for the 50 million *additional* views of broker (and firm) records may not be looking anywhere else for supplemental information concerning their broker.

Academics and Economists Have Also Highlighted Problems With BrokerCheck

Although FINRA has made no meaningful progress on the issue of further expanding the scope, detail, and time frames of disclosures in the BrokerCheck system, there has been significant interest generated elsewhere. Studies and analyses conducted since PIABA's Report was published have provided ample evidence of relevant disclosures missing from BrokerCheck reports including, but not limited to, a number that may be indicative of a broker's propensity to cause harm to investors in the future.

- Findings of FINRA's Office of the Chief Economist

FINRA's Office of the Chief Economist¹⁹ (the "OCE") published a working paper entitled "Do Investors Have Valuable Information About Brokers?" in

¹⁷ See Qureshi & Sokobin, *Do Investors Have Valuable Information About Brokers* at 2.

¹⁸ See, *Finra's BrokerCheck link mandate for adviser websites effective today*

¹⁹ According to FINRA's website, the Office of the Chief Economist was created in 2013 "to conduct research and analysis in support of FINRA's rulemaking and policy agendas." See <http://www.finra.org/industry/chief-economist> (last visited October 8, 2016). The Chief Economist's duties include "conducting sophisticated economic and statistical analyses related to FINRA's mission, working with outside experts in academia and industry to enhance FINRA's foundation of knowledge, [and] conducting special studies and evaluations, ..." *Id.*

August 2015.²⁰ The co-authors of the working paper were Jonathan S. Sokobin, Chief Economist and Senior Vice President, who oversees the OCE,²¹ and Hammad Qureshi, Economist.²² FINRA’s Office of the Chief Economist plays a unique role within FINRA and, although it conducts “sophisticated economic and statistical analyses related to FINRA’s mission, ...” the papers that result from such analyses are represented as not necessarily representing the “views and positions of FINRA.”²³

The OCE’s working paper was born of a premise with which PIABA and other commentators do not necessarily agree – that “... BrokerCheck is considered to be the most comprehensive source of information available to investors about brokers’ professional histories, ...”²⁴ Notwithstanding what some view as an inaccurate premise, which is acknowledged in footnote 5 of the Non-Technical Summary,²⁵ the working paper correctly reasons that “... it is important

²⁰ A copy of a non-technical summary of the OCE working paper is available at: <http://www.finra.org/sites/default/files/OCE-Non-technical-Summary.pdf>, and a copy of the OCE working paper itself is available at <http://www.finra.org/sites/default/files/OCE-Working-Paper.pdf>. We refer to the two as “OCE Summary” and “OCE Working Paper” in the citations that follow.

²¹Dr. Sokobin came to the OCE from the U.S. Treasury Department where he had been since 2011 and most recently was the Acting Deputy Director, leading the Research Center in the Office of Financial Research. *See* <http://www.finra.org/about/jonathan-s-sokobin> (last visited October 8, 2016). Before that, Dr. Sokobin had worked for the SEC since 2000 (he was also a Senior Research Fellow there from 1998 to 2000). *Id.* Dr. Sokobin received his doctorate in Finance from the Graduate School of Business at the University of Chicago. *Id.*

²² Dr. Qureshi received his doctorate in Economics from the Ohio State University in 2009. *See* <https://www.linkedin.com/in/hammad-queishi-5aa89013> (last visited October 8, 2016). He worked for a Washington D.C. management consulting firm from 2009 until he joined FINRA in January 2014. *Id.*

²³ *See* <http://www.finra.org/industry/chief-economist> (last visited October 8, 2016).

²⁴ *See* OCE Working Paper at 1 & 3 and OCE Summary at 1.

²⁵ *See* OCE Summary at 1. We must note at the outset that PIABA and the OCE may not agree on what information in the national CRD system is “non-public” versus “public.” States often vary, depending on their respective sunshine laws, on what may (and may not) be disclosed publicly from the national CRD system when an investor makes a request for information about a broker (*i.e.*, what is “public” or “non-public”). In this Update, PIABA’s use of the term “non-public” in the discussion of the OCE’s working paper is meant only to be consistent with the verbiage of that working paper and should not be taken as being determinative of PIABA’s position on the issue of whether any given data or information is or should be truly “non-public.”

