Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1 090
Re: SR-FINRA-2009-050

Dear Ms. Murphy:

I have been representing investors in claims in Court and in arbitration for more than 27 years. I am also on the roster as an arbitrator for FINRA formerly the National Association of Securities Dealers DRI.

Background

FINRA claims that its mission is Investor Protection. Were that really true, FINRA [formerly NASD Regulation] would never have adopted the industry sponsored amendment to Rule 8312 which provided that the BrokerCheck system would not publicly disclose any information concerning a broker who had been out of the industry for two years. Prior to the adoption of this amendment, information concerning brokers who had left the industry was provided to the public regardless of how long the ex-broker had been unlicensed. Under the amended rule, whenever an investor inquiry is made of an ex-broker who has been out of the industry for two years, FINRA merely responds that there are no records pertaining to that person. FINRA does not even confirm that the ex-broker had ever been in the industry, so most knowledgeable members of the public resort to full legacy reports from those states which actually MORE concerned with investor protection than associated person or brokerage firm protection!! It is only those members of the public who need the broker background information the most who rely on the completeness of Brokercheck who rely to their detriment on this system!

This is anomalous. FINRA, whose responsibility is investor protection, appears to be hell-bent to conceal its records concerning ex-brokers who have potentially wronged investors, simply because the broker had been out of the industry two years. This would be analogous to erasing damaging information available to law enforcement after a certain number of years to protect the privacy of perpetrators!! This information should continue to be available to all investors. At the very least, the information concerning ex-brokers should be available to investors for six years after the broker leaves the industry, which would be consistent with the FINRA six-year eligibility rule for the pursuit of investor claims.

FINRA's Proposal

FINRA now proposes an amendment which would allow investors to get access to information concerning brokers who had been out of the industry more than two years. But it would only apply to those brokers who, although not in the securities industry, were working in other investment-related industries or in other positions of trust. The amendment ignores the needs of investors who are seeking to recover lost savings and retirement funds due to broker wrongdoing and who are searching the records for information about ex-brokers to assist them in pursuit of their claims. FINRA's sole objective in this proposal is to allow investors to obtain information about ex-brokers with whom they intend to do business. Thus, FINRA1s proposal would help a very limited number of investors while ignoring the fact that the vast majority of investors who are seeking information about ex-brokers are doing so because they are trying to get information that will assist them in recovery of their losses.

The FINRA proposal should be expanded to apply to all ex-brokers regardless of whether they are newly engaged in investment-related matters or hold a position of trust. FINRA must recognize that the two-year cutoff which was imposed on disclosure of information concerning ex-brokers in February 2000 does not protect investor interests but rather is injurious to investors and protects the brokerage industry. The BrokerCheck rule was established for general investor protection. It was to allow investors broad access to brokerage information - not just to assist in broker selection, but also specifically to provide information to investors in connection with thepursuit of broker claims.[1] The time period during which all investors can obtain information to pursue claims should be unlimited or at the very least governed by the six-year eligibility rule and not by a shorter two-year period which would potentially result in investors being unable to obtain broker information while their claims are still viable under FINRA rules.[2]

FINRA's stated reason for limiting the disclosure of ex-broker information to two years is privacy concerns for ex-brokers. As a general principle, it is submitted that the privacy concerns of an ex-broker with respect to information concerning that broker's activities while registered are far outweighed by the investor protection interests of those investors who may have claims arising out of doing business with that broker. Any privacy concerns of the ex-broker are already addressed and protected by subsection (c) of Rule 8312 which reserves the right to FINRA to "exclude, on a case-by-case basis, information that contains . . . information that raises . . . personal safety or privacy concerns that are not outweighed by investor protection concerns."

It is important to note that the two-year secrecy rule also helps to protect brokerage firms from legitimate investor claims involving some of the worst brokers. Typically, those brokers who have the worst disciplinary records and who have caused great harm to investors end up quitting or being drummed out of the industry. Investors who are unable to get information on these ex-brokers may be less likely to pursue legitimate claims against their former brokerage firms. FINRA's two-year secrecy rule actually seems to focus on industry protection rather than investor protection, and the "so-called balancing of interests" seems to tilt markedly against investor protection.

It is inexplicable that the worst of the worst brokers who may have multiple sanctions, investor arbitrations, and settlements and finally quit or are forced out of the industry should be shielded by FINRA's rule preventing investors from obtaining access to their records. As stated above, investors seeking information on these wrongdoers are simply told by FINRA that there is no record of the broker. Investors getting such a response from a regulator could easily conclude that they were an isolated victim instead of one of many victims.

It is also troubling that FINRA's statement to the public that there is no record of such a broker is misleading in itself. Indeed, there are records concerning such a broker, and these records are available, but FINRA merely is refusing to disclose them to the investor.

Such a dead end at BrokerCheck can only discourage pursuit of a claim. Individual investors understandably would be stalled in their inquiry, and even investor attorneys who don't understand the system could also be stopped short from getting the facts.

In addition to ignoring the interests of investors who may have a claim and seek information on their ex-brokers, FINRA's proposal fails to allow access to other information that may be part of the CRD system regarding former registered persons, such as bankruptcies, liens, criminal events, or arbitration claims. In this regard, FINRA states that it believes that these other categories of information are more relevant to an investor or potential customer when the individual is registered or was recently deregistered (i.e., within two years). While such information may be valuable to investors or potential customers of ex-brokers who were recently deregistered, it is fallacious to assume that this information would not be equally valuable to other investors who are seeking information in connection with claims against an ex-broker. Losses experienced by an investor involving a broker who is long out of the industry are no less important to the investor than losses experienced where the broker remains in the industry. This information should be provided to all investors who are inquiring concerning ex-brokers.

FINRA's proposed rule change provides that it would allow the public access to information as to only formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or attain other positions of trust. Limiting disclosure to this class of former brokers renders the proposed rule so narrow and as to such a small class of ex-brokers as to be of little significance.

Conclusion

I would recommend that the FINRA proposal be modified to apply to all ex-brokers and to require disclosure of information indefinitely as was the case prior to the 2000 amendment to Brokercheck. At the very least, disclosure should be allowed for a period of six years following the broker's termination from the industry. Furthermore, disclosure with respect to ex-brokers should include the same information which is provided with respect to brokers who are currently registered.

Sincerely,

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