

**VIA WEB SUBMISSION**

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.

The first page of FINRA's Arbitrator's Guide quotes Domke on Aristotle. "Equity is justice in that it goes beyond the written law. And it is equitable to prefer arbitration to the law court, for the arbitrator keeps equity in view, whereas the judge looks only the law, and the reason why arbitrators were appointed was that equity would prevail." It would be inequitable to deny individuals the right to expunge inaccurate, meritless, and frivolous complaints from their CRD record. Arbitrators render decisions in equity, and it is inappropriate for FINRA to go to such extremes to deny individuals their right to expunge inaccurate, meritless, and frivolous complaints from their CRD record based on things as arbitrary and irrelevant as essentially everything it is asking for in its request.

FINRA considers expungement to be an "extraordinary remedy." This phrase has been used by many different parties to serve their own purposes, such as to argue that because expungement is an "extraordinary remedy," fewer claims should be granted. But the number of expungement claims that are granted is arbitrary. Using the phrase in that manner is hyperbolic. FINRA Rule 2080 defines the criteria that expungements may be granted under. If an expungement claim meets one of the criteria enumerated in Rule 2080, then expungement is appropriate. If expungement is appropriate, and expungement is an "extraordinary remedy," then an "extraordinary remedy" is appropriate when one of the criteria enumerated in Rule 2080 has been met.

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. And FINRA itself seems to acknowledge this fact when it states that "[t]he value of the information is dependent on its completeness and accuracy. The absence of accurate information, as well as the presence of clearly inaccurate information, decreases the reliability and hence the value of the disclosure regime." FINRA Discussion Paper – Expungement of Customer Dispute Information, April 2022, Page 1. "as FINRA recognizes, it is important that the information on the CRD system, and by extension BrokerCheck, be complete and accurate." PIABA and the PIABA Foundation, 2021 Study on FINRA Expungements, Page 7. Denying any individual the right to expunge inaccurate and untrue—often factually

impossible, information from the CRD system violates FINRA's own guidance. "The individual's right to the protection of his own good name 'reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty.'" *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

A system that contains information that is false, factually impossible, clearly erroneous, or misidentifies individuals has less integrity than a system that does not contain such information, even if the latter system does not include every possible complaint. A system that contains false or erroneous information is less accurate and reliable. Users of the system will question its overall validity, which undermines trust in the system and its ability to provide accurate information.

This is a false dilemma fallacy, it presents only two options, when there may be more possibilities. It assumes that either the CRD system must contain inaccurate information due to imposed rules, or it must lack all possible complaints. It doesn't consider other options such as refining the expungement process or improving the complaint review system. It's like saying you can either be a cat person or a dog person, without considering that someone might like both or neither.

A system with a higher level of integrity will have a better reputation, leading to increased trust and confidence from users. A system containing false information can quickly lose credibility and become less useful as a resource.

A system that contains false or misleading information can potentially harm individuals or entities involved in the complaints, as well as those who rely on the system for decision-making. This raises ethical concerns about fairness, justice, and transparency.

Systems that contain false or erroneous information, especially when it comes to identifying individuals, may expose the system's creators or operators to legal liabilities, such as defamation or invasion of privacy claims.

A system with accurate information promotes better decision-making by enabling users to make informed judgments based on facts. False or misleading information can lead to poor decisions, misallocation of resources, or misguided actions.

A system containing false information may be susceptible to manipulation, either intentionally or unintentionally. This could allow individuals or entities to use the system for their own benefit or to harm others, which undermines the integrity of the system.

A system that contains false or erroneous information can become less effective in achieving its intended purpose, as users will question its reliability and may be less likely to use it as a source of information or guidance.

A system with accurate information provides a solid foundation for future improvements and updates. In contrast, a system with false or erroneous information may require significant revisions and corrections to address the issues, which can be costly and time-consuming.

A system that contains false, factually impossible, or clearly erroneous information, or misidentifies individuals in allegations, is less trustworthy and reliable compared to a system that does not contain such information, even if the latter system does not include every possible complaint. The integrity of a system relies on the accuracy and reliability of its information, as well as its ability to promote ethical, effective, and informed decision-making.

Imposing such extreme limits on a Registered Representative's right to expunge inaccurate, meritless, frivolous, and often factually impossible allegations from the CRD record, likely exceeds the regulatory authority granted to FINRA by relevant statutes. If FINRA's actions or rules are beyond the scope of the authority delegated to it by the SEC, those actions may be considered ultra vires, or beyond its legal power. In such cases, FINRA's immunity may not cover these unauthorized actions, making it subject to legal action.

