



Securities Arbitration Clinic  
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[Via email to rule-comments@sec.gov](mailto:rule-comments@sec.gov)  
Vanessa Countryman, Esq.  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: **SR-FINRA-2020-005**  
**Proposed Rule Change to Amend the FINRA Code of Arbitration**  
**Procedure for Customer Disputes and the FINRA Code of Arbitration**  
**Procedure for Industry Disputes to Apply Minimum Fees to Requests**  
**for Expungement of Customer Dispute Information**

Dear Ms. Countryman:

Thank you for the opportunity to comment on FINRA's proposed rule change to amend the Code of Arbitration for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to apply minimum fees to requests for expungement of customer dispute information. The minimum fees would apply whether the request is made as part of the customer arbitration or the associated person files an expungement request in a separate arbitration ("straight-in request").

We are writing this comment on behalf of the Securities Arbitration Clinic at St. John's University School of Law (the "Clinic"). The Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents aggrieved investors with small claims, and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules and regulations governing the practices of member firms and broker-dealers, especially in connection with customer complaints.

Currently, there are two ways in which brokers may seek expungement of customer dispute information: (1) through the FINRA arbitration process, and (2) by going directly to court. Within the FINRA arbitration process there are also several options, as referenced above. The fee structure for each method of requesting expungement varies quite drastically. If the request is made during the customer arbitration, there are set filing fees, process fees, surcharges, and per-hearing fees. On the other hand, a broker may file a straight-in request, which is a request for expungement in a separate arbitration. A broker who files a non-monetary claim, such as an expungement request, must pay a \$1,575 filing fee and the member who employed the broker at the time the dispute arose must pay a \$3,750 process fee and a \$1,900 surcharge. Additionally, the per-hearing session fee is \$1,125. It's also significant to note that non-monetary claims are decided by a three-arbitrator panel, unless the parties agree otherwise. Whenever a broker files an expungement request, these are the associated fees required under the Code. FINRA, however, has become concerned about practices used by brokers to avoid paying the fees associated with straight-in requests by adding nominal damages to their claims, in which they must only pay a simplified case filing fee. This can reduce fees from approximately \$9,475 to approximately \$300. Under the proposed changes of SR-FINRA-2020-005, brokers would be required to pay a minimum filing fee for all expungement requests, regardless of whether the request is made as part of the customer arbitration or through a straight-in request, even if the broker adds a small damages claim.

Generally, the Clinic is supportive of the proposed rule changes. The proposed rule changes will provide uniformity amongst brokers attempting to expunge their records, ensure these requests are being properly decided, and protect customer interests.

The proposed rule changes provide for equitable allocation of fees against those who request expungement of customer dispute information. It is wholly unfair to allow some brokers to evade the expungement fees imposed by the Codes by claiming fictitious nominal damages, whereas brokers that abide by the Code are required to pay thousands of dollars more. This will create uniformity, as well as prevent brokers from filing frivolous expungement requests. If brokers are required to pay the minimum filing fee, it would prevent them from making meritless requests – requests they might otherwise attempt to make if they're only risking a couple hundred dollars.

Moreover, expungement requests can be extremely complex to resolve, particularly in straight-in requests where the associated customers do not participate. Thus, FINRA believes expungement requests should be decided by a three-person panel, and the Clinic concurs. Generally, a significant amount of time and effort is needed to administer, consider, and decide expungement requests. Having three arbitrators look at the evidence and come to a resolution is far more effective than having a single arbitrator. Additionally, a three-person panel legitimizes the decision reached, and it follows that the risk of an erroneous decision is reduced.

As an ancillary impact, allowing brokers to add a small damages claim to their expungement requests to reduce their own costs may end up making FINRA a more

expensive forum for customers. FINRA subsidizes these cases heavily. As FINRA mentioned in the filing, FINRA has foregone \$7.3 million in forum fees for cases where the broker has made a nominal damage request. Over time, this lost revenue may lead to higher forum fees for others using the forum, including customers.

In sum, the Clinic supports the proposed rule changes identified in SR-FINRA-2020-005. These proposed changes will enhance the uniformity and legitimacy of the expungement process, while simultaneously protecting customers. Thank you for the opportunity to comment on these important proposals, and for your consideration on this matter.

Respectfully Submitted,

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