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May 21, 2012

VIA E-MAIL

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

**Re: Proposed *In re* Expungement Procedures for Persons
Not Named in a Customer-Initiated Arbitration**

Dear Ms. Asquith:

On behalf of Transamerica Financial Advisors, Inc. and after consulting with a number of our broker-dealer clients, we write to comment on FINRA's proposed new *In re* expungement procedures for persons not named in a customer-initiated arbitration. In sum, we support the establishment of *In re* proceedings that dispense with the need to name respondents in expungement matters, but we find that the proposed proceedings contain many problems, many of which stem from a misguided attempt to bring arbitrators from the underlying arbitrations into the expungement proceedings.

To begin with, FINRA's goal for the proposed proceedings is admirable. Registered representatives should have a simple, straightforward way to clean their records of unmeritorious, unproven allegations. The damage of having false allegations on a registered representative's CRD records can be so great and the substantive bar for expungement has been set so high that, at the least, FINRA should endeavor to make the procedure for expunging incorrect allegations as simple and efficient as possibility.

We also recognize the tension between the harm to registered representatives when incorrect allegations are left on CRD records and the benefit to the public when valid allegations of a registered representative's misdeeds are kept and, typically, made publicly available. When cases are closed without an evidentiary hearing to determine the accuracy of allegations, there is no simple way to resolve this tension.

Regulatory Notice 12-18 notes that there are currently no express procedures for unnamed representatives to seek expungement of their records and the proposed rules seek to

remedy that. *See* Regulatory Notice 12-18 (“Reg. Notice”) at 3. However, comparing the proposed rules to the current absence of “express” procedures can be somewhat misleading. The more appropriate comparison is to the current regime, whether or not “expressly” set forth in the rules. Under the current regime, registered representatives can obtain expungement by filing separate arbitration proceedings in which they name either the firm or customer as respondent—and get a fresh set of potential arbitrators. *See id.*

The proposed *In re* proceedings offer a key benefit over the current regime in at least one significant way: dispensing with the requirement to name a firm or customer as a respondent in the matter. We strongly agree with FINRA that “neither the firm nor the customer should be required to incur the additional expense of participating as a respondent in a new case.” *Id.*

If FINRA had decided to simply make this lone change to the current regime, the proposed rule changes could be simple, straightforward, and fair. Unfortunately, FINRA has attempted to find false efficiencies by providing for the chairperson who presided over the underlying customer arbitration to preside over the *In re* proceeding. This attempt to “re-use” arbitrators from the underlying arbitrations in the *In re* proceedings is counterproductive, prejudicial to the registered representative, and leads to many of the specific issues noted below. Another significant problem with the proposed procedure is the unnecessary burdens it imposes on both the unnamed person and the parties to the underlying customer arbitration.

Below are our specific comments to the proposed rules:

I. Tying the Expungement Proceeding to the Underlying Customer-Arbitration Hearing Is Inherently Flawed.

Proposed Rule 13807(h)(1) provides that the chairperson who presided over the underlying customer arbitration—or, if the chairperson is unavailable, another public arbitrator from the underlying arbitration—will preside over the *In re* expungement proceeding. The potential for arbitrator bias is too great to allow an arbitrator who served on the underlying customer panel to decide the unnamed person’s expungement claim.

FINRA has recognized the potential for bias when an arbitrator hears matters with overlapping parties and issues, and it has recognized that, on occasion, that overlap can become so great as to warrant disqualification. For example, in its “Guidance to Parties in Cases Involving Morgan Keegan and the RMK Bond Funds,” FINRA noted that it “has in the past honored timely challenges based on special circumstances, such as where the arbitrator is serving on multiple cases involving the same firm and the same product. We will continue to accept *timely* challenges on that basis.” The proposed *In re* expungement proceedings would easily meet this standard for arbitrator disqualification. Indeed, not only would the underlying

arbitration and the proposed *In re* proceeding involve the same firm and product, but they would involve the same transaction and largely the same parties, issues, witnesses, and evidence.