to examine the value of BrokerCheck information to investors and to assess whether BrokerCheck would be enhanced by the inclusion of additional non-public information. [Fn omitted]”²⁶

The records reviewed by OCE for its working paper consisted of a subset of data from the CRD system from 2000-2013.²⁷ The sample included 181,133 brokers who registered with FINRA in 2000 or later.²⁸

The OCE’s working paper focused on two primary questions: (1) “[d]o investors already have access to valuable information about brokers through BrokerCheck?” and (2) “[w]ould including additional non-public CRD information enhance the value of BrokerCheck to investors?”²⁹ To assess whether BrokerCheck provides useful information to investors at present in terms of helping them “to evaluate a broker’s propensity for investor harm,” OCE tested the “predictability of investor harm based on BrokerCheck information.”³⁰

The OCE’s key findings were as follows:

- Information available to investors now on BrokerCheck (*i.e.*, disciplinary records, financial and other disclosures, and the employment history) “has significant power to predict investor harm.”³¹
- Release of additional non-public CRD information on BrokerCheck regarding harm associated with a broker’s co-workers at the firm where the broker is registered may benefit investors because it increases the power to predict investor harm.
- Release of additional non-public CRD information about qualification exams³² (specifically the Series 6, 7, 63 and 65, and including scores and proportion of exams failed), undisclosed

²⁶OCE Summary at 3.

²⁷ See OCE Summary at 2 and OCE Working Paper at 7.

²⁸ *Id.*

²⁹ See OCE Summary at 1 and OCE Working Paper at 3.

³⁰ OCE Working Paper at 21.

³¹ The OCE found that “[t]at the 20% of brokers with the highest *ex-ante* predicted probability of investor harm are associated with more than 55% of investor harm events and the total dollar harm in [their] sample.” See OCE Working Paper at 21.

³² The OCE did find that average exam scores were “negatively associated with investor harm,” but also found that there was “no statistically significant association between the number of times a broker failed the exams and investor harm.” See OCE Working Paper at 19. Interestingly, the OCE also found that exam performance led to a decrease in the ability to predict investor harm. *Id.*; see also OCE Summary at 3.

financial events (such as satisfied liens and bankruptcies more than 10 years old), disciplinary events (such as internal reviews), closed/dismissed regulatory actions, investigations or judicial actions do not increase the ability to predict investor harm.

Ultimately, the OCE concluded that the information already disclosed in BrokerCheck reports is valuable to investors because it can help investors “... discriminate between brokers associated with investor harm events and other brokers.” Importantly, the OCE did not recommend narrowing the scope of BrokerCheck reports – a conclusion with which PIABA agrees wholeheartedly. Additionally, while commenting on whether certain non-public CRD information increases the ability to predict investor harm, the OCE notably avoided saying that such non-public CRD information was neither relevant nor useful when determining whether or not to do business with a broker.

PIABA also notes with interest that the OCE found that the release of additional information - specifically that related to a broker’s coworkers’ misconduct – would be useful. PIABA’s members regularly experience situations in which brokers will engage in wrongdoing at Firm A, then leave *en masse*, and join Firm B where they continue their abusive sales practices. This unwelcome trend of brokers filtering down to ever-lower-quality firms was addressed by a report issued by the University of Chicago Booth School of Business, which is discussed next.

- Findings of Chicago Booth School of Business

The Stigler Center for the Study of the Economy and the State, University of Chicago Booth School of Business, published a working paper in February

2016 entitled, “The Market for Financial Adviser Misconduct.”³³ The co-authors of the working paper were Mark Egan,³⁴ Gregor Matvos³⁵ and Amit Seru.³⁶

While the topic addressed in the Chicago Booth working paper is similar to the OCE’s working paper, it is not exactly the same. Additionally, while the data reviewed and analyzed in the OCE’s working paper was similar to what was studied by Chicago Booth for its working paper, it was not identical. For example, unlike the data reviewed by the OCE, Chicago Booth constructed “a novel database containing the universe of financial advisers in the United States from 2005 to 2015 . . .”³⁷ The breadth of the Chicago Booth’s “novel database” is considerable. Chicago Booth analyzed certain disclosure records of *over one million more* brokers than the 181,133 brokers that OCE had reviewed.³⁸

Another difference between the data analyzed in the studies is that the OCE, being part of FINRA, had access to information from the actual national CRD system, whereas Chicago Booth culled its data concerning brokers’ employment history, qualifications, and disclosure information only from the more publicly available BrokerCheck system. Chicago Booth then supplemented the BrokerCheck information about brokers and their firms with certain “firm-level data.”³⁹

³³ See

<http://www.chicagobooth.edu/~media/B76C81EFE39B4EDB9A4B4D8B34DoBoF7.pdf> (“Chicago Booth working paper”)(there was a March 2016 revision to the working paper, which can be accessed at <http://dx.doi.org/10.2139/ssrn.2739170>).

