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ASSOCIATED OFFICE  
LOS ANGELES

April 25, 2012

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

Re: Proposed Changes to Brokercheck

Dear Ms. Asquith:

We have had the pleasure and privilege of representing investors in securities arbitration matters for the past 20 years. We dedicate ourselves to assisting investors to recover losses as a result of broker misconduct. We take our work seriously and don't undertake representation unless we are convinced that a genuine wrong has been committed.

Our experience has been that the securities industry improves each time the member firms and associated persons (brokers) are required to disclose more information about their regulatory and criminal histories as well as their history of complaints, lawsuits, and arbitration claims. As the cliché goes, sunlight is the best disinfectant.

More public disclosure and easier access to it means clients and potential clients will have more information to decide whether to entrust their life savings to a specific firm or associated person.

### **Time Frames for Public Disclosures**

We take the position that there should be no artificial time-frames imposed on the information reported on Brokercheck. A broker stands in the rare position where a single recommendation or action taken on one day can have a life-changing effect on his or her client's entire future. Brokers and their firms bear a heavy, heavy responsibility for their clients' futures, and are well compensated for their efforts. There must, however, be checks and balances in this system to prevent abuse. Full disclosure is the best check available to protect the public.

All too often, we see brokers and firms who have little regard for the impact of their actions on their clients. Unfortunately, it is the client who has to live with the consequences of the broker's actions.

In the interest of giving potential clients the maximum amount of information before investing their life savings with a broker or firm, we believe it is not only appropriate, but mandatory, that all customer, regulatory, and criminal complaints reported to FINRA be publicly disclosed with no regard to the reporting time frame. Already, several state securities regulators make this information publicly available. The problem is that unless a broker is registered to do business in one of those states *and* a member of the public knows to ask that specific regulator for it, that additional information remains locked away from public view by FINRA. Locking potentially helpful information away from public scrutiny serves no purpose.

The securities industry fights hard against anything threatening its ability to prospect for customers and sell investment products. Full disclosure of complaints, arbitrations, regulatory actions and criminal matters will make it hard for troubled brokers to sell product to informed clients. Full and complete Brokercheck disclosure lets every broker know with no uncertainty that the consequences from each recommendation, decision, and action will impact the ability to earn future business. As a result, full public disclosure will serve as a long-term market-driven incentive on brokers to curb reckless behaviors and to handle their clients' money with great care.

### **Brokercheck Should Disclose More Information**

Earlier this month, we looked up a broker-dealer with which our firm recently settled an arbitration claim on behalf of a client. Prior to the settlement, the firm's Brokercheck report disclosed the existence of the pending arbitration claim, the dollar amount, and general allegations. Today, there is absolutely no mention of the dispute or settlement on that same firm's Brokercheck report. Although the settlement contained a confidentiality provision that the Claimant can not disclose the terms of the settlement, we are fairly certain FINRA did not agree to allow the broker-dealer to whitewash the dispute and settlement from Brokercheck.

The very fact member firms, with the obligation to deal fairly with the public and uphold the high standards of commercial behavior, still hide disputes and settlements from public scrutiny should frighten every regulator, client, and potential client. If the purpose of "self-regulation" is for member firms to regulate their activities without governmental intervention, what good does it do to allow each firm to hide its problems from public view?

When a potential client can see the entire history of a firm's discipline and arbitration claims, he or she can make an informed decision whether to risk his or her life-savings with the firm. Full disclosure leads to efficient market-driven regulation: letting clients can decide for themselves who will handle their funds. Successful firms and brokers will thrive while sloppy firms and brokers will fail.

### **Test Scores, Education, and Certifications**

The statement by one commentator of the old industry maxim that a passing grade of 71, one point higher than the minimum passing score on the Series 7 exam, means a registered representative "studied too hard," is outright scary. The exam is the minimal entrance hurdle for brokers to work with other people's money. No one can study too much for such a responsibility. The exam grades should be disclosed. People want the best skill sets from their brokers. An exam grade, while not then end-all statement about the broker's knowledge, is certainly an important element in knowing whether your broker is truly an expert or just "studied too hard."

Full disclosure of exam grades (available already from some states regulatory agencies) once again will have the effect of improved regulation by economic selection. By giving a potential client complete information enables the client to make an informed decision whether to trust a given broker. Those brokers who study harder; gain at least more theoretical expertise; and score higher will succeed. Those brokers, who “studied too hard” and earned 71’s will likely find other opportunities more suited to their natural skill sets.

