

# Office of the Ombudsman

## 2014 Report



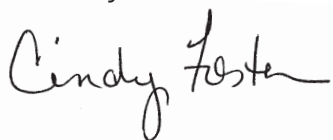
## A Message From the Ombudsman

This report describes how the Office of the Ombudsman works with FINRA constituents to address their concerns and summarizes 2014 activities. As an independent party, the office provides confidential and informal assistance to FINRA constituents. We do not advocate for any individual or entity—including FINRA—rather, we advocate for fair processes and the fair administration of those processes. We also act as a source of information and referral to help constituents address their concerns at the most appropriate level within the organization.

During 2014, the office received a total of 575 cases, compared to 567 cases received the previous year. FINRA-related concerns represented 239 (or 42 percent) of total cases received; and the vast majority were related to registration and disclosure policies, especially those that impacted the manner and content of the information disclosed on BrokerCheck®, and the outcome of examinations and investigations conducted by FINRA’s regulatory operations staff. The office also received 110 complaints regarding the activities of firms, brokers, and other miscellaneous individuals and entities, as well as 220 inquiries regarding a wide range of topics including registration and disclosure policies, FINRA’s Investor Complaint Program, the disciplinary process, sales practice examination policies and the arbitration process. Brokers and investors were the most frequent visitors to the office, accounting for 44 percent and 25 percent of total cases, respectively.

For more information regarding this report or FINRA’s Office of the Ombudsman, please contact us at (888) 700-0028 or visit [www.finra.org/aboutFINRA/ombudsman](http://www.finra.org/aboutFINRA/ombudsman).

Sincerely,



Cindy Foster  
Ombudsperson, FINRA

**Founded in 1996, the Ombudsman's Office is staffed by four trained Ombudsmen.**

## Overview

The primary mission of the Ombudsman's Office is to provide assistance to investors, brokerage firms, individual brokers, and any other business or individual who interacts with FINRA and has concerns regarding unfair treatment or inconsistent regulatory practices. As an independent, neutral and confidential source of assistance, the Ombudsman's Office addresses concerns and complaints, whether anonymous or not, concerning operations, enforcement, or other activities of FINRA or any of its subsidiaries and employees. The Ombudsman does not replace the mechanisms that FINRA already has in place to respond to the issues raised by its constituents, but supports them by helping constituents to identify and evaluate options, explaining the appropriate process for resolution, and when possible, referring concerns to the appropriate office or department and monitoring the outcome. The Ombudsman also will informally facilitate the resolution of or escalate issues that fall outside of FINRA's established policies or processes.

FINRA's Office of the Ombudsman is an Associate Member of the International Ombudsman Association and a Member of the United States Ombudsman Association.

**When contacted by a constituent, the Ombudsman may take one or more of the following steps:**

- 1**
  - ▶ Listen to and discuss the concern with the constituent
  - ▶ Determine the outcome sought by the constituent
  - ▶ Assist in identifying options to address or move forward concerns
- 2**
  - ▶ Conduct a review of any issues presented and pertinent documents
  - ▶ Research and review rules, regulations, policies and procedures
  - ▶ Determine if, and how, the Ombudsman can assist the constituent
  - ▶ When confidentiality is waived, initiate contact with relevant FINRA staff to resolve issues
- 3**
  - ▶ Follow up with the constituent to discuss actions taken and options for moving forward
  - ▶ Answer questions and provide information and resources regarding the topic
- 4**
  - ▶ Provide summary statistics and meet with senior management and the Audit Committee of the Board of Governors to discuss case trends

**Confidential information is not disclosed to anyone outside of the Ombudsman’s Office. Information may need to be shared if there is a threat of imminent risk or serious harm or when legal requirements require FINRA to take action.**

**BROKERCHECK**

**A free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms and brokers.**

## Visitor Demographics

During 2014, 575 constituents contacted the Ombudsman’s Office, which represents a marginal increase when compared to the 567 cases received in 2013. The Ombudsman interacts with a variety of constituents in the course of reviewing and responding to inquiries and concerns. Individual brokers, brokerage firms (firms) and publicly traded companies collectively accounted for 311 (54 percent) of the cases the Ombudsman’s Office received. Public investors accounted for 142 (25 percent) of the cases. Additionally, attorneys, FINRA employees, anonymous individuals and other small miscellaneous categories of individuals accounted for the remaining 122 (21 percent) cases.

