

VIA EMAIL TO RULE-COMMENTS@SEC.GOV

April 7, 2023

Vanessa Countryman, Secretary
J. Matthew DeLesDernier, Assistant Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number SR-FINRA-2022-024 - Addendum

Dear Secretary Countryman and Assistant Secretary DeLesDernier:

Please see attached redacted pre-hearing brief as my Second Addendum to my previously submitted Comment Letter.

Respectfully submitted,

/s/ James P Galvin
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8 FINANCIAL INDUSTRY REGULATORY AUTHORITY
9 DISPUTE RESOLUTION

10 [REDACTED],

11 Claimant,

12 vs.

13 [REDACTED]

14 Respondents.

15 FINRA Case No.: [REDACTED]

16 **CLAIMANT'S PRE-HEARING BRIEF**

17 This pre-hearing brief seeks to address the question of the eligibility of Registered Representatives to seek
18 expungement of inaccurate information on their publicly available Central Registration Depository ("CRD") records
19 under FINRA Rule 13206 (the "Eligibility Rule"). [REDACTED] is prepared to explain to the panel the reasons he is
20 seeking expungement now when he provides testimony at the final hearing. This brief only addresses eligibility in
21 expungement matters and does not address it in the context of [REDACTED] present claim.

22 It is important to note that the Eligibility Rule is not a statute of limitations; however, this brief will discuss
23 statutes of limitations in the context of why they exist in civil matters because the Eligibility Rule exists for a similar
24 purpose.

25 While the specific time limits for different civil causes of action can vary by jurisdiction, the overarching
26 goal of statutes of limitation is to strike a balance between the interests of claimants and respondents, ensuring a fair
27 and efficient legal system.

28 Issues regarding eligibility in arbitration matters arise for one of two reasons: (i) the Respondent(s) seeks
to dismiss the matter under the Eligibility Rule; or (ii) the arbitrator(s) raise the issue *sua sponte*. In the present
matter, the Respondents have not sought dismissal under the Eligibility Rule or raised any concerns regarding
eligibility. This brief will primarily focus on the second reason and why it would be inappropriate for the panel to
deny the relief sought by the Claimant to expunge the inaccurate, "meritless[,] [] and frivolous complaints" contained

1 in the disclosures from his CRD record so that he does not continue to suffer the harm and damages they have and
2 continue to cause him.

3 There are various equitable arguments that are accepted as purposes for statutes of limitation to exist for
4 actions in civil matters:

5 1. As time passes, evidence can be lost, destroyed, or degraded, making it more difficult to accurately establish
6 the facts of a case.

7 a. One reason that the Eligibility Rule exists is FINRA's rule regarding document retention. In the
8 present matter, the relevant documents exist, and this reason is therefore moot.

9 2. Statutes of limitation encourage claimants to pursue their claims within a reasonable period. This ensures
10 that potential defendants have some certainty about their legal exposure and can plan their lives and
11 businesses accordingly without the constant fear of being sued for old claims.

12 a. While civil claims filed in court and arbitration against broker-dealers often seek monetary
13 damages against the firms for some alleged wrongdoing. In expungement matters, the Registered
14 Representative is not alleging wrongdoing by the firm or seeking any damages against the firm.
15 The firm did not make the complaint, and the firm was required by FINRA rules to report the
16 complaint to the CRD system—and the firms have qualified immunity for submitting customer
17 complaints under the rules. In expungement matters, the degree of certainty firms have about legal
18 exposure is moot.

19 3. As time passes, a defendant may lose the ability to mount an effective defense due to the loss of evidence
20 or witnesses. Statutes of limitation recognize that it may be unfair to hold a person or entity accountable
21 for an alleged wrong after a significant period has elapsed.

22 a. Like the reason discussed in item two above is moot, this reason is also moot. The Registered
23 Representative is not alleging any kind of wrongdoing by the firm or seeking to hold the firm
24 accountable for any kind of wrongdoing.

25 b. In the present matter, not only do the documents exist and does the claim not allege any
26 wrongdoing by the Respondents, the Respondents are not opposing the expungement at all, have
27 not sought to dismiss the claim based on eligibility, and are not raising any concerns about being
28 harmed by the timing of the claim that any time limitations exist to prevent.

1 In expungement claims, Registered Representative are seeking to remove inaccurate and often defamatory
2 customer complaints from their publicly accessible CRD records. FINRA rules require that all customer complaints
3 be reported by firms to the CRD system, with no exceptions. Complaints are reported on the CRD system with no
4 consideration regarding the accuracy of the complaint. Inaccurate complaints on a Registered Representative's CRD
5 record publicly defame the Registered Representative on an ongoing basis into perpetuity unless expunged.
6 Attorneys that represent customers in arbitrations in almost all cases where eligibility is raised argue that the "event
7 or occurrence giving rise to the claim" is when the customer learned about the problems alleged in their complaint.
8 They often argue that the rule is tolled when the firm or Registered Representative continues making
9 misrepresentations to the customer because the fraud is ongoing. A similar argument can be made in expungement
10 claims because the inaccurate information on the Registered Representatives' CRD records continue to publicly
11 defame them, the "event or occurrence giving rise to the claim," the harm caused by the publicly available and
12 inaccurate complaint is ongoing until it is expunged from the CRD system.