Although FINRA may have qualified or absolute immunity against private actions through delegation from a federal agency, there are certain arguments that could be made in favor of bringing a cause of action against them when their rules violate constitutional rights. FINRA derives its authority to regulate broker-dealers and associated persons through delegation from the SEC, which derives its authority from federal statutes. Federal statutes cannot authorize activity that violates the Constitution. As such, any activity by FINRA that violates the Constitution is not a regulatory activity because federal statutes cannot authorize such action. FINRA enjoys qualified or absolute immunity from civil claims when it engages in a regulatory activity, but if the activity it is engaged in exceeds the authority that the statutes grant it, then the activity is not regulatory and qualified and absolute immunity would not apply.

When an SRO's rules violate constitutional rights, the immunity the SRO enjoys should not shield it from liability. The fundamental rights enshrined in the Constitution are paramount and should not be compromised, even by an SRO. "The constitutional protection does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered." *Time, Inc. v. Hill*, 385 U.S. 374 (1967).

If the SRO has acted in bad faith or has engaged in intentional misconduct, it may be possible to argue that its immunity should not apply. Courts may be more likely to find exceptions to immunity when there is evidence of intentional wrongdoing.

If the SRO has not followed due process in implementing or enforcing its rules, individuals could argue that their constitutional rights to due process have been violated, and thus, the SRO should not be shielded from liability.

If the federal agency responsible for delegating authority to the SRO has not provided adequate oversight or review of the SRO's actions, it could be argued that the agency is failing in its duty to protect the public interest, and the SRO should be held accountable for any constitutional violations.

Courts may be called upon to balance the interests of maintaining an SRO's immunity against the interests of those whose constitutional rights have been violated. In cases where the harm to the individual is severe and the policy reasons for maintaining immunity are weak, courts may be more inclined to find exceptions to immunity and allow the cause of action to proceed.

Allowing an SRO to have absolute immunity when its rules or actions violate Constitutional rights could be seen as against public policy. Allowing a cause of action in such cases might be necessary to uphold the integrity of the Constitution and to protect individual rights.

FINRA imposing rules that could harm or prevent an individual's rights to liberty and property under the Constitution could potentially violate a person's constitutional rights. The U.S. Constitution establishes a system of checks and balances to ensure that no single branch of government becomes too powerful. SROs, which are typically private organizations, may not be subject to the same level of scrutiny and oversight as government agencies. If SROs are allowed to impose rules that impact constitutional rights without proper checks and balances, it could threaten the balance of power outlined in the Constitution.

It is illogical to focus 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. 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 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.

The Fourteenth Amendment ensures equal protection under the law for all individuals. If FINRA's rules disproportionately impact certain individuals or groups, it could be argued that they are in violation of the equal protection clause.

"The information publicly disclosed about RFPs is far more comprehensive than what is published for most other types of professionals." FINRA Discussion Paper – Expungement of Customer Dispute Information, April 2022, Page 1. "FINRA makes available to the public more comprehensive information on RFPs than is available for insurance agents, bankers, doctors, lawyers and accountants." FINRA Discussion Paper – Expungement of Customer Dispute Information, April 2022, Footnote 1, Page 20. How does this make sense? Lawyers are responsible for actual lives. A lawyer's client who is an alleged murderer could be put to death. Doctors are responsible for actual lives. Many make life or death decisions daily. Both lawyers and doctors are self-regulated, and both are responsible for life-or-death situations. RFPs are responsible for managing money for people, but they are not making life-or-death decisions.

How is it logical that their self-regulators make less information available to the public than FINRA does on RFPs?

"State bar associations evaluate complaints first to determine if there is any merit. Then, after that evaluation, if it is determined that there is some merit, the attorney is involved. The same should [apply] here. FINRA should evaluate the complaint first to determine a basic level of legitimacy. Otherwise, the meritless and frivolous complaints will continue to be filed" and imposing any kind of time limit on the Registered Representative's right to the only form of relief the meritless and frivolous complaints are causing violates the Registered Representative's fundamental rights.