2014 Visitor Demographics		
Visitor Type:	2013 Total	2014 Total
Investor	174	142
Broker	194	254
Brokerage Firm	47	53
Attorney	39	37
FINRA Employee	30	18
Public Company	2	4
Arbitrator	1	2
Contractor	0	1
Anonymous	34	19
Other	46	45
<b>Totals</b>	<b>567</b>	<b>575</b>

During 2014, the office received 254 broker cases, which represent a 31 percent increase compared to 2013. Broker cases consist of inquiries and concerns from both current and former brokers. Regardless of their status in the industry, almost all raised questions or issues pertaining to registration matters and FINRA’s BrokerCheck program.

Investors most often contacted the Ombudsman for information about the investor complaint process and FINRA’s dispute resolution forum, and the majority of these inquiries were related to arbitration policies and processes. Firms accounted for 53 cases, a 13 percent increase compared to 2013. Firms contacted the office most often about FINRA’s examination policies, investigative processes, the outcomes of these regulatory processes, and staff decisions pertaining to disciplinary proceedings. Attorneys representing investors, arbitration claimants, firms, and brokers contacted the office to discuss a variety of FINRA rules and policies, and to identify options to move their clients’ issues forward with FINRA staff.

## Visits by Case Type

In 2014, 220 (38 percent) of the total cases the office received consisted of inquiries about various FINRA rules, policies or procedures, as well as other federal or industry regulations.

FINRA-related complaints comprised 42 percent (239) of total cases, which represents a 17 percent increase when compared to 2013. A case is categorized as a FINRA complaint if a constituent raises concerns regarding FINRA policies, procedures, rules or regulations; FINRA staff; any regulatory process such as examinations, investigations, enforcement or disciplinary activity; and the arbitration and mediation processes. All other complaints and regulatory tips regarding suspicious or questionable activity accounted for 110 cases (19 percent) in 2014. These complaints are referred to FINRA's Investor Complaint Program or Office of the Whistleblower for further review.

2014 Total Visits by Case Type		
Case Type:	2013 Total	2014 Total
Inquiries	245	220
FINRA Complaints	204	239
Firm Complaints	42	47
Broker Complaints	10	11
Other Complaints	19	14
Regulatory Tips	43	38
Miscellaneous	4	6
<b>Totals</b>	<b>567</b>	<b>575</b>

## FINRA Inquiries

Broker inquiries most often pertained to the reporting requirements for the Forms U4 and U5, and the subsequent disclosure of the reported information to the public via BrokerCheck on [www.fnra.org](http://www.fnra.org). Brokers also inquired about FINRA's qualification examination process to become or to remain a broker. Investors most often wanted to discuss concerns about their broker and brokerage firms, and sought information about the investor complaint program and dispute resolution forum. Investors also asked about new rules and regulations that may have resulted in their brokerage firm making procedural changes in the administration of their investment accounts. Firms interested in registering with FINRA for the first time or changing their business models and registration status sought information regarding FINRA's new and continuing membership application processes.

### REGULATORY TIP

Reports of suspicious activity and possible violations of regulatory rules by any firm, broker or others in the financial industry.

### FORM U4

Form U4 is filed by a firm to register a broker with FINRA, as well as commence the employment relationship with the broker.

### FORM U5

Form U5 is filed by a firm to terminate the registration of a broker with FINRA, as well as the employment relationship with the broker.

The Ombudsman assisted visitors by explaining or clarifying relevant rules, policies and procedures, or by referring visitors to the appropriate department, subject-matter experts and other resources. (Please see Appendix A for a list of resources related to the most frequently asked questions received by the Ombudsman.)

