

March 18, 2020

By Electronic Mail – rule-comments@sec.gov

Jill M. Peterson
Assistant Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: File Number SR—FINRA—2020—005

Ms. Peterson,

Thank you for the invitation to submit the herein contained written data, views, and arguments concerning the above-referenced proposed rule change.

AdvisorLaw is unique, in that it *exclusively* advocates for, and actively represents, the interests of individual brokers, Investment Advisor Representatives (“IAR’s”), and other associated persons. In preparing these comments, AdvisorLaw reviewed the “*Text of the Proposed Rule Change*” (hereafter, the “Proposal”) published by the Financial Industry Regulatory Authority (“FINRA” or “Regulator”), as well as the Federal Register Notice, referred to by the Commission as “*File No. SR—FINRA—2020—005*” (hereafter, the “Notice”). In addition to the 219-page Proposal and approximately 10-page Notice, other relevant and related publications were reviewed and are referenced herein by AdvisorLaw.

The following is an objective summary of the Notice’s importance, analytical shortcomings, unfounded rationale, and misplaced blame, as well as the significant deviation of the Regulator from its purpose.

Reliability of FINRA’s Analysis:

1. Quantifiable Utilization of BrokerCheck

The Notice provides that, “[i]n 2019 alone, *BrokerCheck* helped users conduct more than 40 million searches of firms and brokers.” Item II(A)(1). The preceding assertion lacks a footnote or source through which the purported “40 million” figure can be verified or confirmed. However, those paying close attention to the Regulator’s reporting of BrokerCheck usage over time would notice that “*over 40 million searches of firms and brokers*” appears to be a gross underreporting of the 2019 usage. More pointedly, FINRA’s December 28, 2017 News Release prompts the question of why “*over 40 million*” searches occurred during 2019, when, “*during calendar year 2016 [] 111 million reviews of broker or firm records*” were conducted through BrokerCheck. See, A. Williams & N. Condon, *FINRA Sanctions Citigroup Global Markets Inc. \$11.5 Million for Displaying Inaccurate Research Ratings*, FINRA Media Center – News Releases (Dec. 28, 2017), <https://www.finra.org/media-center/news-releases/2017/finra-sanctions-citigroup-global-markets-115-million-inaccurate>.

The notion that the use of BrokerCheck declined 54% between 2016 and 2019 is somewhat difficult to reconcile in light of the Regulator’s June 6, 2016 implementation of an Amendment to Rule 2210.¹ Notwithstanding the unlikely chance that the hundreds of thousands of links to BrokerCheck resulted in a decrease in the number of searches conducted on the site, what then about the millions of dollars in advertising spent promoting BrokerCheck? The news release stated that the advertisements ran on:

“cable channels, including CNBC, Bloomberg, CNN, MSNBC, Fox Business, Fox News, ESPN, Discovery, The History Channel and HGTV. A print ad will run in The Wall Street Journal tomorrow. The campaign will run digitally on relevant sites that include Bloomberg, CNBC, Fortune, Reuters, TubeMogul, the Undertone Network and Wall Street Journal, and search engines Google, Bing/Yahoo and YouTube.”

- N. Condon, M. Ong, & G. Smaragdis, *FINRA Launches National Ad Campaign Promoting BrokerCheck*, FINRA Media Center – News Releases, (Jan. 1, 2015), <https://www.finra.org/media-center/news-releases/2015/finra-launches-national-ad-campaign-promoting-brokercheck>.

Are we to assume that the multi-million-dollar advertising campaign, the hundreds of thousands of links to BrokerCheck affixed to all retail brokers’ websites, and the advances in availability of information have somehow lead to FEWER reviews of brokers and firms on BrokerCheck over the past three years? Perhaps a more reasonable conclusion is that FINRA was either misreporting the site’s usage four years ago, or it is misreporting it now.

