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February 1, 2018

Via E-Mail – pubcom@finra.org

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

Re: **Comments regarding FINRA Regulatory Notice 17-42 (12/6/2017)**

Dear Ms. Asquith:

We write in response FINRA's request for comment on the proposed rule changes concerning expungement of customer dispute information set forth in FINRA's Regulatory Notice 17-42 (December 6, 2017).

Since 1970, Keesal, Young & Logan has represented companies and individuals associated with the financial services industry. Our attorneys have appeared in securities arbitration proceedings conducted by the Financial Industry Regulatory Authority (FINRA), the New York Stock Exchange, Pacific Stock Exchange, American Stock Exchange, National Association of Securities Dealers, American Arbitration Association, Judicial Arbitration and Mediation Services (JAMS), National Futures Association and the Municipal Securities Rulemaking Board. We also have significant experience handling regulatory proceedings initiated by the Securities and Exchange Commission, FINRA and state regulators, and frequently speak on topics related to the securities industry in general and FINRA procedure generally. The opinions and views expressed in this letter are solely those of Keesal, Young & Logan, P.C.

Introduction

Associated persons' livelihoods depend on their reputations. The overwhelming majority of associated persons work diligently to serve investors' needs with integrity and professionalism. Nevertheless, most customer complaints against associated persons must be reported on the associated persons' Central Registration Depository ("CRD") records and also appear on the associated persons' publicly-available BrokerCheck records regardless of whether

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the complaints are timely, justified or meritorious. There is no "gatekeeper" function to weed out false, factually impossible or even defamatory complaints before they are publicly reported on an associated person's CRD record. Rather, the only tool associated persons have to restore their professional reputations and good names after the filing of such unmeritorious claims is the expungement process.

FINRA and its predecessor organizations have a long history of recognizing the importance of a fair expungement process. In 2001, FINRA's immediate predecessor, the National Association of Securities Dealers Regulation ("NASD"), noted that "individuals in the brokerage community have an interest in securing a fair process that recognizes their stake in protecting their reputations and permits expungement from the CRD system when appropriate…." (NASD Notice to Members 01-65, p. 565 (2001)). NASD Regulation likewise recognized that "in some cases, allegations of misconduct may be without merit or may falsely or mistakenly accuse associated persons of engaging in misconduct…" and that those types of allegations "may unfairly tarnish the reputations of those associated persons…." (*Id*., p. 566.) In our opinion, it is critical that the CRD record-keeping system and FINRA Dispute Resolution treat all involved—the investing public, broker-dealer firms, and associated persons—in a fair and neutral manner. We agree with and commend FINRA's goal of providing a fair and neutral forum for public investors; of course, that goal also should embody the equally important goal of providing a fair and neutral forum for associated persons.

Although some of the changes proposed by Regulatory Notice 17-42 are relatively minor, others unfairly skew the expungement procedures against associated persons and will result in an unfair, and unfairly administered, forum. While investor protection and overall transparency are imperative, many of the proposed rule changes do not advance those goals. In the end, the changes serve mainly to punish associated persons who are trying to serve their clients honestly and professionally. That does not protect investors. We therefore urge FINRA's Board of Governors to reject most of the changes proposed by Regulatory Notice 17-42 and to decline to submit the proposed amendments to the Securities and Exchange Commission for adoption. The reasons for our views are discussed below.

Comments on Regulatory Notice 17-42

1. Regulatory Notice 17-42 asks whether the word "grant" in FINRA Rules 12805 and 13805 should be changed to "recommend" or some other description to more accurately reflect the panel's authority in the expungement process.

We agree that the word "grant" in FINRA Rules 12805 and 13805 should be changed to "recommend." This is a clarifying change that accurately reflects the scope of the panel's authority.

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2. Regulatory Notice 17-42 proposes that associated persons who are named parties in an arbitration be required to seek expungement relief in the "Underlying Customer Case" or else they will be barred from seeking expungement relief at a later date. (Regulatory Notice 17-42, I.A.1.)

