

PIABA WARNING: FINRA WITHHOLDS CRITICAL “RED FLAG” INFORMATION IN BROKER BACKGROUND CHECK DISCLOSURES TO INVESTORS

It's Time to Harmonize FINRA and State Disclosures to Public: FINRA's BrokerCheck Routinely Deletes Information about Bankruptcies, Tax Liens, Firings, Flunked Tests, Sales Practice Abuse Investigations, and Other “Red Flags” for Investors.

WASHINGTON, D.C. – March 6, 2014 – Investors who rely on the BrokerCheck disclosure system maintained by the Financial Industry Regulatory Authority (FINRA) to check out the background of their current or potential stockbrokers are not getting access to crucial information about financial professionals even though such information is available from many state securities agencies operating under robust public record laws, according to a new analysis from the Public Investors Arbitration Bar Association (PIABA).

PIABA is warning that the extent of omitted “red flag” background information is so serious that unwitting investors relying on BrokerCheck may very well select brokers with whom they would not do business if they had access to the more complete picture available to FINRA but now being hidden.

The PIABA report underscores in stark terms the high stakes for investors: **“The information that FINRA omits in its reports is objectively important to investors seeking to make an informed decision about selecting a broker. The result is that consumers who use the BrokerCheck system to conduct their due diligence may make an incorrect assumption that all relevant information has been disclosed and may opt to rely on a broker they would have avoided had they known more information.”**

Available at <http://www.piaba.org>, the PIABA analysis find that FINRA has elected to provide limited information about brokers even in the face of calls for fuller disclosure from the Securities and Exchange Commission (SEC), state securities regulators, consumer groups, and other organizations. The PIABA analysis makes clear that the only way for the BrokerCheck system to function as intended to educate and protect investors is to require that FINRA disclosures be made consistent with the more complete reporting provided by state securities agencies.

Attorney Jason R. Doss, president, PIABA, said: **“All investors should be able to obtain complete and consistent information about brokers. Period. The quality of the disclosure you get about brokers should not depend on which state you live in. There is no rational basis for FINRA to hide key ‘red flag’ information that investors in some states can get from state-level agencies. Given that FINRA has failed repeatedly to take action to increase the disclosures in BrokerCheck, Congress and the SEC need to compel them to do so if necessary.”**

“The veil of secrecy that exists in the current BrokerCheck system should be lifted to allow consumers access to a comprehensive, reliable source so that they can make informed decisions about a profession that has extraordinary influence over their life savings,” said Christine Hines, Public Citizen’s consumer and civil justice counsel. **“It is indefensible for FINRA to withhold critical information, already under its control, from the public.”**

“Investors go to BrokerCheck to get information about their broker. They should not have to then follow-up with their state securities regulator to possibly obtain additional, relevant information about that broker that is already in FINRA’s possession. They should be able to get all of the relevant information from one central location,” said Christine Lazaro, director of Securities Arbitration Clinic, St. John’s University School of Law.

Denise (Denny) Voigt Crawford, former Texas Securities Commissioner (1993-2011) and former president, North American Securities Administrators Association (1996-1997 and 2009-2010), said: **“I have been a long-time, very vocal critic of FINRA’s indefensible policies regarding the release of**

information via the CRD. It really is appalling that FINRA is given the authority to collect detailed information about financial professionals yet is not required to make a full disclosure of that information. This practice is very detrimental to the interests of investors, policy makers and the public generally."

For its new analysis, PIABA compared FINRA BrokerCheck and state-level disclosures for a number of brokers. PIABA found the following:

- When a broker-dealer fired a registered broker, BrokerCheck reports excluded the reason for the termination and other commentary regarding the termination, although this information is available from states.
- Information about whether a broker was ever under internal review "for fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct" is not reported by BrokerCheck, but is disclosed by states.
- A personal bankruptcy filed by a broker is not reported by BrokerCheck, but is revealed in state reports.
- A federal tax lien filed against a broker in excess of \$100,000 is not disclosed by BrokerCheck, but is disclosed in state reports.
- Information about failed tests for industry qualification examinations is not disclosed through BrokerCheck, which does not reveal the scores achieved and the number of times a broker failed such tests. It only shows which exams were passed but not the score or how many times a broker may have failed before finally passing. State reports do include this more detailed information.

FINRA maintains the Central Registration Depository (CRD) database on its behalf and on behalf of state securities agencies, which means that BrokerCheck and the states draw on the same pool of information. FINRA promotes BrokerCheck as a major resource for investors. States also make available information from CRD records, but have not generally invested the same kind of time and effort in publicizing the availability of the often more complete information.

The PIABA report notes: **"Despite this uneven access, FINRA has not harmonized its disclosures with the information disclosed by the states with the most robust public records laws. In failing to do so, FINRA has narrowly construed statutory instruction to make the CRD database's information public, ignored the requests of the SEC to increase access, disregarded public requests from multiple academics for more information, neglected multiple requests from the North American Securities Administrators Association, and turned a blind eye to requests from the Public Investors Arbitration Bar Association."**

The report makes the point that it is important that investors have access to the information about termination, bankruptcies and tax liens, industry exam failures and whether a broker was ever under internal review as they would impact the decision-making process of who an investor hires to manage their life savings. In the case of a termination, if an investor reviewed the BrokerCheck report, they may be misled into believing a broker left a firm on amicable grounds since the report does not include the reportable facts and circumstances under which the broker left the firm.

In the case of a bankruptcy or tax lien, a reasonable investor would have good reason not to engage or hire a broker who has demonstrated that he or she cannot properly manage their own finances. In the case of industry exams, BrokerCheck only shows which exams a broker has passed but not if a broker failed an exam prior to that. An investor may believe that this type of information speaks to the basic competency of their broker.

Additionally, it is unimaginable that any reasonable investor would not want or need to know the answer to this question: 'Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct?' Yet, this information is only publicly available from some state regulators, not from BrokerCheck.

FINRA maintains the qualification, employment and disclosure histories of 5100 broker/dealers and approximately 660,000 of their securities employees in the electronic CRD system. FINRA and the North American Securities Administrators Association (NASAA) established the CRD system in 1981. For each associated person licensed by FINRA, the CRD system contains disclosure information with respect to the associated person having been named in a criminal matter, having been the subject of a regulatory disciplinary action, having been the subject of a civil judicial action, and having been the subject of an investor arbitration proceeding.

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 <http://www.piaba.org/> as of 5 p.m. EDT on March 6, 2014.

THE INEQUALITY OF INVESTOR ACCESS TO INFORMATION

A Study Conducted By Public Investors Arbitration Bar Association¹ Demonstrating How FINRA BrokerCheck Reports Omit Critical Information That Harms The Investing Public And Proposing Needed Federal Legislative Change²

March 6, 2014

Introduction

Today, investors lack consistent access to complete information about the financial advisors managing their life savings. Much of this information is contained in the Central Registration Depository (“CRD”), a comprehensive national database containing registration, complaint and other information about stockbrokers and broker-dealer firms. FINRA maintains this database on its behalf and on behalf of the states, yet it makes only a small portion of the information contained within the database available to the public through its online system, BrokerCheck.

In contrast to the BrokerCheck reports, state securities regulators use the same CRD database to provide investors with reports that more thoroughly detail registration and employment histories, exam information and complete customer complaint information available to the public for brokers registered in their states. Access to this information allows investors to make more informed decisions about whether they want to do business with and entrust their life savings to particular brokers. The differences in information available from state to state are attributable to differences in the states’ public records, or “sunshine” laws. These differences in state public record laws and FINRA’s less than complete disclosure of information on BrokerCheck results in uneven access to critical information across the country.

Despite this uneven access, FINRA has not harmonized its disclosures with the information disclosed by the states with the most robust public records laws. In failing to do so, FINRA has narrowly construed statutory instruction to make the CRD database’s information public, ignored the requests of the Securities and Exchange Commission (the “SEC”) to increase access, disregarded public requests from multiple academics for more information, neglected multiple requests from the North American Securities Administrators Association (“NASAA”), and turned a blind eye to requests from the Public Investors Arbitration Bar Association

¹ PIABA 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.

² This study was co-authored by Jason R. Doss, President of Public Investor Arbitration Bar Association; Christine Lazaro, Director of the Securities Arbitration Clinic at St. John’s University School of Law; and Benjamin P. Edwards, Director of the Investor Advocacy Clinic at Michigan State University College of Law.

(“PIABA”).

All investors should be able to obtain complete information about their brokers and firms. FINRA should be that source especially given that it maintains the information and it has marketed and continues to market its BrokerCheck reports as one of the primary ways that it protects investors. On its website, FINRA touts itself as dedicated to investor protection. It states that it works daily to ensure that “investors receive complete disclosure about . . . investment product[s] before purchase.”³ It should also be working diligently to ensure that investors receive the same level of disclosure about the individuals selling the investment products and to whom they are entrusting their life savings.

I. The CRD - National Registration Forms and Database

The CRD system is the securities industry on-line registration and licensing system. Brokers submit a variety of forms to the CRD, including the Uniform Application for Securities Industry Registration, the Form U4, and the Uniform Termination Notice for Securities Industry Registration, the Form U5. Notably, the CRD system also collects customer dispute information.⁴

The CRD was developed by FINRA⁵ and NASAA⁶ in 1981. The “CRD consolidated a multiple paper-based state licensing and regulatory process into a single, nationwide computer system . . . Its computerized database contains the licensing and disciplinary histories on more than 650,000 securities professionals and 5,200 securities firms⁷ and is used by brokerage firms, regulators, and self-regulatory organizations.⁸ FINRA operates the CRD system pursuant to policies developed jointly with NASAA.⁹ FINRA has worked with NASAA, the SEC, brokerage firms and other member of the regulatory community to “establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD is accurate and complete.”¹⁰ Both NASAA and FINRA are parties to the CRD Agreement, which

³ <http://www.finra.org/AboutFINRA/>

⁴ “Customer Dispute Information” includes “customer complaints, arbitration claims, and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. This category of information contains allegations that a member or one or more of its associated persons has violated securities laws, regulations, or rules.” SEC Release No. 34-47435 (March 4, 2003) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System, File No. SR-NASD-2002-168).

⁵ On July 26, 2007, FINRA was created through the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration operations of the New York Stock Exchange. For ease of reference, this article generally refers to the NASD as FINRA throughout.

⁶ “Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.” <http://www.nasaa.org/about-us/>.

