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May 1, 2014

VIA ELECTRONIC SUBMISSION

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: SR-FINRA-2014-020
Comments on Proposed Changes to FINRA Rule 2081

Dear Ms. Murphy:

This comment is submitted by the Georgia State University College of Law's Investor Advocacy Clinic concerning SR-FINRA-2014-020. The Clinic provides free legal representation to investors who suffered losses resulting from broker misconduct but cannot afford or find private legal representation because of the size of their claim. We advocate for investors who otherwise would not have a voice. As investor advocates, we support SR-FINRA-2014-020.

The proposal is a step in the right direction and we support FINRA's effort to ensure that expungements are granted only in extraordinary circumstances. The proposed rule would prevent brokers from conditioning settlements with investors on customers' agreement to support or not oppose expungement. It would also prevent brokers from compensating customers for agreeing to expungements, preventing even the customer from initiating or suggesting such a condition to a settlement.

Expungements were meant for limited situations, such as a mistaken identity or false claims.¹ Despite FINRA's intent, a recent study conducted by the Public Investors Arbitration Bar Association (PIABA) found that between May 18, 2009 and December 31, 2011 "expungement relief was granted in 96.9% of the cases resolved by settlements or stipulated awards."²

¹See FINRA Rule 2080(b)(1) (Expungements appropriate"(A) the claim, allegation or information is factually impossible or clearly erroneous; (B) the registered person was not involved in the alleged [misconduct]; or (C) the claim, allegation or information is false."); See also FINRA Dispute Resolution Arbitrator's Guide, 69 (Feb. 2014) ("Expungement is an extraordinary remedy that arbitrators should recommend only under appropriate circumstances.").

² See Public Investors Arbitration Bar Association, *Expungement Study of the Public Investors Arbitration Bar Association*, 5-6 (Oct. 16, 2013), available at http://www.piaba.org/system/files/pdfs/PIABA_Expungement_Study.pdf.

The investing public's interests are harmed when settlements are premised on an investor not opposing or consenting to an expungement as a condition of a settlement. In most cases, if a settlement is reached, there is merit to the investor's claim against the broker. If such settlements are premised upon the customer either consenting to or not opposing expungement, the investing public is at risk of never having access to all of the pertinent information needed to choose a broker.

If legitimate disputes are expunged from brokers' records, investors will not have access to information relating to broker misconduct, disciplinary problems and serious customer disputes that may affect their decision to work with a particular broker. Although agreeing to expungement as part of a settlement provides a quick resolution for an aggrieved investor, future investors are robbed of the opportunity to see and evaluate important information that should be maintained in the Central Registration Depository (CRD). The information contained on a broker's CRD and available through BrokerCheck is instrumental in the process of choosing a broker.

While SR-FINRA-2014-020 is a step in the right direction, we remain concerned that it may not go far enough in ensuring that expungements are the exception rather than the rule. Accordingly, we recommend that FINRA closely monitor the number of expungements granted and the circumstances in which they are granted even if the proposal is adopted. If there is no significant change to the number of routine expungements, we recommend that FINRA readdress the issue to ensure investors have access to all information necessary to make an informed decision about which broker is best for them.

Conclusion

We support FINRA's efforts to protect investors through the adoption of SR-FINRA-2014-020. Eliminating brokers' ability to condition settlements on customers supporting or not opposing expungements protects investors' rights. Nevertheless, due to the important nature of CRD disclosures, we recommend that FINRA continue to monitor actual expungements granted after this rule change takes effect to determine the rule's effectiveness.

Best regards,


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