2. Economic Impact Assessment

AdvisorLaw takes pause before relying upon an economic assessment conducted by FINRA. The hesitation is borne from the fact that, despite the Regulator’s billion-dollar budget and broad authority to determine fees, sanctions, fines, and membership dues, it reported an annual net loss of \$68.7 million in its most recent financial reports.² Since the Regulator’s 2007 inception, it has accumulated an aggregate net loss of \$406 million. *Supra*, FN2. Notwithstanding the Regulator’s demonstrable inability to maintain even a semblance of financial well-being, the below is limited to the glaring inconsistencies, oversights, and seemingly intentional misdirection among the Notice’s Economic Impact Assessment.

- a. No Accounting of Costs – Nowhere within the 219-page Proposal, nor the Notice, does FINRA provide an outline of the specific costs incurred by the Regulator in conjunction with arbitrations conducted within its forum. The only costs discussed are limited to the honorariums paid to the Chairperson for a Pre-hearing Conference (\$300) and the hearing on the merits (\$425).³ FINRA’s website states that honorariums paid to arbitration panelists other than the Chairperson (in three-arbitrator panels) are \$300; the Proposal and Notice avoid discussion of all other line item costs—aside from that of the chairperson.

¹ Amendment to FINRA Rule 2210 imposed a requirement that “each of a member’s websites include a readily apparent reference and hyperlink to BrokerCheck on: (i) the initial webpage that the member intends to be viewed by retail investors; and (ii) any other webpage that includes a professional profile of one or more registered persons who conduct [sic] business with retail investors.”

² FINRA 2007-2016 Annual Financial Reports, <https://www.finra.org/about/annual-reports/archive>. FINRA 2017 Annual Financial Report, https://www.finra.org/sites/default/files/2017_Annual_Financial_Report.pdf. FINRA 2018 Annual Financial Report, https://www.finra.org/sites/default/files/2019-06/2018_Annual_Financial_Report.pdf

³ SR-FINRA-2020-005 (the “Notice”), p. 6, FN 57.

- b. Two-Hearing Assumption – In footnotes 24, 53, and 59 and Item IV(2)(c) of the Notice, FINRA discusses the means by which it arrived at the \$9,175 discrepancy between the current fees assessed for a straight-in expungement request which is requesting a claim for one dollar and that which is filed solely requesting expungement relief. The above-referenced Item and footnotes contain language indicating that the Regulator is “*assuming one prehearing conference and one hearing on the merits.*” (*emphasis added*). The Regulator erred in making such an assumption. The error is compounded by the fact that FINRA relies upon its incorrect assumption throughout the Economic Impact Assessment.

Available through FINRA’s Awards Online arbitration awards archive⁴, the public is able to verify the following data. Among the 727 (as of January 31, 2020) completed cases in which expungement relief was requested by AdvisorLaw or our Affiliates⁵, only 78.8% were concluded with merely “*one prehearing conference and one hearing on the merits.*” Among the 21.2% of cases requiring two or more pre-hearing sessions or two or more hearing sessions on the merits, FINRA assessed, and was paid, fees exceeding what is “*assumed*” in the above-referenced Item and footnotes. The revenues associated with such fee assessments are wholly excluded from the Regulator’s calculations.

- c. Incorrect Accounting of Fees Assessed and Collected – Another startling oversight conveniently bolsters the Regulator’s incorrect assertion that FINRA would have assessed an additional \$7.2 million in fees against parties requesting straight-in expungement.⁶ The Regulator altogether failed to address the refundable portion of the filing fees outlined in Rule 13902(b)(3).⁷ This Rule accounts for a reduction in “*the amount of one hearing session fee,*” of the total fees assessed by FINRA “*against the party who paid the filing fee.*”

Based upon the crude calculations contained in the above-referenced Item and footnotes, simple mathematics allows one to make a reliable assumption. Such an assumption recognizes that AdvisorLaw’s 565 of the 797 cases constitute a significant sample size of approximately 58%, upon which a reliable hypothesis may be derived. Among the 565-case sample size, 119 cases required more than “*one prehearing conference and one hearing on the merits.*” As such, a more accurate calculation of the discrepancy is \$6.3 million—detailed in Exhibit A.

Under the current Rule, the total fees assessed by FINRA for a straight-in request containing a single dollar of monetary relief is \$250, not \$300, as repeated a half-dozen times within the Notice and nine times in the Proposal. *See also*, Exhibit A. The \$50 difference is the result of the Regulator’s failure to account for the refundable portion of the filing fee proscribed in Rule 13902(b)(3). Furthermore, the \$9,175 discrepancy is overstated by \$1,175. *See*, Exhibit A.