⁷ See <http://www.nasaa.org/industry-resources/investment-advisers/crd-iaad/>.

⁸ See SEC Release No. 34-58886 (October 30, 2008) (Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure to Establish Procedures for Arbitrators to Follow When Considering Requests for Expungement Relief, File No. SR-FINRA-2008-010).

⁹ *Id.*

¹⁰ *Id.*

states that “data on CRD Uniform Forms filed with the CRD shall be deemed to have been filed with each CRD State in which the applicant seeks to be licensed and with [FINRA] and *shall be the joint property of the applicant, [FINRA], and those CRD States.*”¹¹ NASAA has taken the position that CRD records are state records.¹²

II. Congress’s Statutory Mandate to Make CRD Information Public

Section 15A of the Securities and Exchange Act of 1934 (the “Exchange Act”) mandates that FINRA maintain the CRD database and make its information available to the public.¹³ With respect to sharing the CRD database’s information with the public, it provides that FINRA shall:

(B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding-

(i) registration information¹⁴ on its members and their associated persons; and

(ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and

(C) adopt rules governing the process for making inquiries and the **type, scope, and presentation of information to be provided** in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).¹⁵ (emphasis added).

To comply with the statutory requirements, FINRA has established a toll-free telephone listing and the BrokerCheck system.

¹¹ *Karsner v. Lothian*, 532 F.3d 876, 885 n.9 (D.C. Cir. 2008) (emphasis in original).

¹² See NASAA Comment Letter in response to Request for Comments 01-65 Proposed Rules and Policies Relating to Expungement of Information From The Central Registration Depository (Dec. 31, 2001), available at <http://www.nasaa.org/wp-content/uploads/2011/07/95-Letter.37262-47637.pdf>.

¹³ 15 U.S.C.A. § 78o-3(i).

¹⁴ *Id.* In defining the term “registration information,” Congress provided that:

For purposes of this subsection, the term “registration information” means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.

¹⁵ *Id.*

III. FINRA Markets BrokerCheck Reports As A Way For Investors To Conduct Comprehensive Due Diligence About Their Financial Professionals

Today, BrokerCheck provides information about approximately 1.3 million current and former FINRA-registered brokers and 17,400 current and former FINRA-registered brokerage firms.¹⁶ According to a study released by the SEC in 2011, FINRA's BrokerCheck reports are widely utilized by the public to obtain background information about brokers and broker-dealers. For example, the SEC Study stated:

In 1999, a year after FINRA began making records available on its Web site, FINRA received more than one million inquiries, and by 2002, it was fielding more than two million inquiries a year. Usage has increased since BrokerCheck was deployed in March 2007. More than 20 million searches were conducted on the BrokerCheck Web site in 2009, with approximately 18.5 million summary records viewed and approximately 3.8 million requests for detailed reports on a registered representative or a broker-dealer.¹⁷

FINRA holds out BrokerCheck as an important investor education and protection tool. FINRA actively markets BrokerCheck reports to consumers as a way for them to conduct due diligence in selecting financial professionals. For example, FINRA requires its member firms to provide customers with FINRA's BrokerCheck hotline number, as well as making customers aware that FINRA has a BrokerCheck brochure available for investors.¹⁸

In its BrokerCheck brochure, FINRA states, "To help you make informed decisions when choosing someone to manage your investments, FINRA provides BrokerCheck—an important tool that delivers critical information about FINRA-registered securities firms and brokers."¹⁹ In its brochure, FINRA describes the database as "comprehensive" and states that it provides information about a broker's employment history, licensing status, criminal events, regulatory actions, investor complaint information, pending investigations and regulatory proceedings. In this brochure, FINRA does not inform investors that the information it provides is incomplete.

In addition, each BrokerCheck report that consumers receive includes a section entitled, *About BrokerCheck*. The *About BrokerCheck* section of the report states that "FINRA strongly

¹⁶ See <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/> (last visited Jan. 14, 2014).

¹⁷ See SEC Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers, January 2011 ("SEC Study"), pp. 22-23, available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>. (Internal citations omitted.)

¹⁸ FINRA Rule 2267 states in relevant part:

2267. Investor Education and Protection

(a) Except as otherwise provided in this Rule, each member shall once every calendar year provide in writing (which may be electronic) to each customer the following items of information:

- (1) FINRA BrokerCheck Hotline Number;
- (2) FINRA Web site address; and
- (3) A statement as to the availability to the customer of an investor brochure that includes information describing FINRA BrokerCheck.

¹⁹ See "FINRA BrokerCheck, An Online Tool to Help Investors Check the Background of Individual Investment Professionals and Firms", available at <http://www.finra.org/web/groups/investors/@inv/@tools/documents/investors/p009888.pdf>.

encourages investors to use BrokerCheck to check out the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.” Just like the brochure described in the preceding paragraph, the *About BrokerCheck* section does not advise investors that more information than is provided in the BrokerCheck report is available from some state securities regulators. In fact, under the heading “Are there other resources I can use to check the background of investment professionals?”, FINRA only states, “FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.”²⁰

Most recently, on February 13, 2014, as a way to expand its dissemination of FINRA BrokerCheck reports, the FINRA Board of Governors authorized FINRA to seek public comments and consider amending FINRA Rule 2210 (Communications With the Public) “to require firms to include a readily apparent reference and link to BrokerCheck on any member firm's website that is available to retail investors. In addition, the proposal would require a firm to include a readily apparent reference and link to BrokerCheck in any online retail communication that includes a professional profile of, or contact information for, an associated person.”²¹

IV. FINRA’s BrokerCheck Reports Omit Material Information From Consumers That Is Already Publicly Available From Some State Securities Regulators and Harms Consumers

At present, the public may access CRD information through two different channels. Instant access to a culled subset of information may be obtained through FINRA’s BrokerCheck system.²² Notably, the Exchange Act granted FINRA limited discretion to determine the “type, scope, and presentation of information to be provided.”²³ As explained in more detail below, despite the fact that FINRA markets BrokerCheck reports as a way for consumers to obtain comprehensive information about brokers and broker-dealers, FINRA exercises this statutory authority to omit material information about brokers in its BrokerCheck reports even though this same CRD information is publicly available from many states securities regulators. The lack of complete information in FINRA’s BrokerCheck reports has the potential to mislead investors.

A. States Make Information Available through a CRD Snapshot

Broader access to the CRD system’s information may be obtained from a number of states which disclose information about brokers licensed to do business in their state. These more comprehensive reports are commonly referred to as CRD Snapshot Reports. Some states,

²⁰ FINRA’s website references that more information may be obtained from state regulators. However, it does not do so on its main BrokerCheck search page, the page most likely to be seen by investors. In addition, the same website also describes the BrokerCheck reports as comprehensive, which is misleading.

²¹ See FINRA Email to Firms, “Update: FINRA Board of Governors Meeting,” February 13, 2014, available at <http://www.finra.org/Industry/Regulation/Guidance/CommunicationstoFirms/P445719>.

²² FINRA Rule 8312 governs the information FINRA culls from CRD before disclosing information through BrokerCheck. A copy of the current version of Rule 8312 is attached as Appendix 1.

²³ 15 U.S.C.A. § 78o-3(i)(1)(C).

such as Florida and Iowa, provide consumers with CRD Snapshot Reports that disclose substantially more information from the national CRD system than the FINRA BrokerCheck system discloses. These states' CRD Snapshot Reports exclude only personal information such as social security numbers and home addresses.

However, assuming that consumers are even aware that state regulators may provide more complete information about financial professionals, states differ on what information is provided in the CRD Snapshot Report because each state is governed by its state public records laws, which differ from state to state. In addition, most states only provides information about brokers licensed by that state. Therefore, consumers cannot always simply contact a state securities regulator such as Florida, which is governed by very broad public records laws, and obtain the more expansive CRD Snapshot Report unless the broker is licensed in Florida. Also, consumers cannot obtain CRD reports through a Freedom of Information Request from the Securities Exchange Commission because the SEC's response is that it is not in the possession of the requested information.²⁴

Importantly, unlike BrokerCheck where the information is provided instantaneously and for free, CRD Snapshot reports requested from some states cost consumers money; must be requested either by telephone, by email, or through the state securities regulator's website; and may not be delivered for hours or days after the request.

B. FINRA Excludes Important Information from BrokerCheck

In contrast to the states with the most comprehensive disclosure of information, FINRA exercises its statutory authority described above to exclude information contained in CRD Snapshot Reports. To date, it appears that FINRA's rationale for not disclosing the same amount of information as these states is based on "personal privacy and fairness" to FINRA members.²⁵ This rationale, however, is flawed given that the same information excluded from the BrokerCheck reports is already publicly available from these states.

BrokerCheck provides public access to certain CRD registration data about broker-dealers and brokers.²⁶ The information on BrokerCheck regarding brokers is derived from the information on the Uniform Forms, including Forms U4, U5, and U6.²⁷ Information on formerly registered representatives is available for ten years after de-registration, and permanently for brokers who were the subject of a final regulatory action.²⁸

²⁴ A true and correct copy of correspondence dated February 25, 2014 between Jason Doss and the SEC is attached as Appendix 2.

²⁵ See e.g. SEC Release No. 34-60462; File No. SR-FINRA-2009-050, August 7, 2009, Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA Rule 8312 (FINRA BrokerCheck Disclosure); ("FINRA believes this measured expansion of BrokerCheck strikes a balance between, on the one hand, investor protection interests, and on the other hand, personal privacy and fairness to former registered persons.")

²⁶ See SEC Study at p. 16 (internal citations omitted).

²⁷ *Id.*

²⁸ *Id.*

FINRA Rule 8312 governs the information that FINRA releases to the public regarding broker-dealers and brokers and requires them to keep their registration data accurate and up-to-date.²⁹ The rule has been revised several times in the past decade to increase the amount and type of information available to the public on BrokerCheck. Despite these incremental improvements, the BrokerCheck reports still omit important information about brokers.

For example, in January 2011, the SEC released a study pursuant to the Dodd Frank Act entitled, *SEC Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers*, January 2011 (the “SEC Study”). The SEC Study correctly states that not all information in the CRD is disclosed to the public through BrokerCheck.³⁰ The SEC Study stated:

- Reasons and Comments Related to Termination. In situations where a broker-dealer terminates a registered representative, BrokerCheck reports exclude the reason for the termination and any comments from the former registered representative regarding the termination, although this information is reported on Form U5. FINRA also excludes from BrokerCheck, generally, information on Form U4 for registered representatives who have terminated registration more than ten years ago.³¹

It is important for consumers to know all reportable facts and circumstances surrounding brokers’ terminations from their firms. For example, investors considering whether to hire a new broker to manage their life savings have a legitimate interest in knowing both whether that person has been fired from a previous firm and the circumstances surrounding that termination. In addition, with regard to existing customers who may follow the terminated broker to his or her new firm, investors most certainly have a legitimate need to know this information to be able to determine whether the broker is trustworthy.

