



PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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December 7, 2022

Via Electronic Mail

Rule-comments@sec.gov

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F St. NE
Washington, DC 200549-1090

**RE: FINRA Proposed Rule Change to Amend the Codes of Arbitration
Procedure to Modify the Current Process Relating to the Expungement of
Customer Dispute Information, As Modified by Amendment No. 1 – File No.
SR-FINRA-2022-024**

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association (“PIABA”), an international bar association comprised of attorneys who represent investors. Since its formation in 1990, PIABA has promoted the interests of the public investor in all dispute resolution forums, while also advocating for public education regarding investment fraud and securities industry misconduct. Our members and their clients have a fundamental interest in the rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) that relate to investor protection.

Thank you for the opportunity to comment on FINRA’s proposed amendment to its rule change proposal regarding the expungement of customer dispute information from an associated person’s registration records maintained in the Central Registration Depository (“CRD”). In practice, expungement has not been the “extraordinary remedy” that it is supposed to be, but something that is routinely granted, with troubling consequences for investor protection.

PIABA appreciates FINRA’s continued efforts to examine the expungement problem and attempt to find solutions to the issues PIABA members have previously identified. On September 7, 2022, in response to FINRA’s initial submission of the proposed expungement rules changes, PIABA filed a comment letter largely in support of FINRA’s efforts noting that “SR-2022-024 is a significant improvement over current FINRA rules and FINRA’s prior rule proposal concerning

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expungement, SR-2020-030.”¹ FINRA has now refiled the proposed expungement rules changes, modified by Amendment No. 1, in response to comments made during the review period. As detailed below, PIABA reiterates its support for SR-2022-024 as a significant improvement to existing FINRA rules and further supports the revisions contained in Amendment No. 1 as additional improvements to the existing expungement process.

FINRA’s proposal in Amendment No. 1 to specifically state that customers have the right to participate “in all aspects” of the expungement pre-hearing conference and the expungement hearing is a positive clarification of the proposed rule revision as it removes any doubt a panel could have concerning a customer’s ability to attend and take part in the expungement proceedings. PIABA believes that codifying the right of customers to participate in the expungement process and hearing is a worthwhile and necessary effort that will enable arbitration panels to have a more detailed and balanced view of the relevant facts and events underlying the expungement request. The codification will also remedy the persistent problem of arbitration panels refusing to allow aggrieved customers to testify, only to then grant the requested expungement for a lack of evidence that the registered representative did anything wrong.

PIABA also endorses the proposal that arbitration panels “should not give any evidentiary weight” to the fact that customers may choose not to attend or participate in the expungement hearing. While customer participation should be encouraged, a customer’s absence must not be considered, seen to benefit, or deemed to support, the expungement request in any way. Public customers who choose to participate in the expungement process are doing so for a public, not a personal, benefit. And they do so at their own expense without bearing any personal stake in the outcome. As such, an arbitration panel should not view a public customer’s election to not put themselves through that process as any sort of tacit agreement or approval of an expungement. Associated persons seeking expungement must be held to the high evidentiary standard intended by the FINRA’s rules, without regard to the customer’s decision not to participate.

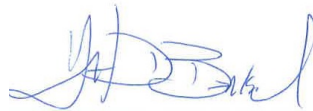
FINRA’s final proposal in Amendment No. 1 is to prohibit associated persons from seeking expungement where “a panel or court of competent jurisdiction previously found the associated person liable in a customer arbitration or civil litigation associated with the same customer dispute information.” PIABA believes this proposed restriction on expungement is a logical and necessary one. Given that the existing FINRA Rule 2080 only allows expungement when the claim at issue is “factually impossible or clearly erroneous” (Rule 2080(b)(1)(A)); the registered person was not involved (Rule 2080(b)(1)(B)); or the claim, allegation, or information is false (Rule 2080(b)(1)(C)), it defies credulity to believe it appropriate that an associated person who fought a customer claim and lost would then attempt to have the matter expunged from their record. The arbitral finding is one in which the underlying claim was found to be meritorious and that the associated person is liable therefor. While the application of common sense would result in such instances being immune from expungement proceedings, PIABA endorses the proposed

¹ See PIABA Comment Letter to Vanessa Countryman, File No. SR-FINRA-2022-024 (September 7, 2022), p. 2.

clarification that an associated person found liable by an arbitration panel or court of competent jurisdiction is not eligible to seek expungement of that claim.

In summation, PIABA supports the three proposed amendments insofar as they are all common sense clarifications to the existing rule proposal, and would help ensure the appropriate and fair application of the expungement process. PIABA appreciates the opportunity to submit these comments and urges the Commission to approve the proposed rules with the revisions suggested above.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "H. Berkson". The signature is fluid and cursive, with a large initial "H" and a long, sweeping tail.

Hugh D. Berkson
President, Public Investors Arbitration Bar
Association