³⁴ Dr. Egan received his doctorate in Economics from the University of Chicago in 2015 and is currently an Assistant Professor of Finance at University of Minnesota. See https://drive.google.com/file/d/oB_jujkslhaXPMoDwQVpOVEVIZ2s/view (last visited October 9, 2016).

³⁵ Dr. Matvos received his doctorate in Business Economics in 2007 from Harvard (from where he also graduated Phi Beta Kappa with honors in economics in 2002). See <https://sites.google.com/site/gmatvos/cv> (last visited October 9, 2016). He is currently an Associate Professor of Finance at University of Chicago Booth School of Business. *Id.*

³⁶ Dr. Seru received his doctorate in Finance from the University of Michigan in 2007 and became a Professor of Finance at the University of Chicago in 2013. See <http://faculty.chicagobooth.edu/amit.seru/vitae/CV.pdf>

³⁷ See Chicago Booth working paper, 1. For its working paper, the OCE only reviewed records consisting of a subset of data from the CRD system for brokers that registered with FINRA from 2000-2013, which was 181,133 brokers. See OCE Summary, 2 and OCE Working Paper at 7.

³⁸ See Chicago Booth working paper at 2 & 6-7.

³⁹ That “firm-level data” included, for a small group of firms, the firm assets, revenues, and compensation structure obtained from a private survey. See Chicago Booth working paper at 6. The data analyzed also included curriculum

The Chicago Booth working paper is an “attempt to provide the first large scale study that documents the economy-wide extent of misconduct among” brokers and brokerage firms.⁴⁰ Chicago Booth’s findings of particular were as follows:

- More than twelve percent of brokers’ records contain a disclosure (not all of which are indicative of fraud or wrongdoing).⁴¹
- Misconduct varies considerably across brokers and firms, but there is evidence to suggest that some firms are more tolerant of misconduct, hiring brokers with bad records and then firing those brokers less often if they engage in misconduct.⁴²
- One in thirteen brokers has a misconduct-related disclosure on their BrokerCheck record;
- The median settlement paid to investors related to broker misconduct is \$40,000 (and 25% of the settlements exceed \$120,000);⁴³
- One-third of brokers with misconduct in their BrokerCheck records are “repeat offenders.”⁴⁴
- “Past offender” brokers are five times more likely to participate in misconduct again than the average broker (including brokers in the same firm at the same time).⁴⁵

vitae from a “leading social networking website for professionals” to gain data on the popularity of firms; “county-level” data from the 2010-2013 timeframe for “employment and demographic information,” and data from Form ADVs for information on “firms’ customer base and fee structure.” *Id.*

⁴⁰ Chicago Booth working paper at 2.

⁴¹ *Id.* at 7.

⁴² *Id.* at 26.

⁴³ *Id.* at 10. The true “cost” of those settlements associated with broker misconduct is better understood when one considers that the median household net worth in the U.S. in 2011 was only \$68,828, meaning that the median settlement amount is over one-half of the median household net worth. *Id.*

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* This finding, along with the “repeat offender” statistic of one-third, suggests that investors could avoid being the victim of misconduct by avoiding brokers misconduct records in BrokerCheck. *Id.* Such findings highlight the importance of brokers, firms and regulators making timely, accurate and complete disclosures regarding broker misconduct so that it appears on in the BrokerCheck records.