If investors in either of the above described circumstances were to conduct due diligence by reviewing FINRA’s BrokerCheck report, they may be misled into believing that the broker left the firm on amicable grounds. In contrast, all reportable information surrounding the termination of a broker is publicly available on CRD Snapshot Reports. Most investors are unlikely to know this very important fact.

Below are quoted excerpts from actual CRD Snapshot and FINRA BrokerCheck reports for one former broker illustrating how these reports differ with regard to termination information that is reported to the public³²:

²⁹ See Exchange Act Release No. 55127 (Jan. 18, 2007) [72 FR 3455 (Jan. 25, 2007)] (approving rule change relating to BrokerCheck disclosure (SR-NASD-2003-168)).

³⁰ See SEC Study at p. 21 (internal citations omitted).

³¹ See SEC Study at p. 21-22 (internal citations omitted); see also FINRA Rule 8312(d)(4).

³² The names of the individual brokers and firms in all of the examples displayed in this report have been redacted because the purpose of this study is not to single out a particular person or broker-dealer. The purpose of this study is to illustrate the systemic problems that exist today with the FINRA BrokerCheck reports.

CRD Snapshot Disclosure

Registrations with Previous Employer(s) From 06/28/2002 To 05/27/2003

Reason for Termination

Termination Comment Permitted to Resign 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.

FINRA BrokerCheck Disclosure

Registration and Employment History

Registration History

This broker previously was registered with FINRA at the following firms:

| Registration Dates | Firm Name |
|--------------------|-----------|
|--------------------|-----------|

| | |
|-------------------|------------|
| 07/2002 - 05/2003 | [REDACTED] |
|-------------------|------------|

Another observation in the SEC Study was as follows:

- Formerly Reportable Information. Certain information that was, but is no longer required to be, reported through the registration and licensing process is not disclosed through BrokerCheck. This information includes, for example, judgments and liens originally reported as outstanding that have been satisfied and bankruptcy proceedings filed more than ten years ago.³³

Reasonable investors would have good reason not to engage or hire a broker who has demonstrated that he or she cannot properly manage their own finances. For example, a reasonable investor would want to know whether their financial advisor has ever filed for bankruptcy, not just in the last 10 years. Similarly, reasonable investors would also want to know if their broker has ever had IRS tax liens levied against them or judgments that arise from, for example, a breach of duty. Once again, this information is publicly available on CRD Snapshot Reports regardless of whether, for example, an IRS tax lien was levied more than 10 years ago and/or has been satisfied.

³³ See SEC Study at 21-22; see also FINRA Rule 8312(b)(2).

Below is a quoted excerpt from actual CRD Snapshot for a former broker who had an IRS tax lien levied against him more than 10 years ago. None of this information is reported on the same former broker's BrokerCheck report.

CRD Snapshot Disclosure

Judgment/Lien DRP
10/2005

DRP Version

- 1. Judgment/Lien amount: \$317,334.00
- 2. Judgment/Lien holder: FEDERAL INTERNAL REVENUE SERVICE
- 3. Judgment/Lien Type: Tax
- 4. Date filed/Explanation: 12/07/2001
- 5. Outstanding: Yes

Status date/Explanation:

Resolution:

- 6. Court Name, location, and Docket/Case #: CLERK OF SUPERIOR COURT
FULTON COUNTY
ATLANTA, GA 30303
SERIAL NUMBER: [SSN]

7. Comment: CURRENTLY HAS PENDING SETTLEMENT OF OFFER AND COMPROMISE FOR TAX YEARS '94, '95 & '96. IN LATE 1998 [REDACTED] HIRED AN ATTORNEY [REDACTED] TO HELP HIM SETTLE A DISPUTED BALANCE OWED TO THE IRS. A SETTLEMENT WAS REACHED IN THE AMOUNT OF \$236,407. THE AGREEMENT WAS MADE BETWEEN [REDACTED] AND [REDACTED], AN IRS EMPLOYEE. THE SETTLEMENT COVERED 1994, 1995, & 1996 TAXES. PRIOR TO THE OFFER, [REDACTED] REDEEMED FUNDS OUT OF HIS RETIREMENT ACCOUNT TO HELP SETTLE THIS OFFER IN TWO CHECKS, \$92,879.40 & \$58,704.59. ALL OF THESE FUNDS WERE PAID TO THE IRS TO BE APPLIED TO THE SETTLEMENT. [REDACTED] WAS GIVEN THE IMPRESSION THIS WOULD BE APPLIED TO THE SETTLEMENT AMOUNT. CONSEQUENTLY, [REDACTED] AND [REDACTED] AGREED TO THE SETTLEMENT. [REDACTED] THEN THOUGHT HIS BALANCE WAS \$84,823.01. [REDACTED] HAS ATTEMPTED TO COMPLY WITH HIS RECENT TAX MATTERS HAVING PAID YEAR 2000 TAXES AND MADE ESTIMATES FOR 2001.

The SEC Study also states:

- Examination Details. Scores on industry qualification examinations, and failed examinations, are also excluded from BrokerCheck reports, although BrokerCheck displays industry examinations that a registered representative has passed.³⁴

CRD Snapshot Reports include much more information about scores on industry qualification examinations including information about failed exams. Reasonable investors may believe that this type of information speaks to the basic competency of their broker. If an investor decides this information is an important factor to consider when choosing a broker, they should be permitted to do so.

Below are quoted excerpts from actual CRD Snapshot and FINRA BrokerCheck reports for one former broker illustrating how these reports differ with regard to how his exam score information is reported to the public:

CRD Snapshot Disclosure

| Exam | Enrollment ID | Exam Status | Status Date | Exam Date | Grade | Score | Window Dates |
|------|---------------|-----------------|-------------|------------|-------------|-------|-----------------------|
| S6 | 25518193 | Official Result | 03/09/2006 | 03/08/2006 | Passed | 74 | 03/02/2006-6/30/2006 |
| S7 | 25518203 | Window Expired | 11/21/2011 | | | | 07/23/2011-11/20/2011 |
| S7 | 25518202 | Window Expired | 07/18/2011 | | | | 03/19/2011-07/17/2011 |
| S7 | 25518202 | Official Result | 07/12/2011 | 07/12/2011 | Late Cancel | | 03/19/2011-07/17/2011 |
| S7 | 25518200 | Window Expired | 06/05/2006 | | | | 02/04/2006-06/04/2006 |
| S7 | 25518199 | Official Result | 01/01/2006 | 12/22/2005 | Failed | 56 | 08/26/2005-12/24/2005 |
| S63 | 25518198 | Window Expired | 12/07/2009 | | | | 08/07/2009-12/05/2009 |
| S63 | 25518197 | Window Expired | 07/06/2009 | | | | 03/05/2009-07/03/2009 |
| S63 | 25518196 | Window Expired | 03/03/2009 | | | | 11/02/2008-03/02/2009 |
| S63 | 25518195 | Official Result | 10/06/2008 | 10/03/2008 | Failed | 55 | 06/06/2008-10/04/2008 |
| S63 | 25518194 | Window Expired | 05/26/2008 | | | | 01/26/2008-05/25/2008 |
| S65 | 34115427 | Official Result | 02/06/2014 | 02/06/2014 | Passed | 73 | 11/12/2013-03/12/2014 |

³⁴ *Id.*; see also FINRA Rule 8312(b)(2)(E).

FINRA BrokerCheck Disclosure

Broker Qualifications

Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below. FINRA should not be permitted to pick and choose which information investors can consider, and by failing to disclose publicly available information on this topic, FINRA arguably makes the disclosures misleading to investors.

This individual has passed 0 principal/supervisory exams, 1 general industry/product exam, and 1 state securities law exam.

| Principal/Supervisory Exams | Category | Date |
|------------------------------------|-----------------|-------------|
| Exam | | |

No information reported.

| General Industry/Product Exams | Category | Date |
|---------------------------------------|-----------------|-------------|
| Exam | | |

| | | |
|---|----------|------------|
| Investment Company Products/ Variable Contracts Representative Examination | Series 6 | 03/08/2006 |
|---|----------|------------|

| State Securities Law Exams | Category | Date |
|-----------------------------------|-----------------|-------------|
| Exam | | |

| | | |
|--|-----------|------------|
| Uniform Investment Adviser Law Examination | Series 65 | 02/06/2014 |
|--|-----------|------------|

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.

Additionally, even though it was not discussed in the SEC Study, unlike CRD Snapshot Reports, BrokerCheck does not release "Internal Review Disclosure" information. Rule 8312(d)(3) states:

FINRA shall not release "Internal Review Disclosure" information reported on Section 7 of the Form U5[.]

One of the questions in Section 7 contained in Form U-5 entitled, *Internal Review Disclosure*, asks:

7B. Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating *investment-related* statutes, regulations, rules or industry standards of conduct?

It is unimaginable that any reasonable investor would not want or need to know the answer to this question. Once again, this information, along with detailed descriptions about the nature of the investigated conduct under review, is publicly available from some state regulators.

Below is a quoted excerpt from actual CRD Snapshot of a broker whose former firm conducted an internal review beginning within a month of the broker voluntarily leaving the firm. The internal review involved alleged sales practices violations related to the sale of non-variable insurance products. None of this information is available on the same broker's FINRA BrokerCheck report.

CRD Snapshot Disclosure

Internal Review DRP

DRP Version 05/2009

Part I

1. Notice received from: [REDACTED]

2. Date initiated/Explanation: 02/16/2012

3. Details: FIRM CONDUCTED AN INVESTIGATION OF REPRESENTATIVE'S INSURANCE SALES PRACTICES AFTER ALLEGATIONS WERE MADE THAT HE MISREPRESENTED CERTAIN FEATURES AND TRANSACTIONS RELATED TO NON-VARIABLE INSURANCE POLICIES.

4. Internal review pending: No

5. Resolution details:

A. Date concluded/ Explanation: 04/17/2013

B. Internal review resolution: FIRM'S REVIEW RESULTED IN MULTIPLE CANCELLATIONS AND RESCISSIONS OF POLICIES SOLD BY REPRESENTATIVE.