“The requirements for reporting disputes between customers and RFPs are extensive. Reportable disputes include customer complaints, arbitration claims and court filings made by customers against RFPs and their broker-dealer firms, and the arbitration awards or court judgments that may result from those claims or filing. Information about these disputes must be reported regardless of whether the firm or the RFP believes the allegations are untrue, inaccurate or malicious, and FINRA is required by law and FINRA rules to disclose this information.” FINRA Discussion Paper – Expungement of Customer Dispute Information, April 2022, Page 2. “If a customer dispute meets the reporting requirements, a broker-dealer firm must report information about the dispute, including the customer’s allegations, even if the firm or the RFP believe the allegations are untrue, inaccurate or malicious.” FINRA Discussion Paper – Expungement of Customer Dispute Information, April 2022, Page 3. “In short, the article in question contained false statements of fact which were defamatory ... and it was published with knowledge of [the] falsity or with reckless disregard of whether they were false or true.” *Cantrell v. Forest City Publishing Co.*, 419 U.S. 245 (1974). “We must apply a ‘commonsense balancing’ of the competing interests at stake, taking into account the potential harm that may result from the publication of false statements of fact and the chilling effect that may result from imposing liability for such statements.” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

“Any such improvements must continue to seek to balance the interests of securities regulators in having accurate and relevant information to fulfill their regulatory responsibilities, the interests of investors in having access to accurate and meaningful information about RFPs with whom they may engage in business, the interests of securities firms in having accurate information for use in making informed employment decisions, and the interests of the brokerage community in having a fair process to address inaccurate information.” FINRA Discussion Paper – Expungement of Customer Dispute Information, April 2022, Page 14. “and the interests of the brokerage community in having a fair process to address inaccurate customer dispute information. FINRA Discussion Paper – Expungement of Customer Dispute Information, April 2022, Page 2.

The Fifth and Fourteenth Amendments of the U.S. Constitution guarantee that no person shall be deprived of life, liberty, or property without due process of law. FINRA, by imposing rules that could harm or prevent an individual’s rights to liberty and property, may be bypassing the proper legal processes, thus violating the individual's right to due process.

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. As discussed above, lawyers and doctors make life-or-death decisions in their work. RFPs do not. When someone complains about a lawyer to the bar association or a doctor to the American Medical Association, the complaint is reviewed by lawyers or doctors. It is not just made publicly available without any kind of review whatsoever. Not only does this make no sense, but it also violates the equal protection clause of the Constitution.

The proposed rule changes seek enhanced arbitrator training. It seems that the Claimant’s bar and those representing the interests of associated persons seem to agree on this. I think I will allow the Claimant’s bar to summarize it.

“FINRA’s current proposed plan to require a panel of three randomly selected arbitrators from a special roster will not significantly reduce the percentage of expungement requests.... More training will not work.... FINRA implemented enhanced expungement training in 2014, expungements are still being granted approximately 90% of the time. “ PIABA and the PIABA Foundation, 2021 Study on FINRA Expungements, Page 6. “Additional training did not work.” PIABA and the PIABA Foundation, 2021 Study on FINRA Expungements, Page 4. “Clearly, despite more training, expungement requests were not treated as an extraordinary remedy.” PIABA and the PIABA Foundation, 2021 Study on FINRA Expungements, Page 4.

“FINRA’s current proposed solution is to create a roster of specially trained expungement arbitrators from the chair-qualified arbitrator roster to decide expungement cases and require a panel of three (3) randomly selected arbitrators from that roster to decide expungement requests.... An analysis of historical arbitration awards going back more than a decade demonstrates that these methods have already been tried and have failed.” PIABA and the PIABA Foundation, 2021 Study on FINRA Expungements, Page 9. “[T]he solution is not ... to increase the number of arbitrators per case ... to require additional training or ... to create a special roster of arbitrators as FINRA has proposed.” PIABA and the PIABA Foundation, 2021 Study on FINRA Expungements, Page 15. “Our data shows that a panel of three arbitrators is just as likely to grant expungement as a single arbitrator.” PIABA and the PIABA Foundation, 2021 Study on FINRA Expungements, Page 20.

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 refile 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.

While the specific time limits for different civil causes of action can vary by jurisdiction, the overarching goal of statutes of limitation is to strike a balance between the interests of claimants and respondents, ensuring a fair and efficient legal system.