⁴ Arbitration Awards Online, <https://www.finra.org/arbitration-mediation/arbitration-awards>

⁵ AdvisorLaw Affiliates include but are not limited to: HLBS Law, Ogara Law, Alex Peterson, Esq., Harnett Law, LLC, A. Nguyen, Esq., and others.

⁶ *See*, Proposal Item IV(2)(c) and footnotes 58-59.

⁷ Rule 13902(b)(3): In the award, the amount of one hearing session fee will be deducted from the total amount of hearing session fees assessed against the party who paid the filing fee. If this amount is more than any fees, costs, and expenses assessed against this party under the Code, the balance will be refunded to the party.

It is, however, important to note that FINRA erroneously and routinely neglects to comport with the above-referenced requirement of Rule 13902(b)(1). Rather than refunding “*the amount of one hearing session fee*,” only half of such an amount is refunded by the Regulator to the “*party who paid the filing fee*.” The error presumably stems from the misapplication by FINRA of the “*Refund*” amount contained in the table accompanying Rule 13900(c)(1). These amounts are not associated with the “*refundable portion of the filing fee*.” Rather, they pertain to the portion of the filing fee that is to be refunded “[i]f a claim is settled or withdrawn” under certain circumstances.

FINRA inappropriately determined the refundable portion of the filing fee through the aforementioned misapplication of its own Rules in no less than 38 instances among the 727 straight-in expungement cases handled by AdvisorLaw or one of our affiliates between January 2016 and June 2019.

FINRA’s Rationale for the Rule Change:

I do not dispute that requiring a three-arbitrator panel to hear any arbitration case is a logical basis upon which the Regulator can increase forum fees. However, the Proposal attempts to convince the Commission that expungement relief, in and of itself, warrants a three-person panel. Conveniently or otherwise, if the Commission accepts this proposition, the imposition of additional fees upon participants appears to be focused on creating an economic barrier. The Regulator fails to establish a reasonable basis upon which the need for a three-arbitrator panel is supported. In an effort to establish a basis, the Regulator doubles down on its incorrect assumption that nominal monetary relief is being requested “*to reduce the fees*.” Additionally, the Regulator seeks to establish a statutory basis for the proposed changes through selective references to the Securities Exchange Act of 1934 (the “Act”).⁸ The preceding topics make various assertions as to the rationale behind the proposed changes which are discussed below.

1. Implied Need for a Three-Person Panel

Throughout the Notice, the Regulator struggles to find support for its contention that cases in which expungement relief is sought require a three-arbitrator panel. Through its attempts, the Notice questions the integrity of prior expungement decisions, discusses the “*complexity*” of expungement cases, and implies that FINRA Rules and Guidance have not been followed historically. In addition, the Regulator suggests that it may single out one form (among several)⁹ of non-monetary relief and eliminate the rights of parties thereto which are established by Rule 13401(c).

- a. Complete Factual Record – FINRA states that, “*having three arbitrators available to ask questions and request evidence would help to ensure that a complete factual record is developed . . .*” Such an assertion implies that a single arbitrator is incapable of “*ensur[ing] that a complete factual record is developed*.” The Regulator provides no support for the assertion that, for some reason, a sole arbitrator is unable to adequately ensure that the factual record is complete. The implication of FINRA’s assertion is that the current and historic arbitrations fell short in adhering to the Guidance¹⁰, which “*directs arbitrators to ensure that they have all of the information necessary to make an informed and appropriate recommendation on expungement*.”

⁸ 15 U.S.C. 780-3(b)(5-6).

⁹ FINRA Online Arbitration Claim Filing Guide, “Non-Monetary Relief Categories” at p. 26, (June 2016).

¹⁰ FINRA’s Notice to Arbitrators and Parties on Expanded Expungement Guidance, *See also*, Proposal FN3, p. 1.