In its brochure on BrokerCheck, FINRA does not inform investors that the information it provides is incomplete. Rather, as discussed above, it labels the information it provides through BrokerCheck as “comprehensive.” As outlined above, it is anything but comprehensive.

The analysis above weighs in favor of consumers being able to obtain the same comprehensive information whether they request it from states or FINRA. Given that each state is governed by different state public records laws, the most efficient way to accomplish this goal is for FINRA to expand the information available on BrokerCheck to mirror the information that is provided by states such as Florida and Iowa. Historically, FINRA has been resistant to expanding the information provided on BrokerCheck reports through the rule making process, because the Exchange Act provides FINRA with limited discretion to define the “type, scope, and presentation of information to be provided.” As such, when determining what information it will disclose in the BrokerCheck reports, FINRA, a self-regulatory trade association, gives great weight to the “personal privacy and fairness” interests of its members (brokers and broker-dealers), who have a vested interests in not disclosing important information that could be detrimental to their own businesses. FINRA’s conflict between the competing interests of protecting investors and protecting its members in the name of “personal privacy and fairness” leads to the absurd result that FINRA BrokerCheck reports omit material information on the basis of privacy when the same information is already publicly available from some state regulators.

The information that FINRA omits in its reports is objectively important to investors seeking to make an informed decision about selecting a broker. The result is that consumers who use the BrokerCheck system to conduct their due diligence may make an incorrect assumption that all relevant information has been disclosed and may opt to rely on a broker they would have avoided had they known more information.

C. FINRA Chooses not to Harmonize BrokerCheck

On December 13, 2013, NASAA filed a comment letter in support of a FINRA rule proposal to expand the categories of civil judicial disclosures permanently included in BrokerCheck reports.³⁵ In its comment, NASAA stated:

In addition to supporting FINRA’s proposal, NASAA encourages the Commission and FINRA to consider making additional information available through BrokerCheck. For example, NASAA believes that BrokerCheck Reports should include such information as broker’s educational background, continuing educational history, and CRD/IARD filing history as well as the reason for and comments related to broker’s termination. In addition, NASAA believes that FINRA should discontinue the practice of placing a 10-year time limit on the inclusion of bankruptcies in BrokerCheck reports.

On December 27, 2013, in approving FINRA proposed rule change, the SEC agreed with NASAA’s recommendation and stated:

³⁵ See Cmt Ltr, NASAA, 2013, Release No. 34-70876, File No. SR-FINRA-2013-48, available at <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-Release-34-70876-12132013.pdf>

Finally, as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck, reviewing what additional information could be disclosed, such as the additional information that NASAA suggested in its comment letter, because BrokerCheck is a valuable tool for the public to use in deciding whether to work with a firm or an industry member.³⁶

In November 2013, in connection with the above-described rule proposal, FINRA publicly acknowledged the importance of the disclosure but in the end continued to be reluctant to expand the information contained in the BrokerCheck reports. For example, FINRA stated:

FINRA's belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation [pursuant to Section 15A(i) of the Exchange Act; 15 U.S.C. 78o-3(i)] to make information available to the public, FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued Regulatory Notice 12-10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program.³⁷

In the same document, however, in connection with recommendations from commentators to expand the time frames for disclosing information on BrokerCheck, FINRA stated:

Ten of the 71 comment letters received addressed the general expansion of the time frame for providing information through BrokerCheck. In general, these comment letters suggested that there should be no time limits on the inclusion of disclosure events in BrokerCheck (e.g., information about a bankruptcy is no longer disclosed through BrokerCheck after 10 years) and that all information about associated persons should be included in BrokerCheck on a permanent basis. FINRA is not prepared at this time to propose that all BrokerCheck information should be available on a permanent basis.³⁸ (emphasis added).

As explained below, calls by commentators, academics and regulators, demanding greater access to information on BrokerCheck reports have been largely ignored by FINRA for many years. FINRA has made marginal improvements over the last ten years but its continued hesitance to simply provide all CRD information that is already publicly available from state regulators illustrates that change through the regulatory rule making process has proven to be ineffective. Immediate legislative change is needed to prevent consumers from being misled into believing that the BrokerCheck reports are comprehensive when they are not.

³⁶ See SECURITIES AND EXCHANGE COMMISSION, Release No. 34-71196; File No. SR-FINRA-2013-048, available at <http://www.sec.gov/rules/sro/finra/2013/34-71196.pdf>.

³⁷ See SECURITIES AND EXCHANGE COMMISSION, Release No. 34-70876; File No. SR-FINRA-2013-048, November 14, 2013 at page 3, available at <http://www.sec.gov/rules/sro/finra/2013/34-70876.pdf>.

³⁸ Id. at p. 7-8.

The most efficient way to harmonize the information on BrokerCheck reports with the information already publicly available is for federal legislators simply to amend §15A of the Exchange Act to define the type and scope of information that FINRA would be required to make available through BrokerCheck so that, similar to Florida and other states with broad public records laws, FINRA would only be permitted to exclude personal information such as social security numbers, home addresses, etc. There is simply no reason that the same CRD information is a public record at the state level but is treated as non-public by FINRA.

V. Continuing Calls for Greater Access

For many years, PIABA, the SEC, multiple academics, and NASAA have recognized the problem and called on FINRA to more fully disclose the CRD's information through BrokerCheck.³⁹ In 2010, PIABA and others called for FINRA to harmonize the BrokerCheck system with the information disclosed by Florida, because it is inequitable for many investors to be denied access to information within a national database merely because their state has not implemented the same disclosure laws and procedures as Florida.⁴⁰

Highlighting the issue's importance, the SEC approved certain changes to the BrokerCheck system in 2010 and encouraged FINRA to harmonize BrokerCheck's disclosures with those available from the states. It specifically stated that:

The Commission urges FINRA to consider the information as suggested by the commenters. This information is available from the individual states; however, it would be more accessible through BrokerCheck.⁴¹

In the same Release, the SEC indicated that it understood that FINRA would continue to improve the range of information available through BrokerCheck when it stated that:

³⁹ See Cmt. Ltr., William A. Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic and Adisada Dudie, Cornell Law School, 2011, *available at* <http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-8.pdf> ("In our comment to the Securities and Exchange Commission ("SEC") dated September 8, 2009 regarding File Number SR-FINRA-2009-050, the Clinic asked FINRA to modify its proposal and make the entire BrokerCheck record available indefinitely"); Cmt. Ltr., Lisa A. Catalano, Director, Associate Professor of Clinical Legal Education and Christine Lazaro, Supervising Attorney, Securities Arbitration Clinic, St. John's University School of Law, *available at*: <http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-7.pdf> ("Certain states, such as Florida, will make the broker's CRD available to investors that request it, while other states do not . . . We urge FINRA to consider expanding BrokerCheck to ensure that the investing public has equal access to the information available about brokers regardless of where they do business."); Cmt. Ltr., Joelle B. Franc, Student Attorney; Jonathan P. Terracciano, Student Attorney; and Birgitta K. Siegel, Esq., Visiting Asst. Professor; Securities Arbitration & Consumer Law Clinic, Syracuse University College of Law, *available at*: <http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-10.pdf> ("the full information available through a request to state regulators should likewise be made available directly through BrokerCheck."); Cmt. Ltr., Scott R. Shewan, President, Public Investors Arbitration Bar Association, *available at*: <http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-4.pdf> ("Because FINRA is the gatekeeper for this information, it should endeavor to ensure that the investing public has equal access to the information available. Investors in Florida should not be more protected than investors in New York."); Cmt. Ltr., Melanie Senter Lubin, Maryland Securities Commissioner and Chair, NASAA CRD/IARD Steering Committee, *available at*: <http://www.sec.gov/comments/sr-finra-2010-012/finra2010012-3.pdf> ("We also remain concerned with FINRA's decision to exclude other critical information. . .").

⁴⁰ *Id.*

⁴¹ SEC Release No. 34-62476; File No. SR-FINRA-2010-012, at 15.

The Commission notes that FINRA stated it would continue to evaluate all aspects of the BrokerCheck program to determine whether future circumstances should lead to greater disclosure through BrokerCheck. FINRA has a statutory obligation to make information available to the public and, as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck because it is a valuable tool for the public in deciding whether to work with an industry member.⁴²

When the SEC released its *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers* in January 2011, it once again recognized the importance of the disclosure of information through BrokerCheck:

The Commission has long expressed the view that registration information about financial services providers is key to making sound investment decisions. . . . BrokerCheck . . . provide[s] investors important data about the financial services providers on whom they will rely in helping to meet their investment goals. While the Commission has stated that BrokerCheck is “a valuable tool for an investor to use to get information about a firm or a registered person with whom the investor is considering doing business,” the Commission nonetheless has “**urge[d] investors to check with each state where the firm has done business or where the sales person has been registered to obtain a complete picture of his or her disciplinary history.**” Moreover, the Commission previously has encouraged FINRA to consider increasing the amount of information available on BrokerCheck.⁴³ (Emphasis added.)

In its Study, the Staff of the SEC made intermediate recommendations, advising FINRA to continue to examine the feasibility of expanding BrokerCheck:

For example, BrokerCheck excludes information reported on Form U5 concerning the reason for a registered representative’s termination and any comments from the former registered representative regarding that termination reported on Form U5. Also, as discussed, FINRA excludes from BrokerCheck, generally, information on Form U4 for registered representatives who have terminated registration more than ten years ago. Historical filings are another type of content that may be of interest to investors. BrokerCheck . . . provide[s] only the most recent filings by broker-dealers . . . and their associated persons; they do not provide access to previous filings. Expanding BrokerCheck . . . to include registration data from previously filed registration forms, or amendments to them, would permit investors to review a firm’s filing history and the changes the firm has undergone over time.⁴⁴

⁴² *Id.* at 16.

⁴³ See SEC Study at p. 43 (internal citations omitted).

⁴⁴ See SEC Study at p. 44 (internal citations omitted).

VI. The Need for Action

As illustrated above, FINRA actively encourages investors to use BrokerCheck so that they can make informed decisions about their brokers. FINRA requires firms to notify investors repeatedly about the availability of BrokerCheck. FINRA then misleads investors into believing that they are obtaining complete and adequate information about their brokers. In an effort to protect the interests of its members in the securities industry, FINRA has purposely chosen not to further expand BrokerCheck.

