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NICHOLAS J. GUILIANO, ESQUIRE

September 8, 2009

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: Comments on File No. SR-FINRA-2009-050
Notice of Filing of Proposed Rule Change Relating to FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

Dear Ms. Murray:

Please accept our comments to SR-FINRA-2009-050.

I am an attorney licensed to practice law in the Commonwealth of Pennsylvania. I am admitted to the United States District Court for the Eastern District of Pennsylvania, the United States Third Circuit Court of Appeals, and the United States Supreme Court.

Our practice has been substantially limited to the litigation of securities related matters in federal court, individually and as class actions, and principally in arbitration before the Financial Industry Regulatory Authority ("FINRA") Dispute Resolution, Inc. (formerly known as The National Association of Securities Dealers ("NASD") Dispute Resolution, and the New York Stock Exchange ("NYSE") Department of Arbitration.

Since 1995, we have represented more than 1,000 public customers from approximately 38 different states, and several other countries, in FINRA or NASD sponsored arbitrations involving claims against brokerage firms, stockbrokers, or investment professionals, for among other things fraud in connection with the sale of securities, the sale of unregistered securities, breach of fiduciary duty, and the violation of the state and federal securities laws.

The present two year "purge" regulatory actions is wholly insufficient and does not advance the public interest through a unified or comprehensive system of regulation.

Often, and invariably, we encounter former registered persons, previously subject to an extensive history of customer complaints, arbitrations and regulatory proceedings, that re-invet themselves as "registered investment advisors," and as such, in a position of trust, continue to earn fees and other asset based remuneration as "solicitors" through the placement of client funds with money managers or as investment managers, whom are exempt from SRO registration simply because they do not execute securities orders.

In fact, the proposed rule change, as part of a comprehensive system of enforcement, and public transparency, should expand access to other information that may be part of the CRD System regarding the former registered person, such as customer complaints, bankruptcies, liens, criminal events or arbitration claims.[1]

The public has a right to know with whom they are dealing, and unfortunately, once a broker is no longer registered for a period of two (2) years, no information is publicly available regarding that person, their prior associations, or regulatory actions against that person.[2]

Invariably, we have seen instances where the conduct of a broker or an associated person is the subject matter of numerous customer arbitrations or other proceedings, where the broker was not named in the proceeding, and hence the existence of these claims were not disclosed on the broker's CRD. The mere existence of these claims imparts a heightened duty to supervise on the part of the member, and in most cases is probative of the member's notice of a problematic broker. Since these complaints were not disclosed (unless settled for an amount of more than $10,000 where the broker contributed to the settlement), in substantial part these claims were immune from discovery under the NASD Discovery Guide. Thankfully, as of May 18, 2009, this has changed and these proceedings are now required to be disclosed.

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[1] A review of existing data as reported to the CRD system indicates that 29,500 out of the 663,000 persons registered with NASD (approximately four percent of currently active registered persons) have been subject to one or more customer complaints and arbitrations within the last five years. Of this number, 2,751 persons (.41 percent of all registered persons) have had three or more complaints and arbitrations. Of the approximate 663,000 registered representatives in the country in 2003, only 2,751 or 0.41 % have been the subject of three or more complaints or arbitrations. See, e.g. NASD Notice to Members 03-49 (Sept. 2003).

[2] Presently, FINRA's Public Disclosure System is somewhat difficult to navigate, and unless a person has the correct spelling of a person's legal first name and last name, or prior association (even using the "sounds like" function), one will get no results. In contrast, FINRA arbitration's on-line filing system will locate members and associated persons, irrespective of minor spelling or capitalization errors, which suggests that FINRA (formerly the National Association of Securities Dealers, Inc.), only cosmetically seeks to have disclosable information really available to the public.

Similarly, in many instances where a broker was named as a party in a proceeding, the public customer, in connection with a settlement, frequently would be "paid-off" to agree to the expungement, or agree to allow the member to pursue an expungement) of the broker's CRD. Since counsel's duty is arguably to their client, and not necessarily the public interest at large, this placed counsel and sometimes clients in a difficult position. The new expungement rules have addressed or partially cured this dilemma.

FINRA's recent proposed Rule change, and its recent enforcement action where it professes to regulate "all the activities in which a member engages," including the investment advisory activities of its registered representatives is a breath of fresh air, and will undoubtedly advance the public interest, because these the investment advisory activities of these individuals will finally be subject to some form of regulatory scrutiny of the sales practices of these individuals, aside from the perfunctory SEC review of typically "disclosure" requirements of investment advisor activities. *See* NASD Conduct Rule 3010(b); NASD Notice to Members 98-38.[3]

These three (3) rule changes (including the one proposed Rule change, which is purported to be simply a restatement of present policy), provide a comprehensive system of disclosure and enforcement that promotes the interests of the investing public.

The proposed changes to FINRA Rule 8312, requiring the disclosure of prior associations and the existence of regulatory actions against former brokers, now engaged in other activities, provides the investing public, particularly in these times, with essential information.

The public has a right to know, and therefore, we strongly support the proposed amendment to FINRA Rule 8312.

Respectfully submitted,
Nicholas J. Guiliano
Nicholas J. Guiliano

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[3] *See, In Re Ameritas Investment Corporation*, FINRA AWC No. 06-6364302 (Aug 6, 2009)(FINRA enforcement action against Ameritas Investment Corp., a Nebraska-based dually registered broker-dealer and investment advisor, fined $100,000 for failure to supervise the investment advisory activities of one of its brokers in connection with the sale of unsuitable investments and related violations).