



Securities Arbitration Clinic
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October 22, 2020

Via email to rule-comments@sec.gov

Vanessa Countryman, Esq.
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **File Number SR-FINRA-2020-030**

Dear Ms. Countryman:

Thank you for the opportunity to comment on FINRA's proposed rules changes related to the issue of expungement of customer dispute information. 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 dollar claims and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing the information that may be available to customers when deciding with whom to invest.

The Clinic has been supportive of FINRA's proposed changes to the rules governing when and how an associated person or member firm may seek expungement of customer complaint information from the CRD, and by extension, BrokerCheck.¹

The Clinic is supportive of the changes proposed to expungement requests made by associated persons during simplified cases, i.e., those decided on the papers or after a special proceeding. The Clinic primarily represents investors with small claims which are often filed under the Simplified Rule, FINRA Rule 12800. The Clinic has previously

¹ See St. John's University School of Law Comment on Regulatory Notice 17-42, February 5, 2018, available at https://www.finra.org/sites/default/files/17-42_st-John-law_comment.pdf.

expressed concerns that expungement requests have delayed the process for investors who have filed simplified claims.²

Additionally, we have found the current process to be confusing for investors. Expungement requests require that the arbitrator hold a hearing on the issue of expungement, regardless of the choice made by the investor with respect to how the claim was filed. This means that even if the investor requested that their case be decided on the papers, a hearing on expungement will still be scheduled before they know the outcome of their claim. Investors often don't understand why there needs to be a hearing or how the hearing will be conducted. Investors often understandably assume that a hearing on expungement must mean they have lost their claim on the merits. The investors we represent in the Clinic would often proceed *pro se* if not for our representation. If the Clinic is not there to explain what is happening, the investor may not understand if they should even proceed with the case at that point. FINRA's proposal goes far to address these issues.

We strongly support FINRA's proposal to bifurcate the expungement request in simplified cases. We continue to believe that a bifurcated hearing will allow for a just resolution of the request because the arbitrator will have all of the facts and special insights necessary to decide whether to recommend a request for expungement, while resolution of the investor's claim will not be delayed. Under a bifurcated hearing, an investor will not need to wait until the expungement request is decided to receive their award. The Clinic continues to suggest that associated persons be prohibited from seeking expungement if there has been a finding of liability in the underlying arbitration.

The Clinic also supports the proposal to adopt a requirement that expungement requests be filed during a customer arbitration where the associated person has been named. When the case closes by award after a hearing, the arbitration panel is best situated to decide both the customer dispute and the expungement request. The Clinic also supports the proposal that cases that close other than by award after a hearing be required to be filed as a straight-in request under proposed rule 13805.

The Clinic supports the establishment of a Special Arbitrator Panel to decide straight-in requests. Expungement requests are a complex and extraordinary remedy, which require extensive fact-finding where the customer's input is unavailable. We agree that a three-person panel will facilitate the arbitrator's fact-finding role by allowing a variety of questions and viewpoints, which will generate greater details necessary for the panel to decide whether or not to recommend the expungement. We believe that the establishment of a Special Arbitration Panel and the requirement that the panel decide straight-in requests will also address the concerns with arbitrator-shopping. Limiting an associated person's or member firm's ability to challenge an arbitrator for cause and not allowing the striking of arbitrators will prevent associated persons and member firms from working collectively to select a panel more likely to recommend expungement. In turn, this will ensure that the information available to investors results from a fair and

² See *id.*

impartial proceeding and is not tainted by the associated person or firm member selecting arbitrators that are more likely to recommend expungement.

Additionally, the Clinic strongly agrees with the time limitations and restrictions on expungement request withdrawals. First, we believe that the time limitations will encourage and increase customer participation in expungement proceedings. This is consistent with the notion that customer input is crucial for an arbitrator's decision as to whether expungement should be recommended. A timelier expungement request will be more beneficial since customers will be more readily available and have a clearer recollection of the facts. Allowing associated persons and member firms the ability to request expungement years after the customer's complaint has been settled decreases the likelihood that a customer will participate because they may not be as interested in the process long after their issues have resolved.

Second, we strongly agree with the restrictions on expungement request withdrawals. The adoption of this proposal will provide an additional barrier to prevent arbitrator-shopping. As it stands, associated persons and member firms benefit greatly by filing duplicative expungement requests. The ability to file duplicative requests provides associated persons and member firms with an out, in which they can choose to withdraw a request that is unlikely to be decided in their favor and replace it with one in which they are more certain to receive a recommendation for expungement. Again, restricting the avenues that associated persons and member firms can rely on to receive more favorable outcomes, which do not rely on the merits of the complaint, protects investors who trust that the information available to them through BrokerCheck is accurate and not a product of biased decision-making.

Given the reported problems associated with the current expungement process, the Clinic supports the proposed changes to the expungement process. Thank you for your consideration of this matter and the opportunity to comment on these important proposals.

Respectfully Submitted,

/s/
Ruben Huertero
Legal Intern

/s/
Christine Lazaro
*Director of the Securities Arbitration Clinic
and Professor of Clinical Legal Education*