Despite this strong overlap, the unnamed person would have none of the rights of a party to the underlying arbitration. As a non-party to the underlying arbitration, an unnamed person has no ability to object to the introduction of evidence or witnesses in that proceeding. Moreover, any such right would be of only limited use since testimony and evidence could be admissible for purposes of resolving the claims at issue in the customer dispute without being relevant to the more limited issues at issue in the *In re* proceeding. Perhaps most importantly, the unnamed person has no right to examine and cross-examine witnesses in the underlying proceeding, leaving no ability to clarify or contest otherwise misleading testimony presented to the arbitrator. In sum, because the unnamed person was not a party to the underlying arbitration, it is unfair for the unnamed person to present claims before an arbitrator who has already made legal and factual determinations on issues intimately related to the unnamed person's expungement claim. "A person who was not a party to a suit generally has not had a 'full and fair opportunity to litigate' the claims and issues settled in that suit. The application of claim and issue preclusion to nonparties thus runs up against the 'deep-rooted historic tradition that everyone should have his own day in court.'" *Taylor v. Sturgell*, 553 U.S. 880, 892-893 (U.S. 2008) (citations omitted).

Under this scenario, it is entirely possible—indeed, likely—that the arbitrator deciding expungement would have reviewed evidence in the underlying customer arbitration that is prejudicial to the unnamed person but has no relevance to the unnamed person's expungement proceeding. Indeed, proposed Rule 13807(l)(1)(A) limits discovery in the *In re* proceeding "to only those documents which the unnamed person has demonstrated are substantially and directly related to establishing the grounds for expungement under FINRA Rule 2080." The arbitrator will have likely reviewed evidence and heard testimony in the underlying customer arbitration that goes well beyond this limited scope. Moreover, the arbitrator may have developed preconceived ideas about the registered representative from the underlying customer arbitration that have no place in the *In re* proceeding. This is exactly the type of potential arbitrator bias that FINRA normally strives to prevent.

Rather than making the process more efficient, having an arbitrator from the underlying customer arbitration preside over the *In re* proceedings will only *increase* the burden and costs on the unnamed person—in most cases, substantially. For example, in order simply to determine what was said at the underlying customer hearing and what exhibits were introduced (if for no other reason than to deal with any extraneous, incorrect, or misleading information conveyed during the underlying arbitration that the unnamed person had no power to prevent or controvert), the unnamed person or, more likely, his or her counsel will have to listen to the entire hearing. In other words, instead of sitting through one hearing, the unnamed person will have to sit through two. Most likely, sitting through the audiotapes of the underlying hearing

would take the unnamed person (or, again, his or her counsel) even longer and would be more tiresome than sitting through the actual hearing since it would be without the benefit of seeing how exhibits were used (if the unnamed person is able to get them at all) and almost certainly without the benefit of seeing the demonstrative exhibits at all.

There simply is no feasible workaround to this problem other than to jettison the use of arbitrators from the underlying arbitration in the *In re* proceeding. The unnamed person either takes on a substantial effort to identify and attempt to rectify any misconceptions created at the underlying arbitration in which he or she was not a party or else goes forward in the *In re* proceeding blind to any misleading, extraneous, or inaccurate testimony or arguments made in the underlying arbitration that the arbitrator has considered and that have inevitably impacted that arbitrators' view on the unnamed person's expungement arguments. Indeed, FINRA's Regulatory Notice goes so far as to support an arbitrator's consideration of evidence from the underlying arbitration during the *In re* proceeding, encouraging them to "consider the evidence and other information presented during the underlying customer arbitration for possible relevance to the *In re* claim." See Reg. Notice at 5. Although FINRA apparently hopes to create efficiencies through this process, an arbitrator who hears an unnamed person's *In re* claim with preconceived notions of the evidence is a problem, not a benefit.

In short, providing that an arbitrator from the underlying customer arbitration will preside over the expungement proceeding creates a process that is less efficient and irredeemably tainted with arbitrator bias. We suggest that proposed rules be amended to provide for a new arbitrator to preside over the *In re* expungement proceeding.

II. The Requirement That an Unnamed Registered Representative File a Notice of Intent to File an *In re* Claim Is Unnecessary And Will Add Confusion to the Underlying Customer Arbitration.

Under proposed Rule 13807(c), the unnamed person would be required to file a Notice of Intent in order to be permitted later to file a claim for expungement relief. FINRA explains in Regulatory Notice 12-18 that this Notice of Intent would (1) alert FINRA and arbitrators of the underlying customer arbitration case to prepare for a possible *In re* claim and (2) allow the arbitrators to consider the evidence and other information represented during the underlying customer arbitration for possible relevance to the *In re* claim. However, no real action will be taken by FINRA or the arbitrators until after the conclusion of the underlying customer-initiated arbitration case. Once concluded, FINRA would notify the unnamed person (assuming he filed the Notice of Intent) that the matter is closed. At that time, the unnamed person would be able to seek expungement by filing a Statement of Claim and an *In re* Submission Agreement.