If an associated person *does not appear* in the "Underlying Customer Case" (perhaps because he or she was not properly served with the claim and had no notice of it, or because he or she is no longer subject to FINRA's jurisdiction), we believe it would violate principles of fairness and due process to bar the associated person from seeking expungement relief at a later date.

By making it *mandatory* for associated persons to seek expungement relief in the Underlying Customer Case at the risk of being barred from seeking that relief at a later date, Regulatory Notice 17-42 virtually ensures that every associated person will assert a claim for expungement in every case in which they are named. This will result in increased expense to every associated person and to every member firm that employed the associated person during the time of the events alleged in the Underlying Customer Case. In addition, it will increase the cost and expense associated with arbitration, which perversely could impede the goals of protecting investors and ensuring that FINRA arbitration remains an expedient and cost-effective forum.

To address this very real concern, we suggest that where an associated person's request for expungement relief is granted under Rule 2080 as part of the Underlying Customer Case, the arbitrators be specifically authorized to assess, in appropriate cases, any additional filing fees or costs associated with the expungement to the associated person (and against the customer who initiated the unmeritorious claim).

3. To seek expungement relief as part of the resolution of the "Underlying Customer Case," Regulatory Notice 17-42 proposes that associated persons be required to (1) file the expungement request no later than 60 days before the first scheduled hearing session (or obtain an extension of that deadline) and (2) pay a filing fee of $1,425 or the filing fee provided in Rule 12900(a)(1), whichever is greater, and further contemplates the assessment of a "member surcharge" and a "process fee." (Regulatory Notice 17-42, I.A.2.)

If an associated person has been named in *and has appeared in* an Underlying Customer Case, we agree that it is reasonable to require the associated person to state his or her intent to seek expungement relief at least 60 days before the first scheduled hearing date (or to seek relief from that deadline by way of a

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motion). This process ensures that all participants in the Underlying Customer Case are on notice of the issues to be addressed and determined at the evidentiary hearing.

We urge FINRA to reject the proposed $1,425 filing fee that an associated person would be required to pay to restore his or her good name under the expungement procedures in the Underlying Customer Case, as well as the related "member surcharge" that would be charged to the associated person's employer and/or former employer(s).[1] Regulatory Notice 17-42 does not explain the rationale for imposing these additional filing fees on an associated person, nor does Regulatory Notice 17-42 justify imposing a "member surcharge" and "process fee" on the associated person's employer during the time of the events at issue, *regardless of whether that member is a named party to the arbitration*. Since Regulatory Notice 17-42 would *require* an associated person to seek expungement relief in the Underlying Customer Case (where the associated person appears in the Underlying Customer Case), the expense of empaneling and compensating arbitrators and administering the case should be handled as part of the Underlying Customer Case. Any additional administrative or processing burden as a result of the expungement request would be *de minimis*.

Additionally, we are concerned about Regulatory Notice 17-42's proposal that all member firms who employed the associated person during the time of the events giving rise to the dispute would be subject to a member surcharge. The proposal fails to recognize at least three realities:

First, Regulatory Notice 17-42 neither defines nor provides any guidelines regarding the meaning of the phrase "during the time of the events giving rise to the dispute." Frequently, an "occurrence or event" that is the basis for a customer's claim occurred years ago, but the customer contends that he or she is entitled to damages up to and including the date of the hearing, in some instances based on the argument that there exists a "continuing duty" or "continuing harm." Does the "time of the events giving rise to the dispute" refer to simply the date of the event or occurrence that gave rise to the dispute? Or does it refer to the entire time period that the customer contends is at issue (frequently a hotly contested issue).

[1] By way of comparison, the cost to file a complaint in Los Angeles County Superior Court is $435 (unlimited civil cases). Cal. Gov. Code §§70611, 70602.5, 70602.6.

