**PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION**
1225 West Main Street, Suite 126 | Norman, OK 73069
Toll Free (888) 621-7484 | Fax (405) 360-2063
www.piaba.org

May 5, 2020

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

Re: **File No. SR-FINRA-2020-011** (FINRA proposed rule change to address brokers with a significant history of misconduct)

Dear Mr. Fields:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international, not-for profit, voluntary bar association that consists of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA's mission has been to promote the interests of the public investor by, among other things, seeking to protect such investors from abuses in the dispute resolution process, working with regulators and legislators to help craft rules and laws that better protect investors, and advocating for public education related to investment fraud and industry misconduct. Our members and their clients have a fundamental interest in the rules promulgated by the Financial Industry Regulatory Authority ("FINRA") that govern the practices of brokers and broker-dealer firms.

PIABA is supportive of FINRA's proposed rule changes to address brokers with a significant history of misconduct. Those rule changes would: (1) allow a Hearing Officer to impose conditions or restrictions on the activities of a respondent when a disciplinary matter is appealed; (2) amend FINRA Rule 9520 to require member firms to adopt heightened supervision for statutorily disqualified brokers while an eligibility request is under review by FINRA; (3) amend FINRA Rule 8312 to allow the disclosure through BrokerCheck of the status of a member firm as a "taping firm" under FINRA Rule 3170; and (4) require a member firm to submit a written request to FINRA for a materiality consultation and approval of a continuing membership application, if required, when a person that has – in the prior five years – one or more "final criminal matters" or two or more "specified risk events" seeks to become an owner, control person, principal or registered person of a member firm.

The proposed rule changes recognize that there continue to be several holes in the FINRA regulatory framework that allow bad actors to continue to abuse investors, even when FINRA is aware of the bad conduct. By way of example, a troubled broker is currently allowed to maintain his or her access to the securities markets while a disciplinary matter is appealed to the National Adjudicatory Council ("NAC"). Similarly, a FINRA member firm is currently able to continue to profit from the sales of a statutorily disqualified broker simply because an eligibility request was made to FINRA. Moreover, the full regulatory process involved to remove a bad broker or expel a brokerage firm with a history of abusing investors takes significant time and, if the bad actor is allowed to continue abusing investors while this process is ongoing, FINRA cannot appropriate protect the public. As FINRA states on page 5 of the notice:

> a FINRA enforcement proceeding could involve a hearing before a Hearing Panel, numerous motions, an appeal to the NAC, and further appeals to the SEC and federal courts of appeals. Moreover, even when a FINRA Hearing Panel or Hearing Officer imposes a significant sanction, the sanction is stayed during appeal to the NAC, many sanctions are automatically stayed on appeal to the SEC, and they potentially can be stayed during appeal to the courts. When all appeals are exhausted, the respondent's FINRA registration may have terminated, limiting FINRA's jurisdiction and eliminating the leverage that FINRA has to incent the respondent to comply with the sanction, including making restitution to customers.

The obvious and concerning question in that years long process involving a troubled broker that FINRA now recognizes is: "what is he or she doing to his or her customers while the appeal is pending?" PIABA members have seen many cases over the years where bad actors have used the appeal process to perpetuate additional fraud against the investing public and appreciate that FINRA is attempting to now stop this from continuing.

PIABA notes, as it has in the past, that a broker or broker-dealer should not be able to conduct business as usual during a disciplinary appeal. Brokers or broker-dealers should have restrictions in place during the pendency of an appeal to make sure they do not continue with abusive behavior and further injure investors while appealing a disciplinary action. Moreover, such members should be required to provide clear and convincing evidence of a manifest error by the trier of fact and show the likelihood of success of the underlying appeal before any restrictions are removed. This would provide the appropriate balance between protecting the investing public and due process for brokers and member firms.

As FINRA also explained in its notice, there are "persistent issues with some member firms despite FINRA's tools to identify recidivist brokers and the supervision rules in place." As a result, FINRA needs to be able to strengthen its ability to actually stop these bad actors immediately, not just be able to identify them and then put them in a years long process that allows further misconduct. An employing broker-dealer should be informed immediately of any condition or restriction imposed on one of its brokers. After notification, heightened supervision plans need to be documented and enforced if a broker-dealer maintains its relationship with a disciplined broker. In a self-regulatory environment, broker-dealer registration and supervision is one of the hallmarks of our country's regulatory framework. FINRA's steps here provide benefits by closing an obvious regulatory gap.

As practitioners who represent the victims of broker misconduct, PIABA members are often amazed at the regulatory histories of some of the brokers our clients or perspective clients are complaining about. We are often left wondering: "how is this person still registered?" or "why did this brokerage firm give this person access to the securities markets?" While we are pondering those questions, the person we are talking to is dealing with the devastation of having lost their life savings and a recidivist broker is likely stalking his or her next prey. Any arguments against these proposed rule changes based on minor compliance costs are far outweighed by the very important investor protection benefits they provide.

PIABA supports these rule changes and continues to encourage FINRA to address the enormous risks that recidivist brokers present to the investing public. PIABA appreciates the opportunity to comment on these proposed rule changes. Thank you for your consideration.

Respectfully submitted,

Samuel B. Edwards, President
Public Investors Advocate Bar Association