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October 25, 2013

The Honorable Mary Jo White
Chair, Securities and Exchange Commission
100 F St., N.E.
Washington, D.C. 20549

Dear Chair White:

I am writing regarding concerns I have with certain Financial Industry Regulatory Authority (FINRA) programs and policies aimed at protecting investors from unscrupulous brokers. In light of recent press reports regarding inadequacies in FINRA's broker-dealer disciplinary record programs and FINRA arbitration practices, I would strongly to encourage the Securities and Exchange Commission (SEC) to exercise its oversight authority over FINRA by taking appropriate remedial regulatory action. Concurrent with this letter to you, I have sent a letter to FINRA Chair and Chief Executive Officer Richard G. Ketchum explaining in detail the issues that trouble me and asking for his response. A copy of that letter is enclosed.

The first issue that I raised with Chair Ketchum concerns BrokerCheck, FINRA's web-based system that allows investors to learn about any disciplinary actions taken against a broker. BrokerCheck is a critical consumer self-help tool. But all too frequently, brokers are able to expunge arbitration awards and settlements from the BrokerCheck data base, depriving investors of highly relevant information. Current FINRA rules allow brokers to request expungement from the arbitrator before whom a claim is pending. Despite the fact that FINRA rules contemplate expungement only in very limited circumstances, according to a recent study, in over 90 percent of settlements and over half of awards, arbitrators granted brokers' requests to expunge.[1] Worse, in many cases, brokers conditioned settlement on the investor's agreement not to oppose expungement. Plainly, the FINRA rules need to be strengthened. First, in my view, all arbitration awards and settlements should be reported by BrokerCheck. Expungement should truly be rare, and arbitrators should not be allowed to decide that an award should be expunged. Rather, FINRA should establish an internal process that determines whether a particular award or settlement meets stringent expungement criteria. In addition FINRA rules should flatly prohibit expungement provisions in settlement agreements.

A second and related issue concerns unpaid arbitration awards. According to FINRA, $51 million dollars in arbitration awards granted in 2011 remain unpaid today. Investors are required by their brokerage agreements to participate in FINRA's arbitration process when they have a claim against a broker. If an investor successfully proves their claim but is never paid, the integrity of the entire system is undermined. Yet, that is precisely what happens in far too many cases, and it is unacceptable. After an award is granted, deadbeat brokers simply close their firm doors or declare bankruptcy, and the investor is

[1] Expungement Study of the Public Investors Arbitration Bar Association, October 16, 2013, available at http://piaba.org/system/files/pdfs/PIABA%20STUDY%20%20STOCKBROKER%20ARBITRATION%20SLATES%20WIPED%20CLEAN%209%20OUT%20OF%2010%20TIMES%20WHEN%20%E2%80%9CEXPUNGEMENT%E2%80%9D%20SOUGHT%20IN%20SETTLED%20CASES.pdf

never paid. The SEC is partly to blame for this. Current regulations allow brokerages to open with far too little capital, certainly not enough to pay an arbitration award. The SEC needs to investigate these deadbeat brokers and amend existing or promulgate new rules to address this problem. FINRA is apparently considering a requirement that brokers carry insurance, a creative idea that certainly merits further exploration.

Finally, "rogue brokers" continue to vex the securities industry. The *Wall Street Journal* recently reported[2] that over 5,000 brokers from firms expelled by FINRA are still selling securities. These brokers reportedly migrate from one unsavory firm to another, often leaving a trail of unpaid arbitration claims. After studying the disciplinary records of these brokers, it was found that, on average, a broker who left at least two firms that were eventually expelled and who joined another firm had greater than eight times as many arbitration claims and disclosures as the industry average. If brokers with that number of disciplinary disclosures are allowed to continue practicing, FINRA needs to revise its disciplinary system. And as the agency charged with overseeing FINRA, the SEC, too, must address this issue.

More than twenty years ago, as the chair of the House Energy and Commerce Committee's Subcommittee on Telecommunications and Finance, I investigated and held hearings on these same issues. After countless hours of Congressional and agency staff investigation, including a Government Accounting Office Report, testimony from numerous witnesses, and considerable correspondence between myself and then-SEC Chair Arthur Levitt, Jr., I believed the problems had been solved by the SEC and the industry. It is unacceptable to find that they have surfaced again.

I look forward to your response addressing these concerns. Please contact Lisa Foster or Justin Slaughter on my staff at 202-224-2472 with any questions. I request a response to this letter by November 13, 2013.

Sincerely,

Edward J. Markey

Edward J. Markey
United States Senator

[2] Eaglesham, Jean and Barry, Rob, "More Than 5,000 Stockbrokers From Expelled Firms Still Selling Securities". Wall Street Journal, October 16, 2013.