To ensure that the BrokerCheck system functions as intended, Congress needs to act to ensure that the public has complete and uniform access to the national CRD database. Congress could achieve uniform disclosure by requiring FINRA to harmonize its disclosures with the disclosures available from the states with the most robust public records laws. As discussed above, in 2010, the SEC urged FINRA to consider harmonizing the information it makes available with the information the states make available to investors. Notwithstanding that more than three years have passed, FINRA has not acted to do so. More than a decade ago, NASAA requested that FINRA make this information available:

Almost all the information filed on forms U-4, U-5, U-6, BD and BD-W is public information under state freedom of information or sunshine laws. Investors should be able to view all of this public information in one easy to access site. Because [FINRA] operates Web CRD, it is in the optimal position to manage this central gateway for investors and potential investors to access public information.⁴⁵

FINRA has chosen not to do so because it is a self-regulatory trade association that is driven in part by the “personal privacy and fairness” interests of its members (brokers and broker-dealers), who presumably prefer to have less information provided to the investing public. Accordingly, Congress must step in and act where FINRA and the regulatory process has failed.

After hearings allowing interested parties to voice their concerns, Congress should harmonize national access to the national CRD database by amending the Exchange Act to explicitly require FINRA to match the disclosures available from certain states or by explicitly detailing additional disclosures to be made. The most efficient way to harmonize the information on BrokerCheck reports with the information already publicly available is for federal legislators simply to amend §15A of the Exchange Act to define the type and scope of information that FINRA would be required to make available through BrokerCheck so that, similar to Florida and other states with broad public records laws, it would only be permitted to exclude personal information such as social security numbers, home addresses, etc. There is simply no reason that the same CRD information is a public record at the state level and not publicly available from FINRA.

⁴⁵ See NASAA Comment to NASD Notice to Members 02-74, Public Information Review, available at <http://www.nasaa.org/wp-content/uploads/2011/07/87-NASDPublicInformationReview.37627-43960.pdf>.

Appendix 1



Print

8312. FINRA BrokerCheck Disclosure

This version is valid from Nov 6 2010 through Jun 22 2014.

Amendments have been announced but are not yet effective. To view other versions open the versions tab on the right.

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, FINRA shall release information regarding a current or former member or current or former associated person through FINRA BrokerCheck.

(b)

(1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below for inquiries regarding a current or former member, a current associated person, or a person who was associated with a member within the preceding ten years.

(2) The following information shall be released pursuant to this paragraph (b):

(A) any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively "Registration Forms");

(B) currently approved registrations;

(C) summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer;

(D) the most recently submitted comment, if any, provided to FINRA by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included;

(E) information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations;

(F) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member is subject to the provisions of NASD Rule 3010(b)(2) ("Taping Rule");

(G) Historic Complaints (i.e., the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and that have not been settled or adjudicated, and customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 prior to May 18, 2009 or an amount less than \$15,000 on or after May 18, 2009 and are no longer reported on a Registration Form), provided that any such matter became a Historic Complaint on or after August 16, 1999; and

(H) the name and succession history for current or former members.

(c)

(1) Except as otherwise provided in paragraph (d) below, FINRA shall release the information specified in subparagraph (2) below for inquiries regarding a person who was formerly associated with a member, but who has not been associated with a member within the preceding ten years, and:

(A) was ever the subject of a final regulatory action as defined in Form U4 that has been reported to CRD on a Registration Form; or

(B) was registered with FINRA on or after August 16, 1999, and any of the following applies, as reported to CRD on a Registration Form:

(i) was convicted of or pled guilty or nolo contendere to a crime;

(ii) was the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation; or

(iii) was named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the person was involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person.

(2) The following information shall be released pursuant to this paragraph (c):

(A) information regarding the event(s) enumerated in paragraph (c)(1)(A) or (B) as reported on a Registration Form;

(B) administrative information, including employment history and registration history derived from information reported on a Registration Form;

(C) the most recently submitted comment, if any, provided to FINRA by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included; and

(D) information as to qualifications examinations passed by the person and date passed. FINRA will not release information regarding examination scores or failed examinations.

For purposes of this paragraph (c), a final regulatory action as defined in Form U4 may include any final action, including any action that is on appeal, by the SEC, the Commodity Futures Trading Commission, a federal banking agency, the National Credit Union Administration, another federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization (as those terms are used in Form U4).

(d) FINRA shall not release:

(1) information reported as a Social Security number, residential history, or physical description, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority;

(3) "Internal Review Disclosure" information reported on Section 7 of the Form U5;

(4) "Reason for Termination" information reported on Section 3 of the Form U5;

(5) Form U5 information for fifteen (15) days following the filing of such information;

(6) the most recent information reported on a Registration Form, if:

(A) FINRA has determined that the information was reported in error by a member, regulator or other appropriate authority;

(B) the information has been determined by regulators, through amendments to the uniform Registration Forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred;

(7) information provided on Schedule E of Form BD.

(e) Eligible parties may dispute the accuracy of certain information disclosed through FINRA BrokerCheck pursuant to the administrative process described below:

(1) Initiation of a Dispute

(A) The following persons (each an "eligible party") may initiate a dispute regarding the accuracy of information disclosed in that eligible party's BrokerCheck report:

(i) any current member;

(ii) any former member, provided that the dispute is submitted by a natural person who served as the former member's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Legal

Officer or Chief Compliance Officer, or individual with similar status or function, as identified on Schedule A of Form BD at the time the former member ceased being registered with FINRA; or

(iii) any associated person of a member or person formerly associated with a member for whom a BrokerCheck report is available.

(B) To initiate a dispute, an eligible party must submit a written notice to FINRA, in such manner and format that FINRA may require, identifying the alleged inaccurate factual information and explaining the reason that such information is allegedly inaccurate. The eligible party must submit with the written notice all available supporting documentation.

(2) Determination of Disputes Eligible for Investigation

(A) FINRA will presume that a dispute of factual information is eligible for investigation unless FINRA reasonably determines that the facts and circumstances involving the dispute suggest otherwise.

(B) If FINRA determines that a dispute is eligible for investigation, FINRA will, except in circumstances involving court-ordered expungement, add a general notation to the eligible party's BrokerCheck report stating that the eligible party has disputed certain information included in the report. The notation will be removed from the eligible party's BrokerCheck report upon resolution of the dispute by FINRA. In disputes involving a court order to expunge information from BrokerCheck, FINRA will prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.

(C) If FINRA determines that a dispute is not eligible for investigation, it will notify the eligible party of this determination in writing, including a brief description of the reason for the determination. A determination by FINRA that a dispute is not eligible for investigation is not subject to appeal.

(3) Investigation and Resolution of Disputes

(A) If FINRA determines that the written notice and supporting documentation submitted by the eligible party is sufficient to update, modify or remove the information that is the subject of the request, FINRA will make the appropriate change. If the written notice and supporting documentation do not include sufficient information upon which FINRA can make a determination, FINRA, under most circumstances, will contact the entity that reported the disputed information (the "reporting entity") to the Central Registration Depository and request that the reporting entity verify that the information, as disclosed through BrokerCheck, is accurate in content and presentation. If a reporting entity other than FINRA is involved, FINRA will defer to the reporting entity about whether the information received is accurate. If the reporting entity acknowledges that the information is not accurate, FINRA will update, modify or remove the information, as appropriate, based on the information provided by the reporting entity. If the reporting entity confirms that the information is accurate in content and presentation or the reporting entity no longer exists or is otherwise unable to verify the accuracy of the information, FINRA will not change the information.

(B) FINRA will notify the eligible party in writing that the investigation has resulted in a determination that:

(i) the information is inaccurate or not accurately presented and has been updated, modified or deleted;

(ii) the information is accurate in content and presentation and no changes have been made; or

(iii) the accuracy of the information or its presentation could not be verified and no changes have been made.

(C) A determination by FINRA, including a determination to leave unchanged or to modify or delete disputed information, is not subject to appeal.

(f) Upon written request, FINRA may provide a compilation of information about FINRA members, subject to terms and conditions established by FINRA and after execution of a licensing agreement prepared by FINRA. FINRA may charge commercial users of such information reasonable fees as determined by FINRA. Such compilations shall consist solely of information selected by FINRA from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the SEC.

••• Supplementary Material: -----

.01 Availability and Format of Information Regarding Persons Associated with a Member Prior to 1999. Certain types of information about some persons formerly associated with a member, but who have not been associated with a member since January 1, 1999, may not be available through BrokerCheck. Types of information that may be unavailable for these persons may include the following: administrative information (e.g., employment and registration history) and

information as to qualifications examinations. In addition, FINRA may release a composite report that includes information from multiple Registration Forms for such persons.

.02 Disputes Not Eligible for Investigation. For purposes of paragraph (e) of this Rule, examples of situations in which FINRA will determine that a dispute is not eligible for investigation include, but are not limited to:

(a) a dispute that involves information that was previously disputed under this process and that does not contain any new or additional evidence;

(b) a dispute that is brought by an individual or entity that is not an eligible party;

(c) a dispute that does not challenge the accuracy of information contained in a BrokerCheck report but only provides an explanation of such information;

(d) a dispute that constitutes a collateral attack on or otherwise challenges the allegations underlying a previously reported matter such as a regulatory action, customer complaint, arbitration, civil litigation, or termination;

(e) a dispute that consists of a general statement contesting information in a BrokerCheck report with no accompanying explanation; and

(f) a dispute that involves information contained in the Central Registration Depository that is not disclosed through BrokerCheck.

Amended by SR-FINRA-2010-012 eff. Nov. 6, 2010.
 Amended by SR-FINRA-2010-012 eff. Aug. 23, 2010.
 Amended by SR-FINRA-2009-050 eff. Nov. 30, 2009.
 Amended by SR-FINRA-2009-008 eff. May 18, 2009.
 Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
 Amended by SR-NASD-2003-168 eff. March 19, 2007.
 Amended by SR-NASD-2002-04 eff. Oct 14, 2002.
 Amended by SR-NASD-2002-05 eff. March 11, 2002.
 Amended by SR-NASD-99-45 eff. March 1, 2000.
 Amended by SR-NASD-97-78 eff. Feb. 17, 1998.
 Amended eff. May 4, 1988; Sept. 19, 1989; July 1, 1991; Apr. 30, 1992; July 1, 1993.

Selected Notices: [00-16](#), [02-20](#), [04-36](#), [07-10](#), [08-57](#), [09-23](#), [09-66](#), [10-34](#).