- Brokers working for firms run by “executives and officers with records of misconduct are more than twice as likely to engage in misconduct.”⁴⁶
- Despite the presence of so many repeat offenders, firms can be strict in disciplining brokers for misconduct, *e.g.*, nearly one-half of brokers that engaged in misconduct in any given year do not have their job the following year.⁴⁷
- Forty-four percent of brokers who lose their job after misconduct find new employment within the securities industry within a year.⁴⁸
- Although some brokers with misconduct in their BrokerCheck records are able to find new employment within the securities industry, those brokers often take longer to find new employment and when they do, they are often hired at smaller, less desirable firms where they are paid ten percent less than they were making at their former firm.⁴⁹
- Brokers with misconduct in their BrokerCheck records switch to firms where more brokers with past misconduct records work (compared to other brokers looking for employment).⁵⁰
- Those firms that hire more brokers with misconduct records are not as likely to fire brokers for new misconduct.⁵¹
- Broker misconduct is more prevalent among firms that work with retail investors (as opposed to institutional investors).⁵²
- The results suggested that broker misconduct is more common in areas with “relatively high incomes, low education, and elderly populations.”⁵³

At the end of its conclusion, the Chicago Booth working paper stated that “a natural policy response to lowering misconduct is an increase in market transparency and in policies helping unsophisticated consumers access more information.”

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 4 & 26.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 27.

Notwithstanding the importance of some of the findings in this particular study, PIABA was most intrigued by, and interested in, the discussion under Section 6 of the working paper: “Robustness and Extensions.” There, the authors began by explaining that they had “conservatively categorized” six of twenty-three categories of disclosure as “misconduct disclosures.”⁵⁴ It was also in Section 6 that the authors specifically explored “whether other [*i.e.*, non-misconduct] disclosures predict advisers’ future misconduct.” Table 16 shows that several “other disclosure” categories (of which there were seventeen) can also predict “future misconduct to some extent . . .” In other words, the Chicago Booth authors also found a correlation between “non-misconduct” disclosures and the predictability of misconduct, “suggesting that disclosing these categories may be valuable to potential consumers trying to avoid misconduct [by their broker].” PIABA accordingly supports the continued disclosure of the “non-misconduct” disclosure information.

The Chicago Booth working paper only focused on information which is presently disclosed in BrokerCheck. Because the authors did not analyze any of the additional disclosures that may be made available to the public by various states drawing from the national CRD system, they could not offer any opinion on whether any of the potential additional disclosures may predict future misconduct or otherwise be of value to investors.

- **Additional Analysis Finds The OCE and Chicago Booth Studies Under-Report The Problems With BrokerCheck**

The OCE’s and Chicago Booth’s work was analyzed and critiqued in June 2016 report titled *How Widespread and Predictable is Stock Broker Misconduct?*, written by Craig McCann, PhD, CFA, Chuan Qin, PhD, and Mike Yan, PhD, CFA, FRM.⁵⁵ The SLCG Report confirmed the findings of OCE and Chicago Booth that “the risk a broker will commit misconduct is significantly increased if he or she works with co-workers who have previously committed misconduct.”⁵⁶ Additionally, the SLCG Report also showed what OCE’s and Chicago Booth’s reports showed – “that association with past customer complaints and disciplinary events is a good indicator of higher propensity for future investor harm.”⁵⁷

⁵⁴ *Id.* at 25.

⁵⁵ Hereinafter the “SLCG Report.” McCann and Yan are principals with Securities Litigation & Consulting Group (“SLCG”), with Qin serving as a senior financial economist for SLCG. The report is available at <http://www.slcg.com/pdf/workingpapers/McCann%20Qin%20and%20Yan%20on%20BrokerCheck%20Final.pdf> .

⁵⁶ *Id.* at 31.

⁵⁷ *Id.*

However, SLCG ultimately determined that the information that is provided by BrokerCheck is not useful to retail investors for two reasons: (1) investors are still not getting all of the information that could be made available on BrokerCheck (*i.e.*, all of the information from the national CRD system); and, (2) investors do not have the analytical capabilities to truly use whatever information they are able to get from BrokerCheck to determine whether any given broker is likely (or more likely than another) to engage in broker misconduct.⁵⁸ Not mincing words, SLCG stated that “BrokerCheck is worthless in its current hobbled form, but could easily be modified so that investors could protect themselves and market forces would substantially reduce broker misconduct.”⁵⁹ The modification advocated by SLCG is for FINRA to make *all* the “public facing data” that is made available in individual BrokerCheck reports available to the public for analysis, testing, rating and ranking instead of only providing what is now available through BrokerCheck on a broker-by-broker or firm-by-firm basis.

