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April 27, 2012

VIA ELECTRONIC SUBMISSION

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

Re: FINRA Regulatory Notice 12-10, Request for Comments on Ways to Facilitate and Increase Investor Use of BrokerCheck Information

Dear Ms. Asquith,

The Investor Rights Clinic at Pace Law School (“PIRC”),¹ operating through John Jay Legal Services, Inc., welcomes the opportunity to comment on the scope of information provided in BrokerCheck reports and the ways in which FINRA can facilitate and increase investor use of BrokerCheck information. PIRC fully supports the disclosure of additional information, such as brokers’ educational backgrounds, professional designations, examination scores and comments related to a broker’s termination in the BrokerCheck reports. Additionally, granting for-profit companies access to BrokerCheck information for commercial use could be a meaningful way to increase investor exposure to such information. PIRC believes that these additional disclosures, the commercial use of BrokerCheck information, and meaningful alterations to the report design, format and content, could all enhance investor access to and understanding of the information disclosed.

Information Displayed

We believe investors should be provided with as much information as possible about their brokers, or prospective brokers, so they are positioned to make informed decisions about

¹ PIRC opened in 1997 as the nation’s first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, *SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors- Levitt Responds to Concerns Voiced At Town Meetings* (Nov. 12, 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/91-101.txt>.

whom to entrust with their money. Withholding relevant information from the investing public will not result in an accurate portrayal of the member firms and associated person (APs), and contradicts the purpose of BrokerCheck, established in 1988 “to provide the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons.”² PIRC supports disclosure of information possessed by FINRA which relates to broker education, professional designations, and qualification exam scores. We believe disclosure of this information comports with the fundamental purpose of BrokerCheck, as stated by FINRA, and is information on which an investor should be able to reasonably rely when selecting a financial services professional.

In response to comments which oppose exam score disclosure, the concerns expressed could be alleviated in large part by indicating on the report whether the broker passed or failed the exam, with the actual score in parenthesis. As discussed below, BrokerCheck reports could contain hyperlinks which direct investors to a window containing information about the purpose of the test and the significance, or lack thereof, of a particular numerical score.

Adjust Report Design, Format and Content

Because PIRC regularly represents unsophisticated investors of modest means, we emphatically support the addition of educational content to BrokerCheck as one means of curbing investor illiteracy. For example, use of hyperlinks in reports to allow investors to “click” unfamiliar terms and be automatically re-directed to a window which provides an explanation of that term would be extremely helpful. This additional information may allow for a deeper understanding of the information in the respective report which would otherwise have gone unrecognized. While a link to separate glossary, guide and/or informational website would also be helpful, the ability to click through to the definition of an unfamiliar term improves user-friendliness and, we believe, would enhance the utility of BrokerCheck and reduce investor illiteracy.

We also suggest that BrokerCheck reports include information about the broker dating back to the time of registration. While PIRC applauds FINRA’s 2010 decision to extend the reporting period from two years to ten years, PIRC respectfully asserts that a broker’s *entire* history is relevant to the investing public, not just what has transpired in the past ten years. Additionally, the information in the reports should include complete court action histories, including disclosure of all felony and misdemeanor charges involving investment-related business, fraud, wrongful taking of property, bribery, forgery, and other property crimes.³ PIRC

² See SEC Office of Investor Education and Advocacy Staff, *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers*, n.35 (Jan. 2011), citing Exchange Act Release No. 25604 53 Fed. Reg. 1487 (proposed April 20, 1988), available at <http://www.sec.gov/news/studies/2011/919bstudy.pdf>.

³ John Wasick, *What You Should Know About Your Adviser*, REUTERS (Mar. 5, 2012), available at <http://www.reuters.com/article/2012/03/05/us-column-wasik-finra-idUSTRE8241TO20120305>.

also supports the disclosure of employment termination circumstances and bases, which may reveal a broker's proclivity for misconduct. This type of information is certainly relevant to an investor's decision to entrust her life's savings to a particular broker who is often a stranger to the investor. Disclosure of this nature also offers the additional benefit of potential deterrence, providing a strong incentive for members and APs to avoid misconduct because information pertaining to misdeeds will be made available to investors.⁴ The expected deterrent effect would also help to restore investor trust and confidence in the integrity of the market.