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Appendix 2

Jason Doss

From: TradingAndMarkets <TradingAndMarkets@SEC.GOV>
Sent: Tuesday, February 25, 2014 11:12 AM
To: Jason Doss
Subject: RE: FOIA Request- CRD Snapshot Report for [REDACTED] CRD No. [REDACTED]

Mr. Doss,

While the staff can provide you with Form BD and Form BDW information available through the CRD system, we cannot provide you with Form U-4 or Form U-5 information.

Forms BD and BDW are Commission forms.

Forms U-4 and U-5 are not Commission forms.

For Form U-4 and/or Form U-5 information, you will need to contact FINRA.

The Division of Trading and Markets

From: Jason Doss [mailto:jasondoss@dossfirm.com]
Sent: Tuesday, February 25, 2014 11:07 AM
To: TradingAndMarkets
Subject: FOIA Request- CRD Snapshot Report for [REDACTED] CRD No. [REDACTED]

To whom it may concern:

Please accept this email as a formal FOIA request to the SEC for the above CRD Snapshot Report. Please produce the document as soon as possible. Thanks.

Jason Doss
The Doss Firm, LLC
36 Trammell Street, Suite 101
Marietta, Georgia 30064
(770) 578-1314 (T)
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MARKETS

Regulator Deletes Red Flags From Brokers' Records, Says Study

Study Into Brokers' Records Was Conducted by Public Investors Arbitration Bar Association

By JEAN EAGLESHAM and ROB BARRY

Updated March 6, 2014 8:49 p.m. ET

A Wall Street regulator is facing heightened pressure to overhaul its oversight of stockbrokers and better protect investors.

The Financial Industry Regulatory Authority "routinely" strips out some possible red flags on brokers from its database in the information it makes available to investors, according to a study released Thursday by an organization of lawyers who represent investors in claims against brokers.

The study followed a Wall Street Journal investigation, which disclosed in a page-one article Thursday that more than 1,600 brokers' records don't show personal bankruptcies and criminal charges that should be reported.

Finra, which oversees the nation's brokerage firms, said it would "look closely at taking additional steps to address these reporting issues" unveiled by the Journal, a spokeswoman said. The regulator describes itself as the "first line of defense" for 90 million U.S. investors.

Related

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Brokers Able to Hide Some Disputes 10/17/2013

Finra Is Cracking Down on 'High-Risk' Brokers 11/21/2013

Investors can look up brokers on a Finra website called "BrokerCheck" and quickly find out their professional history. But the Public Investors Arbitration Bar Association, the lawyer group, said Thursday that Finra was scrubbing potential black marks from the information it provided to investors.

Finra defended its BrokerCheck tool. "While the system may not be perfect, we do have to make determinations on what information...is appropriate to release, while at the same time balancing fairness," it said.

Finra rules require brokers' records to show various red flags, including personal-bankruptcy petitions filed in the past 10 years and felony charges and convictions. But not all potential

black marks are covered by this reporting system. One example: Brokers don't have to report many types of

misdemeanor charges and convictions.

A Journal investigation found dozens of brokers with criminal records that don't have to be disclosed to investors. The criminal charges uncovered by the Journal, which don't show up on brokers' records—in accordance with the current rules—include assault, sexual contact without consent, hit-and-run and habitual substance abuse.

Consider the matter of Niyukt R. Bhasin, founder, owner, president and chief executive of NSM Securities Inc., a former brokerage firm in West Palm Beach, Fla. The BrokerCheck record for Mr. Bhasin, 45 years old, doesn't show any criminal history.

But Mr. Bhasin has twice been put on probation for domestic assault misdemeanors since 2004, according to court records.

He again was placed on probation last year after being found guilty of driving under the influence and other misdemeanor charges, the records say. None of these criminal charges need to be reported under the regulatory rules. Mr. Bhasin, his firm and two of his former brokers were last month charged by Finra with misconduct including excessive trading and unsuitable investment recommendations from March 2007 through September 2012 that allegedly "resulted in many NSM customers suffering significant losses."

Finra alleged in the civil disciplinary case that Mr. Bhasin "fostered a culture of non-compliance that resulted in widespread sales practice violations." His firm's Finra membership was canceled last month.

Mr. Bhasin, who is no longer working as a broker, didn't respond to numerous phone calls and emails seeking comment before his firm closed down. David Roth, a lawyer who represented him in last year's criminal case, declined to comment. Mr. Bhasin couldn't be reached for comment Thursday.

A Finra spokeswoman said the rules on which criminal charges and convictions have to be disclosed by brokers are made by the Securities and Exchange Commission. A spokesman for the SEC, which oversees Finra, declined to comment.

The Journal investigation found more than 11,700 brokers who have disclosed criminal histories. Of those, more than 2,300 mention the word "theft" in their BrokerCheck reports, more than 800 mention "larceny" and over 140 include the word "forgery."

The Journal's analysis was done using a unique database, gathered from 21 states, of more than 500,000 stockbrokers who were still working in the industry last year and comparing it with criminal and bankruptcy-court filings.

The analysis showed more than 1,500 brokers with personal-bankruptcy filings from 2004 through 2012 that aren't in their BrokerCheck records and 150 brokers whose records don't include criminal charges or convictions that should have been reported. Brokers' records should show personal bankruptcy petitions filed within the past 10 years.

Thursday's lawyers group report compared the information on brokers provided by Finra's BrokerCheck with the broader reports—on the same brokers from the same Finra database—that can be accessed from state securities regulators in states such as Florida and Iowa that have robust freedom-of-information laws.

The red flags that can be accessed in some states, but not from Finra directly, include information on whether a broker was ever under internal review "for fraud or wrongful taking of property, or violating

investment-related statutes, regulations, rules or industry standards of conduct," the study said.

Other potential black marks scrubbed from BrokerCheck include whether brokers have previously failed industry-qualification exams, federal tax liens that have now been satisfied and personal-bankruptcy filings that are more than 10 years old, according to the lawyers group.

Terry Weiss, a lawyer at Greenberg Traurig LLP who represents brokers and brokerage firms, defended Finra's approach. He said the stockbrokerage business "may be the only profession where any of this sort of information is publicly disclosed in this fashion."

Write to Jean Eaglesham at jean.eaglesham@wsj.com and Rob Barry at rob.barry@wsj.com

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Friday, March 7, 2014

Reed, Grassley Statement on FINRA Withholding Critical "Red Flag" Information In BrokerCheck System

WASHINGTON, DC – In response to a new study from the Public Investors Arbitration Bar Association (PIABA), which found that the Financial Industry Regulatory Authority's (FINRA) BrokerCheck background check system routinely omits "red flag" background information such as tax liens and sales practice abuse investigations, U.S. Senators Jack Reed (D-RI) and Chuck Grassley (R-IA) today issued the following joint statement:

"While FINRA has been responsive to our concerns regarding expungement of broker records, we remain concerned that crucial red flags and potential warning signs are not readily available to investors. FINRA made a commitment to us to improve its expungement system and to provide greater transparency. Clearly, there is some more work that FINRA needs to do. We expect FINRA to honor this commitment and ensure that the plain and simple facts are available to investors."

-end-

PIABA STUDY: STOCKBROKER ARBITRATION SLATES WIPED CLEAN 9 OUT OF 10 TIMES WHEN “EXPUNGEMENT” SOUGHT IN SETTLED CASES

Troubling Findings Raise Question: Are Investors Being Kept in the Dark About Arbitration Cases? Case in Point: One Financial Professional Gets Investors’ Claims Expunged 35 Out of 40 Times.

WASHINGTON, D.C. – October 16, 2013 – Investors who rely on public records to check out the background of their current or potential stockbrokers are, in many cases, unlikely to be getting a complete picture, according to a major Public Investors Arbitration Bar Association (PIABA) study of more than 1,600 arbitration cases over a recent five-year period. [The report is available at http://www.piaba.org](http://www.piaba.org).

In reviewing all securities arbitration awards in cases filed between January 1, 2007 and December 31, 2011 in which the word “expungement” appears, PIABA found that:

- An “alarmingly” high percentage of arbitration cases resolved by settlement or stipulated awards where expungement relief has been granted. For the time period January 1, 2007 through mid-May 2009, expungement was granted in 89 percent of the cases resolved by stipulated awards or settlement. (The May 2009 end date reflects a change in reporting requirements mandating more information about arbitration cases.)
- For the most recent time period mid-May 2009 through the end of 2011, expungement relief was granted in nearly every instance -- 96.9 percent of the cases resolved by settlements or stipulated awards.
- Some stockbrokers have taken a particularly aggressive approach to wiping their slate clean. One individual associated with a brokerage firm requested expungement 40 times, and arbitration panels granted such relief to that individual 35 times.

In the securities industry, the term “expungement” refers to the process by which an individual stockbroker licensed through the Financial Industry Regulatory Authority (FINRA), the industry self-regulatory organization, can seek to have removed from his or her public regulatory record any record of a complaint or complaints made by investors arising from the conduct of the broker. This Central Registration Depository information is typically accessed by the public through state securities offices and FINRA’s BrokerCheck program. For its data, PIABA used the main independent arbitration case tracking system maintained by the Securities Arbitration Commentator.

Attorney Scott Ilgenfritz, president, PIABA, and author of the expungement study, said: **“To say that ‘expungement’ of customer claims from broker records is a major investor protection problem is an understatement. The result is that investors who**

are diligent enough to seek out information about brokers may be getting a woefully incomplete picture of the individual to whom they will entrust all or most of their nest egg. What is supposed to be an extraordinary relief measure is now being sought and granted in roughly nine out of the 10 settled cases that we studied. This clearly indicates that the current expungement procedures are seriously flawed. **Regulators need to step in and crack down on the granting of expungements, particularly in settled cases.**”

Commenting on the report, Rachel Weintraub, legislative director and senior counsel, Consumer Federation of America (CFA), said: **“One of the key recommendations we make to investors is to check the record of anyone they are thinking of trusting with their money. Consumer Federation of America has worked to ensure that the information provided to investors is complete and accurate. But when it is too easy for brokers to get complaints expunged from their records, investors who attempt to do the right thing and check out the broker’s disciplinary record may end up making their decision based on incomplete information. Worse, they may be led to believe that a broker has a clean disciplinary record when that is far from true. This leaves investors vulnerable to fraud and abuse.”**

Attorney Jason R. Doss, incoming president, PIABA, said: **“The expungement process for stockbrokers in arbitration cases is clearly broken today and needs fixing. We have believed for some time now that expungements are a significant investor protection issue, but this new study from PIABA now documents precisely just how bad the situation is. This is not some technical legal issue; the consequences for the information relied upon by investors and investor confidence in the financial markets must be seen as paramount here. This situation simply cannot be allowed to go unaddressed.”**

WHY INVESTORS NEED THE FACTS

FINRA maintains the qualification, employment and disclosure histories of 5100 broker/dealers and approximately 660,000 of their securities employees in the electronic CRD system. FINRA and the North American Securities Administrators Association (NASAA) established the CRD system in 1981. For each associated person licensed by FINRA, the CRD system contains disclosure information with respect to the associated person having been named in a criminal matter, having been the subject of a regulatory disciplinary action, having been the subject of a civil judicial action, and having been the subject of an investor arbitration proceeding.