## FINRA Complaints

All cases involving FINRA complaints are designated to a department based on function or area of responsibility. For example, complaints related to Member Regulation, Market Regulation and the Office of Fraud Detection frequently involve sales practice examination, investigative and review processes. Enforcement complaints may pertain to investigative techniques or sanctioning decisions. Finance matters may relate to issues involving the processing of fees or the issuance of refunds.

### 2014 FINRA Complaints by Department

Departments	2013 Total	2014 Total
Registration and Disclosure	45	87
Member Regulation—Sales Practice	39	46
Dispute Resolution	30	24
Enforcement	30	18
Office of Fraud Detection and Market Intelligence	13	14
Market Regulation	7	8
Market Operations	2	7
Member Regulation—Other	8	7
Finance	4	6
Technology	5	4
Other	21	18
<b>Totals</b>	<b>204</b>	<b>239</b>

**Brokers must amend their Form U4 within 30 days of the disclosure event.**

**A disclosure event is any matter that is required to be reported on Forms U4 and U5, such as criminal actions, regulatory disciplinary actions, civil judicial actions, customer complaints, arbitrations and civil actions terminations, and financial matters.**

---

#### **EXAMINATION PROCESS**

**Cases related to sales practice or the cyclical inspections of firms.**

---

#### **CAUSE EXAMINATIONS**

**Cases related to targeted investigations triggered by specific events, regulatory tips or regulatory concerns.**

---

#### **REVIEW PROCESS**

**Cases related to assessments of membership applications, advertising regulation reviews and corporate finance reviews of underwritings.**

## **Summary of 2014 Case Trends**

### **Registration and Disclosure Requirements per Forms U4/U5**

Registration and disclosure cases concerned broker disclosures that are available to the public via BrokerCheck, Form U4 reporting requirements, the Form U5 termination process and late disclosure fees. Brokers typically contacted the Ombudsman regarding public disclosure of civil and criminal events that were either aged matters or matters the brokers believed were unrelated to the financial industry. Brokers also contacted the Ombudsman regarding the disclosure of unsettled or unsubstantiated customer complaints and modifications made to BrokerCheck in 2014. Among other things, the modifications highlighted certain information related to a broker's disciplinary or work history on the BrokerCheck summary page, and made certain civil actions permanently available in BrokerCheck. Brokers noted that in order for the public to obtain a comprehensive explanation of a disclosure event, one must take additional steps to view details.

There also was an increase in broker cases related to late fees charged when a qualification exam was cancelled within 10 business days of the test date, and from the late disclosure of bankruptcies and other reportable events via the Form U4.

### **Regulatory Process (Examinations, Investigations and Reviews)**

FINRA's regulatory process includes routine or cyclical examinations of firm operations, as well as cause examinations, investigations and reviews of both firm and broker activities prompted by suspicious activity or customer complaints. In many cases constituents disagreed with the staff's assessment of or the outcome of regulatory matters, the manner in which a rule, policy or procedure was interpreted and applied by staff, as well as the timeline of these events. Broker and firm cases often addressed a concern that the duration of examinations, investigations, and reviews were too lengthy and resulted in regulatory uncertainty impacting their employment and business plans.

### **Arbitration Process**

FINRA is the administrator for a neutral dispute resolution forum offering both arbitration and mediation services to assist in the resolution of disputes among and between investors, brokers and firms. Arbitration parties, investors, brokers, firms and their attorneys initiated contact with the Ombudsman to discuss arbitration rules, policies and procedures, and arbitrator actions. Parties also contacted the Ombudsman to discuss FINRA's responsibilities as the administrator for the forum and staff's responsiveness to inquiries. The office also discussed with visitors the process for collecting an award and overturning a dissatisfactory award.

## **Investor Concerns**

Investors contacted the Office to discuss actions taken by brokers and firms with respect to their investment accounts. The Ombudsman used these contacts to explain the customer complaint process and referred visitors to the Investor Complaint Center and other FINRA and non-FINRA resources. When investors disagreed with the outcome of FINRA's review of their complaint, the Ombudsman reviewed the matter to determine if the issue was resolved pursuant to relevant policies and/or escalated the matter. Where investors sought reimbursement of alleged damages, the Ombudsman provided information regarding the arbitration and mediation process via FINRA's dispute resolution forum.

