



April 27, 2017

The Honorable Kevin McCarty
California State Assembly
State Capitol, Room 2136
Sacramento, CA 95814

RE: AB 1008, Criminal Background Check Legislation: Oppose Unless Amended

Dear Assemblymember McCarty:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is a national trade association which represents hundreds of large, medium and small broker-dealers, banks and asset managers, many of whom have a strong presence in California. We appreciate the opportunity to provide comments on AB 1008, legislation that would prohibit employers from asking applicants about any criminal history until after a conditional offer of employment has been made. While we applaud the sponsors’ intent, we must respectfully oppose the legislation as currently drafted.

In our industry, employees are entrusted with the care and custody of their clients’ funds – funds which often constitute the life savings of individual investors. Understanding this, the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA) and state law impose requirements which make background checks an important part of the hiring process and which, in certain instances, dictate specific results. There is little benefit to the firm or to the applicant to get to the conditional offer stage only to reject the applicant due to these obligations.

For example, the SEC effectively prohibits any broker-dealer from employing any person convicted within the past 10 years of certain crimes. These restrictions apply to any felony and certain misdemeanors, including but not limited to embezzlement, perjury, counterfeiting, and offenses involving the purchase or sale of a security.

Similarly, Section 15(b)(1) of the Securities Exchange Act of 1934 requires brokers or dealers to register with FINRA (with limited exceptions), and Section 3(a)(39) of the Act states that a person is subject to statutory disqualification if he/she meets certain criteria, including any conviction noted above. This is reiterated in Article III, Section 4 of FINRA’s By-laws.

In addition, FINRA operates Web CRD, the central licensing and registration system for the securities industry and its many regulators. People seeking to be licensed as broker-dealer agents or investment adviser representatives with any of the 50+ state securities departments or the 18 different Self-Regulatory Organizations (SROs) must electronically file a Form U4². On pages 12, 13, 26, 27 and 28, applicants are required to disclose whether they have been charged with or

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. For more information, visit <http://www.sifma.org>.

² FINRA Rev. Form U4:
<http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf>.

convicted of a felony, been charged with or convicted of certain misdemeanors, or been found to have engaged in certain improper conduct by the SEC, Federal or State Regulatory agencies, or FINRA. FINRA places the initial burden of verifying the information from an employee's or prospective employee's Form U-4 on the employer.³ This information is then used by FINRA and by state securities departments to determine whether a person can be registered as a broker.

We would encourage you to provide an exemption for instances where federal, state, local or SRO obligations prohibit or restrict employment based on criminal history. Such an exemption is not unusual in either criminal or credit background check legislation. For example, NYC law enacted in 2015 restricts criminal background checks generally but permits such checks "pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history," and specifically includes "rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended."

The City of San Francisco passed a similar ordinance in 2014 which prohibited criminal background checks generally but permitted them where required by federal or state law. There was then interpretative language stating that federal law included SRO obligations.

We appreciate your consideration of our concerns. Please do not hesitate to contact me at 212-313-1311 or our California lobbyist Joanne Bettencourt at 916-212-5923 if you have any questions.

Sincerely,



Kimberly Chamberlain
Managing Director & Associate General Counsel
State Government Affairs

CC: Chairman Thurmond, Assembly Labor & Employment Committee
Members, Assembly Labor & Employment Committee
Jennifer Richard, Chief Consultant, Assembly Labor & Employment Committee
Joshua White, Republican Policy Consultant

³ FINRA Rule 3110(e).