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Second, where an associated person changes employers during the events alleged in the claim, the former firm may not wish to pay a member surcharge and "process fee" for the former employee; likewise, the new employing firm may not wish to pay a member surcharge and "process fee" relating to conduct that arguably occurred long before the associated person was hired. The imposition of these fees (whether mandatory or voluntary) on the former and current member firms creates an obvious tension between the associated person and his or her former and current employer(s). This tension may deter an associated person from pursuing meritorious requests for expungement relief simply because of unrelated economic pressure.

Third, an associated person's employment may change as a result of a broker-dealer firm being sold or acquired by another firm. In that instance—where the associated person does not voluntarily change jobs but instead the employing firm changes names or owners around the associated person—will both Firm 1 and Firm 2 (the *former* member firm and the *new* member firm) be assessed "member surcharges"? Regulatory Notice 17-42 does not address this.

Regulatory Notice 17-42 should not be approved without further clarification and guidance to member firms and associated persons on these important issues.

4. Regulatory Notice 17-42 proposes that a three-person panel of arbitrators must unanimously agree that expungement is appropriate. (Regulatory Notice 17-42, I.A.3 and II.B.)

Imposing a unanimity requirement on expungement decisions is unfair to associated persons and effectively imposes a higher burden of proof (unanimity) on associated persons than on customers in the same case (where a majority of arbitrators may decide the merits of a claim). Under Rule 12410, all rulings and determinations of the panel concerning customer disputes are to be made "by a majority of the arbitrators . . . ." Rule 13414 pertaining to industry disputes is identical. There exists no reasonable basis for treating an associated person's expungement request materially differently from a decision on the merits of the underlying customer complaint. The same rules that apply to a determination of the merits of a customer case should apply to determining whether expungement relief is warranted under Rule 2080. We urge FINRA to reject this proposed component of Regulatory Notice 17-42.

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5. Regulatory Notice 17-42 proposes that in order to grant expungement relief, the arbitrators must (1) identify at least one of the Rule 2080(b)(1) grounds for expungement that serves as the basis for expungement and (2) find that the customer dispute information has no investor protection or regulatory value. (Regulatory Notice 17-42, I.A.3 and II.B.)

This is a material change to Rule 2080 that serves only to unnecessarily complicate and confuse the expungement process to the detriment of associated persons with no corresponding investor protection value. Current FINRA Rule 2080 sets forth the circumstances under which expungement of customer complaint information from an associated person's CRD record would be appropriate. Expungement relief is appropriate under Rule 2080(b)(1) where the arbitrators find that:

(A) the claim, allegation or information is factually impossible or clearly erroneous;

(B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or

(C) the claim, allegation or information is false.

If the expungement relief is based on judicial or arbitral findings other than those described above, expungement relief can be granted under Rule 2080(b)(2) where the arbitrators conclude that:

(A) the expungement relief and accompanying findings on which it is based are meritorious; and

(B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

Regulatory Notice 17-42 proposes to remove the arbitrators' ability to grant expungement relief based on judicial or arbitral findings "other than" those listed in Rule 2080(b)(1). We urge FINRA to reject this component of the proposal. Customer disputes arise in a myriad of ways and under countless circumstances. Arbitrators must be empowered to restore balance and the status quo of an untarnished professional reputation in circumstances where they determine such relief is warranted under the alternate grounds identified in Rule 2080(b)(2).

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Regulatory Notice 17-42 also proposes to treat Rule 2080(b)(2) as an *additional* requirement for expungement relief instead of as an *alternate* basis for expungement relief. This additional burden is not justified and simply will confuse the proceedings. For instance, if the arbitrators find that a claim is "factually impossible," "clearly erroneous," "false," or that the registered representative was "not involved in the alleged investment-related sales practice violation" (under Rule 2080(b)(1)), the claim by definition has no investor protection value. What "investor protection" interest could be served by the continued reporting of a false, factually impossible, or clearly erroneous claim? The requirements of Rule 2080(b)(2) are already satisfied by definition when any of the grounds of Rule 2080(b)(1) has been established. There is plainly nothing more for the arbitrators determine, and FINRA should not suggest that arbitrators must make additional findings as a prerequisite to granting expungement relief.

