



PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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June 28, 2018

Ms. Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, D.C. 20006-1506

Re: **Regulatory Notice 18-16** (Comment on FINRA Rule Amendments Relating
To High-Risk Brokers and the Firms that Employ Them)

Dear Ms. Mitchell:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitration proceedings. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes in order to protect the rights and fair treatment of the investing public.

FINRA seeks comment on proposed rule amendments that would impose additional restrictions on member firms that employ brokers with a history of significant reportable misconduct. These brokers, while relatively small in number, may present a heightened risk of harm to investors, and their continued misconduct could undermine confidence in the securities industry as a whole. PIABA believes that the proposed rules, which will impose additional and stronger controls over high-risk brokers and their employing firms, will benefit the investing public.

The Rule 9200 Series (Disciplinary Proceedings)

Proposed Rule 9285 addresses situations wherein an order sanctioning a broker is appealed. In particular, proposed Rule 9285(a) allows a hearing officer or panel to impose conditions or restrictions on the activities of a representative or firm, as the officer or panel considers necessary, for the purpose of preventing customer harm. PIABA supports this measure. If a broker is sanctioned for wrongful conduct (especially particularly egregious conduct), he or she should not be permitted to go about 'business as usual' while an appeal is pending; rather, the broker should be subjected to a higher level of supervision during this time. PIABA suggests that the rule specify that the representative's broker-dealer be notified immediately of any such conditions or restrictions imposed by a hearing officers. For these same reasons, PIABA supports the proposed amendments to Rule 9311, which make clear that a pending appeal would not stay any conditions and restrictions imposed by the hearing panel or officer.

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Proposed Rule 9285(b) provides for an expedited review process for a representative or firm subject to restrictions or conditions pursuant new Rule 9285(a). PIABA believes that these procedures make sense and should be enacted. While an expedited review process is a good thing, there should also include a clear, relevant standard built into the Rule. For example, the Rule could state that the appealing party must provide clear and convincing evidence of a manifest error on behalf of the trier of fact. The appealing representative or firm should carry the burden of showing the likelihood of success of the underlying appeal in order to lift or ease any restrictions or conditions. If a clear standard is not incorporated into the Rule, PIABA fears that the procedures under Rule 9285(b) would be subject to abuse.

Proposed Rule 9285(c) requires firms to adopt a written plan of heightened supervision while the appeal is pending. PIABA also supports this proposed rule. PIABA also believes that the firm should be required to document its enforcement of the heightened supervision plan, subject to review by FINRA.

The Rule 9520 Series (Eligibility Proceedings)

Proposed Rule 9520 would require member firms to adopt heightened supervisory procedures for brokers during the period a Statutory Disqualification (hereinafter "SD") eligibility request is under review by FINRA. While the number of SD eligibility requests is modest, and FINRA has found that more than half of those requests are withdrawn because the representative's registration was terminated or the request simply withdrawn, there is an obvious benefit to requiring the application of heightened supervision to those registered representatives whose conduct is egregious enough that they face statutory disqualification.

Rule 8312 (FINRA BrokerCheck Disclosure)

FINRA proposed amendments to Rule 8312 to disclose the status of a member firm as a taping firm under Rule 3170, through its BrokerCheck system. Rule 3170 was instituted to address concerns regarding the need for heightened supervision of certain high-risk brokers with disciplinary histories. A firm with enough registered representatives formerly employed by "disciplined firms" is required to maintain special written procedures for supervising the telemarketing activities of *all* of its registered persons. In short, a "taping firm" is one that employs a significant percentage of high-risk brokers. While PIABA supports the disclosure on Broker-Check that a firm is a "taping firm," it is concerned that simply noting the firm's status as such, and without explanation, will be devoid of meaning to virtually all investors. If a disclosure is made, it must be meaningful. PIABA would therefore insist that any "taping firm" disclosure be explained in BrokerCheck, with a specific narrative description of why the disclosure is being made.

NASD Rule 1010 Series (Membership Proceedings)

FINRA proposed amendments to the NASD Rule 1010 series ("MAP Rules") to require member firms to seek materiality consultations when an individual who has one or more final criminal convictions, or two or more specified risk events within the previous five years, seeks to become an owner, control person, principal or registered person of the firm. The amendments would allow FINRA to review and potentially restrict or deny a member firm from allowing such person to become an owner, control person, principal or registered person. PIABA supports the proposed amendments and agrees with FINRA that the proposed amendments would promote investor protection.

As FINRA is aware, the hiring practices of certain brokerage firms are a threat to investors. Oftentimes, brokers with significant disciplinary histories change brokerage firms, with little to no attention given to their checkered pasts. PIABA believes that such increased due diligence, on this relatively small group of individuals, is consistent PIABA's

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and FINRA's goals. Requiring firms to go through the materiality consultation process will also surely remind those firms of the need to keep those new representatives under a well-defined and well-enforced supervisory system.

PIABA further believes that the numerical threshold and criteria proposed to trigger a materiality consultation are appropriate and clear enough to avoid confusion. As FINRA states, the proposal focuses attention on "the economic trade-off between incorrect identification of individuals that may not subsequently pose a risk of harm their customers, and not including individuals that may subsequently pose risk of harm." PIABA agrees and emphasizes that the minor costs of complying with the amendments will be far outweighed by the increased investor protections. Further, the easily-definable criteria proposed to trigger a materiality consultation (a final criminal conviction and disclosure events required to be reported on the Uniform Registration Forms) remove doubt as to which individuals require a materiality consultation. The proposal adequately applies stronger standards for continuing membership with FINRA and promotes investor protection from high-risk brokers.

Conclusion

In summary, PIABA supports the proposed rules since we agree that the proposed rules would benefit the investing public by imposing additional restrictions while strengthening existing controls over high-risk brokers and their employing firms.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Stoltmann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrew Stoltmann