While the Securities and Exchange Commission (SEC) approved FINRA rules related to expungement, the federal oversight agency did so on the understanding that the granting of such relief would be an extraordinary remedy. As the SEC noted in 2008: “[T]he Commission believes that having accurate and complete information in the CRD is vital; information that has regulatory value or that could assist investors in protecting themselves should not be removed from CRD.”

In 2009, FINRA stated the following: “Accurate and complete reporting in CRD, including the reporting of required customer dispute information, is an important aspect of investor protection. The new procedures ensure that arbitrators have the opportunity to consider the facts that support or weigh against a decision to grant expungement. The procedures add transparency to the process and safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.”

RECOMMENDATIONS FOR CHANGE

As the PIABA study makes clear, what the SEC and FINRA intended to happen with expungement – that it is to be an extraordinary remedy – does not track with the liberal application of the process to wipe clean the slates of stockbrokers, particularly with respect to cases resolved by settlement. Arbitrators do not appear to appreciate the importance of the accuracy of disclosure information in the CRD system to investor protection.

One possible issue is that the training required by FINRA for arbitrators to be able to rule upon a motion seeking expungement relief is limited. Arbitrators must take an online training course, which takes approximately one hour, and pass a test concerning the materials included in the online training course. More and better training for arbitrators is needed, according to PIABA: “Changes need to be made with respect to the content and thoroughness of the training arbitrators are required to complete before they can rule upon a motion seeking expungement relief. Changes should also be made with respect to the procedures applicable to motions seeking expungement relief.”

According to Ilgenfritz, “FINRA has very recently undertaken steps to better educate arbitrators concerning their roles in the expungement process and the critical importance of accurate customer claims information with respect to investor protection. FINRA’s arbitrator education efforts need to go further, and FINRA needs to propose rule changes.”

Specifically, the PIABA report recommends the following: “FINRA needs to propose a rule change with respect to respondents and their counsel bargaining for in settlement negotiations or conditioning a settlement upon an investor’s agreement to not oppose expungement or an agreement to expungement.”

The report notes: “Finally, for FINRA to fulfill its mission of investor protection, the procedures applicable to motions for expungement relief need to be changed. FINRA needs to play a more active role in arbitrators’ rulings on motions for expungement relief. FINRA needs to review and critically assess all motions for expungement relief, particularly those made in cases resolved by settlement. FINRA also needs to review and critically assess settlement agreements. A proposed rule change should include the requirement that the hearing on any motion for expungement relief be scheduled no sooner than 60 days after service of the motion on the customer and FINRA. In cases

resolved by settlement, FINRA should require respondents to provide to FINRA the settlement agreement along with the motion for expungement relief.”

Outlining needed remedies, the report continues: “Upon receipt of any motion for expungement relief and any settlement agreement, FINRA should provide those documents to the securities commissioner for the state in which the case was filed. The amended procedures should provide for FINRA and the designee of the state securities commissioner to have the right to appear at the hearing on the motion for expungement relief and to oppose expungement relief when such opposition is appropriate.”

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.

MEDIA CONTACT: Ailis Aaron Wolf, (703) 276-3265 or aawolf@hastingsgroup.com.

EDITOR’S NOTE: A streaming audio replay of the news event will be available on the Web at <http://www.piaba.org/> as of 5 p.m. EDT on October 16, 2013.

MARKETS

Stockbroker Requests to Scrub Complaints Are Often Granted

Study Shows Brokers' Requests to Strike Complaints Granted in Vast Majority of Cases

By JEAN EAGLESHAM And ROB BARRY

Updated Oct. 16, 2013 7:01 p.m. ET

Stockbrokers are being routinely allowed to scrub some customer complaints from their public records, leaving investors in the dark about potentially troubled advisers, according to a study of more than 1,600 arbitration cases.

Brokers asked to remove customer disputes from their records in 1,625 arbitration cases filed from 2007 through 2011, according to a report by the Public Investors Arbitration Bar Association, an association of securities lawyers. Arbitrators approved removal requests in more than 90% of the 629 cases that settled. In the other cases, which went to an arbitration hearing, almost half the requests to clean records were granted. During the period, there were 17,635 arbitration cases overall, the bar association report shows.



Stockbrokers can scrub some complaints from their regulatory profiles. *Agence France-Presse/Getty Images*

The systematic polishing of records raises a fresh concern about the oversight of brokers by the Financial Industry Regulatory Authority, a Wall Street self-regulator. A page-one article by The Wall Street Journal earlier this month disclosed how some groups of brokers have migrated from one problem firm to another, often leaving unpaid arbitration awards in their wake.

Finra has tweaked "expungement" rules a number of times in recent years, but the report said that, for settled arbitration cases, "Finra's attempts to mandate narrow grounds for granting expungement relief...have failed."

Jason Doss, incoming president of the bar association, said: "Very simply, Finra needs to take more action to protect investors, and we have the hard data to prove that point."

A Finra spokeswoman said the group issued "further guidance" to arbitrators last week on dealing with such expungement requests and "the rules and processes could be applied with more rigor" in cases that are settled. Finra is "reviewing its rules...and will consider changes," the spokeswoman said.

A spokesman for the Securities and Exchange Commission, which oversees Finra, declined to comment.

Clean Sheet

Most requests by stockbrokers to scrub their disciplinary records are granted by arbitrators in settled customer cases.



Source: Public Investors Arbitration Bar Association
The Wall Street Journal

Customers opening brokerage accounts in most cases must agree to settle disputes using Finra's arbitration system, giving up their right to go to court. Finra encourages investors to vet brokers using its "BrokerCheck" database—a public record showing arbitration claims, criminal charges, bankruptcies and other possible red flags.

The new research suggests investors using BrokerCheck risk being "led to believe a broker has a clean disciplinary record, when that is far from true," said Rachel Weintraub, legislative director and senior counsel at the Consumer Federation of America. "This leaves investors vulnerable to fraud and abuse."

The problem of repeat customer disputes appears focused on a small minority of troubled brokers, according to a database compiled by the Journal of the records of more than 558,000 brokers.

Just more than 30,000—about 5%—of these brokers reported at least one customer complaint at the time the data were collected, by using public-records requests, earlier this year. Reporting three or more customer complaints were 3,389 brokers, and 162 of those had 10 or more complaints, according to the Journal analysis.

Brokers can apply to remove a customer dispute from their records. Finra rules require such expungement requests to be approved by its arbitrators and confirmed by federal courts.

Finra has said this ability to wipe the slate clean should be an "extraordinary" measure. Its rules say expungement should be allowed only if the customer claim is false, factually impossible, clearly wrong or doesn't involve the broker.

The report could fuel concerns that firms are exploiting loopholes in the rules to cleanse employees' public profiles, in some instances enabling many complaints to vanish from a broker's record. "There were a number of cases we looked at where the broker was requesting expungement multiple times," said Scott Ilgenfritz, president of the bar association.

The proportion of brokers' requests for expungement granted in settled cases increased each year over the five-year period studied, from 88% in 2007 to 97.8% in 2011, according to the new study.

The number of expungement requests increased after Finra changed its rules in May 2009 to require brokers to disclose arbitration claims involving them even if they weren't named as a party to the case. Since that change, firms offering to settle claims often require investors to agree they won't oppose an expungement request by the broker concerned as a condition of the deal, lawyers say.

"Almost every time you settle, broker-dealers want an agreement that you won't oppose a request to get [the case] expunged," said Bruce Oakes, a partner at St. Louis-based law firm Oakes & Fosher LLC. He said expungement has gone from being a means to correct genuine errors into a "tool for brokers and their firms that they use to keep their records clean."

Terry Weiss, a lawyer at Greenberg Traurig LLP who represents brokers and brokerage firms, said expungement requests were being granted in only a "relatively small" proportion of the overall number of

cases. "The arbitration process is fair to investors, and the BrokerCheck system accurately depicts the background information that is relevant to investors," he said.

The demand for expungement "will likely increase even more dramatically" if the SEC approves a proposed rule change passed by Finra's board last December, the bar association's report said. The proposal would allow brokers who are required to disclose a complaint that doesn't name them to ask for expungement without involving their firm or the customer. Finra hasn't yet sent the proposal to the SEC. The Finra spokeswoman said the proposed rule would make the process more efficient but "not easier."

Write to Jean Eaglesham at jean.eaglesham@wsj.com and Rob Barry at rob.barry@wsj.com

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October 25, 2013

Richard G. Ketchum
Chair and Chief Executive Officer
Financial Industry Regulatory Authority
1735 K St. NW
Washington, DC 20006

Dear Chairman Ketchum:

It has been some time since we last communicated, and I trust you are doing well. I write to express my serious concerns about three issues related to the Financial Industry Regulatory Authority's (FINRA) ability to protect investors from "rogue brokers" that were recently exposed in *the Wall Street Journal*.¹ First, I was alarmed to learn that arbitration awards and settlements do not show up in FINRA's BrokerCheck database because brokers have been able to successfully expunge the information. Investors cannot protect themselves from dishonest brokers if they cannot determine whether brokers with whom they are considering investing their funds have large or repeated settlements or awards due to their wrongdoing or mismanagement. Second, I am appalled that \$51 million in arbitration awards granted to investors in 2011 remain unpaid. Investors are required to participate in FINRA's arbitration program if they have a claim against their broker. If an investor successfully proves their claim but is never paid, the integrity of the entire system is threatened. Finally, I question FINRA's record in tracking rogue brokers if, as reported earlier this month, over 5,000 stockbrokers from firms expelled by FINRA are still selling securities, a practice commonly known as "cockroaching."

