



PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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January 20, 2021

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

**RE: Request for Comment on SR-FINRA-2020-045
Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)**

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association¹ (“PIABA”), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) relating to investor protection.

PIABA strongly opposes SR-FINRA-2020-045, which seeks to amend Rule 8312 to: 1) make information about formerly registered individuals subject to a final regulatory action available through BrokerCheck on a permanent basis only for those individuals who have been registered on or after August 16, 1999; and 2) exclude information from BrokerCheck about deceased individuals.

PIABA supports any rule that makes BrokerCheck more effective and accurate and has frequently commented on prior proposals for changes to BrokerCheck. FINRA advertises that the BrokerCheck reports are “complete” and provide meaningful and substantive information to investors wanting to learn more about specific brokerage firms and registered representatives. The investing public should be able to rely on BrokerCheck to vet their financial professionals, but can only do so if such information is accurate and meaningful. FINRA’s proposal to amend Rule 8312 is a leap backwards in investor protection, because it proposes to remove vital information that investors have the right to know.

¹ Formerly known as the Public Investors Arbitration Bar Association.

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FINRA should proceed carefully to ensure the protection of the public's interest in relevant information. FINRA's embrace of widespread pre-dispute arbitration agreements currently acts to conceal public access to information about many disputes because records from FINRA proceedings are not available to the public as they are in public court proceedings. As such, FINRA must only promulgate rules and policies that facilitate the removal of information from BrokerCheck in the most extraordinary circumstances, because any removal diminishes the ability of reputation to police business misconduct.

1. FINRA's Proposal to Remove the Permanent Inclusion of Regulatory Actions

Under the current Rule 8312, information is made available through BrokerCheck on a permanent basis for those formerly registered individuals who are the subject of a final regulatory action, which is categorized by FINRA as a "Permanent Disclosure Event." In 2009, FINRA amended Rule 8312 to make information concerning final regulatory actions against brokers permanently available in BrokerCheck, regardless of when they were employed in the securities industry. FINRA Reg. Notice 09-66, p. 1. The stated goal was to help investors make informed decisions when considering who to choose to handle their hard-earned funds. FINRA noted the importance of allowing public access to information about formerly registered persons who, although no longer in the securities industry in a registered capacity, may still work in other investment-related industries or attain other positions of trust and about whom investors may wish to learn relevant disciplinary information. *Id.* at 2.

The current proposal abandons FINRA's prior position of investor protection. FINRA was correct in 2009. There are many career paths that a former associated person could take that would place him or her in a position of trust with access to client funds. PIABA's members frequently get calls from investors harmed by ex-brokers who are defrauding the public but have not been registered since the 1980s and 1990s. There is no reason to remove these disclosures from the public record; doing so is antithetical to FINRA's mission of protecting investors.

FINRA cites data limitations as a motivation for changing Rule 8312, in that minimal information about the final regulatory action is available for publication in the BrokerCheck reports. While that may be accurate, it is not sufficient reason to remove the regulatory action in its entirety from BrokerCheck. Even where details of the action are limited, the fact that a final regulatory action against an individual took place *at all* is highly important information to the public. If the investor knows about the regulatory action, there is an opportunity to ask the financial professional questions about it, do his or her own research, and make an *informed* decision about entrusted funds to that person.

The other rationale FINRA gives for the proposal is that FINRA staff must manually create BrokerCheck reports for these individuals due to the fact that their information is not available in the Web CRD system. With all due respect, that is what FINRA was supposed to be doing since the implementation of the "Permanent Disclosure Events" in November of 2009. Now, twelve (12) years later, FINRA is claiming that it is too onerous of a process? The paper-based legacy of the CRD system should have been resolved a long time ago, and any inconvenience for FINRA to bring the BrokerCheck system up to its advertised standards is far outweighed by the needs of the investing public for that information. The better question to be asked here, is how many records remain to be updated?

2. FINRA's Proposal to Remove All Information for Deceased Brokers

FINRA states that including information about deceased individuals in BrokerCheck offers little investor protection value. PIABA strenuously disagrees.

It is not unusual for aggrieved investors to seek out a lawyer and file an arbitration claim relating to a deceased broker's misconduct. Sometimes investors file claims against the deceased broker's supervising brokerage firm shortly after his or her death; and sometimes it is several years after the events that gave rise to their losses. Indeed, the FINRA *Code of Arbitration Procedure* affords investors the opportunity to submit claims that are up to six (6) years after the event or occurrence giving rise to the claim. (FINRA *Customer Code of Arbitration Procedure*, Rule 12206(a)). Claims relating to negligent supervision and vicarious liability do not disappear simply because the brokerage firm's agent is deceased.

FINRA cites two defective rationales for the proposal. First, FINRA argues that maintaining information about a deceased broker may result in unnecessary distress for the individual's family. The assumption here is that the broker's history reflects bad acts – otherwise, having the information available for public view would not be distressing. It makes no sense for FINRA to be jumping through hoops to protect the reputation of these bad brokers, to the detriment of the investors which it is supposed to protect.

Without that information publicly available, attorneys representing aggrieved investors will search the BrokerCheck system, not locate the deceased broker, and conclude (incorrectly) that the person was never registered with a FINRA-member firm. Take, for example, now deceased former broker Karl H. Romero (CRD # 403473). Mr. Romero died in 2016. Before his passing, he accumulated nine customer complaints and/or arbitration claims related to sales practices regarding various alternative investments, starting in 2009. After his death, *five* (5) additional customers filed complaints or otherwise complained about Mr. Romero's sales practices regarding various alternative investments. According to Brokercheck, the most recent complaint about Mr. Romero was filed in December 2019, and was settled by Mr. Romero's employer in February 2020. Had FINRA's proposed changes been implemented, those customers may not have brought and resolved their legitimate claims because they and their counsel were deprived of valuable information related to Mr. Romero's past history. Further, those claimants could have been denied valuable discovery about the prior disputes and any related FINRA investigations.

Second, FINRA claims that maintaining information about a deceased individual in BrokerCheck could possibly make it easier for someone to steal the deceased person's identity in an attempt to defraud investors. That is simply not a credible argument. BrokerCheck does not identify whether an individual is deceased, so it makes it no more likely that a scammer would learn that the individual was deceased from BrokerCheck than other sources. If a scammer has that information, it necessarily would have been from a different source. Moreover, there is no personal confidential information shared about an individual, deceased or otherwise, on BrokerCheck, such as home addresses, dates of birth, social security numbers, account numbers, or taxpayer identification numbers. It is a hollow argument that keeping information on deceased brokers publicly available will make it any more likely that they are the subject of identity theft and certainly does not outweigh the concrete value of substantive information to harmed investors.

There is rarely a good reason to whitewash Brokercheck and deny valuable information to prospective investors and victims of bad brokers. The death of a broker is no reason to conceal his or her misdeeds. It appears the only benefit to deleting such valuable information would be to the firm or firms which employed the broker.

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Further, PIABA wonders whether the removal of the bad acts of deceased brokers would cause FINRA to undercount the metrics related to determining whether a member firm should be placed on FINRA'S proposed restricted firm list.²

As an association of attorneys who represent aggrieved investors in FINRA arbitration proceedings and in court, PIABA believes that all of the information that is disclosed for current FINRA member firms and associated persons should remain in the public domain indefinitely. We urge FINRA to withdraw SR-FINRA-2020-045 immediately.

Sincerely,



David P. Meyer,
PIABA President

² SR-FINRA-2020-041.