

VIA EMAIL TO RULE-COMMENTS@SEC.GOV

April 7, 2023

Vanessa Countryman, Secretary
J. Matthew DeLesDernier, Assistant Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number SR-FINRA-2022-024

Dear Secretary Countryman and Assistant Secretary DeLesDernier:

I am an attorney who represents registered representatives seeking to expunge inaccurate customer dispute disclosures from the CRD system. I write to express my concerns about FINRA's proposed rule changes.

Preliminary, I would like to emphasize how illogical focusing solely on the percentage of expungement claims that are granted without considering the percentage of the reported disclosures that are expunged. Simply because a large percentage of panels grant expungement claims does not imply that the expungement claims are not valid. Nor does it imply that when panels grant expungements, it is not because an extraordinary remedy is necessary. If a disclosure is inaccurate, and there is no other way to address the inaccuracy except through expungement and expungement is an extraordinary remedy, then an extraordinary remedy is necessary to correct the inaccurate disclosure. Approximately 35,000 customer dispute disclosures were added to the CRD system between 2015 and 2020. However, panels only granted approximately 4% (approximately 1,550) of the disclosures, which suggests that panels rarely grant expungements, as opposed to being excessively granted as the proposed rule changes seek to rectify.

It is also illogical to only address the expungement process without addressing the disclosure reporting process as well. The current system requires that broker-dealers report all customer complaints to the CRD system. It does not give the reporting broker-dealer any discretion to review complaints, nor does FINRA review the complaints. Consider the example of a registered representative who inherits a customer from another registered representative who sold the customer an annuity. Subsequently, the customer complains they misrepresented the annuity when sold and references the newly assigned registered representative's name. The rules would require the complaint to be reported to the newly assigned registered representative's CRD record, even though it is factually impossible that he or she made the alleged misrepresentation. If something is factually impossible, how is it that the process of disclosure reporting does not provide any mechanism for weeding out the allegations? It is unfair for allegations to be reported to the representative's CRD record that both the firm and FINRA can easily verify are factually impossible. Requiring the representative to go through the extremely costly and time-consuming process of expunging the factually impossible allegations amplifies the unfairness. To then make it impossible for him or her to expunge the factually impossible allegations if not filed in the brief time limit the proposed rule changes seek is unjust and contrary to our country's principles of justice.

If one of the primary goals is to maintain the integrity of the CRD system, then how is it logical to insert barriers that sometimes make it impossible to remove factually impossible information from it? That is completely illogical.

The proposed rule changes seek to increase customer participation in expungement proceedings. While I do not take issue with seeking to increase the participation of customers in the proceedings, I take issue with the proposal not addressing the common—in my experience—problem with customers, and their attorneys sometimes, making misrepresentations while under oath during the proceeding without a mechanism to address it. What is the point of even requiring individuals to take an oath if nothing is going to be done if they perjure themselves?

The proposed rule changes seek to limit panels to public arbitrators. How does that make any sense? Such a rule would exclude individuals with a deeper understanding of the industry and securities, who could provide a useful perspective for the other arbitrators to consider.

The proposed rule changes seek enhanced arbitrator training. While I do not take issue with this request, they should make any enhanced training public in advance and be open to public comment to avoid potential bias or conflicts of interest.

The proposed rule changes seek to take away the parties' right to strike and rank arbitrators. This is unfair and contrary to our country's principles of justice in both court and arbitral proceedings. In jury trials, the parties may conduct voir dire. Other arbitration forums allow the parties to select their arbitrator(s). This proposed rule change would take away the parties' right to strike biased or prejudiced arbitrators and violate other rights, such as the right to a fair trial, due process, and equal treatment under the law, amongst others.

The proposed rule changes seek to codify a best practices analysis. While I do not take issue with this request, how does the proposal consider the perspective of the individual(s) deciding what the best practices are? How does it prevent bias and conflicts of interest?

The proposed rule changes seek to require a unanimous panel decision to grant expungement requests. How is this change not contrary to our country's principles of justice? It almost assumes that the individual is guilty, as opposed to innocent. Taking away the parties' right to rank and strike arbitrators eliminates the only safeguard against biased or prejudiced arbitrators. Requiring a unanimous decision would essentially allow a single biased or prejudiced arbitrator to deny a valid expungement claim carte blanche with no safeguards or appeals.

The proposed rule changes seek to prohibit individuals from withdrawing claims without prejudice. This is another unfair violation of the individual's rights. There are various reasons that a claim may need to be withdrawn besides arbitrator shopping. What about if the individual has a family member who becomes ill, an individual becomes ill, or other kinds of major issues arise that are legitimate reasons the individual may need to withdraw the claim? How is it just to bar that person from refiling because, hypothetically, some individuals might withdraw their claims for unethical reasons?

The proposed rule changes would impose brief time limits on an individual's right to seek expungement of inaccurate disclosures. This is unduly restrictive and could violate the person's rights. Many financial advisors may be unaware of the option to seek expungement of inaccurate complaints until a later date. The person may not have the resources to pursue expungement within the proposed time frame. The rule would also make it impossible for representatives to remove inaccurate information from their CRD records after the period has passed.

This could violate their due process rights by depriving them of their right to protect their reputations without adequate procedural safeguards. Moreover, the time limit could be considered arbitrary and capricious, as it does not consider the unique circumstances of each case or the fact that some people may be unable to address the issue within the prescribed period and may be seen as an arbitrary restriction on their ability to clear their records of inaccurate information, which could run afoul of their due process rights. The time limits could violate their right to equal protection by unfairly burdening them and treating them differently from others similarly situated with no rational basis. Requiring the reporting of factually impossible allegations raises First Amendment concerns, as it may infringe upon their right to free speech and expression by compelling them to bear the burden of false information without recourse.

In conclusion, FINRA's proposed rule changes raise significant concerns about fairness and the potential violation of rights. The proposed rule changes, if approved, could violate due process rights, equal protection rights, and First Amendment rights, amongst others. The proposed rule changes may exceed regulatory authority, as granted by the relevant statutes.

I urge the SEC to weigh these concerns and arguments before approving the proposed rule changes. Any rule changes must balance the need for investor protection with industry integrity and the rights and interests of registered representatives.

Thank you for your attention to this matter. I hope you will take these arguments into account when considering the proposed rule changes.

Respectfully submitted,

/s/ James P Galvin
James P. Galvin, Esq.