As you will likely recall from your days as head of the SEC's Division of Market Regulation, at the time, these are issues I have raised before. The genesis of BrokerCheck is Section 510 of the Penny Stock Reform and Civil Remedies Act of 1990, a bill that I co-authored in the House of Representatives. This provision of the law required registered securities associations, notably the National Association of Securities Dealers (NASD), to maintain an 800 telephone number that investors could call to check the disciplinary histories of broker dealers.

After the 800 number was launched in 1991, I continued to monitor its performance, including the NASD's commendable decision to supplement the hotline with a website that would enable consumers to access broker disciplinary information, as well as the industry's ability to adequately discipline unscrupulous brokers who broke the rules. After reading the *Wall*

¹ Eaglesham, Jean and Barry, Rob, "More Than 5,000 Stockbrokers From Expelled Firms Still Selling Securities" (*Wall Street Journal* October 4, 2013); Eaglesham, Jean and Barry, Rob, "FINRA to Consider Requiring Brokerages to Carry Arbitration Insurance" (*Wall Street Journal* October 4, 2013); Eaglesham, Jean and Barry, Rob "Stockbroker Requests to Scrub Complaints Are Often Granted" (*Wall Street Journal* October 16, 2013).

Street Journal stories, I learned that many of the same problems I had identified and believed had been corrected by the industry in the early 1990s continue to plague the securities industry.

In February 1993, a year after the NASD Hotline was established, the General Accounting Office (GAO) reported that the NASD had decided to expand the information made available to the public to include, among other things, arbitration decisions. Despite those welcome reforms, however, I continued to hear reports of significant deficiencies in the NASD Hotline and of unscrupulous brokers fleecing unsuspecting customers. As a result, the House Telecommunications and Finance Subcommittee, which I then chaired, began an investigation of the adequacy of regulatory and supervisory standards for brokers with extensive disciplinary histories and asked the General Accounting Office (GAO) to undertake a comprehensive examination of the nature and adequacy of SEC oversight in this area. In September 1994 the Telecommunications and Finance Subcommittee held hearings on sales practice abuses and the continued presence of “rogue brokers” in the securities industry. During those hearings, the GAO released a report, prepared in response to my request, which found that unscrupulous brokers were difficult to track for a variety of reasons, including that many disciplinary actions went unreported. It recommended that the Central Registration Depository (CRD) be improved.

At the conclusion of the Subcommittee’s hearings, I wrote the GAO asking that it conduct a survey of the effectiveness of the NASD Hotline (the predecessor to BrokerCheck) because of egregious omissions in the information provided to the public. I also wrote to then-Chair of the Securities and Exchange Commission (SEC), Arthur Levitt, asking the Commission to explain,

why the NASD is not providing investors who call the Hotline with information about settlements of complaints involving abusive sales practices, whether the Commission believes that such information should be provided to investors, and if so, what steps are being taken to assure that the NASD makes this information available.²

In a letter dated October 28, 1994, Chairman Levitt responded confirming that NASD did not then disclose settlements of arbitration claims, only awards pursuant to a decision by an arbitrator. The SEC pledged to undertake an examination of the operation of the NASD hotline during fiscal year 1995.

As a result of these actions, NASD rules subsequently were amended so that settlements and arbitration awards against brokers were required to be disclosed to the investing public. It appeared that the problem had been addressed satisfactorily by the industry and by the SEC. Thus, I was concerned to read the *Wall Street Journal* article reporting that this very same problem is again impacting the securities industry, albeit in a slightly different, though no less insidious form.

On October 16, 2013, the *Wall Street Journal* reported on a study of FINRA arbitrations between brokers and clients from 2007 to 2011. The study found that brokers routinely ask

² Letter from Edward J. Markey to Arthur Levitt, September 28, 1994.

arbitrators to expunge from their disciplinary record arbitration awards or settlements of investor complaints and that in an astonishing 90 percent of the cases that were settled, the arbitrators granted those requests. Even in cases that proceeded to a hearing, half the requests were granted. The result, of course, is to hide bad brokers from the investing public. The news story also revealed that many times investors are required as a condition of settlement to agree not to oppose an expungement request. Such extortionary tactics further undermine the integrity and reliability of the BrokerCheck system.

I am aware that on the eve of the publication of the *Wall Street Journal* investigation, FINRA sent a notice to its arbitrators reminding them that expungement is an extraordinary remedy, as well as of their obligation to provide a written explanation for granting expungement. In my view, counseling arbitrators is simply not enough.

In addition I believe BrokerCheck itself needs to be retooled. In the description of BrokerCheck provided on the FINRA website, there is no mention of the fact that an investor can learn of any disciplinary actions taken or complaints filed against a broker. Instead, the website states only that BrokerCheck provides the “professional background” of current and former FINRA-registered brokers. If investors are not aware that this information is available, they will not be able to take advantage of it. Worse, even when one actually does a search, disciplinary action is euphemistically labeled “Disclosure Information.” Moreover, the information provided is misleading. Under the heading, “Disclosure Information”, FINRA assures investors that “disclosure events are certain criminal matters; regulatory actions; civil judicial proceedings; customer complaints, arbitrations, or civil litigations; employment terminations; and financial matters in which the broker has been involved.” Nowhere does FINRA disclose that not all “disclosure events” are reported because some have been expunged. And without such notice, investors have no way of knowing that they may be looking at only a sliver of a broker’s arbitration data, one that is biased in favor of the broker.

The *Wall Street Journal* followed its story on the BrokerCheck system with another regarding FINRA arbitrations. Specifically, the *Journal* reported that often arbitration awards are not paid because brokerage firms faced with awards simply close their doors or declare bankruptcy. The Securities Investor Protection Corporation does not provide protection to investors for unpaid arbitration awards, and it is rare that arbitration awards are fully paid if the brokerage firm declares bankruptcy. Thus, investors are left with only a pyrrhic victory. I know that FINRA is considering a requirement that brokerage firms carry insurance that would cover arbitration awards. I encourage you to vigorously pursue this and any other possible solutions to this injustice.

Finally, with respect to the “cockroaching” problem, FINRA simply must do a better job of tracking and removing unscrupulous brokers from the industry. The *Wall Street Journal* investigation, which had to be conducted using state regulatory information because FINRA refuses to release all of its disciplinary records,³ reported that at least 610 brokers had worked at more than one firm that FINRA had expelled. More troubling is the fact that on average, a broker

³ FINRA of course allows access to BrokerCheck, but we now know how deficient that data is.

who left at least two firms that were eventually expelled and who joined another firm had greater than eight times as many arbitration claims and other required disclosures as the industry average. If brokers with eight times as many arbitration claims and disclosures as the industry average are still allowed to practice, FINRA needs to revise its disciplinary system. To be sure, there are hundreds of thousands of brokers who play by the rules and well serve the investing public, but that is cold comfort to an unsuspecting investor who loses their life savings to a rouge broker and all the more reason FINRA can and should ferret out those few brokers who are bad.

Concurrent with this letter, I have written to SEC Chair Mary Jo White, enclosing a copy of this letter, urging the SEC to promulgate new rules for FINRA that mandate the disclosure of arbitration awards and settlements. In addition, these rules should ban any settlement provisions relating to expungement. Further, the expungement process itself needs to be modified so that expungement truly becomes the rare exception rather than the rule. In my opinion, arbitrators should not be allowed to decide whether to expunge an arbitration award or settlement from a broker's disciplinary record. Rather, FINRA should establish an internal process that determines whether a particular settlement or award meets stringent and narrow expungement standards. In addition, I have asked the SEC to address the problem of deadbeat brokers who refuse to pay arbitration claims and the need to better police brokers who migrate from bad firms to worse.

Unfortunately, what I said in 1994 is as true today as it was then: "It takes only a few rogue brokers to create an enormous amount of financial harm for investors. It is simply unacceptable that individuals who rack of repeated disciplinary infractions should be allowed to continue ripping off the investing public." Without an effective BrokerCheck in place and without a more rigorous disciplinary system, investors will continue to be harmed by unscrupulous brokers.

I look forward to your response addressing these concerns. Please contact Lisa Foster or Justin Slaughter on my staff at 202-224-2472 with any questions. I request a response to this letter by November 15, 2013.

Sincerely,



Edward J. Markey
United States Senator

United States Senate

WASHINGTON, DC 20510

December 16, 2013

Mr. Richard G. Ketchum
Chairman and Chief Executive Officer
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006

Dear Mr. Ketchum:

Given our interest in improving transparency of our financial markets, we are writing in response to a recent Public Investors Arbitration Bar Association (PIABA) study, which raises concerns about the number of times investor complaints may be expunged, or removed, from publicly available broker records maintained by the Financial Industry Regulatory Authority (FINRA).

FINRA provides information to investors through BrokerCheck, which FINRA believes, “should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual.” However, as the PIABA study indicates, this system may not enable investors to easily obtain all the information necessary to determine whether to hire a particular FINRA registered broker. According to the PIABA study, expungement relief was granted in 96.9% of cases from May 2009 through December 2011.

We share FINRA’s view that “expungement is an extraordinary remedy that should be granted only under appropriate circumstances,” and that it should be permitted “only when it has no meaningful investor protection or regulatory value.” However, we believe that meaningful investor protection includes the disclosure of whether a customer dispute was settled. Not just for transparency sake, but also to help prospective investors make informed decisions about which individuals or firms with whom to do business.

Given our interest in fair financial markets and transparency, we request that you provide a response to each of the five recommendations cited in the PIABA study and explain whether and why or why not FINRA intends to adopt each recommendation. Additionally, please provide:

1. The number of instances in which FINRA has questioned or challenged the provision of expungement relief and a detailed description of the circumstances of each case.
2. Any draft legislative language that would be necessary to provide FINRA with the authority to ensure that expungement relief is provided “only when it has no meaningful

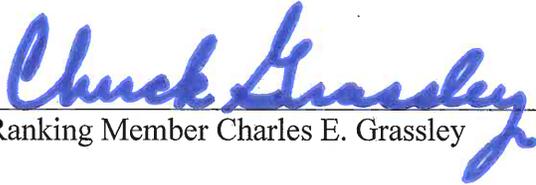
investor protection or regulatory value,” if you do not believe such authority already exists.

Please provide a response by January 6, 2014. Thank you for your attention to this important matter.

Sincerely,



Senator Jack Reed



Ranking Member Charles E. Grassley