



**COMMONWEALTH** *financial network*

VIA ELECTRONIC MAIL

February 5, 2018

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 17-42, Modifications to Expungement Process**

Dear Ms. Asquith:

In its Regulatory Notice 17-42, the Financial Industry Regulatory Authority, Inc. (“FINRA”) solicited comments regarding proposed changes to rules affecting the expungement process.

Commonwealth Financial Network<sup>®</sup> (“Commonwealth”) is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 2,000 registered representatives (“RRs”) who are independent contractors conducting business in all 50 states.

For the reasons set forth below, Commonwealth joins the many other individuals and firms that have already expressed concerns with the proposed modifications.

### **The Proposed Rules Have no Real Benefit**

Nothing contained in the new rules will make the industry more transparent, create more investor confidence, or stop scoundrels from being scoundrels. Rather, the proposed rules simply make it harder for reputable RRs to deal with spurious allegations lodged by irrational customers who understand that a written complaint can be used as leverage to demand compensation for the slightest perceived wrong.

The system, as presently constituted: (i) already sufficiently accommodates customers who want to lodge complaints; (ii) already requires disclosure of minor complaints that serve no public purpose; and (iii) already requires a RR to make a substantial outlay of money and time to seek expungement – with no guarantee that it will succeed.

If FINRA believes that expungement is being granted at too frequent a rate, it should consider first studying the merits of the cases that are being expunged before it determines that expungement is being granted too liberally. It is much more likely that the FINRA-trained arbitrators granting the expungement awards (who are required to be chairperson certified) have

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determined that the disclosures are unwarranted than it is that the expungement standards aren't high enough.

### **FINRA Should Change U4 Criteria Before Considering Expungement Modifications**

FINRA needs to amend the criteria for disclosure of customer complaints on RR U4s. The bar for disclosure is so low that almost any written complaint requires disclosure. Particularly, the \$5,000 threshold should be drastically increased. It is an amount so de minimis that it is essentially superfluous.

Many frivolous and meritless complaints are required to be disclosed on RR U4s under the current rubric. These complaints are unduly prejudicial in this day and age when anyone with internet access can view RR's disclosures. Most customers that avail themselves of online disclosure information likely do not understand how easy it is for a customer complaint to become disclosable. Therefore, their assumption is that the disclosure must reflect something serious. This is unnecessarily prejudicial to RRs that bear the brunt of such complaints through no fault of their own.

Although some disclosures may be relevant to the consumer in choosing a RR, complaints should be acknowledged as an expected cost of doing business – not be treated as out of the ordinary “scarlet letters” that taint a customer's opinion of a RR because of an outdated standard.

If FINRA chooses to make it more difficult to expunge complaints it should ensure that only legitimate and warranted complaints are disclosed in the first place. This would include, at a minimum: (i) drastically increasing the alleged damages threshold; (ii) narrowing the definition of “sales practice violation”; and (iii) modifying the process such that clearly false or uncorroborated allegations do not require disclosure.

### **FINRA Should Change Brokercheck Criteria Before Considering Expungement modifications**

Similar to the U4 concerns above, FINRA's Brokercheck site also unfairly publicizes certain RR disclosures. Although to a large extent the U4 and Brokercheck are one and the same, it is noteworthy to recall that the U4 requires only disclosure of certain customer complaints that have been lodged within the most recent 24 months. Yet those same complaints apparently remain on Brokercheck in perpetuity. This is also unnecessarily prejudicial to RRs as these complaints remain publicly available well beyond the time they are of any public benefit.

Sincerely,



Joe Tully  
Assistant General Counsel