The SLCG report was critical of the OCE working paper for, among other reasons, excluding a large number of brokers – 85% of the 1.2 million brokers on BrokerCheck. It then assessed the Chicago Booth working paper and was largely able to replicate its findings, specifically agreeing that the “regulatory environment and labor market sifts bad brokers down the quality ladder over time into brokerage firms with loose hiring practices and compliance ethics.”⁶⁰

Significantly, the SLCG report found that the brokers excluded from the OCE study were between six and nine times more likely to have a claim reported than those included in the SLCG study.⁶¹ Viewed differently, SLCG found that the brokers excluded from the OCE analysis were associated with 75% of all investor harm events between 2000 and 2014.⁶² SLCG also found that the factors most commonly associated with investor harm events included higher average number of past customer complaints that led to an award or settlement, general customer disputes, judgments and liens, disciplinary events, and criminal events. As noted above, however, SLCG concluded that the key indicator of potential future broker misconduct was the extent to which a particular broker’s co-workers had been involved in previous investor harm events.

The SLCG authors analyzed 10,009,600 broker-year observations for 1,200,673 unique brokers by conducting deep and sophisticated statistical analyses of the data, and concluded:

The effectiveness of the regression models shows that the coworker disclosure and employment history contains valuable information

⁵⁸ *Id.* at 28-29.

⁵⁹ *Id.* at 1.

⁶⁰ *Id.* at 5-6.

⁶¹ *Id.* at 7-8.

⁶² *Id.* at 21.

for predicting the *first incidence* of investor harm event in a broker's career, and this information, if carefully compiled and explained, may protect investors from potential misconduct by brokers with clean disclosure record.⁶³

They then noted that, as currently constituted, FINRA's BrokerCheck system makes it impossible for an investor to glean this sort of information, in part, because reports are only available one at a time:

Our analysis, and the analyses conducted by [Chicago Booth] and [OCE] show that association with past customer complaints and disciplinary events is a good indicator of higher propensity for future investor harm. While avoiding brokers with disclosure events may be a good rule of thumb for unsophisticated investors who have access to nothing more than public BrokerCheck information, it is not sufficient. Even at the highest risk firms, 80% of brokers don't have customer complaints. The 20% of brokers at these firms with a history of customer complaints do, though, increase the likelihood that other brokers at the same firm with a clean record will cause investor harm in the future. Investors need to know the disciplinary history of a broker's co-workers.⁶⁴

The authors then called upon FINRA to release *all* of the BrokerCheck database so that anyone interested in analyzing the data could do so. While FINRA subsequently acknowledged that third parties analyzing BrokerCheck data could offer value to investors, it has not actually made the data available.⁶⁵

What SLCG meant by "all" of the BrokerCheck database is "the public facing BrokerCheck data."⁶⁶ SLCG reasoned that making such information available should not be problematic because "FINRA and the SEC have already determined that this information is not confidential and should be disseminated to the public."⁶⁷ Yet, SLCG seems to be aware that FINRA *has* had a problem with making additional information from the national CRD system publicly available through BrokerCheck.⁶⁸

And so, PIABA finds itself still asking FINRA to make more information available on BrokerCheck. Only now, PIABA is making this request of FINRA

⁶³ *Id.* at 30.

⁶⁴ *Id.* at 29.

⁶⁵ See Jason Zweig, *Is Your Broker Good or Bad*, Wall Street Journal (April 22, 2016) (available at: <http://www.wsj.com/articles/is-your-broker-good-or-bad-1461342875>).

⁶⁶ *Id.* at 31.

⁶⁷ *Id.*

⁶⁸ *Id.* ("FINRA has so thoroughly throttled the distribution of this important data as to make it virtually useless.")

(the same as it made in March 2014) with even more support from others who have studied the issue and agree that the current BrokerCheck system is deficient and could be improved to better serve investors.

Taken on the Whole, The Academics and Experts Find That BrokerCheck Must Be Expanded If FINRA Is To Promote Investors' Well Being

Regardless of whether one considers the OCE, the Chicago Booth, or the SLCG study, the authors considered hundreds of thousands of broker records, and in some cases, millions. They analyzed those broker records to discover predictors of misconduct. They all concluded that prior instances of misconduct often served as indicators of likely future harm to investors. They also all found, to varying degrees, that the “quality” of a broker’s co-workers served as an indicator of the likelihood of future wrongdoing.