There are various equitable arguments that are accepted as purposes for statutes of limitation to exist for actions in civil matters:

1. As time passes, evidence can be lost, destroyed, or degraded, making it more difficult to accurately establish the facts of a case.
  - a. While I would argue that the rights of an individual to remove inaccurate and untrue information from the public record supersedes the possibility that any documents may be unavailable, FINRA's new time limit proposal does not even make sense from that standpoint as its own rules require firms to retain documents for multiple times the two years it is currently proposing.
2. Statutes of limitation encourage claimants to pursue their claims within a reasonable period. This ensures that potential defendants have some certainty about their legal exposure and can plan their lives and businesses accordingly without the constant fear of being sued for old claims.
  - a. While civil claims filed in court and arbitration against broker-dealers often seek monetary damages against the firms for some alleged wrongdoing. In expungement matters, the Registered Representative is not alleging wrongdoing by the firm or seeking any damages against the firm. The firm did not make the complaint, and the firm was required by FINRA rules to report the complaint to the CRD system—and the firms have qualified immunity for submitting customer complaints under the rules. In expungement matters, the degree of certainty firms have about legal exposure is moot.
3. As time passes, a defendant may lose the ability to mount an effective defense due to the loss of evidence or witnesses. Statutes of limitation recognize that it may be unfair to hold a person or entity accountable for an alleged wrong after a significant period has elapsed.
  - a. Like the reason discussed in item two above is moot, this reason is also moot. The Registered Representative is not alleging any kind of wrongdoing by the firm or seeking to hold the firm accountable for any kind of wrongdoing.

In expungement claims, Registered Representative are seeking to remove inaccurate and often defamatory customer complaints from their publicly accessible CRD records. FINRA rules require that all customer complaints be reported by firms to the CRD system, with no exceptions. Complaints are reported on the CRD system with no consideration regarding the accuracy of the complaint. Inaccurate complaints on

a Registered Representative's CRD record publicly defame the Registered Representative on an ongoing basis into perpetuity unless expunged. Attorneys that represent customers in arbitrations in almost all cases where eligibility is raised argue that the "event or occurrence giving rise to the claim" is when the customer learned about the problems alleged in their complaint. They often argue that the rule is tolled when the firm or Registered Representative continues making misrepresentations to the customer because the fraud is ongoing. A similar argument can be made in expungement claims because the inaccurate information on the Registered Representatives' CRD records continue to publicly defame them, the "event or occurrence giving rise to the claim," the harm caused by the publicly available and inaccurate complaint is ongoing until it is expunged from the CRD system.

Besides the reasons discussed above, there are other arguments why time limitations should not apply to expungement claims:

1. It is illogical, unfair, and contrary to the principals of fairness and fair dealings to impose time limitations on an individual's right to remove inaccurate and defamatory information from publicly accessible systems. Imposing time limitations on a Registered Representative's right to seek expungement without also addressing the rule requiring that all complaints, regardless of the accuracy or truth of the complaint, be reported to the CRD system with no kind of review by the firm or FINRA violates the principal of fair dealing. "This is the equivalent to treating the symptom and not the disease. Thus, if there is no minimum requirement for what is counted as a disclosure," and until disclosure reporting is addressed, there should not be any time limits on a Registered Representative's right to expunge inaccurate and defamatory information from the CRD.
2. "Many financial advisors are still unaware of the expungement process." Or perhaps the financial advisor does not have the resources to pursue expungement within the time frame. Time limits "would preclude them from ever pursuing expungement." If there are going to be time limits on the right to seek expungement of inaccurate, meritless, and frivolous complaints ... FINRA should send notice to all financial advisors giving them a period in which they must pursue an expungement claim or their opportunity will expire."
3. One argument put forth to make it more difficult for Registered Representatives to expunge inaccurate, meritless, and frivolous complaints from their CRD records is to maintain the integrity of the CRD system. Imposing time limits on a Registered Representative's right to expunge inaccurate, meritless, and frivolous complaints from the CRD system results in the exact opposite outcome. Preventing the ability to expunge inaccurate, meritless, and frivolous complaints from the CRD system, harms the system's integrity by ensuring inaccurate, meritless, and frivolous complaints from the system. If the integrity of the CRD system is an important goal, then there should be no limitations on the ability to remove inaccurate information from it.
4. Imposing time limits on a Registered Representative's right to seek expungement of inaccurate, meritless, and frivolous complaints is unduly restrictive and violates the Registered Representative's rights. It violates their due process rights by depriving them of their right to protect their reputations without adequate procedural safeguards. Time limits are arbitrary and capricious, as they do 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 are an arbitrary restriction on their ability to clear their records of inaccurate information, which runs afoul of their due process rights. They violate their right to equal protection under the law by unfairly burdening them and treating them differently from others similarly situated with no rational basis. Requiring the reporting of inaccurate, meritless, frivolous[,] and often factually impossible allegations, the imposing time limits that prevent them from seeking to expunge them, violates the Registered Representatives First Amendment rights because it infringes



upon their right to free speech and expression by compelling them to bear the burden of false information without recourse.