The proposed Notice of Intent does not appear to have any real benefit. Giving notice to the arbitrators of a potential *In re* proceeding could only cause problems. As discussed above,

there are inherent problems in having the arbitrators for the underlying customer arbitration consider evidence for possible relevance to the *In re* claim without the unnamed person as a party to cross-examine witnesses or controvert evidence. It could also complicate the underlying hearing. It is left unclear whether arbitrators would be expected (or even permitted) to ask for additional evidence during the course of the customer arbitration that might have relevance to the unnamed person's potential expungement claim—which still would not have been filed.

Moreover, this would serve as a completely unnecessary bar to pursuing expungement for those unnamed persons who might miss this arbitrary deadline. Such unnamed persons could be time-barred before even the conclusion of the underlying arbitration. There is no justification for such a short deadline.

We suggest that the requirement that unnamed persons file a Notice of Intent under proposed Rule 13807(c) be dropped. The Notice of Intent would do nothing to facilitate the expungement proceedings and, as noted above, would only add confusion to the underlying customer arbitration.

III. The Time to File an *In re* Expungement Claim Is Too Short.

Proposed Rule 13507(d) provides that an unnamed person has 60 days from the date FINRA sends the notice of conclusion of the customer arbitration matter to file a statement of claim seeking expungement relief. This does not provide enough time for the unnamed person to come to a decision as to whether or not to file an expungement claim, obtain legal counsel, gather facts, potentially review materials from the underlying customer arbitration, and draft a statement of claim. There is also less room for flexibility than in other arbitrations. In most arbitrations, if a party needs an extension to a deadline, he can reach an agreement with the opposing party. However, under the proposed rules, the unnamed person would have to obtain an extension from the Director, who would require a showing of good cause.

There is no purpose served by such a short deadline. This is not a matter in which there are opposing parties who deserve repose over time; by their nature, *In re* claims involve only the unnamed person. The only “harm” from delay is to the unnamed person, who will have the disclosure of the underlying arbitration on his or her CRD throughout any delay in filing. If anything, this extremely short limitations period seems designed to accommodate the use of an arbitrator from the underlying matter and therefore constitutes another issue unnecessarily caused by FINRA’s attempt to use an arbitrator from the underlying arbitration.

We suggest amending proposed Rule 13507(d) to allow at least one year from FINRA’s notice of the conclusion of the underlying arbitration for an unnamed person to file an expungement claim. A one-year limitations period would be shorter than most state statutes of

limitations and far shorter than the 6-year eligibility period for customer-initiated arbitrations. See FINRA Rule 12206.

IV. The Unnamed Person Should Have a Say in the Arbitrator Selection Process.

As discussed above, proposed Rule 13507(h)(1) provides for a public arbitrator from the underlying customer arbitration to preside over the expungement proceeding. Proposed Rule 13507(h)(2) provides for the appointment of a single arbitrator if no public arbitrators from the underlying customer arbitration are available. The proposed rule directs FINRA to “appoint randomly, pursuant to Rule 13400 a single public chair-qualified arbitrator” FINRA’s use of the word “appoint” implies that the unnamed person takes no part in the arbitrator selection process. This is certainly less than clear, however, since proposed Rule 13400 refers to the “Neutral List Selection System,” which provides for list selection, a process that includes arbitrator lists, rankings, and preemptory strikes. See FINRA Rules 13403 – 13406.

If, indeed, the proposed rules do intend to prevent the unnamed person from using the list selection process, that is inappropriate. There is no reason for unnamed persons to be denied the process they would be entitled to in any other FINRA arbitration proceeding. Providing for arbitrator rankings better ensures that the unnamed person can get an arbitrator qualified to evaluate the particular issues in the *In re* proceeding. We suggest that the proposed Rule 13507(h)(2) be amended to clarify that the unnamed party will receive a list of 10 arbitrators, have the right to the customary 4 preemptory strikes, and be able to rank the rest, as in any other FINRA arbitration. This would, of course, become a more important change if the proposed rules are amended to prevent the automatic use, where possible, of a public arbitrator from the underlying arbitration.