All three reports also implicitly acknowledged a fundamental premise: that a one-off review of a particular broker’s report is better than nothing. While that may be true, those analyses failed to challenge the quality of the BrokerCheck reports themselves. The Chicago Booth working paper and the SLCG study did not examine the potential value of the information which FINRA presently excludes from BrokerCheck because this information was not readily available. Given the differences in state disclosure, it is generally not possible for outsiders to obtain complete state CRD reports for every broker. Accordingly, the reports and their conclusions have their limitations. Notwithstanding the limitations, the conclusion that non-misconduct related disclosures are still relevant and may be predictors of future misconduct lend support to the premise that the disclosure of information presently excluded by BrokerCheck would have some value to investors.

FINRA Must Be The Principal Provider of Broker History Information

As discussed above, FINRA’s BrokerCheck as presently constituted does not present a full and fair background regarding brokers and firms. And, as discussed above, an investor must consult his or her state securities regulator in an effort to try to fill the gaps in the BrokerCheck report. Unfortunately, there are differences in what data in the national CRD system can be made publicly available by the various states (due to their respective sunshine laws). Thus, in order for investors across the United States to obtain uniform information about brokers (regardless of the state(s) in which brokers are registered), FINRA should be the principal provider of *full and complete* BrokerCheck reports.

There are two principal reasons that investors should not have to rely on states for historical data about brokers: (1) differing state laws on what may be made publicly available, combined with the states’ obligations to protect (and not produce) personal identifying information (“PII”), have made it more difficult and expensive for investors to obtain relevant information from some state regulators;

and, (2) FINRA stands in the best position to ensure that the national CRD system is complete and up-to-date, as well as ensure that investors are all receiving uniform information about brokers regardless of where the brokers are registered.

States Operate Under Different Constraints Than FINRA, Which Hinders Their Ability To Adequately Fill The Gaps In BrokerCheck Reports

When states make CRD reports available upon request of investors, the data in the CRD reports is provided under the public records, or sunshine, laws. States vary in terms of what information they are able to make available under these laws. Accordingly, an investor making such a request from Florida will receive different information than an investor making such a request from New York, even if the request is for background information about the same broker. The result is that an investor in one state (New York, here) may not receive key historical information about his or her broker simply because that investor did not know to find out if the broker is registered in other states and then request information about the broker from any other state(s) too.

Because an investor's request for a state regulator's CRD report on a broker seeks the revelation of information in public records, many states treat such requests as Freedom of Information Act Requests ("FOIA requests"). As a result, those states charge a fee to collect the information, as they would for any other FOIA request. Other states, cognizant of the need to avoid the inadvertent disclosure of a broker's PII, may require investors to pay a fee for the time required for staff to review the information in the state's CRD reports and redact PII. In those states, investors cannot get the CRD report for a broker until they have paid the fee and the staff has reviewed and redacted any PII that was found in the broker's report. Additionally, even the process by which a CRD report is requested can vary by state. In some states, an investor can simply call or email the securities regulator and they will receive the broker's state CRD report without any appreciable delay. On the other hand, some states require the request for a CRD report to be made in writing, and a fee to be paid (sometimes by a specific method such as cashier's check or money order mailed to a certain address), before the report will be provided to the investor.

Contrary to the variances in content, cost, and time at the state level, BrokerCheck is electronically accessible, immediately available, and has already been vetted to ensure it reveals no personal identifying information. FINRA has the ability to include in its BrokerCheck reports any information it wants from the more complete data that resides in the national CRD system.⁶⁹ Thus, FINRA can, and should, make more fields and data available to investors through expanded BrokerCheck reports that investors can access in the same manner as they do for current BrokerCheck reports. Dissemination of more complete

⁶⁹ The data in the CRD reports provided by the states actually comes from the national CRD system.

background information about brokers through the existing BrokerCheck system will ensure that investors across the country have access to the same information about a broker at the same time and at the same cost.

FINRA is best situated to ensure an accurate CRD system

FINRA is, and has been, the regulator with the ability to correct all of the issues with BrokerCheck. While states often provide investors with more thorough reports (*i.e.*, containing additional important data from the national CRD system) than BrokerCheck reports, that is not always the case. Additionally, it has become apparent that the national CRD database itself is missing critical information because brokers and firms have not always reported what is required.

