Neil H. Smith
5705 Pollock Lane
Knoxville, TN 37914
865-247-6014
neilsmith06@comcast.net

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Sent Via U.S. Mail

Financial Industry Regulatory Authority
Attn: Marcia E. Asquith
Office of the Corporate Secretary
1735 K Street NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 17-42 (December 6, 2017)

Dear Ms. Asquith:

I appreciate the opportunity to add my comments to those already presented regarding Regulatory Notice 17-42 (December 6, 2017). I have read what I believe to be the majority of comments already submitted regarding the changes FINRA is seeking to make regarding the policies, procedures and rules for Expungement. I will not impose my opinions and beliefs when so many have already made similar, impassioned statements that, for the most part, reflect my own. However there is one topic where I feel compelled to add my two cents: Section III.A, Selection of Panel.

I became a FINRA Arbitrator in 2006 and have been on the Chairperson Roster since 2007. During this time period I have been selected as a panel member or sole Arbitrator on more than 60 cases. Among those I have been selected to participate in eight Expungement hearings: six were granted and two were denied: I was the sole Arbitrator on two out of the eight cases: of the remaining six, four were unanimous decisions with the remaining two being decided by the majority. I cannot state the qualifications for the other Arbitrators involved in those cases, but I can claim this about mine:

(1) I completed enhanced expungement training;
(2) I *HAVE NOT* been admitted to practice law in any jurisdiction;
(3) I *DO NOT* have five years' experience in any one of the following disciplines:
    (a) litigation;
    (b) federal or state securities regulation;
    (c) administrative law;
    (d) service as a securities regulator; or
    (e) service as a judge.

So now I have to ask this question: Was I qualified to participate in those eight cases? If an "Expungement Arbitrator Roster" is created I will not be qualified to be on it. Will I? Will these new qualifications mean that I should never have been on the cases I decided as sole arbitrator, or participated in as a member of the Panel? There is an even more pertinent question to consider: Will this open the door for others to claim that their

Expungement hearings were invalid because the Arbitrators who decided their case were unqualified to do so?

As a FINRA Arbitrator I have: read Statements of Claim and the answers responding to them; I have presided over IPHC's, telephonic hearings on Motions, and in-person hearing on the merits; I have decided entire cases only on the papers presented; I have decided Motions only with the papers presented; I have issued Subpoenas and Orders for Appearance; and I have decided cases with multi-million dollar awards affecting the lives of Claimants as well as the Respondents. And I have performed all these responsibilities with a strong dedication to listen to both sides of the case, considering all of the testimony and evidence presented, and have pushed aside any empathy I may have had for the losing party because I am committed to only honoring the merits deciding the case.

Is the responsibility for deciding a claim for Expungement that much greater than those brought by Claimants against Respondents? Customer and Industry cases? Will the creation of a fourth roster, based on RN 17-42.III.A, negatively impact the credibility of a large number of the 3,337 public Arbitrators on FINRA rosters as of December 31, 2017? There will be those who will ask, "If they aren't competent to decide Expungements, are they really competent to decide cases?"

As an Arbitrator who has completed "enhanced expungement training," and who has also participated in Expungement claims, I can say, with no reservations, that there is need for improvement in the training. A good start toward that improvement should involve Arbitrators who have participated in a number of Expungement cases. They can offer insight as to which areas they felt lacked the training and knowledge of the procedures and what was expected of them. Another excellent source of how to improve the training should come from the case administrators who have had to hand-hold the arbitrators through the process. They know the problem areas that arise frequently.

I've said my piece and offered my opinions. Now I will finish with FINRA's own words that shouldn't be brought into question by those who would seek to undermine the credibility of the arbitration process – past, present or future:

*"FINRA arbitrators are a group of **dedicated individuals** serving the investing public and the securities industry. They are **neutral, well-qualified and essential to maintaining a fair, impartial and efficient system of dispute resolution**. FINRA maintains a roster of more than 7,200 arbitrators."* (Emphasis added.)

Respectfully and truly yours,

Neil H. Smith
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