V. The Unnamed Person Should Determine the Hearing Location.

FINRA Rules 12213(a)(2) and 13213(a)(2) provide that parties to a FINRA arbitration may agree to any hearing location they want, whether or not it was where the underlying events took place. Proposed Rule 13807(j) would strip this ability from unnamed persons seeking expungement under 13807 and would require the hearing to take place where (1) the underlying customer arbitration hearing was held, if an arbitrator from the underlying customer arbitration is presiding over the expungement matter; or, (2) where the events at issue took place if the presiding arbitrator did not serve on the panel for the underlying customer arbitration.

These hearing location requirements are unnecessary and have the potential to greatly inconvenience the unnamed person. The unnamed person is the only party to the expungement proceeding, so there are no other parties to be inconvenienced. Indeed, any inconvenience to third parties would be extremely limited since Proposed Rule 13807(k) provides that the parties to the underlying arbitration may appear at the expungement hearing by telephone.

The proposed rule is particularly problematic when one of the arbitrators from the underlying customer arbitration presides over the expungement proceedings and, thus, the hearing must proceed wherever the underlying arbitration took place. Yet again, this is an inconvenience imposed on the unnamed person for the sake of using an arbitrator from the underlying arbitration in the *In re* proceeding. The parties to the underlying arbitration can agree to have the arbitration anywhere (even, upon the Directors' consent, in a foreign location (*see* FINRA Rules 12213(b) and 13213(b)), and the unnamed person—who had no say in that decision—must then bring the *In re* proceeding in the location preferred by parties to *another* matter. With respect to proposed Rule 13807(j), it appears that FINRA is prioritizing arbitrator convenience above that of the party. We suggest amending proposed Rule 13807(j) to provide that the unnamed person may chose the hearing location for the expungement proceeding.

VI. Discovery Issues Under Proposed Rule 13807(l).

A. Proposed Rule 13807(l)(1)(A)(ii) provides that a party to the underlying customer arbitration must produce documents requested by the unnamed person in the expungement proceedings within 10 days from the date of the request. Ten days are simply not sufficient to provide the documents or object. Parties to a typical FINRA arbitration get 60 days to respond to discovery requests, and those parties generally have counsel to assist them. By contrast, parties to the underlying arbitration would not yet have had reason to hire counsel for the *In re* proceeding. There is therefore a strong chance that they would have to go through the process of hiring counsel—or, at least, extending a prior retention to a new matter—in order to respond to the discovery request. It is simply not feasible to forced non-parties to hire counsel; review requests; locate, review, and produce relevant documents; and make objections within 10 days.

In addition, parties to the underlying arbitration may be left trying to figure out the scope of issues relevant to the discovery requests they receive. Although the parties to the underlying customer arbitration are given notice of the *In re* proceeding according to 13807(k), there is no provision in the proposed rule mandating that they receive a copy of the *In re* statement of claim. Thus, the parties to the underlying action would not have reason to be aware of the particular issues in the *In re* proceedings in order to properly raise objections.

We suggest proposed Rule 13807(l)(1)(A)(ii) be amended so that the parties to the underlying customer arbitration have 60 days to respond to discovery requests propounded under the proposed rule and that the unnamed person is directed to provide a copy of the *In re* statement of claim within 5 business days of any request by a party who has received discovery requests in the *In re* proceeding.

B. Proposed Rule 13807(l)(1)(A)(i) implies that the presiding arbitrator must review and approve any request for production of documents propounded to FINRA prior to FINRA's producing such documents. This process would be inefficient and could result in a hearing to

resolve the issue, thereby imposing another \$450 hearing session on the unnamed person seeking expungement. We see no reason for document requests to FINRA to always be an individualized determination, much less one requiring arbitrator involvement. At the same time, there is no provision for notice of the request to the parties to the underlying arbitration, and it is those parties who would have a potential interest in the release of hearing tapes or exhibits to the unnamed persons. We suggest that the proposed rule be amended to provide that parties to the underlying arbitration be copied on any discovery requests to FINRA and that FINRA will provide certain documents, such as hearing tapes and exhibits, to unnamed persons as a matter of course unless there is an objection within 15 days by any party to the underlying arbitration. If there is an objection, it will be resolved by the arbitrator in the *In re* proceeding.

C. Proposed Rule 13807(l)(1)(A)(iii) implies that a party to the underlying customer arbitration would be required to specifically identify all documents that it objects to producing, rather than simply objecting to the unnamed person's specific document requests. This requirement would be more burdensome than what is required in customer arbitrations and is entirely unnecessary. Compliance with proposed Rule 13807(l)(1)(A)(iii) would be particularly difficult if the party to the underlying customer arbitration had only 10 days to object, as currently contemplated under proposed Rule 13807(l)(1)(A)(ii). We suggest amending the proposed rule to provide for objections to be raised to document requests rather than to the production of specific documents.