6. Regulatory Notice 17-42 discusses expungement relief in the context of two possible resolutions to customer cases: closing by award and closing by "other than award" (e.g., the parties settle the arbitration). (Regulatory Notice 17-42, I.A.3 and I.A.4.)

Regulatory Notice 17-42 proposes that, if the case is resolved by an award, the arbitrators must consider and decide the expungement request during the Underlying Customer Case. If the case closes "other than by award" (such as by settlement), Regulatory Notice 17-42 proposes that the panel in the Underlying Customer Case would not decide the associated person's expungement request. In that situation, the associated person would be permitted to file the expungement request as a new claim under the Industry Code against the firm at which he or she was associated at the time of the events giving rise to the customer dispute. (Regulatory Notice 17-42, I.A.3 and I.A.4.) This component of Regulatory Notice 17-42 raises but does not address the following important issues:

<u>If a case closes as a result of an order dismissing the case under Rule 12206 or Rule 12504</u>, will the request for expungement relief be determined by the same arbitrators who ruled on the motion in the Underlying Customer Case? What if the motion to dismiss is granted *before* the associated person has made a request for expungement? Will the associated person have the right to seek expungement relief before the same arbitrators who determined the Underlying Customer Case?

<u>If a case closes by settlement</u>, Regulatory Notice 17-42 proposes that the panel in the Underlying Customer Case would *not* decide the associated person's expungement request. In that situation, the associated person would be permitted

to file the expungement request as a new claim under the Industry Code against the firm at which he or she was associated at the time of the events giving rise to the customer dispute. If the settlement occurs late in the case (perhaps even after the commencement of or during the presentation of evidence in the merits hearing), does the associated person have the right to request that the panel in the Underlying Customer Case continue to serve, for the purpose of resolving the related request for expungement relief? Clearly at that point the arbitrators would be familiar with the issues and at least some of the evidence; it would seem to be a waste of time, effort and resources to require the associated person to initiate a *new* request for expungement relief before a *new* panel of arbitrators under the Industry Code. Further, if the associated person has already paid the filing fee for expungement contemplated by Regulatory Notice 17-42 in the Underlying Customer Case, will the associated person be required pay *another* filing fee upon the filing of a new expungement request under the Industry Code?

If FINRA wishes to pursue possible modifications to the expungement rules and procedures, we urge FINRA to reject the Regulatory Notice 17-42 in its current form and to consider these issues and ramifications before recommending any proposed rule changes.

7. Regulatory Notice 17-42 proposes a one-year limitation on an associated person's right to request expungement of customer dispute information where the dispute did not result in an arbitration claim. (Regulatory Notice 17-42, I.A.5.)

Regulatory Notice 17-42 proposes that an associated person seeking expungement of a customer complaint that does not result in an arbitration claim be required to file a request for expungement relief "within one year of the date that a member firm initially reported a customer complaint to CRD." In our opinion, the one-year period is unreasonably short and unfair for at least the following reasons.

First, a one-year eligibility requirement on expungement requests is inconsistent with other provisions of the FINRA Rules. For example, Rule 12206 allows customers to file an arbitration claim within six years after the occurrence or event giving rise to the claim. Regulatory Notice 17-42 fails to justify the disparity in allowing customers six years to bring a claim while restricting associated persons to just one year to seek expungement relief.

Second, Regulatory Notice 17-42 proposes that, if the customer complaint did not result in an arbitration, the one-year limitation on an expungement request would begin to run from the date that a member firm initially reported the

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customer complaint to CRD. Due to the six-year eligibility period for customer complaints under Rule 12206, this will lead to inequitable and inconsistent results. It is entirely possible, for instance, that a customer might submit a complaint to a firm (resulting in the complaint being reported on the associated person's CRD and BrokerCheck) but allow the complaint to remain dormant, without initiating an arbitration claim, for a period of three, four or five years. If, in the fifth year, the customer initiates an arbitration claim, the customer's claim may be eligible for arbitration under Rule 12206 but the associated person's request to expunge that very same claim would be time-barred. That is an inequitable result that should be avoided.

