



May 12, 2016

The Honorable Karen E. Spilka, Chair
Senate Committee on Ways and Means
Massachusetts State House
Room 212
Boston, MA 02133

RE: S. 2271 - An Act Regulating the Use of Credit Reports by Employers

Dear Chair Spilka,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is a national trade association which brings together the shared interests of hundreds of broker-dealers, banks and asset managers, many of whom have a presence in Massachusetts. We are writing to express concern about S. 2271, as currently drafted, which would largely prohibit the use of credit reports by employers.

SIFMA certainly respects the sponsors’ interest in wanting to help people who have experienced financial difficulties get back on their feet through gainful employment. However, in the financial services industry, credit history is a relevant and necessary consideration when making employment decisions. Employees of securities firms have daily and direct access to client funds – funds which represent the dreams and life savings of your friends and neighbors. A person who is facing substantial debt or is in or near bankruptcy or foreclosure could pose a potential risk to these dreams and savings. It is important that securities firms are aware of that risk.

Federal and state securities regulators also recognize the importance of knowing the personal financial circumstances of securities industry representatives. For example, the Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States, and it has a stated mission “to protect America’s investors by making sure the securities industry operates fairly and honestly.”² Section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)) requires brokers or dealers to register with FINRA (with limited exceptions), and FINRA Rule 3110(e) provides that “a member firm must ascertain by investigation the good character, business reputation, qualifications and experience of a job applicant before the firm applies to register that applicant with FINRA.”

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 U4³. On page 14, 15,

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. SIFMA has offices in both New York and Washington, D.C. For more information, visit <http://www.sifma.org>.

² FINRA, *About FINRA*, <http://www.finra.org/AboutFINRA>

³ FINRA Rev. Form U4 <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf>

19, and 33 of the form, applicants are required to disclose whether they have compromised with creditors, filed a voluntary or involuntary bankruptcy petition, have any outstanding judgments or liens, or had a bonding company deny, pay out or revoke a bond. On page 19, applicants also acknowledge that any jurisdiction, SRO, employer or prospective employer may conduct an investigative consumer report. In addition, FINRA requires firms to verify the accuracy and completeness of such information.⁴ Regulators then use the collected information as part of their assessment on whether a license should be granted.

We recognize and appreciate the language in Section 51B(b)(A) that would exclude employers required by federal or state law to use a consumer report for employment purposes. However, due to the securities industry's regulatory oversight structure, the language does not currently incorporate FINRA rules. As such, in order to ensure that securities firms can continue to comply with their SRO obligations, we strongly urge you to modify the language in (A) to read:

“(A) if an employer is required by federal or state law, rule or regulation, or the rules of a self-regulatory organization as defined in Section 3(a)(26) of the Securities and Exchange Act of 1934 (15 U.S.C. § 78(c)(a)(26)) to use a consumer report for employment purposes;”

Alternatively, we would ask you to consider a broader financial institution exemption which is not limited to federally insured institutions and which does not impose a compensation requirement. Connecticut, for example, enacted a law in 2011⁵ which exempts financial institutions and then expressly defines financial institutions to include investment advisors, broker-dealers and entities registered with the Securities and Exchange Commission.

As you may know, roughly 10 states currently restrict the use of credit background checks for employment purposes. The vast majority of these laws contain language which in some way recognizes our industry's need to conduct such checks; even the recent New York City law, which is generally considered to be the strictest of its kind in the nation, includes a provision providing for compliance with SRO obligations. We would be happy to discuss this with you in greater detail at your convenience.

We appreciate the opportunity to provide feedback. Please do not hesitate to contact me at 212-313-1311 or our lobbyists Roger Donoghue and Tara O'Donnell at 617-720-5090 with any questions.

Sincerely,



Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

CC: All Members, Senate Committee on Ways and Means

⁴ FINRA Rule 3110(e)

⁵ Public Act No. 11-223