

STATEMENT OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
BEFORE THE
NEW YORK CITY COMMITTEE ON CIVIL RIGHTS
HEARING ON
INT. NO. 318 – PROHIBITING DISCRIMINATION BASED ON ONE'S
ARREST RECORD OR CRIMINAL CONVICTION

December 3, 2014

The Securities Industry and Financial Markets Association (SIFMA), which represents the shared interests of hundreds of securities firms, banks, and asset managers, holds that – at least for the financial services industry – the ability to conduct criminal background checks must be preserved in this bill in order for the industry to meet its legal and regulatory responsibilities. Under the federal Securities Exchange Act of 1934 and Financial Industry Regulatory Authority (“FINRA”) rules, individuals with certain criminal convictions (including, but not limited to, fraud, embezzlement, and money laundering) are barred from a number of financial services positions. Therefore, we respectfully request your consideration of an amendment to your criminal background check ban legislation, (Int. 318) which would allow financial services employers to continue to comply with their industry-specific obligations—an important consideration already provided by your colleague, Council Member Palma, in her social media privacy legislation that was introduced earlier this year (Int. 224).

While a number of states and cities have introduced legislation with the intent of removing unfair barriers to employment, legislation which prohibits an employer from performing criminal background checks on job applicants conflicts with federal law and financial services regulatory obligations. SIFMA believes that this bill should include language that would allow the financial services industry to comply with its obligations under the Exchange Act, FINRA rules, and any other such federal or state law or regulation.

Legal and Regulatory Requirements Regarding Criminal Convictions

As stated above, federal law and certain regulatory requirements provide at least two separate hiring restrictions concerning individuals convicted of certain crimes, both of which originate from the Exchange Act. The first restriction is a bar from individuals convicted of certain crimes from registering with the Securities Exchange Commission (SEC), which is a requirement to work in a number of financial services positions. The second restriction originates from the Exchange Act’s requirement that certain financial services employees be members of FINRA. Currently, FINRA bars individuals with certain criminal convictions from membership. Moreover, the initial determination of whether or not an individual is disqualified from either SEC registration or FINRA

membership is required to be made by financial services firms – and according to federal regulators, a criminal background check must be performed as part of this determination.

Given the nature of these restrictions and obligations, and the legal and regulatory mechanisms by which they are enforced, SIFMA is concerned that Int. 318, as written, would not allow financial services firms to comply with their existing legal and regulatory obligations. However, we would be more than happy to work with Council Member Jumaane Williams in developing a technical amendment that would permit industry compliance without endangering the integrity of the bill.

We appreciate your consideration of our concerns and look forward to future discussions on an amendment. In the meantime, please call me at 212-313-1200, if you have any questions concerning the securities industry, or visit our website at: www.sifma.org.