PIRC also suggests that information pertaining to a brokers' termination be accompanied by a description explaining the relevant facts and circumstances surrounding AP employment terminations. This information could certainly be relevant to a customer as it is a direct reflection of the broker's job performance and professionalism. Moreover, such commentary could be favorable to brokers whose positions were terminated for unremarkable reasons. This too may augment the investing public's sentiment regarding market integrity, as transparency, or "sunlight," is believed by many to be the most effective disinfectant.⁵

With respect to the actual format and layout of the report, PIRC suggests that information pertaining to customer complaints and enforcement proceedings be moved forward in the presentation of information. This is typically the type of information which interests investors most, and presenting it prominently would make it more readily accessible. PIRC also supports addition of a concise description of disclosure events in the summary report. The initial summary report may be as far as some investors proceed in their research, and the addition of this information in an abbreviated format may substantially improve investor awareness of prior misconduct. Additionally, with respect to member firms, the number of disclosure events may be so voluminous that the only way for an investor to make sense of it would be to provide a summary table which consolidates the information into a "digestible" format, perhaps using charts or other infographics to summarize a member firm's regulatory, litigation and dispute resolution histories.⁶

PIRC is cognizant of the need to balance the interests of members and APs with investor education and protection. Therefore, PIRC suggests that FINRA implement a more effective procedure in which member firms and APs can correct or expunge inaccurate or misleading information. The existence of a meaningful process for making such corrections is essential to both the protection of brokers and the dissemination of accurate information to investors.

⁴ *Id.*

⁵ Louis Brandeis, *Other People's Money, Ch. V, What Publicity Can Do*, HARPER'S WEEKLY (Dec. 20, 1913), available at <http://www.law.louisville.edu/library/collections/brandeis/node/196>.

⁶ Edward Wyatt, *Wall Street's Repeat Violations, Despite Repeated Promises*, N.Y. TIMES (Nov. 11, 2011), infographic available at <http://www.nytimes.com/interactive/2011/11/08/business/Wall-Streets-Repeat-Violations-Despite-PromisesStsssss.html?ref=business#>.

Enhance BrokerCheck Investor Awareness

PIRC is troubled by the 2009 study FINRA cited in Notice to Members 12-10, which determined a mere fifteen percent of respondents claimed they had checked a financial advisor's background with a state or federal regulator.⁷ Another source indicates the actual number is closer to one in every twenty customers who conduct this sort of research presently.⁸ Like FINRA, PIRC strives to empower investors by educating them and encouraging the use of informational resources like BrokerCheck to investigate their brokers and investment firms and be better positioned to make informed decisions. PIRC believes that increasing investor awareness is of paramount importance, because, after all, what good is increasing disclosed information if the investing public never sees it?

In order to promote investor awareness, PIRC suggests that FINRA take the relatively simple step of including a direct link or "button" which leads to BrokerCheck on the FINRA homepage accompanied by a brief description of the information BrokerCheck provides. In its current set up, once a visitor arrives at FINRA.org, it is not readily apparent how to access BrokerCheck. Many investors, particularly the elderly, or those who are less educated or internet savvy, may benefit from a more conspicuous path to access BrokerCheck. Similarly, FINRA could require that members include a direct link to BrokerCheck on their websites and other public communications. This would obviously be a more contested undertaking, but it could produce significant results. While investors may not visit FINRA's website, or even know of its existence, they almost certainly visit the website of their broker.

Another possible method to promote and expand investor awareness is to provide informational materials to FINRA members and other financial service providers to distribute to their clients. For example, many people rely heavily on their accountants for financial advice. If FINRA made informational materials available to accountants it may greatly increase the number of investors such materials reach. FINRA could also require members to distribute informational BrokerCheck literature to all customers. Literature of this sort could be provided to customers along with account opening documents, customer profiles and the like. In the case of electronically-established accounts, such materials could be sent to customers via e-mail. At the very least, this would ensure that all new customers are provided with some notification about the existence of and information available from BrokerCheck. Additionally, FINRA could require member firms to include a brief notation regarding BrokerCheck and/or its internet address on each and every account statement, similar to the disclaimers which aim to inform

⁷ FINRA Regulatory Notice 12-10, *FINRA BrokerCheck: FINRA Requests Comments on Ways to Facilitate and Increase Investor Use of BrokerCheck Information*, n. 9 (Feb. 2012), available at <http://www.finra.org/Industry/Regulation/Notices/2012/P125621>.