- b. Purported Complexity – FINRA additionally asserts that “*straight-in [expungement] requests. . . can be complex to resolve*” and that “[e]xpungement requests may be complex to resolve, particularly straight-in requests. . .” As a function of the purported complexity of such cases, “*the filing fees and related member and forum fees should reflect the general complexity of these requests, as well as the time and effort needed to administer, consider and decide them.*” Without offering even a shred of evidence supporting the purported “*complexity,*” FINRA rationalizes the 3,158% increase in fees assessed against the parties on a unilateral contention that straight-in expungement requests are complex. The Regulator’s categorization of expungement cases as “*complex*” fails to identify a rational basis upon which the Commission can reasonably rely.
- c. Unclear on Rights Created by 13401(c) – The Regulator mentions the applicable Rule 13041(c), which allows “*the parties [to] agree in writing to one arbitrator.*” Notice, Item II(ii) and FN22. Rule 13401(c) gives the parties to an arbitration the option of stipulating to a single arbitrator to preside over the matter. However, the Proposal is silent as to whether the proposed rule changes would usurp this right for parties to arbitrations containing expungement relief. There is significant discussion surrounding the fact that FINRA “*believes*” that expungement cases “*should be decided by a three-person panel,*” but the Notice is unclear as to the ability of the parties to “*agree in writing to one arbitrator*” for expungement cases, if the proposed changes are approved by the Commission.

2. Reliance Upon the Act

The Regulator relies upon provisions of Sections 15A(b)(6) and 15A(b)(5) of the Act in outlining its authority for the proposed changes. Section 15A(b)(6) states (in part) that FINRA rules must be “*designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.*” Whereas, Section 15(b)(5) states (in part) FINRA rules must “*provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.*”

- a. (b)(6) Prevent Fraud/Manipulative Practices – The Notice is peppered with implications of impropriety surrounding the accompaniment of nominal monetary damages with expungement relief. However, at no point within the proposal does the Regulator accuse any individual or group of individuals outright of “*fraudulent*” practices. Likewise, there are several implications by the Regulator that the nominal monetary relief is “*manipulative,*” but no direct accusation exists—beyond an implication which is discussed and wholly rebutted below. AdvisorLaw submits that the Regulator has failed to achieve this requirement of the Act.
- b. (b)(6) Promote Just and Equitable Principles of Trade – The intent behind this provision of the Act does not contemplate or attempt to incorporate justice on the part of the Regulator. Rather, the requirement that Rules be designed to promote just and equitable principles of trade pertains to the industry participants (i.e., member firms, associated persons, and investors), not the regulators overseeing industry participants. As such, FINRA has not demonstrated that the proposed rule change is designed in accordance with this requirement. Thus, absent a showing by the Regulator that the change is designed to “*promote just and equitable principles of trade,*” it fails to adhere to this requirement of the Act.

- c. (b)(6) Protection of Investors and Public Interest – Lastly, we consider the possibility that the rule change is designed, “*in general, to protect investors and the public interest.*” In this regard, the Notice seems to contradict itself. Insofar as the public interest of the CRD system, the Regulator unequivocally acknowledges the importance of ensuring that “*accurate and complete*” information is contained therein. As discussed below, the effect of the proposed changes will undoubtedly result in fewer associated persons’ ability to seek expungement of “*factually impossible, clearly erroneous, or false*” information. If incorporated as proposed, the very mechanism by which such information is routinely pruned from the CRD system will be underutilized—resulting in the overpopulation of “*factually impossible, clearly erroneous, or false*” information amid the CRD system.

In regard to the protection of investors, little needs to be said if one assumes that the arbitrators overseeing expungement hearings are competent. The arbitrator training, guidance, and FINRA Rules governing expungement are presumably designed to result in consistent and appropriate outcomes. Logic suggests that, if the aforementioned framework is adhered to, and FINRA staff does not meddle with the participants, investor protection is inherent in the process.

