

September 6, 2022

Via Electronic Submission

J. Matthew DeLesDernier
Assistant Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: File No. SR-FINRA-2022-024

Dear Assistant Secretary DeLesDernier:

I write to comment on the series of changes to FINRA's expungement process proposed by SR-FINRA-2022-024 (the Proposal) and thank the Commission for requesting comment on the Proposal. I am an Associate Professor of Law at the University of Nevada, William S. Boyd School of Law. I have carefully studied the current FINRA-facilitated expungement process and remain concerned that many of the core problems with the process will remain unchanged. I have written about problems with the arbitration-facilitated expungement in prior comment letters and in a law review article.¹

Despite my concerns about the process, I write to support the Proposal as it offers an incremental improvement over the current system. The current Proposal adopts many reforms I previously suggested in prior letters, including requiring a unanimous arbitration panel, providing improved notice and participation rights to customers, and allowing an authorized representative of state securities regulators to participate. All of these reforms will work to improve information to flow to the arbitrators making decisions in these matters.

Still, the Proposal suffers from a significant flaw. It improperly limits state securities regulator participation only to "straight-in" expungement requests and excludes regulators from expungement hearings in ordinary customer cases. The authorized representatives of state securities regulators should be able to participate in any expungement hearing, regardless of the filing mechanism a broker uses to procure an expungement hearing.

The strength of a state securities regulator's interest in protecting the integrity of its records does not shift with the mechanism used to procure an expungement hearing within FINRA's dispute resolution forum. States and the public will still suffer harm whenever the arbitration-facilitated expungement process results in the deletion of public records.

The rationale for limiting the authorized representative of state securities regulators to straight-in requests appears weak. If it is important to allow state securities regulators to participate in straight-in expungement requests because customers do not participate, it remains

¹ Benjamin P. Edwards, *Adversarial Failure*, 77 WASH. & LEE L. REV. 1053 (2020).

important to allow state securities regulators to participate in ordinary requests as customers often do not participate. Functionally, customer cases and straight-in expungement requests will often result in only a broker having any real interest in speaking to arbitrators. Many FINRA arbitrations settle well before any evidence is presented to the arbitration panel. For investors represented by counsel operating on a contingency fee, the attorney's interest in presenting evidence and participating in the process diminishes dramatically after settlement. Without any award to be won or fee to be collected, the attorney receives no compensation for laboring to develop information and educate a panel. Similarly, many customers do not desire to spend time and effort to fight an expungement request for a settled claim. The authorized representatives of state securities regulators should have authority to fill this advocacy gap.

The Commission should request information from FINRA about the percentage of customer cases which remain open after settlement to allow for an expungement hearing. FINRA should also be able to provide statistical information about customer and counsel participation in post-settlement expungement hearings. These statistics will likely show a similar lack of customer engagement as in straight-in expungement requests.

I thank you again for the opportunity to comment on the Proposal. Current expungement processes drain valuable public information from public databases and drive enormous harm to the public. The Commission must require more to effectively protect the public's interest.

Sincerely,

A handwritten signature in black ink that reads "Ben Edwards". The signature is written in a cursive, slightly slanted style.

Benjamin P. Edwards
Associate Professor of Law
University of Nevada, Las Vegas
William S. Boyd School of Law