D. Proposed Rule 13807(l)(1)(B) provides different protections from compelled testimony for the customer in the underlying arbitration than it does for the member firm, as discussed below. This disparity serves no purpose. The proposed rule would also potentially hamper the fair resolution of the expungement claim by precluding testimony from the customer in some cases even if "no other approach or method exists to obtain documents or information that substantially and directly relate to establishing grounds for expungement under Rule 2080."

Proposed Rule 13807(l)(1)(B)(i) provides that the unnamed person may request a subpoena be issued to any respondent from the underlying customer proceeding for appearance at the expungement proceeding. However, proposed Rule 13807(l)(1)(B)(ii) provides that an unnamed person "shall not subpoena a customer in the underlying investment-related customer-initiated arbitration proceeding, unless the unnamed person demonstrates that the customer's testimony is not available from tape, digital or other recording or transcript, **and** that no other approach or method exists to obtain documents or information that substantially and directly relate to establishing grounds for expungement under Rule 2080." (emphasis added.)

Under the current phrasing, *both* elements must be met. Thus, under a literal reading of the proposed rule, if the customer testified in the underlying arbitration—for any limited purpose—then the unnamed person would be absolutely barred from subpoenaing the customer to testify in the *In re* proceeding, even if the second element is met and, therefore, "no other

approach or method exists to obtain documents or information that substantially and directly relate to establishing grounds for expungement.” Proposed Rule 13807(l)(1)(B)(ii). The additional requirement that the customer not have testified in the underlying arbitration serves no legitimate purpose and could hamper legitimate needs for testimony. If testimony from the customer is truly necessary (as the second element already requires), why should the unnamed person’s ability to subpoena the customer hinge on whether or not the customer may have testified on other subjects? It is an arbitrary and unnecessary distinction, particularly when the unnamed person was not a party to the underlying arbitration and had no ability to examine the witness.

Moreover, there is no reason for the customer to receive such strong subpoena protections under the proposed rule while proposed Rule 13807(l)(B)(i) affords member firms and other respondents no such protections. Each party to the underlying arbitration would be equally burdened by being compelled to testify at the expungement proceeding. The unnamed person may no longer be associated with the firm. Indeed, if the unnamed person needs to subpoena the firm, then that is likely the case. If anything, the customer who actually made the claim and who had the customer relationship would seem to be a far more important witness for expungement purposes than the firm.

We suggest proposed Rule 13807(l)(1)(B)(ii) be amended to remove the requirement that the customer’s testimony from the underlying customer arbitration not be available in order for the unnamed person to be able to obtain a subpoena for the customer’s testimony in the expungement proceedings and 13807(l)(1)(B)(i) be amended to include protections to member firms that are consistent with those provided to customers in 13807(l)(1)(B)(ii).

VII. If Requested, Unnamed Persons Should Be Required to Enter Into Confidentiality Agreements With Member Firms Prior to Receiving Confidential Settlement Agreements From Underlying Customer Arbitrations.

Proposed Rule 13807(d)(2) requires firms to provide settlement agreements from the underlying customer arbitration to unnamed persons seeking expungement if the unnamed person so requests. Such agreements are often confidential. The proposed Notice of Intent to File an *In re* Expungement Claim provides that the unnamed person agrees to maintain the confidentiality of any settlement agreement and other documents obtained from the underlying customer arbitration. The confidentiality provision in the Notice of Intent, however, does not provide any remedy should the unnamed person violate the confidentiality agreement. Proposed Rule 13807(l)(2), likewise, binds the unnamed persons to confidentiality agreements in place in the underlying customer arbitration. Yet, the underlying confidentiality agreements and orders will have been formulated without consideration of forced production to a non-party to the underlying arbitration and so may not adequately address such a situation.

We do not see a reason why a person who is not named or a party to the settlement agreement would have any rights to or jurisdiction over a confidential settlement agreement. Additionally, the proposed rule is silent as to what relief or legal remedies the parties to the settlement agreement would have against the unnamed person if the unnamed person violated the terms of the underlying confidentiality provisions.

We suggest that proposed Rule 13807(d)(2) be amended to include an additional clause providing that a member firm may object to producing settlement agreements if the firm does not believe the protections in 13807(l)(2) are sufficient in that particular case, allowing the firm to seek an appropriate confidentiality agreement from the unnamed person or order from the presiding arbitrator in the *In re* proceeding, and expressly providing that the arbitrator presiding over the *In re* proceeding has authority to enforce any such agreement or order.