- d. (b)(5) Equitable Allocation of Reasonable (Costs) – This Section of the Act requires that FINRA allocate “*dues, fees, and other charges*” in an “*equitable*” manner. The singling out of expungement among all non-monetary types of relief (*Supra*, FN 9) available within the Regulator’s forum appears, on its face, biased. Likewise, the ease with which the Regulator purposes to assess multiple Member Surcharges and Member Processing Fees is not commensurate with the “*reasonable*” requirement of this Section.
- e. (b)(5) Among (Anyone) Using Any Facility or System (FINRA) Operates or Controls – There is no discussion by the Regulator of the fact that, often times, the investor(s) who caused the disclosure in question choose to participate in the hearing on the merits. Although, in these instances, the investors are not a party to the arbitration, procedure allows such investors to participate. Consistent with the authority established by 15A(b)(5), the Regulator would be within its purview to assess “*reasonable dues, fees, and other charges*” against such investors “*using any facility or system which [FINRA] operates or controls.*” Nonetheless, not a single example of assessing fees against a participating investor can be identified at this time.

Critical Nature of Nominal Damages:

FINRA states as fact that associated persons are requesting damages of less than \$1,000 as an accompaniment to their expungement relief, in order to avoid fees. The Regulator goes as far as to assert: “**FINRA is aware that associated persons who file a straight-in request often add a small monetary claim (typically, one dollar) to the expungement request to reduce the fees assessed against the associated person and qualify for an arbitration heard by a single arbitrator¹¹.**” (*emphasis added*, footnote omitted).

First and foremost, it is unlikely that FINRA has any knowledge of the purpose or intent of associated persons filing expungement claims containing a small monetary relief component. It does not appear that FINRA has ever represented a broker in an expungement claim within the FINRA Dispute Resolution arbitration forum, let alone, filed a claim in the Forum seeking both nominal monetary and expungement relief.

¹¹ Having a single arbitrator can be achieved through “*a written agreement by the parties*” to use one arbitrator. Pursuant to Rule 13401(c), this option is available to all claims, regardless of the monetary damages sought.

Having precisely *zero* experience with filing these claims, I submit that, FINRA supposedly being “*aware*” of the purpose and intent on the inclusion of the nominal monetary relief is pure speculation or wholly fabricated, in order to cast a negative light on those engaging in this practice.

Although I cannot speak for all claimants engaging in this practice, AdvisorLaw and its affiliates represented brokers in 565 of the 797 straight-in requests containing a small monetary claim (*See*, Notice, FN59. *See also*, “*Reliability of FINRA’s Analysis*,” §2(c) *Supra.*). Having had a hand in over 70% of the cases referenced by FINRA in support of its supposed omniscience, I feel it is important to share the *true* purpose and intent of including nominal monetary relief in accompaniment to the expungement requests.

Insofar as the 565 such claims in which AdvisorLaw had some part, the purpose and intent was never to “*reduce fees.*” The purpose and intent was to avoid unnecessary subjugation to the discretion of the Director of Arbitration.¹² For claims which do “*not request or specify money damages,*” the Director is given broad authorization to charge parties fees outside of those proscribed within Rules 13900-13902. These Rules allow the Director to assess forum fees (hearing session and filing fees) in excess of those associated with monetary claims.

In an effort to represent our clients’ interests, nominal monetary relief is requested to ensure that the Director does not impose egregious forum fees upon our client. Under the Rules for non-monetary claims, the Director is authorized to unilaterally assess hearing session fees of up to \$1,500 per session and filing fees of up to \$4,000. *Supra*, FN12-13. By including a request for nominal monetary relief, the forum fees associated with the claim are fixed by the tables accompanying the Rules.

Perhaps FINRA would benefit from considering the possibility that its own Rules encourage (if not *require*) the inclusion of a small monetary relief accompanying the expungement. Mitigating the financial exposure of seeking non-monetary relief within the forum amounts to nothing more than adequate representation.

FINRA’s Deviation from its Purpose:

The Proposal evinces a vast departure by the Regulator from its purported mission – “*FINRA is dedicated to protecting investors and safeguarding market integrity in a manner that facilitates vibrant capital markets.*”¹³ The protection of investors impliedly includes proactive efforts by the Regulator to ensure that the information contained within the CRD system is true and accurate. Although somewhat tangential, “*safeguarding market integrity*” is not advanced through enacting the proposed regulations which discourage the removal of “*factually impossible or clearly erroneous*” allegations from the CRD system.