⁸ Jack Waymire, a representative of The Paladin Registry, stated that his surveys reveal less than five percent of customers review compliance records of advisers before they hire them. Dan Jamieson, *FINRA may give up lock on BrokerCheck*, INVESTMENT NEWS (Mar. 1, 2012), available at <http://www.investmentnews.com/article/20120301/FREE/120309986>.

investors that their accounts are not FDIC-insured. This would be a fairly inexpensive and easy modification for member firms to implement.

FINRA could also take strides to enhance its social networking presence, expanding on its use of Twitter⁹ and YouTube.¹⁰ This would be a relatively low-cost endeavor that could have a significantly favorable impact on investor awareness of BrokerCheck.¹¹ Moreover active social media use dedicated to BrokerCheck could better inform investors and perhaps increase dialogue about other relevant topics beyond that of BrokerCheck. Social media is a powerful communication tool and PIRC believes it would be in the best interest of the investing public to expand FINRA's existing social media presence with messages related directly to BrokerCheck, such as tutorial content that informs investors of BrokerCheck features and functions.

Commercial Use

PIRC supports making BrokerCheck data available to for-profit companies for commercial use. We anticipate that for-profit users would develop a variety of insightful analytics from the data and actively pursue investors to use their services. These commercial users would likely make greater efforts to attract investor attention and deploy more resources to achieve that objective. Presumably, the ultimate result would be increased investor awareness and consumption of the information BrokerCheck provides, albeit from alternative sources, who could be reasonably expected to add value to the information through proprietary analysis.

The commercial disclosure of BrokerCheck information could also have a meaningful contribution to the organization, analysis and presentation of the existing data. As we noted above, the voluminous reports of major brokerage firms can contain hundreds of pages of disclosure events, and in some instances, result in a report exceeding one-thousand pages.¹² It is highly unlikely investors will make sense of such voluminous information, and we know of no data aggregation or analytical services provided by FINRA. Private companies could provide a valuable service by sifting through the data and developing useful summaries and metrics. The information could also be used to compare the performance of brokers and brokerage firms and to establish behavioral norms.¹³ The presentation of the currently available information in a

⁹ FINRA presently maintains Twitter accounts, respectively *available at* https://twitter.com/#!/FINRA_News, https://twitter.com/#!/FINRA_Education, and https://twitter.com/#!/FINRA_Investor.

¹⁰ FINRA and the FINRA Investor Education Foundation both presently maintain YouTube channels, respectively *available at* <http://www.youtube.com/user/finraonline> and <http://www.youtube.com/user/FINRAFoundation>.

¹¹ See Samuel Axon, *How Small Businesses are Using Social Media for Real Results*, Mar. 22, 2010 *available at* <http://mashable.com/2010/03/22/small-business-social-media-results/>.

¹² The Morgan Stanley disciplinary record spans over 500 pages; the UBS disciplinary record approximates 800 pages, and Merrill Lynch's is roughly approximately 1,200 pages. See Edward Siedle, *FINRA BrokerCheck System Collapsing Under Weight of Massive Disclosed Industry Wrongdoing*, FORBES (Oct. 13, 2011), *available at* <http://www.forbes.com/sites/edwardsiedle/2011/10/13/finra-brokercheck-system-collapsing-under-weight-of-massive-disclosed-industry-wrongdoing/>.

¹³ Jamieson, *supra* note 8.

more comprehensible, user-friendly format could take huge strides toward investor education and empowerment.

PIRC is mindful of concerns FINRA may have about releasing BrokerCheck information without any restrictions on its presentation or secondary commercial uses. To alleviate much of that concern, PIRC suggests that FINRA require commercial secondary users to sign a licensing agreement which obligates them to make detailed disclosures when presenting any data, number, analysis, metric or summary that FINRA did not directly provide. Additionally, commercial users should be prohibited from implying FINRA endorsement or approval, especially in instances when FINRA's raw data has been altered.

Conclusion

For the foregoing reasons, PIRC supports disclosure of additional information on member and AP BrokerCheck reports. PIRC also supports secondary commercial use of BrokerCheck information because of the increased investor awareness it would likely generate and the anticipated data analysis and disclosure that would presumably result. Moreover, PIRC believes that adjustments to the report format are warranted, as well as inclusion of educational hyperlinks, increased public awareness, and easier internet access to BrokerCheck. Finally, we believe member firms should assist in augmenting public awareness in BrokerCheck by providing related information about the service in communications made to the customers and the investing public.

Respectfully Submitted,

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