FINRA must act *now* to ensure the information available to investors through BrokerCheck is comprehensive and accurate. A Wall Street Journal article published on March 14, 2014, just a week after PIABA's Report was released, reported that more than "1,600 stockbrokers . . . records failed to disclose bankruptcy filings, criminal charges or other red flags in violation of regulations, without regulators noticing."⁷⁰ Roughly nine months later, FINRA amended its supervision rule to add a requirement that firms adopt procedures to verify the accuracy and completeness of information contained on a broker's Form U4 (one of the primary forms used to funnel information into the CRD system).⁷¹ FINRA also adopted a temporary program to address the underreporting of information on Form U4. FINRA permitted firms to update missing information between 2014 and 2015, and refunded late reporting fees.⁷²

Notwithstanding the two-year-old Wall Street Journal article and FINRA's subsequent efforts to remedy the situation, the problem persists today. SLGC has compared BrokerCheck information with FINRA's arbitration award database, finding at least 75 examples of brokers not reporting arbitration award information.⁷³

⁷⁰ Eaglesham, Jean and Rob Barry, "Stockbrokers Fail to Disclose Red Flags," Wall Street Journal, March 5, 2014, available at <http://www.wsj.com/news/articles/SB10001424052702304026804579411171593358690>.

⁷¹ See "Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of FINRA Rule 3110(e) (Responsibility of Member to Investigate Applicants for Registration) in the Consolidated FINRA Rulebook," File No. SR-FINRA-2014-038 (December 30, 2014), available at <https://www.sec.gov/rules/sro/finra/2014/34-73966.pdf>.

⁷² See *Id.*, see also FINRA Rule 3110.15.

⁷³ McCann, Craig, Mike Yan and Chuan Qin, "Things Go From Bad to Worse for BrokerCheck" (July 7, 2016), available at <http://blog.slcg.com/2016/07/things-go-from-bad-to-worse-for.html>.

The fact that SLCG found 75 examples of brokers not reporting arbitration award information is shocking, given the fact that FINRA itself publishes the information regarding arbitration awards. In other words, despite having the arbitration award data in its possession, FINRA has somehow failed to ensure that the data makes it into the CRD system. If the CRD system is incomplete, the BrokerCheck reports and state CRD reports drawn from that system will also be incomplete – leading state regulators and investors, alike, without the information needed to fully assess brokers.⁷⁴ Simply put, FINRA must ensure that accurate and complete information is being disclosed to the CRD system, or else BrokerCheck will always be broken.

CONCLUSION

PIABA's March 2014 report called on FINRA to step forward and ensure that BrokerCheck provided investors with sufficient information to allow them to fully vet, to the extent possible, potential stockbrokers with whom they would entrust their life savings. The closest thing to a response from FINRA came in the form of an amendment to Rule 2210, "Communications with the Public," which required the inclusion of links to the BrokerCheck website in specified circumstances. Otherwise, the only other noticeable actions taken by FINRA with respect to BrokerCheck was limited to some tweaks to the BrokerCheck website and homepage, and an advertising campaign touting the broken BrokerCheck system as the best (and seemingly only) source of broker background information.

In other words, it appears as though FINRA has made little, if any, progress in enhancing or otherwise improving the BrokerCheck system. While its own Office of the Chief Economist found value in offering additional information within BrokerCheck reports, FINRA has not publicly endorsed the working paper and certainly has not taken steps to enhance BrokerCheck disclosures. FINRA's lack of progress is particularly frustrating given FINRA's Chief Legal Officer's April 2016 statement that FINRA recognized that third parties may be able to provide valuable information to investors and that FINRA was "carefully considering the issue."⁷⁵ FINRA has been silent regarding its consideration, much less implementation, of efforts to make more information publicly available as suggested by SLCG.

Moreover, it has become increasingly apparent that the data contained in the national CRD system, and thus BrokerCheck reports, is incomplete, unreliable or even false. These issues threaten to render even what broker

⁷⁴ The problems related to expungement of customer complaints from CRD records is beyond the scope of this Update. PIABA has addressed issues with the current expungement process in previous reports and updates, and will continue to push for expungement reform in the future.

⁷⁵ See Zweig, *Is Your Broker Good or Bad* (available at: <http://www.wsj.com/articles/is-your-broker-good-or-bad-1461342875>).

background information is disclosed in BrokerCheck reports useless to an investor trying to research his or her broker.