1. CRD System Influence on Investors and Employers – As clearly stated in the Notice, “*member firms use [information in the CRD system] to help them make informed employment decisions.*” The Regulator admits that “*information contained in the CRD system (and displayed through BrokerCheck) may negatively affect the business and professional opportunities of associated persons.*”

¹² Rule 13902(a)(2): If the claim does not request or specify money damages, the Director may determine that the hearing session fee should be more or less than the amount specified in the schedule above, but, in any event, the hearing session fee shall not be less than \$50 or more than \$1,500 for each hearing session.

Rule 13900(b)(2): If the claim does not request or specify monetary damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but, in any event, the filing fee may not be less than \$225 or more than \$4,000.

¹³ Finra.org/about

- a. Tolerance of Inappropriate Information – The Regulator further acknowledges that “*customer dispute information contained on the CRD system (and displayed through BrokerCheck) may negatively affect the business and professional opportunities of associated persons but also provide customer protections.*” FINRA goes on to differentiate between customer dispute information which “*has merit*” and that which “*is factually impossible, clearly erroneous, or false.*” It outwardly states that “[a]ny such negative impact may be inappropriate, however, such as when the customer dispute information is factually impossible, clearly erroneous, or false.” By way of differentiating, the Regulator admits to the fact that negative information lacking in merit resides within the CRD system. The Notice makes no mention of any unilateral efforts by the Regulator to eliminate “*factually impossible, clearly erroneous, or false*” information from the CRD system.
- b. Recitation of elements of expungement – FINRA goes further to state that,

“[t]he regulatory framework governing the CRD system and BrokerCheck has long contemplated the possibility of expunging certain customer dispute information from these systems in limited circumstances, such as where the allegations made about the broker are factually impossible or clearly erroneous. The expungement framework seeks to balance the important benefits of disclosing information about customer disputes to regulators and investors with the goal of protecting brokers from the publication of false allegations against them.”

- Notice, Item II(a)(1)(I)

Inconsistent with Rule 2080 and the herein-referenced assertions within the Notice, the above caption speaks to “contemplate[ing] the possibility of expunging” allegations that “*are factually impossible or clearly erroneous.*” (*emphasis added*). The Regulator’s decision to reduce to “contemplate” its commitment to “ensure[ing] that the information submitted and maintained in the CRD system is accurate and complete” strikes the reader as inconsistent or suspicious. The caption goes further to purport to “*balance the important benefits of disclosing information about customer disputes*” and “*the goal of protecting brokers from the publication of false allegations against them.*” (*emphasis added*). In balancing the value of information to the regulators and investors against the “goal” of protecting brokers from false allegations, is there any scenario in which the inclusion of false allegations among the CRD system provides value to regulators and investors? If so, FINRA offers no such example. In addition, and only a few paragraphs earlier, the Regulator acknowledged the existence of false and meritless allegations within the CRD system.

2. The 2015 “Study” Referenced by FINRA –

Within the proposal, the Regulator cites a “study” authored by two of its employees: Hammad Qureshi and Jonathan Sokobin. The “study” seeks to determine the “*predictability of investor harm associated with brokers based on BrokerCheck information.*” When assessing the propensity for investor harm, the very same “study” acknowledges that “*some customer complaints may lack merit or suitable evidence of investor harm,*” and, thus, the FINRA employees authoring the “study” chose to “*only count complaints that led to awards against brokers or settled above a de minimis threshold.*” The study goes further to assert that “less than 1.5% of the brokers in [their] sample” remain, when only considering awards against brokers

and settlements above a *de minimis* amount. The importance of that finding requires knowledge that the percentage of brokers within the sample prior to culling *de minimis* settlements and denied, withdrawn, or closed no-action disputes is **approximately 8.2%**. Meaning, the authors of the “study” intentionally excluded four out of every five brokers with a customer dispute from their analysis.

To nobody’s surprise, the findings of FINRA’s 2015 “study” supported the hypothesis that BrokerCheck information “*has significant power to predict investor harm.*” However, it is absolutely crucial to take note that the “study” did not report findings pertaining to four out of every five brokers with one or more customer dispute disclosure. Nonetheless, the very same disclosures remain within the CRD system and BrokerCheck.

