

United States Senate

WASHINGTON, DC 20510

March 1, 2018

Robert W. Cook
President and Chief Executive Officer
FINRA
1735 K Street NW
Washington, D.C. 20006

Dear Mr. Cook,

We are writing today to request any information that the Financial Industry Regulatory Authority (FINRA) may have on the prevalence of sexual harassment within the financial services industry. Because FINRA is the primary regulator of brokers, we are interested in learning more about FINRA's efforts to collect data about broker-perpetrated harassment.

Sexual Harassment in the Financial Industry

In recent months, a series of high-profile cases of sexual harassment, abuse, and assault have come to light, forcing a national reckoning on the prevalence of sex discrimination in American workplaces. Though sexual harassment in the entertainment and political industries has dominated the news, it is pervasive throughout the workforce.

The world of finance is not immune from this harassment. The financial services industry, including banks and credit institutions, funds and trusts, securities firms, insurance companies, and monetary authorities, employs over 6 million people.¹ According to EEOC data, the "finance and insurance" sector generated the ninth-largest number of sexual harassment claims filed with the agency from 2005-2015.² And last year, a number of high-level financial managers were forced to step down amid harassment allegations.³

The financial sector, however, has had fewer public revelations of sexual harassment than other industries.⁴ This disparity is not, according to female employees, a sign that sexual

¹ U.S. Department of Labor, Bureau of Labor Statistics, "Industries at a Glance: Finance and Insurance: NAICS 52" (online at <https://www.bls.gov/iag/tgs/iag52.htm>).

² Emily Stewart, "These are the industries with the most reported sexual harassment claims," *Vox* (November 21, 2017) (online at <https://www.vox.com/identities/2017/11/21/16685942/sexual-harassment-industry-service-retail>).

³ "Fidelity chairman deals with fallout from sexual harassment claims," *Reuters* (October 22, 2017) (online at <https://www.reuters.com/article/us-fidelity-conduct/fidelity-chairman-deals-with-fallout-from-sexual-harassment-claims-idUSKBN1CR0PW>); Sarah Krouse and Kirsten Grind, "At Fidelity, New Fallout From Claims of Sexual Harassment, Bullying," *Wall Street Journal* (October 22, 2017) (online at <https://www.wsj.com/articles/at-fidelity-new-fallout-from-claims-of-sexual-harassment-bullying-1508677202>).

⁴ William D. Cohan, "Women Say a Rigged System Allows Wall Street to Hide its Sexual Harassment Problem," *New Yorker* (January 7, 2018) (online at <https://www.newyorker.com/news/news-desk/women-say-rigged-system-allows-wall-street-to-hide-sexual-harassment-problem>).

harassment does not occur: in recent months, women in finance have anonymously reported being “grabbed, kissed out of the blue, humiliated, and propositioned by colleagues and bosses” at work.⁵ Rather, the silence appears to result from strong “cultural and financial forces” in the industry that discourage speaking out,⁶ including the payout of large settlements with non-disclosure agreements to harassment victims, class-action prohibitions, and forced arbitration.⁷

FINRA Regulation of the Securities Industry

FINRA is an independent, self-regulatory organization that promotes “investor protection and market integrity” through regulation of the securities industry. FINRA oversees 3,700 financial firms and 630,000 individual brokers.⁸ Broker-dealers and brokers are required to register with FINRA before engaging the public in securities transactions.⁹ Registered brokers must comply with FINRA rules, pass qualification exams, and engage in continuing education programs to remain in good-standing with the organization.

FINRA maintains a variety of records on individual broker dealers. To register a broker with FINRA, financial firms must file a Uniform Application for Securities Industry Registration or Transfer (a “Form U4”), which includes information on the broker’s employment history and qualifications.¹⁰ When a registered broker leaves, or is terminated from, his or her job, firms must file a Uniform Termination Notice for Securities Industry Registration (a “Form U5”), which includes information on the reasons for the broker’s termination.¹¹

FINRA operates the Central Registration Depository (CRD), the “central licensing and registration system for the U.S. securities industry” that “contains...the qualification, employment and disclosure histories” of brokers.¹² The CRD houses information contained in Forms U4 and U5. Some of this information is shared with the public through FINRA’s BrokerCheck database—though certain disclosures, including the reasons for termination highlighted in the Form U5, are withheld from public review.¹³

⁵ Max Abelson, “Why Wall Street Hasn’t Had Its #MeToo Moment Yet,” *Bloomberg Businessweek* (January 11, 2018) (online at <https://www.bloomberg.com/news/articles/2018-01-11/why-wall-street-hasn-t-had-its-metoo-moment-yet>).

⁶ Max Abelson, “Why Wall Street Hasn’t Had Its #MeToo Moment Yet,” *Bloomberg Businessweek* (January 11, 2018) (online at <https://www.bloomberg.com/news/articles/2018-01-11/why-wall-street-hasn-t-had-its-metoo-moment-yet>).