VIII. FINRA Should Clarify That Proposed Rules 12806 And 13806 Do Not Apply to Cases Already Pending Or Closed And Should Provide For *In re* Proceedings For Expungement For Named Individuals In Certain Cases.

Proposed Rules 12806 and 13806 provide that named persons must seek expungement during the customer arbitration and bar named persons from seeking expungement in subsequent proceedings, including proceedings under proposed Rule 13807. Proposed Rules 12806 and 13806, however, do not expressly exempt cases that are currently pending or have closed. At the time these cases were pending, registered representatives—whether or not named—had no notice that they would be precluded from seeking expungement if they did not do so during the pendency of the matter or at hearing (if the case ever even reached hearing). These individuals should not be precluded from doing so now.

Indeed, there is no legitimate reason to foreclose named persons from seeking expungement in a separate *In re* proceeding, even after the introduction of the proposed rules. In many cases, an *In re* expungement proceeding could be far more efficient than seeking expungement as part of the underlying customer arbitration. For instance, if claimants' counsel decides to name a registered representative or potential control person in the firm in multiple cases, if the cases settle—as many arbitrations do—the named individuals would be left having to go through hearings in all of the separate arbitrations rather than consolidating them into one case and one hearing.

We suggest that proposed Rules 12806 and 13806 be amended to provide specific exemptions to the requirement that requests for expungement by named or unnamed persons be brought as part of the customer arbitration, including exemptions for cases closed or pending prior to enactment of the rules and for those cases that close without going to hearing.

IX. The Definition of “Unnamed Person” in Proposed Rules 12100(z) and 13100(cc) Should Be Consistent With Language Used In FINRA’s Instructions for Completing Question 14 I(5) of Form U4 and Question 7E of Form U5.

The definition of “unnamed person” in proposed Rules 12100(z) and 13100(cc) is inelegantly worded so that the language does not seem to capture the intended meaning. The definitions currently read as if the statement of claim filed in the underlying customer arbitration must itself allege that the associated person was either named in or can be reasonably identified from the body of the arbitration claim. That is not the requirement for disclosing an arbitration to CRD. According to the instructions for responding to Question 14 I(5) of Form U4 and Question 7E of Form U5, a member firm must report the arbitration “if the individual was not named as a respondent/defendant but (1) the Statement of Claim or Complaint specifically mentions the individual by name and alleges the individual was *involved* in one or more *sales practice violations* or (2) the Statement of Claim or Complaint does not mention the individual by name, but the *firm* has made a good faith determination that the *sales practice violation(s)* alleged *involves* one or more particular individuals.” (emphasis in original.)

The current definition of “unnamed person” in the proposed rules may therefore be read to unintentionally exclude some individuals who were not parties to the underlying arbitration but who have the matter on their CRD disclosures. We suggest proposed Rules 12100 (z) and 13199 (cc) be revised to read

The term “unnamed person” means an associated person who is identified in a Form U4 or Form U5 as having been the subject of an investment-related customer-initiated arbitration proceeding but who was not named as a respondent in such proceeding.

X. The Cost of the Expungement Proceeding Is Too High.

Under proposed Rule 13807(g), an unnamed person would be required to pay a \$750 filing fee to initiate the expungement process. This fee includes an initial hearing session. Based on FINRA’s definition of a hearing session, it appears that this fee would go toward an initial pre-hearing conference to set a schedule rather than toward the actual evidentiary hearing.

Each additional session would cost \$450. Therefore, it appears that even an expungement matter that could be decided in a single, half-day session and without any discovery hearings would cost at least \$1,200. In addition to these forum fees, an unnamed person would have additional expenses, such as legal fees, discovery expenses, and time taken from regular business and personal activities—not to mention the additional costs associated with confirming the expungement award. These costs are excessive.

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We suggest amending proposed Rule 13807(g) to lower the initial filing fee and hearing session fees. As a guide, fees could be in line with the current member filing fees (\$525) and hearing session fees (\$125) for \$5,000 claims before a single arbitrator.

Thank you for your consideration of these comments. Please contact us if you have any questions concerning the foregoing.

Sincerely,

SUTHERLAND ASBILL & BRENNAN LLP

A handwritten signature in black ink, appearing to read 'Bryan M. Ward', is positioned above the printed name.

Bryan M. Ward