3. FINRA Fails to Ensure Integrity of the CRD System –

As the Commission considers FINRA’s 219-page Proposal, I encourage it to note the amount of time and resources expended by the Regulator in advancing its proposal. Ponder the scenario where, instead, even a fraction of the resources used to prepare and advance the Proposal were allocated to develop a mechanism by which the Regulator takes unilateral action to identify and weed out false and erroneous customer dispute allegations. Now, please ask yourselves which use of resources would achieve the Regulator’s objectives more effectively.

- a. FINRA Currently Requires Reporting of Allegations Regardless of Merit – FINRA’s existing Rules require the reporting of erroneous complaint filings which are withdrawn by the customers or dismissed by the firms. Despite the Regulator’s purported acknowledgement that “*impossible, clearly erroneous, or false*” information is “*inappropriate,*” no action has been taken to change the requirement that member firms report such allegations.
- b. FINRA Takes No Proactive Measures – FINRA seemingly does nothing to ensure that the “*inappropriate*” information is excluded from the CRD. Worse yet, its Rules require member firms to report complaints containing “*inappropriate information.*” Once reported, the “*inappropriate information*” becomes part of a public disclosure for the underlying broker.¹⁴ As such, the affected broker’s CRD record and BrokerCheck profile prominently display the allegations which the “*study*” identifies as false or erroneous. The inaccurate information which, at that point, is part of the permanent public record associated with the broker, will remain in the public sphere if and until the affected broker obtains expungement relief. The juxtaposition of this with the below statement is vivid:

“FINRA works with the SEC, NASAA, and other members of the regulatory community to ensure that information submitted and maintained in the CRD system is accurate and complete.”

- Notice, Item II(A)(1)(a)(I)

If the Regulator *truly* wants to ensure the integrity of the information contained in the CRD system and portrayed on its BrokerCheck website, why do its very own Rules require member firms to report false and erroneous allegations? Further, why do the brokers against whom these allegations are lodged have to spend thousands of dollars and many months for the mere *chance*

¹⁴ FINRA Rule 4530(a)(1)(B)

to have the allegations removed from the CRD? Logic suggests that it should take much less time and money for brokers to remove false and erroneous allegations from the CRD.

On behalf of AdvisorLaw and the community of licensed professionals whom we represent, I ask that the Commission consider the points contained herein. Likewise, I encourage those interested in additional clarification or expansion of the above views and arguments to contact me with questions or requests.

I appreciate your time and attention to this correspondence.

Respectfully,



Dochter D. Kennedy
President & Founder
AdvisorLaw, LLC

EXHIBIT A: Fee Assessment and Net Fee Assessment Calculations Corrected

CURRENT RULES (nominal monetary relief included)								
Example 1	Filing Fee	Member Surcharge	Processing Fee	Refundable Portion of Filing Fee	Initial Pre-hearing Conference	Pre-Hearing Conference	Hearing on the Merits	TOTALS
Associated Person	\$50			(\$50)	\$50		\$50	\$100
Member Firm		\$150						\$150
TOTAL								\$250

$$\text{\$250} \times 783^{\dagger} = \text{\$195,750}$$

CURRENT RULES (solely non-monetary relief requested)								
Example 2	Filing Fee	Member Surcharge	Processing Fee	Refundable Portion of Filing Fee	Initial Pre-hearing Conference	Pre-Hearing Conference	Hearing on the Merits	TOTALS
Associated Person	\$1,575			(\$1,125)	\$1,125		\$1,125	\$2,700
Member Firm		\$1,900	\$3,750					\$5,650
TOTAL								\$8,350

$$\text{\$8,350} \times 783^{\dagger} = \text{\$6,538,050}$$

Net Fees Assessed Example 1: \$250

$$\text{\$6,538,050} - \text{\$195,750} = \text{\$6,342,300}$$

Net Fees Assessed Example 2: \$8,350

Discrepancy: \$8,100

[†] 783 is the number of applicable claims contained in FN59 of the *Notice*.