5. Registered Representatives have property and liberty interests in their licenses and professional reputations. The accumulation of inaccurate, meritless, and frivolous complaints on their CRD records greatly affects their ability to build their book of business, register in additional jurisdictions, obtain or maintain various professional designations, and pursue lateral career opportunities, promotions, and/or employment at other firms, among many other things.
6. There are also concerns regarding the newly adopted FINRA Rule 4111, which establishes an annual calculation for all member firms based on several metrics to determine whether they should be classified as a Restricted Firm and subject to additional obligations. The metrics used in Rule 4111 include the total number of cumulative disclosures on the CRD records of their associated persons. Thus, inaccurate, meritless, and frivolous complaints on their CRD records may find it difficult to retain employment, or get employed by new firms, which clearly impacts their property and liberty interests in ensuring the accuracy of their CRD records.

“The amount of time that passes after allegations are case has absolutely nothing to do with whether the allegations are” false. Imposing time limitations on a Registered Representative’s right to expunge false information from his CRD record is not complicated. “The allegations are either true or false.... It is that simple.” “A principle that seems to have been lost by FINRA” and those who argue for time limitations on a Registered Representative's right to expunge inaccurate, meritless, and frivolous complaints[,] ... is that the accused is innocent until proven guilty.” Finding that a claim seeking to expunge inaccurate, meritless, and frivolous complaints from a person’s CRD record would strip the individual of any remnant of fairness and equity. Imposing any form of time limitation on a Registered Representatives right to expunge inaccurate, meritless, and frivolous complaints from their CRD Records does not withstand Constitutional scrutiny.

It is worth pointing out something that should be obvious. Many customer complaints are clearly factually impossible. For example, if a customer complains that an annuity was misrepresented when sold. In the complaint the customer includes the name of his current advisor; however, the annuity was sold by a prior advisor. In that situation, the broker-dealer obviously knows that the complaint is factually impossible, and FINRA could and should know that the complaint is factually impossible. However, despite both the broker-dealer and FINRA knowing, or that they should have known, that the complaint is factually impossible and therefore untrue, FINRA requires that the broker-dealer report it to the CRD system which FINRA publishes to the public, a third party. As FINRA either knew or should have known that the statement published to the third-party public is untrue, yet it requires the firm to report it and it then publishes it to the third-party public regardless, in every single instance that follows this fact pattern, every single Registered Representative with such a complaint published to their CRD record arguably has a claim for defamation against FINRA.

While broker-dealers have no choice but to follow FINRA’s rules, FINRA does have the ability to do something so that it does not knowingly publish untrue statements about a Registered Representative to the third-party public, and therefore any kind of qualified immunity is could seek to rely on in many situations would arguably not be allowed as a defense against defamation claims. Taken one step further, as this exact fact pattern likely applies to thousands of Registered Representatives located in every state in the country, FINRA’s rule that requires knowingly publishing untrue statements to the third-party public potentially opens FINRA to a class action lawsuit filed by the affected individuals. Taken another step forward, FINRA then imposing time limitations on the Registered Representatives right to even seek to remove the information that FINRA required to be published to the third-party public despite the fact that the firm knew, and FINRA should have known, is untrue and factually impossible based on something as arbitrary as when the expungement was sought aggravates the potential claims of defamation, and could even be seen as almost

negligent disregard of the law and intentionally inflicting emotional distress on the individuals forced to live the remainder of their lives with untrue defamatory statements on their public record without any recourse to remove it for no reason other than FINRA says so!

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 could continue and write many more pages outlining reasons why the proposed rules have serious problems. I have additional pages of notes, but I did not have an opportunity to assemble them. Or even finish all the research, there is a lot more out there. But the reality is that I have been so busy the past few weeks that I am tonight making time to put down a few of them before the comment period ends. And I have a hearing in the morning and I can't spend a lot of time trying to organize what I could get down either.

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.