



Securities Arbitration Clinic
St. Vincent DePaul Legal Program,
Inc.

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[Via email to pubcom@finra.org](mailto:pubcom@finra.org)
Ms. Marcia E. Asquith
Officer of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 2006-1506

Re: **FINRA Regulatory Notice 17-42**
Expungement of Customer Dispute Information

Dear Ms. Asquith:

Thank you for the opportunity to comment on 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 small aggrieved investors 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.

Generally, the Clinic is supportive of the proposed changes to the rules governing when and how an associated person may seek expungement of customer complaint information from the CRD, and by extension, BrokerCheck.

The Clinic supports the creation of an Expungement Arbitrator Roster. The Clinic supports the proposal that arbitrators eligible for the Expungement Arbitrator Roster be chair-qualified attorneys. Expungement of customer complaint information is an extraordinary remedy, which requires a different determination than whether a firm or associated person is liable to the customer for damages. We believe enhancing the

training and qualifications of public chairpersons to serve on an Expungement Arbitrator Panel will help ensure greater integrity of the expungement process.

Consonant with FINRA's goal of maintaining the accuracy of the data in the CRD and, therefore BrokerCheck, the Clinic supports requiring the standard for granting expungement be a finding that the customer dispute information has no investor protection or regulatory value. This will help strengthen investor protection by improving confidence in the accuracy of the CRD and BrokerCheck.

The Clinic strongly agrees with requiring associated or unnamed persons to wait until the conclusion of a customer's case to file an expungement request. We believe that the result of the customer's case will assist the arbitrator panel in determining whether or not the customer dispute information has any investor protection or regulatory value. The Clinic suggests that associated persons be prohibited from seeking expungement if there has been a finding of liability in the underlying arbitration.

Additionally, the Clinic supports separating the expungement request from the underlying arbitration to allow for consistency in how expungement requests are considered. In cases under \$100,000, a single arbitrator considers the merits of the case. The arbitrator will be a public chair-qualified arbitrator; however, the arbitrator may or may not be on the Expungement Arbitrator Roster. In cases in excess of \$100,000, three arbitrators consider the merits of the case, however, it is possible that none of the arbitrators will be from the Expungement Arbitrator Roster. In addition, in cases under \$100,000, a single arbitrator will consider the expungement request, while three arbitrators must reach a unanimous decision for cases where the customer complaint requested damages in excess of \$100,000. To ensure uniformity in how expungement requests are considered, all expungement requests should be heard by a panel of three arbitrators from the Expungement Arbitrator Roster. To the extent an arbitrator in the underlying customer dispute is qualified as an Expungement Arbitrator, we would have no objection in that arbitrator being retained on the new panel to consider the expungement request.

In addition, by separating the expungement request from the underlying customer case, customers should receive faster decisions in simplified cases. Currently, if an associated person requests expungement in a simplified case, the arbitrator must hold a hearing to consider the request, notwithstanding that the customer did not request a hearing on the underlying dispute. This delays the process, as the arbitrator may only hold the hearing once he has made a determination on the merits of the case. However, that decision is not relayed to the parties, because the award may not be finalized until all outstanding issues (expungement) are decided. The Clinic thanks FINRA for recognizing and attempting to address these issues by proposing that expungement requests will be bifurcated from simplified arbitrations.

In addition, we support allowing the proposed expungement process to proceed without the customer having to be named a party to the request. We do believe that customers must have notice of the expungement request and the right to appear.

In addition, if the customer does wish to appear in connection with an expungement request, we support continuing to allow the various forms of appearance contemplated by FINRA in its guidance to the parties and arbitrators: (i) the customer and their counsel may appear at the expungement hearing; (ii) the customer may testify (telephonically, in person, or other method) at the expungement hearing; (iii) counsel for the customer or a pro se customer may introduce documents and evidence at the expungement hearing; (iv) counsel for the customer or a pro se customer may cross-examine the broker and other witnesses called by the party seeking expungement; and (v) counsel for the customer or a pro se customer may present opening and closing arguments if the panel allows any party to present such arguments.¹ The Clinic represents individuals, at no cost to the customer, who cannot otherwise obtain representation. Our clients are often elderly, with health issues which may make appearing for a hearing difficult. Therefore, we support FINRA's belief that customers should be able to participate in an expungement hearing without having to appear in person. By allowing the customer flexibility, customers may be better able to participate in the expungement request.

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.

Very truly yours,

/s/
Kelly Frevele
Legal Intern

/s/
Sigourney Norman
Legal Intern

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

¹ See FINRA, "Notice to Arbitrators and Parties on Expanded Expungement Guidance," September 2017, available at <http://www.finra.org/arbitration-and-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance>.