Third, instead of decreasing expungement requests, the proposed one-year limitation on expungement relief claims likely would increase the frequency of those requests. Under the proposal in Regulatory Notice 17-42, an associated person would be obligated to seek expungement relief within one year of the date a customer complaint is first reported on the associated person's CRD. An associated person could timely initiate and obtain expungement relief, only to find that three, four or five years later the customer initiates an arbitration based on the complaint that was previously expunged. Assuming that the customer's initiation of the dispute in arbitration would be reported anew on the associated person's CRD, the associated person would be required to initiate a second request for expungement relief of the same complaint that had been expunged years earlier. This obviously results in an undue burden on associated persons and member firms, as well as an undue consumption of arbitral (and, in some instances, judicial) resources.

In our opinion, if FINRA ultimately imposes an eligibility period on expungement relief, the period should be six years (the same period of time as the eligibility for customer complaints under Rule 12206), and the six-year period should commence one year after the member firm's filing of the "closing event" Form U4 or Form U5 amendment and Disclosure Reporting Page (reporting the resolution of the claim). Further, similar to Rule 12206(b), if the arbitrators in a FINRA arbitration determine that the associated person's request for expungement relief is ineligible for arbitration because it was initiated more than six years after the "closing event" on the associated person's Form U4 or Form U5 (and correlating CRD), the associated person should have the right to withdraw the request for expungement relief from arbitration, without prejudice, and pursue expungement relief in court.

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8. Regulatory Notice 17-42 proposes eliminating the ability of unnamed associated persons to intervene in the Underlying Customer Case for the purpose of seeking expungement relief. (Regulatory Notice 17-42, I.B.2.)

This component of Regulatory Notice 17-42 is unnecessary. Customers frequently name member firms as the respondent in arbitration but avoid naming the individual associated person who is accused of various sales practice violations. Regardless of whether the associated person is named as a respondent, the claim may nevertheless be one that requires reporting on the associated person's CRD. In that instance, the associated person may have an interest in intervening in the Underlying Customer Case for the purpose of seeking expungement relief. This approach often can be economical, given that the evidence on the merits (or lack thereof) of the customer's complaint will be presented at the evidentiary hearing and that same evidence will provide the basis for expungement relief. Regulatory Notice 17-42 does not explain the reason for eliminating the rights of unnamed associated persons in this circumstance. We urge FINRA to reject this component of the proposal.

9. Regulatory Notice 17-42 proposes requiring associated persons seeking expungement relief to appear in person or by videoconference, rather than by telephone. (Regulatory Notice 17-42, II.A.)

Again, this proposal reflects a disparity in FINRA's treatment of customers who seek awards of money damages and associated persons who seek expungement relief. No rule requires customers seeking monetary awards to appear in person or by video conference in order to initiate or pursue a claim. Arbitrators frequently allow customers and other witnesses to appear by telephone. In certain circumstances, an associated person's appearance by telephone in an expungement relief proceeding is both efficient and appropriate. The associated person is available and can answer questions from the arbitrators, if necessary. Associated persons should not be subject to more stringent burdens on their requests for expungement relief than customers have in their requests for damages.

10. Regulatory Notice 17-42 proposes a special "Expungement Arbitrator Roster" for use in cases where the expungement relief is not decided as part of the "Underlying Customer Case." (Regulatory Notice 17-42, III.A.)

We commend FINRA for providing expungement training to its arbitrators, but we find at least three shortcomings with the proposed "Expungement Arbitrator Roster" process and suggest that it should be rejected.