## **Regulatory Policy**

Regulatory policy visits generally related to questions or complaints about FINRA rules and regulations, federal securities laws enforced by FINRA, interpretive materials and/or regulatory policies. Investors, brokers and firms contacted the Ombudsman regarding various rules and regulations ranging from pattern day-trading rules and margin requirements to social media. The Ombudsman provided clarity regarding regulatory policy topics by referring the constituents to the pertinent rules and regulations, *Regulatory and Informational Notices*, interpretive and exemptive letters, and subject-matter experts. Where questions remained regarding the regulatory treatment of a specific situation, the Ombudsman referred the visitor to the pertinent examining District Office and the interpretive letter process offered by the Office of the General Counsel for regulatory and interpretive guidance.







## Case Resolutions

The Ombudsman responded to constituents by reviewing the cases presented; researching and providing clarification of applicable procedures, rules and regulations; and referring the constituent to appropriate resources and offices within FINRA. The Ombudsman’s review also included facilitating discussions with staff, conducting shuttle diplomacy between the constituent and the business unit, and when necessary, reviewing regulatory documents such as examination reports, investigative files and on-the-record testimony. The Ombudsman listened to arbitration tapes, reviewed arbitration files, interviewed staff, consulted subject-matter experts, and escalated matters to senior management, as appropriate.

During 2014, the Ombudsman periodically met with FINRA’s Chief Executive Officer and the Audit Committee of FINRA’s Board of Governors to share statistics and trends regarding the cases received by the Ombudsman’s Office. The Office also met with department managers to review statistics and trends specific to their area of responsibility and discuss options to address questions and issues raised frequently.

### To contact the FINRA Ombudsman:

- |   |          |   |
|---|----------|---|
|  | Option 1 | Call toll-free at (888) 700-0028, weekdays from 9 a.m. to 5 p.m., ET          |
|  | Option 2 | <u>Submit an inquiry or concern</u> online— <i>anonymously</i> , if preferred |
|  | Option 3 | Email <i>ombuds@finra.org</i>   |
|  | Option 4 | Write to the FINRA Ombudsman<br>9509 Key West Avenue, Rockville, MD 20850     |

## Appendix A: FINRA Resources

### Dispute Resolution Process

- ▶ *Overview of Arbitration and Mediation*: A general description of the arbitration and mediation process available for resolving conflicts with a broker or firm.
- ▶ *Initiate an Arbitration or Mediation*: General information on how to commence an arbitration or mediation.
- ▶ *Arbitration Process*: Information about how to file an arbitration claim, answer a claim, select an arbitrator, and more.

### Investor Assistance

- ▶ *Investor Complaint Center*: Allows the online reporting system of any fraudulent or suspicious activities by brokers or firms.
- ▶ *FINRA Securities Helpline for Seniors*: A toll-free number (844) 57-HELPS (844-574-3577) that senior investors can call to get assistance from FINRA or raise concerns about issues with brokerage accounts and investments.

### Regulatory Resources

- ▶ *FINRA's Office of the Whistleblower*: Regulatory tips, via the hotline (866-96-FINRA) or mailbox ([whistleblower@finra.org](mailto:whistleblower@finra.org)), are reviewed on an expedited basis by senior staff, and those warranting additional review and investigation are subject to an expedited regulatory response.
- ▶ *2015 Regulatory and Examination Priorities Letter*: The annual regulatory and examination priorities letter highlights both emerging and existing risks.
- ▶ *FINRA Provides Guidance on its Enforcement Process: Regulatory Notice 09-17* describes the investigative and enforcement process.

### Registration and Disclosure Process

- ▶ *Registered Representatives Brochure*: A brochure for brokers to use in all phases of their career in the securities industry.
- ▶ *Broker Comment Request Form*: The form former brokers may use to provide an update or context to information disclosed via BrokerCheck.
- ▶ *Central Registration Depository Individual Snapshot Report*: A Snapshot contains information that has been reported to FINRA about an individual via Forms U4 or U5.