⁷ Susan Antilla, “How Wall Street Keeps Outrageous Gender Bias Quiet 20 Years After the Boom-Boom Room,” *The Street* (June 4, 2016) (online at <https://www.thestreet.com/story/13590242/1/how-wall-street-keeps-outrageous-gender-bias-quiet-20-years-after-the-boom-boom-room.html>); Jessica Guynn, “‘Enough is enough’: Gretchen Carlson says bill ending arbitration would break silence in sexual harassment cases,” *USA Today* (December 6, 2017) (online at <https://www.usatoday.com/story/money/2017/12/06/bipartisan-bill-would-eliminate-forced-arbitration-break-silence-sexual-harassment-cases/925226001/>).

⁸ FINRA, “About FINRA” (online at <http://www.finra.org/about>).

⁹ FINRA, “Registration and Qualification” (online at <http://www.finra.org/industry/registration-qualification>).

¹⁰ FINRA, “Form U4: Uniform Application for Securities Industry Registration or Transfer” (online at <https://www.finra.org/sites/default/files/AppSupportDoc/p015111.pdf>).

¹¹ FINRA, “Terminate an Individual’s Registration” (online at <http://www.finra.org/industry/terminate-individuals-registration>).

¹² FINRA, “Central Registration Depository (WEB CRD)” (online at <http://www.finra.org/industry/crd>).

¹³ FINRA, “About BrokerCheck” (online at <http://www.finra.org/investors/about-brokercheck>); PIABA, “The Inequality of Investor Access to Information: A Study Conducted by Public Investors Arbitration Bar Association

In addition, FINRA provides an arbitration and mediation forum to allow investors, brokers, and firms to resolve disputes.¹⁴ Though complainants are not required to arbitrate statutory employment discrimination claims¹⁵—which include sexual harassment¹⁶—using FINRA’s arbitration forum, a number of brokers choose to do so. According to FINRA data, “discrimination or harassment”—a category that includes discrimination on the basis of disability, age, gender, race, sexual orientation, national origin, religion, employment discrimination, and sexual harassment—was one of the top 15 controversies listed in intra-industry FINRA cases in 2017.¹⁷

Questions

While the data that FINRA collects on individual brokers is not comprehensive, it provides unique insight into sexual harassment in the financial sector. To help us better understand any FINRA efforts to track and combat sexual harassment, we request a response to the following questions no later than March 14, 2018. In addition, we request a staff-level briefing on your responses by March 16, 2018.

1. To what extent would FINRA’s existing data collection processes, including the collection of Form U4s and Form U5s, capture the existence of workplace sexual harassment? Please provide an analysis for the years 2010-2018 of Form U4s and Form U5s filed with FINRA that include references to workplace harassment, including sexual harassment. Does FINRA disclose this information on BrokerCheck? Are there firm filing practices that minimize the extent to which workplace sexual harassment is reported to FINRA?
2. How many statutory employment discrimination claims has FINRA arbitrated for each of the years 2010-2018 for both inter- and intra-agency cases? Of those claims, how many related specifically to sexual harassment?
3. According to recently released data, around \$14 million of \$119 in arbitration awards went unpaid in 2016.¹⁸ Of FINRA awards that went unpaid from 2010-2018, what is the dollar amount linked to arbitration awards related to workplace harassment, including sexual harassment?

Demonstrating How FINRA BrokerCheck Reports Omit Critical Information That Harms the Investing Public And Proposing Needed Federal Legislative Change” (March 6, 2014) (online at <https://piaba.org/piaba-newsroom/report-brokercheck-inequality-investor-access-information-remains-unabated-update>).

¹⁴ FINRA, “Overview: Arbitration and Mediation” (online at <https://www.finra.org/arbitration-and-mediation/overview>).

¹⁵ FINRA Rule 13201 (online at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4204).

¹⁶ FINRA Rule 13100(bb) (online at http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=4196).

¹⁷ FINRA, “Dispute Resolution Statistics” (online at <https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics>).

¹⁸ Ann Marsh, “FINRA releases data about unpaid arbitration awards,” *Financial Planning* (February 9, 2018) (online at <https://www.financial-planning.com/news/finra-releases-new-data-about-unpaid-arbitration-awards>).

4. Based on the data that FINRA collects on broker registration, termination, and arbitration, would FINRA be able to conduct analyses of the prevalence of sexual harassment perpetrated by brokers? Please provide a description of the analyses that FINRA could conduct.

Please do not hesitate to reach out to Susannah Savage of Senator Warren's staff with any questions or concerns at 202-224-4543. We look forward to working with you on this issue.

Sincerely,



Elizabeth Warren
United States Senator



Dianne Feinstein
United States Senator



Catherine Cortez Masto
United States Senator