



SECURITIES ARBITRATION COMMENTATOR, INC.

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RICHARD P. RYDER, PRESIDENT

March 26, 2020

[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

Dear Ms. Countryman:

Thank you for the opportunity to comment on the above rule proposal. As the President of the Securities Arbitration Commentator, Inc. ("SAC"), I have a long and deep interest in the securities arbitration arena and the rules and procedures that govern the process. I have considerable experience in this field, having served at various times as NASD Director of Arbitration, in-house defense counsel with a major brokerage firm, an arbitration practitioner, testifying expert, arbitrator and mediator.

Please excuse this belated comment letter, but after reading the comments submitted on the new proposal to revise expungement fees (SR-FINRA-2020-005), I became concerned about an aspect of the proposed rulemaking that I did not see addressed in the submitted filing. When FINRA began requiring judicial confirmation of expungement "recommendations" by its arbitrators, carved out from that requirement were pleas for CRD corrections from brokers whose Form U5s contained allegations by their former employers that had no relation to conduct involving customers, but were alleged to be "defamatory in nature." In other words, the U5 disclosures pertained to regulatory, policy or behavioral matters that didn't directly impact customers. The challenged disclosures, for the most part, do not even appear on the public CRD.

#### **U5 "Reformation"**

SAC's Award Database, which dates back to 1989 and now catalogs and displays online some 60,000 Awards, records Award information issued by FINRA, among other forums. We have developed protocols for entering Awards that consider expungement requests from brokers. In order to distinguish the Awards I've just described from the typical expungement order that requires court confirmation and conformance with FINRA Rule 2080, we categorize this other relief as "reformation" of the Form U5. Does the Rule change proposal see these reformation matters as different from expungement Awards or are they intended to be treated the same as expungement cases under the new expungement regime that FINRA is erecting? I believe FINRA should focus on this particular detail and supply clarification.

When FINRA's precursor, NASD, imposed its moratorium on issuing expungement relief in January 1999, it continued to issue relief in these reformation cases. In [NTM 99-54](#), NASD described the reformation relief as "an exception" from the typical expungement case and even

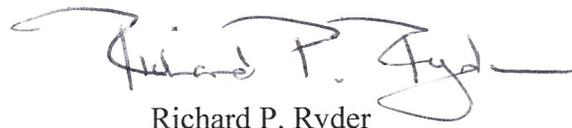
defined the separate type: "the dispute must be between a firm and a current or former associated person and arbitrators must clearly state in the 'Award' section of the award that they are ordering expungement relief based on the defamatory nature of the information in the CRD." In FINRA's "[Expungement Training](#)" guide, FINRA maintains that separation, indicating specifically that: "Rules 2080, 2081, 12805 and 13805 do not apply to expungement requests in arbitration cases between industry parties (between individual brokers and securities firms or between firms) based on the defamatory nature of the information. CRD will continue to honor these types of expungements without a court order."

### **Need for Clarity**

Expungement cases have numbered in the many hundreds over the past couple of years; reformation Awards constitute a smaller group -- a little over a hundred such matters in 2019, according to the Award Database. In our estimation, these cases do not involve the same investor protection considerations as does expunging customer-related information, and FINRA in the past has excepted these matters from the stringent requirements it has imposed on customer-oriented expungement requests. We may have missed it in the proposal (I did word-search "defamatory in nature" with no results), but FINRA does not seem to have considered that distinction here.

Perhaps, the fee structure should be the same for all CRD-expungement/reformation requests, but the two should not be conflated haphazardly. Good reasons exist to exempt reformation of Form U5s on a broker's record from the increasingly stringent requirements that FINRA has in place and in mind for expungement of customer information. That regime should not apply to reformation requests and it has not until now. FINRA should clarify its intent before this rule proposal is approved by the SEC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard P. Ryder", with a long horizontal flourish extending to the right.

Richard P. Ryder