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First, Regulatory Notice 17-42 provides that in cases where expungement relief is not sought as part of the Underlying Customer Case, FINRA will randomly select three public chairpersons to decide an expungement request. This appears to suggest that three — and only three — arbitrators will be imposed on the associated person, meaning that the associated person would not have the right to strike or rank proposed arbitrators for the expungement relief hearing. Again, this imposes an unfair restriction on associated persons, and is a restriction that is absent from customer dispute cases. We suggest that FINRA randomly select a minimum of 12 proposed arbitrators to serve on an expungement relief case, from which the associated person and anyone else involved in the case can rank and strike the proposed panelists.

Second, Regulatory Notice 17-42 proposes a specialized "Expungement Arbitrator Roster." To be included on the "Expungement Arbitrator Roster," an arbitrator must be admitted to practice law in at least one jurisdiction and have at least five years' experience in "litigation" (not necessarily securities litigation). The "Expungement Arbitrator Roster" does not include non-lawyers who have five or more years' experience in the securities industry. We believe that non-lawyers who have five or more years' experience in the securities industry bring valuable experience and practical perspective to securities arbitrations. FINRA shares this belief, which is why it permits non-lawyers with five or more years' experience in the securities industry to serve as arbitrators in the resolution of customer disputes. We believe that the qualifications of arbitrators in expungement relief cases should mirror the qualifications of arbitrators in customer dispute cases.

Third, as noted above, non-lawyers who have five or more years' experience in the securities industry are permitted to serve as arbitrators in customer disputes. Therefore, it is likely that in cases where the request for expungement relief is sought as part of the Underlying Customer Case, the associated person's request for expungement relief may be decided by a panel that includes a non-lawyer arbitrator; but in cases where the request for expungement is not decided as part of an Underlying Customer Case, non-lawyer arbitrators would not be eligible to participate. FINRA obviously believes that non-lawyer arbitrators are capable of "understanding the unique nature of a request for expungement," because FINRA permits non-lawyer arbitrators to decide expungement requests in the context of Underlying Customer Complaints. These same non-lawyer arbitrators should be permitted to serve on arbitration panels where expungement is the only relief sought. There is no rational basis to create a two-tiered system for the resolution of requests for expungement relief depending

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on whether the requests are part of an Underlying Customer Complaint or brought as a stand-alone claim.

11. Regulatory Notice 17-42 proposes use of the "Expungement Arbitrator Roster" in simplified cases. (Regulatory Notice 17-42 IV.)

Regulatory Notice 17-42 proposes that an associated person would not be permitted to request expungement relief as part of the Underlying Customer Case in "simplified arbitrations" (typically arbitrations involving $50,000 or less, which are resolved by a single appointed arbitrator). Instead, under the proposal, the associated person would be required to file an expungement request under the Industry Code against the firm at which he or she was associated at the time of the events giving rise to the customer dispute, and only at the conclusion of the simplified case. Regulatory Notice 17-42 proposes that a three-member panel from the "Expungement Arbitrator Roster" would consider and decide the expungement request.

For the reasons discussed at item 10 above, we urge FINRA to reject the proposed "Expungement Arbitrator Roster." In addition, we believe that the arbitrator who is most qualified to determine a request for expungement relief in any particular case is the same arbitrator who heard and considered the evidence and merits (or lack thereof) of the underlying customer case which is the basis for the request for expungement. If that evidence has been reviewed and considered by a single arbitrator pursuant to the simplified arbitration rules, then that arbitrator, acting alone, should likewise have the authority to determine the associated person's correlating request to expunge information about that complaint from his or her CRD. It is unfair to impose the burden of a second arbitration and its attendant added expense, delay and effort on the associated person in this circumstance. Further, requiring the associated person to initiate a new arbitration for expungement relief under the Industry Code (rather than seek expungement relief as part of the Underlying Customer Case in the simplified arbitration) risks inconsistent results between the two proceedings. FINRA should simplify the process, not make it more complicated.