Since PIABA's Report was published in early 2014, academics have spent countless hours gathering data from the BrokerCheck system, as well as (in some instances) the CRD system and limited publicly available information, in an effort to assess the utility of the BrokerCheck system to investors trying to learn about their brokers' history. Their primary conclusion was unambiguous: a broker's co-workers have a large impact on whether that broker is more likely than another broker at another firm to commit sales abuses in the future. Accordingly, the history of those who work with and around a broker is important in predicting how likely a particular broker is to engage in future wrongdoing. Unfortunately, the current BrokerCheck system does not provide any data on others that work at a broker's firm or in a broker's office.

Based on the studies, articles and reports that have been published by a variety of sources over the last two and a half years since PIABA's report was published, it is clear that FINRA needs to take action to improve the national CRD system and BrokerCheck reports. Indeed, if FINRA is serious about protecting investors and truly believes, as it has professed, that researching a broker is a meaningful part of an investor's broker selection process, PIABA calls upon FINRA to:

1. Ensure that *all* complaints, arbitration awards, and settlements are promptly and accurately recorded in a broker's and/or firm's CRD record(s);
2. Ensure that the data disclosed *via* BrokerCheck is, at a minimum, congruous with the most liberal state sunshine law;
3. Include in BrokerCheck reports data concerning whether arbitration awards or settlements were actually paid;⁷⁶

⁷⁶ PIABA issued a report concerning the scourge of unpaid arbitration awards in February 2016. See *Unpaid Arbitration Awards, A Problem The Industry Created – A Problem The Industry Must Fix*, Hugh Berkson (Feb 2016)(available at [https://piaba.org/system/files/pdfs/Unpaid%20Arbitration%20Awards%20-%20A%20Problem%20The%20Industry%20Created%20-%20A%20Problem%20The%20Industry%20Must%20Fix%20\(February%2025,%202016\).pdf](https://piaba.org/system/files/pdfs/Unpaid%20Arbitration%20Awards%20-%20A%20Problem%20The%20Industry%20Created%20-%20A%20Problem%20The%20Industry%20Must%20Fix%20(February%2025,%202016).pdf)) Given that FINRA does not publish data concerning unpaid awards, PIABA tried to determine for itself whether arbitration awards were paid. This proved to be impossible because there is nothing in BrokerCheck reports concerning whether any particular award against a broker or brokerage firm went unpaid. Investors deciding whether to do business with a firm (or a broker) should have the benefit of knowing whether that firm (or broker) has been unable to pay awards awarded to aggrieved investors in the past. With respect to the ability to pay awards, we also note that PIABA is in favor of BrokerCheck reports including data on whether a firm (or a broker) maintains liability insurance and, if so, the limits of such insurance.

4. Add statistical information on the BrokerCheck home page to allow an investor to put an individual BrokerCheck report into context (*e.g.*, include statistics showing the total number of registered brokers in the industry and the total number in the industry with one, two, three, four, or more investor complaints on their record);
5. Open the entire BrokerCheck database to the public (*e.g.*, academics and other third parties) to allow deep data analysis and development of quantitative and qualitative reports concerning brokers and brokers' co-workers.

Should FINRA continue to ignore PIABA's, the SEC's, NASAA's, academics,' and the public's calls for improvements in the BrokerCheck system, PIABA calls upon Congress to amend §15A of the Exchange Act to define the type and scope of information FINRA would be required to make available through BrokerCheck so that, similar to Florida and other states with broad public records laws, the only data that would be excluded would be personal information such as social security numbers, home addresses, and other personal identifying information.

The current incomplete and/or inaccurate BrokerCheck reports are of limited value, and may be of no value depending on how incomplete or inaccurate a given broker's information is. Investors should not be subject to the vagaries of their local public records laws to ensure that they gain the information necessary to fully and fairly assess their potential financial advisor. Investors also should not be subject to brokers' whims with respect to what, when, and how much they will disclose to FINRA when the information to be disclosed is otherwise available and/or known to FINRA.

As things stand now, FINRA claims to offer information "You might want to know about"⁷⁷ but fails to offer information you definitely want to know about. The solution to the BrokerCheck problems is so simple and the resulting potential benefit to investors so meaningful that FINRA cannot be allowed to continue promoting the current broken BrokerCheck system. FINRA is fully aware of BrokerCheck's limitations and it must be required to eliminate those that it can.

⁷⁷ See FINRA's BrokerCheck home page, available at: <http://brokercheck.finra.org>.