The same goes for the broker’s educational background and certifications. In fact, FINRA not too long ago tried cracking down on the more questionable certifications and titles brokers bestowed upon themselves. There certainly is no harm in requiring a broker to report to FINRA and the public all the so-called titles he or she uses in working with the public.

Lastly on this point, Brokercheck should disclose awards and commendations earned by brokers. Whether it might be an award for sales, a commendation for community service, or recognition for charitable works, positive items should also be made available for the public. By making good deeds a matter of public record encourages more of the same, and lets potential clients get a full, fair, and complete picture of their potential broker as both a professional and a human being.

### **Uniformity between Brokercheck and IAPD**

It would be immensely helpful to bring Brokercheck and the IAPD into sync with one another. There are too many instances of a troubled broker becoming an investment advisor and the public is forced to look at two separate systems to try to locate the “advisor’s” complete history.

In addition, although not in FINRA’S bailiwick, it is worth noting there is a massive hole in the IAPD reporting system, specifically the fact SEC-registered Registered Investment Advisors do not have to disclose the existence of arbitration claims or the results. This gap needs to be fixed.

The more uniformity and ease of access to the regulatory information means the more likely potential clients can make informed decisions.

### **Links to Other Websites**

We agree that FINRA should provide at least the links to other websites such as state securities regulators, state insurance regulators, state banking regulators, and the various certifying entities such as the CFP board and CFA Institute. There is no harm, and certainly a great benefit, in telling members of the public where they can learn more about their brokers and/or advisors.

### **Summary Displays of Brokercheck Information**

One of the most meaningful and concise displays of information is the chart of the number of criminal, regulatory, employment, and customer complaints divided by whether the matters have been resolved or are pending. That detailed chart should appear on the Brokercheck summary page. In addition, with some planning for dealing common names, the chart should be easily accessible from any internet search of a broker's name.

On a related note, over the past years, FINRA discovered it has a problem with displaying PDF files in a web browser. Rather than fix the problem, it posted a "solution" which requires end users to change how their computers display the PDF files. It seems logical, in the absence of additional information; FINRA should fix the problem rather than force members of the public to troubleshoot a computer error caused by FINRA'S Brokercheck system.

### **Availability of Information to Private Companies**

As to commercial firms using the information contained in Brokercheck reports, we do not take a position whether such firms may use the information in profit-making ventures. We believe the Brokercheck information should remain free to the public. In no circumstance should FINRA provide to for-profit companies additional disclosure information that does not appear on the Brokercheck report. On a related note, to further protect investors, FINRA should require any for-profit company selling the information contained in Brokercheck to provide all of the information without limitation or redaction.

There is one additional item of concern the Brokercheck web address. Several potential clients advised us that they tried looking up their broker on Brokercheck, but could not figure out how to do it and described a very strange sounding website. When asked what website they went to, all answered [www.brokercheck.com](http://www.brokercheck.com). FINRA has done an excellent job of branding the word

Brokercheck. However, it failed to capture the most logical of internet addresses for its service. Right now, if a client enters [www.brokercheck.com](http://www.brokercheck.com), he or she will find a near useless website occupied by a company called “Land Merchandising Corp.” If the Brokercheck information becomes available to private companies, it seems almost certain that the [www.brokercheck.com](http://www.brokercheck.com) address will be used by a private, for-profit firm, not unlike what happened with the various so-called free credit reporting companies exploiting the phrase “free credit report”. Rather than be surprised at the creative resourcefulness of the free market, FINRA should strongly consider obtaining this domain and putting it to use.

### **Search Engine Accessibility to a Broker’s Records**

If FINRA decides to make its records available to private firms to be sold to the public, those same records should be easily accessible on the internet by way of search engine. There is no reason why a member of the public should pay for “publicly disclosed” information if that information is already available at no charge.

The difficulty of clients understanding they need to go to [www.finra.org](http://www.finra.org), click on the “Investors” link, and then find the link to Brokercheck, can challenge the less technologically sophisticated members of the public. Making a broker’s name and Brokercheck information available to search engines improves the probability a potential client will be able to find the important information about his or her broker.

### **Conclusion**

We support FINRA’S efforts to broaden the disclosure of information on Brokercheck. We are hopeful FINRA will see through the persuasively seductive arguments of the securities industry suggesting that critical information be kept in dark corners away from potential clients’ eyes.


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Thank you for your consideration.

Respectfully,



JONATHAN W. EVANS



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