

PIABA: FINRA SPENT MILLIONS OF DOLLARS HYPING “BROKEN” BROKERCHECK SYSTEM RATHER THAN FIXING IT

2.5 Years After PIABA Report Detailing BrokerCheck System’s Flaws, No Action Has Been Taken to Provide Fuller Information to Investors; States Often Give Out More Details.

WASHINGTON, D.C. – October 20, 2016 – How did FINRA respond to a March 2014 report by the Public Investors Arbitration Bar Association (PIABA) detailing the serious deficiencies in the background information provided about financial professionals to investors through FINRA’s BrokerCheck website?

Two and half years later, [a new PIABA report](#) found that FINRA did not fix BrokerCheck. Instead, the industry self-regulatory organization made things worse by spending millions in advertising to get unwary investors to rely on the flawed BrokerCheck system. Examples of information routinely not included in BrokerCheck reports, but available from many state securities agencies, include the circumstances of a broker’s termination of employment (especially when the broker quits during the course of his firm’s investigation of his conduct), bankruptcy filings, tax liens, and test scores.

As the PIABA report notes: “... 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.”

Report co-author and PIABA President Hugh D. Berkson said: **“Before FINRA spent millions of dollars advertising BrokerCheck, it should have fixed its broken disclosure system. The current incomplete BrokerCheck reports are of limited value. As things stand now, FINRA claims to offer information ‘You might want to know about,’ but fails to offer information you definitely want to know about. 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. The answer to the problem is so simple, and the result so meaningful, FINRA cannot be allowed to continue to hype a broken system it knows is of limited utility.”**

PIABA Executive Vice President and President-Elect Marnie C. Lambert, who co-authored the report, said: **“This is a major problem when it comes to what investors are relying on for information about their financial advisors. FINRA incorrectly advertises the BrokerCheck reports as being ‘complete’ and helpful to investors but, 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.”**

BrokerCheck reports provided by FINRA and background reports offered by states for any given broker-dealer (firm) or registered representative (broker) rely on the same source for information – 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 missing critical information about a firm or broker that investors may not be able to obtain elsewhere -- depending on with which states a broker is registered. Typically, only those states where a broker is registered will have background information on that broker.

On June 1, 2015, FINRA announced that it was launching a major new promotion of BrokerCheck. As the PIABA report notes: “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.”

The TV, print, and online campaign was first reported to have cost \$3.5 million, but the FINRA annual report for 2015 indicates that a substantial portion of the self-regulatory organization’s \$27.4 million in expenditure for “professional and contract services” went to BrokerCheck hype. The impact was clear: FINRA reported 71 million reviews of broker or firm records in 2015, up from 29 million the year before.

Even though the Securities and Exchange Commission (SEC) urges investors to consult with state securities regulators for CRD reports, BrokerCheck does not. As the PIABA report indicates: “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 ... 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.”

In calling for action, the PIABA report states: “[I]f 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;
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.

If FINRA fails to act, Congress should step to require more complete and transparent disclosure through BrokerCheck, according to PIABA.

ABOUT PIABA

Public Investors Arbitration Bar Association is an international, not-for-profit, voluntary bar association of lawyers who represent claimants in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect such investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights. For more information, go to www.piaba.org.

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