

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](mailto:rule-comments@sec.gov)

Re: File Number SR-FINRA 2022-024

Dear Assistant Secretary DeLesDernier:

The PIABA Foundation writes to comment on the series of changes to FINRA's expungement process proposed in SR-FINRA 2022-024 ("Proposed Rule"). We thank the Commission for requesting comment and for the reasons set forth below, the PIABA Foundation supports its approval.

The undersigned are current and past Presidents of the PIABA Foundation<sup>1</sup> and both have years of experience representing parties in FINRA arbitrations. In October 2019 and May 2021, the undersigned co-authored studies about FINRA's expungement process in which we identified several serious problems.<sup>2</sup> The undersigned have also personally represented customers opposing expungement requests on a *pro bono* basis through the Foundation's *pro bono* expungement program. Our personal experiences with the process reinforce the grave concerns we have about the current expungement system.

It is imperative that the SEC and FINRA ensure expungement is granted only in extraordinary circumstances. Customer complaints have regulatory and investor protection value. When valid complaints are expunged, CRD and BrokerCheck become unreliable. This harms all users of CRD and BrokerCheck – the SEC, FINRA, state securities regulators, investors, and brokerage firms who use the information for various purposes.

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<sup>1</sup> The PIABA Foundation is a 501(c)(3) that is devoted to protecting investors from investment-related disputes through providing investor education. The PIABA Foundation is a separate entity from the Public Investors Advocate Bar Association ("PIABA") and does not speak for PIABA.

<sup>2</sup> Copies of both studies were previously provided to FINRA and the SEC and they are also available on the PIABA Foundation's website, [www.piabafoundation.org](http://www.piabafoundation.org).

The PIABA Foundation believes that the Proposed Rule is a step in the right direction and, if approved, would enhance the balancing of the competing interests of providing regulators broad access to information about customer disputes to fulfill their regulatory obligations, provide a fair process that recognizes brokers' interest in protecting their reputation and ensure investors have greater access to accurate information about their current and/or prospective financial professionals. Furthermore, the Proposed Rule would codify and enhance recognition of the fact that expungement is an extraordinary remedy that would be allowed only in very limited circumstances.

A. The PIABA Foundation Applauds the Proposed Participation of State Securities Regulators in Straight-In Expungement Arbitrations.

Despite the significant improvements proposed in SR-FINRA 2022-024, the PIABA Foundation continues to believe that expungement requests should not be handled in FINRA arbitration at all, because the requests are better suited for resolution in a regulatory setting. Recognizing, however, the logistic difficulties in creating a regulatory process that would need to include multiple state and federal regulatory stakeholders, the PIABA Foundation has previously recommended numerous changes that should be implemented if expungement requests were going to continue to be resolved in FINRA's arbitration forum.

With regard to straight-in expungements, the most significant change previously proposed by the PIABA Foundation has been that FINRA and/or the SEC create and embed an investor protection advocate ("Advocate") into the expungement arbitration process. The PIABA Foundation previously proposed that the Advocate would serve to protect the integrity of the regulatory record and would be responsible for investigating customer complaints, obtaining and reviewing documents, interviewing the customer, customer's counsel, and any other relevant witnesses. The Advocate would also participate in the expungement arbitration from the beginning of the process.

The PIABA Foundation applauds FINRA for proposing to allow state securities regulators or their authorized representatives to participate in straight-in expungement arbitrations. This change creates the framework and mechanism for the Advocate role envisioned by the PIABA Foundation. State securities regulators are an important stakeholder with a vested interest to protect the integrity of the CRD database and to ensure that expungements are treated as an extraordinary remedy.

B. The PIABA Foundation Still Has Concerns About the Proposed Special Arbitrator Roster.

FINRA's proposal is to have arbitrators randomly assigned from a roster of chair-qualified public arbitrators who are specially trained ("Special Arbitrator Roster") to decide straight-in expungements. The Proposed Rule does not explain, however, how FINRA will select which chair-qualified arbitrators will serve on the Special Arbitrator Roster.

Importantly, FINRA should not create the Special Arbitrator Roster from those arbitrators who currently have the most experience deciding expungement petitions, because these are

precisely those arbitrators whom brokers have selected over the years to rubberstamp expungement requests. The PIABA Foundation's 2019 Expungement Study showed that the most experienced and frequently selected arbitrators granted expungement at a higher rate than the average arbitrator. For example, the study analyzed all awards for the three arbitrators who had the highest number of awards in the country. The most prolific arbitrator granted expungement requests 97% of the time. The second most prolific arbitrator granted expungement 96% of the time. The third most prolific arbitrator granted expungement 95% of the time. In addition, the frequency in which these arbitrators were selected accelerated over time between 2015 and 2018.

Also, FINRA's prior efforts to provide more expungement training has similarly not worked. For years, FINRA has attempted to solve the problem of expungements being granted too frequently by providing arbitrators with more training in hopes that they will treat expungement as an extraordinary remedy. Yet, as shown in the 2019 Expungement Study, expungements continue to be granted more than 80% of the time. Award history, standing alone, illustrates that a roster of specially trained arbitrators will not solve the problem.

The PIABA Foundation suggests that FINRA and the SEC consider not limiting the Special Arbitrator Roster to chair-qualified public arbitrators. While the PIABA Foundation understands the desire to have experienced arbitrators deciding expungements, experience in understanding and appreciating the regulatory value of a customer complaint should be the most important qualification.

Current and former state, federal and SRO securities regulators would seem like ideal candidates for the Special Arbitrator Roster. Arbitrators with regulatory experience, however, may not be chair-qualified public arbitrators and in fact may be classified as non-public arbitrators. Importantly, the non-public arbitrator pool no longer consists only of individuals who work in the securities industry. In recent years, FINRA has expanded what type of experience classifies an arbitrator as non-public. For example, attorneys who represent investors in FINRA arbitration disputes have been moved from the public pool to the non-public pool even though they may not have ever worked in the securities industry. Simply put, limiting the Special Arbitrator Roster exclusively to chair-qualified public arbitrators would unnecessarily exclude arbitrators who are otherwise qualified.

The PIABA Foundation also encourages FINRA to specifically recruit current and former state and federal regulators to serve as arbitrators on the Special Arbitrator Roster.

Thank you again for requesting comment on these important proposed changes. For the reasons set forth above, the PIABA Foundation supports the approval of SR-FINRA 2022-024.

Sincerely,

/s/ Celiza Braganca

CELIZA BRAGANÇA  
President

/s/ Jason R. Doss

JASON R. DOSS  
Past-President and Founding Director