



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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December 23, 2014

Mr. Tom Cochran
CEO and Executive Director
The United States Conference of Mayors
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Cochran:

On behalf of the North American Securities Administrators Association (NASAA),¹ I write to call your attention to municipal legislation that prohibits certain employers from requesting credit history information (“credit checks”) from prospective employees except as permitted under state or federal law.² Generally speaking, such legislation usually contains an exclusion for credit checks permitted or required under state or federal law. Such exclusions, however, would benefit from an explicit reference to the broker-dealer industry self-regulatory organization operating under federal statutory oversight,³ the Financial Industry Regulatory Authority (“FINRA”). Though NASAA does not have a position regarding the use of certain specific information as part of background checks, NASAA is concerned that, without explicit reference to FINRA in an exclusion for state and federal law, there may remain ambiguity surrounding FINRA’s authority to conduct background checks.

Broker-dealers employ individuals to provide financial services to investors. Known as “agents” for state-law purposes, these individuals are often registered in the states where they are conducting business. An agent must also register with FINRA and is subject to the FINRA rules requiring good character, business reputation, qualifications and experience. This registration framework ensures that each broker-dealer agent is subject to the requirements of the states in

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, as well as the Canadian provincial regulators and the Mexican securities regulator. NASAA is the voice of securities agencies responsible for investor protection and efficient capital formation.

² Such legislation is currently being considered in New York City (Int. No. 261; sponsored and introduced by NYC Councilman Brad Lander) and the District of Columbia (B20-65; sponsored and introduced by DC Councilman Jim Graham). On May 1, 2012, the City of Chicago enacted a law (SO2011-7287) that prohibits employers from using credit history as a basis for making employment decisions. It is important to note that not all legislation prohibiting employers from requesting credit history information from prospective employees presents the policy concerns identified in this letter.

³ Section 15A of Securities and Exchange Act of 1934, 15 U.S.C. 78o-3 (governing registered securities associations) and Section 19 of the Securities and Exchange Act of 1934, 15 U.S.C. 78s (governing registration, responsibilities and oversight of self-regulatory organizations). 15 U.S.C. §§ 78o-3, 78s.

which the agent conducts business, while also ensuring that states have notice of the presence of an agent wishing to conduct business in their jurisdictions. Such notice allows a state to make a registration determination and, should the agent's conduct raise regulatory concerns or result in investor complaints, have information on the agent's business and presence in the relevant jurisdiction.

NASAA supports requirements to ensure the accuracy of information disclosed on the Uniform Application for Industry Registration and Transfer, also referred to as Form U4. NASAA similarly supports FINRA's requirement that broker-dealer firms assess the good character, business reputation, qualifications and experience of a broker-dealer agent, as described in FINRA 3110(e), which became effective on December 1, 2014. NASAA also supports FINRA's requirement that firms have written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in a broker-dealer agent's Form U4.⁴

State securities regulators and FINRA rely on the Form U4 and the Central Registration Depository ("CRD"), the central licensing and registration system for the U.S. securities industry and its regulators, to administer the broker-dealer agent registration process in a uniform and efficient manner. Applicants submit Form U4 through the CRD, which is both a filing and depository tool. The CRD allows for efficient dissemination to and regulator review of the information broker-dealer agent applicants submit while also providing important disclosures to the investor community through its public-facing tool, BrokerCheck. Some investors also utilize state freedom of information laws to gather broker information contained in Central Registration Depository snapshot reports. While these laws are generally broader in scope and contain information not found in BrokerCheck, CRD snapshot reports also contain information drawn from the Form U4.

Applicants for broker-dealer registration submit information and make disclosures to the CRD through Form U4, which provides information used by regulators to make decisions on applicants' registrations. Among the disclosures required in Form U4, certain disclosures focus on bankruptcies and outstanding judgments or liens and applicants acknowledge that regulators or employers may conduct further verifications or investigations.⁵ These disclosures are not designed to present a barrier to entering the industry, but rather to provide firms, regulators and investors relevant and accurate information on each broker-dealer agent.

In light of the Form U4's role as a tool for both state securities regulators and FINRA in carrying out the regulatory responsibilities under applicable law, NASAA emphasizes the importance of explicitly referring to FINRA in an exclusion in any legislation that prohibits employers from requesting credit history information from prospective employees. Thank you for your attention to these concerns. Should you or any of your members have questions or require additional information, please do not hesitate to contact me or Anya Coverman,

⁴ See NASAA Letter to Securities and Exchange Commission (October 22, 2014), *available at* <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-Letter-Release-No.-34-73238-File-Number-SR-FINRA-2014-038.pdf>

⁵ See pages 14, 15, 19 and 33 of Form U4.

NASAA's Deputy Director of Policy, or A.Valerie Mirko, NASAA's Deputy General Counsel,
at (202) 737-0900.

Sincerely,

A handwritten signature in black ink, appearing to read "William Beatty". The signature is fluid and cursive, with a large initial "W" and a stylized "B".

William Beatty
NASAA President and Washington Securities Director