12. Additional comment regarding Regulatory Notice 17-42 and Expungements.

In addition to the foregoing comments, we urge FINRA to consider the following:

a. <u>Guidance to Associated Persons Regarding Registration Requirements and Expunged Claims</u>. We request that FINRA provide clarity and

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guidance to associated persons and registration personnel regarding the meaning and effect of an expunged claim in the context of licensing and registration questionnaires.

For instance, the Uniform Application for Securities Industry Registration or Transfer (Form U4 (Rev. 5/2009)) asks applicants a number of questions regarding whether they have ever been named as a respondent in or the subject of an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that the associated person was *involved* in one or more *sales practice violations* and the resolution of those claims. (*See* Form U4 Questions 14.I(1)-(5).) Must applicants answer "Yes" to these questions if the customer claim asserted against them has been determined to be "false," or "factually impossible," or a panel of arbitrators or court determined that the associated person was "not involved" in the alleged conduct, and therefore the complaint has been duly expunged from the associated person's CRD record? The instructions for completing the Form U4 do not answer this question, and we have found no guidance from FINRA on this issue.

We urge FINRA to expressly inform associated persons that they may confidently answer these questions "No" with respect to claims that have been expunged from their records.

b. Explicitly Recognizing Orders From Other Arbitration Forums For Expungement Relief.

In an effort to provide public customers with a choice of alternative dispute resolution forums, member firms frequently allow public customers to elect arbitration before FINRA, the American Arbitration Association, and other providers. If a public customer elects arbitration before an arbitration forum other than FINRA, the arbitral findings should be recognized and afforded the same weight as arbitral findings of arbitrators in a FINRA-administered arbitration, provided that (1) the arbitrators make written, factual findings as the basis for expungement under Rule 2080, and (2) the requirements of Rule 12805 are satisfied. Arbitrators in these alternate forums are qualified to determine whether, after a recorded hearing, the evidence supports a finding that a claim is "factually impossible or clearly erroneous," or that the associated person was "not involved" in the alleged wrongdoing, or that the claim is "false," or that a claim for expungement is meritorious and expungement would have no material adverse effect on investor protection.

Re: Comments regarding FINRA Regulatory Notice 17-42 (12/6/2017)

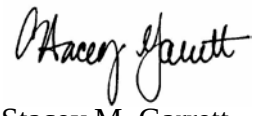
Currently, FINRA Rules 2080 and 12805 refer to "arbitration awards seeking expungement relief" and "confirming an arbitration award containing expungement relief" without specifying that the Award must be a FINRA Award. FINRA states that it will accept expungement orders issued by a court of competent jurisdiction (without an underlying arbitration award). We suggest that FINRA explicitly state that orders from other respected arbitral tribunals, validated by judicial confirmation, will be accorded comity. By doing so, FINRA will encourage member firms to continue providing public customers with their choice of arbitration forum (not restricting that choice to FINRA, simply because it is the only arbitration forum in which expungement relief can be obtained), and FINRA likewise will encourage associated persons to seek expungement relief as part of the "Underlying Customer Case" where the arbitrators will be familiar with the evidence from that proceeding.

Conclusion

As securities attorneys, we value FINRA's desire to provide a fair, neutral, and transparent forum for public investors; however, the rights and interests of associated persons must not be trampled in the process. To reiterate, we agree that misconduct by associated persons towards investors should not be swept under the rug. However, the mechanism for expunging false, defamatory or factually impossible claims from honest associated persons' records should not be made so onerous that it hurts the very associated persons who share FINRA's concern for helping the investing public. Thank you for FINRA's continued recognition that associated persons have an interest in protecting their professional reputations from false or mistaken claims through the expungement process, and for the opportunity to comment on the proposals in Regulatory Notice 17-42.

For the reasons set forth above, we urge FINRA's Board of Governors to reject the proposal in Regulatory Notice 17-42 with the few exceptions noted herein and work towards drafting proposed rules concerning expungement with the goal of fairness and expediency in mind for all participants in the FINRA arbitral process.

Very truly yours,



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