13 Besides the reasons discussed above, there are other arguments why time limitations should not apply to
14 expungement claims:

- 15 1. It is illogical, unfair, and contrary to the principals of fairness and fair dealings to impose time limitations
16 on an individual's right to remove inaccurate and defamatory information from publicly accessible systems.
17 Imposing time limitations on a Registered Representative's right to seek expungement without also
18 addressing the rule requiring that all complaints, regardless of the accuracy or truth of the complaint, be
19 reported to the CRD system with no kind of review by the firm or FINRA violates the principal of fair
20 dealing. "This is the equivalent to treating the symptom and not the disease. Thus, if there is no minimum
21 requirement for what is counted as a disclosure," and until disclosure reporting is addressed, there should
22 not be any time limits on a Registered Representative's right to expunge inaccurate and defamatory
23 information from the CRD.

- 24 a. "State bar associations evaluate complaints first to determine if there is any merit. Then, after that
25 evaluation, if it is determined that there is some merit, the attorney is involved. The same should
26 [apply] here. FINRA should evaluate the complaint first to determine a basic level of legitimacy.
27 Otherwise, the meritless and frivolous complaints will continue to be filed" and imposing any kind
28

1 of time limit on the Registered Representative's right to the only form of relief the "meritless and
2 frivolous complaints" are causing violates the Registered Representative's fundamental rights.

3 2. "Many financial advisors are still unaware of the expungement process." Or perhaps the financial advisor
4 does not have the resources to pursue expungement within the time frame. Time limits "would preclude
5 them from ever pursuing expungement." If there are going to be time limits on the right to seek
6 expungement of inaccurate, "meritless[,] and frivolous complaints ... FINRA should send notice to all
7 financial advisors giving them a time period in which they must pursue an expungement claim or their
8 opportunity will expire."

9 3. One argument put forth to make it more difficult for Registered Representatives to expunge inaccurate,
10 "meritless[,] and frivolous complaints" from their CRD records is to maintain the integrity of the CRD
11 system. Imposing time limits on a Registered Representative's right to expunge inaccurate, "meritless, and
12 frivolous complaints" from the CRD system results in the exact opposite outcome. Preventing the ability
13 to expunge inaccurate, "meritless[,] and frivolous complaints" from the CRD system, harms the system's
14 integrity by ensuring inaccurate, "meritless[,] and frivolous complaints" remain. If the integrity of the CRD
15 system is an important goal, then there should be no limitations on the ability to remove inaccurate
16 information from it.

17 4. Imposing time limits on a Registered Representative's right to seek expungement of inaccurate,
18 "meritless[,] and frivolous complaints" is unduly restrictive and violates the Registered Representative's
19 rights. It violates their due process rights by depriving them of their right to protect their reputations without
20 adequate procedural safeguards. Time limits are arbitrary and capricious as they do not consider the unique
21 circumstances of each case or the fact that some people may be unable to address the issue within the
22 prescribed period, and are an arbitrary restriction on their ability to clear their records of false
23 information, which runs afoul of their due process rights. They violate their right to equal protection
24 under the law by unfairly burdening them and treating them differently from others similarly situated
25 with no rational basis. Requiring the reporting of inaccurate, "meritless[,] [] frivolous[,] and often
26 factually impossible allegations, then imposing time limits that prevent them from seeking to expunge
27 them, violates the Registered Representatives First Amendment rights as it infringes upon their right to
28 free speech and expression by compelling them to bear the burden of false information without recourse.

- 1 5. Registered Representatives have property and liberty interests in their licenses and professional reputations.
2 The accumulation of inaccurate, “meritless, and frivolous complaints” on their CRD records greatly affects
3 their ability to build their book of business, register in additional jurisdictions, obtain or maintain various
4 professional designations, and pursue lateral career opportunities, promotions, and/or employment at other
5 firms, among many other things.
- 6 6. There are also concerns regarding the newly adopted FINRA Rule 4111, which establishes an annual
7 calculation for all member firms based on several metrics to determine whether they should be classified
8 as a Restricted Firm and subject to additional obligations. The metrics used in Rule 4111 include the total
9 number of cumulative disclosures on the CRD records of their associated persons. Thus, inaccurate,
10 “meritless[,] and frivolous complaints” on their CRD records may find it difficult to retain employment, or
11 get employed by new firms, which clearly impacts their property and liberty interests in ensuring the
12 accuracy of their CRD records.
- 13 7. Finally, imposing time limits on a Registered Representative's right to expunge inaccurate, “meritless[,] []
14 frivolous[,]” and often factually impossible allegations from the CRD record, likely exceeds the regulatory
15 authority granted to FINRA by relevant statutes.

16 “The amount of time that passes after allegations are made has absolutely nothing to do with whether the
17 allegations are” false. Imposing time limitations on a Registered Representative’s right to expunge false information
18 from his CRD record is not complicated. “The allegations are either true or false.... It is that simple.” “A principle
19 that seems to have been lost by FINRA” and those who argue for time limitations on a Registered Representative's
20 right to expunge inaccurate, “meritless[,] and frivolous complaints[,] ... is that the accused is innocent until
21 proven guilty.” Finding that ██████████ claim seeking to expunge inaccurate, “meritless[,] and frivolous
22 complaints” from his CRD record is time barred would strip him of any remnant of fairness and equity.
23 Imposing any form of time limitation on a Registered Representatives right to expunge inaccurate, “meritless[,]
24 and frivolous complaints” from their CRD Records does not withstand Constitutional scrutiny.

25 It would be inappropriate to deny ██████████ the right to expunge the inaccurate, “meritless[,] and frivolous
26 complaints” from his CRD record. The Respondents have not raised the issue of eligibility. The “event or occurrence
27 giving rise to the claim” is ongoing, therefore the eligibility period has not run. It would be inappropriate for the
28 panel to deny Mr. Kneen’s right to expunge the disclosures at issue *sua sponte*.

