

PIABA REPORT: INVESTORS FACE MAJOR UPTICK IN INVESTMENT SCAMS IF FINRA UNLEASHES “ROGUE BROKERS” BY GUTTING SUPERVISION RULES

Rule Change Will Significantly Increase Vulnerability of Investors & Close Avenues for Recourse

WASHINGTON, D.C. – October 4, 2018 – FINRA is proposing to undercut investor-protection rules requiring supervision of the conduct of stockbrokers, and the resulting “regulatory black hole” will leave investors significantly more at risk of abuses by eliminating supervision of the outside activities of “rogue brokers,” according to a new Public Investors Arbitration Bar Association (PIABA) report.

Titled “*FINRA’s Attempt To Gut Investor Protections: Proposed Reforms To FINRA Supervision Rules*” and available at www.piaba.org, the PIABA report contains the following warning: “FINRA is currently contemplating the evisceration of crucial protections that have been in place for decades to safeguard investors against investment schemes by brokerage firms’ registered representatives, including ‘selling away’ schemes. If FINRA’s proposed changes are approved, there will likely be more investment scams perpetrated by registered representatives. If these proposals are adopted, brokerage firms will no longer be held primarily responsible for identifying and stopping rogue brokers.”

PIABA President and report co-author Andrew Stoltmann, attorney, Stoltmann Law Offices, Chicago, IL, said: **“Who decided that rogue brokers needed regulatory relief? This is undoubtedly one of the worst rule changes ever contemplated by FINRA. It would be a bonanza for rogue brokers and it would paint a huge target on the backs of investors. The effect will be that brokerage firms will be less likely to prevent ‘selling away’ and other related schemes and scams. These changes will create a regulatory black hole that will insulate brokerage firms now serving as the first line of defense against outside investment schemes at the direct expense of protecting investors. Rather than fixing the rogue broker problem, FINRA has chosen to focus on how to let its member brokerage firms wash their hands of any responsibility for these unscrupulous actors.”**

PIABA Director and report co-author Adam Gana, attorney, Gana Weinstein LLP, New York, NY, said: **“FINRA’s claimed mission is to ‘safeguard the investing public against fraud and bad practices.’ Fraudulent outside business activities pose a serious risk to investors as evidenced by the numerous examples of fraudulent private placements, Ponzi schemes, and investment frauds perpetrated through third-party investment advisors (IAs). If FINRA implements the changes it is proposing, it will significantly reduce brokerage firms’ obligations with respect to supervising their registered representatives and pose a grave risk to investors.”**

FINRA is currently contemplating, under FINRA Regulatory Notice 18-08, eliminating almost all supervision requirements for registered representatives’ outside business activities, including record keeping. FINRA proposes to exempt member firms from supervising:

- Investment related activities at third-party investment advisor firms;
- Investment related activities at member affiliates including IAs, banks, and insurance companies;
- Non-investment related work and outside business activities; and
- Personal investments.

These private securities transactions (often referred to as “selling away”) and other forms of outside business activities manifest themselves in a variety of schemes and fraudulent activity every year, including but not limited to, fraudulent private placements, Ponzi schemes, and investment frauds perpetrated through third-party IAs established by the registered representative.

As the PIABA report notes: “A common modus operandi in these schemes is for a registered representative to establish a solo or small IA firm and perpetrate the fraud through outside business activities in an effort to avoid member supervision.”

FINRA proposed changes to Rule 3290 will narrow and reduce member firms' supervisory obligations and result in unacceptable adverse consequences, including:

- Dramatically weakening long-standing supervisory obligations;
- Creating glaring supervisory deficiencies;
- Encouraging de facto violations of federal securities laws;
- Generating inconsistencies with other FINRA rules and regulatory guidance;
- Producing perverse incentives for registered representatives and members; and
- Leaving investors with inadequate protection.

As the PIABA report points out: "Essentially, FINRA member firms would potentially be insulated from any liability related to the outside business activities of its registered representatives."

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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EDITOR'S NOTE: A streaming audio replay of the news event will be available on the web at www.piaba.org as of 5 p.m. ET/4 p.m. CT on October 4, 2018.