



## Consumer Federation of America

February 1, 2021

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: File No. SR-FINRA-2020-030, Procedures Relating to Requests to Expunge  
Customer Dispute Information

Dear Secretary Countryman:

The Commission currently has before it a proposal from the Financial Industry Regulatory Authority, Inc. (FINRA) to amend the Code of Arbitration to strengthen procedures regarding requests to expunge customer dispute information, including by creating a new specialized roster of arbitrators with enhanced training and experience to handle such requests.<sup>1</sup> Like most commenters, we recognize the good faith effort by FINRA to address shortcomings in the current approach to expungement requests. Nevertheless, serious questions have been raised by state securities regulators,<sup>2</sup> attorneys who specialize in representing investors in arbitration,<sup>3</sup> and securities law scholars<sup>4</sup> about the adequacy of the proposed changes. In light of these concerns, the PIABA Foundation has requested that the Commission conduct a hearing as part of its consideration of the FINRA proposal.<sup>5</sup> I am

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<sup>1</sup> Securities and Exchange Commission, Release No. 34-90734, File No. SR-FINRA-2020-030 (Dec. 18, 2020), <https://www.sec.gov/rules/sro/finra/2020/34-90734.pdf>.

<sup>2</sup> Comment letter from West Virginia Commissioner of Securities Lisa Hopkins, on behalf of the North American Securities Administrators Association (Oct. 22, 2020), <https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030-7936105-224674.pdf>.

<sup>3</sup> Comment letter from David P. Meyer, PIABA President, on behalf of the Public Investors Advocate Bar Association (Oct. 23, 2020), <https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030-7936002-224667.pdf>.

<sup>4</sup> Comment letter from Benjamin P. Edwards, Associate Professor of Law, University of Nevada, Las Vegas, William S. Boyd School of Law (Jan. 19, 2021), <https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030-8266713-227998.pdf>.

<sup>5</sup> Comment letter from Jason R. Doss, President, and Celiza Braganca, Vice President, on behalf of The PIABA Foundation (Jan. 19, 2021), <https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030-8262461-227978.pdf>.

writing on behalf of the Consumer Federation of America (CFA)<sup>6</sup> to voice my support for that hearing request.

The SEC, FINRA, state securities regulators, personal finance writers, and investor advocates all consistently recommend that investors check out the disciplinary record of the broker-dealers and investment advisers they are considering working with before trusting them with their money. Investors therefore have a reasonable expectation that the database regulators maintain for that purpose will, to the extent possible, provide them with complete and accurate information. Recognizing the importance of this data, FINRA has adopted a clear standard that information about arbitration disputes involving retail investors is only to be expunged from brokers' records under a very limited set of circumstances – for example, where the information is “factually impossible or clearly erroneous,” where the registered person was not involved in the alleged misconduct, or where the “claim, allegation or information is false.”<sup>7</sup>

Unfortunately, as NASAA stated in its October comment letter, “The frequency of arbitrator-awarded expungement demonstrates that this is not the case.” On the contrary, a 2019 study by PIABA Foundation found that from 2015 through 2018, expungement requests were granted more than 80% of the time. As the PIABA study noted, “Once these complaints are expunged, they disappear completely from CRD and BrokerCheck – making them no longer visible to investors or regulators.”<sup>8</sup> This creates problems for state securities administrators, who “use this information as part of their licensing and oversight responsibilities” and “are generally obligated under state securities and public records laws to retain all information filed as part of a registration application or an amendment to the application.”<sup>9</sup> It is also a problem for investors, who may be misled into believing their broker has a clean record when that is not the case.

While acknowledging that the FINRA proposal strengthens the procedures surrounding expungements, both attorneys who specialize in representing investors in arbitration and state securities regulators have voiced the view that the proposed changes do not go far enough to make expungement the truly extraordinary event FINRA policy clearly states it should be. Both have detailed extensive changes that they believe are needed to make the process function as intended. Ultimately, we agree with those who have suggested that expungement cannot reasonably be delegated to arbitrators and is instead more appropriately treated as a regulatory decision. As such, it is better handled by the regulators with a direct stake in maintaining the integrity of the database.

We therefore urge the Commission to hold a hearing on these issues before acting on the FINRA proposal. While that might have the immediate effect of slowing approval of the

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<sup>6</sup> Consumer Federation of America is an association of more than 250 national, state, and local pro-consumer organizations founded in 1968 to advance the consumer interest through research, advocacy, and education.

<sup>7</sup> FINRA Rule 2080, Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2080>.

<sup>8</sup> PIABA Foundation Letter

<sup>9</sup> NASAA Comment Letter

proposed rule, it could also help to ensure that we don't lose several more years experimenting with an approach to expungement requests that does not achieve the desired outcome.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barbara Roper", with a stylized flourish at the end.

Barbara Roper  
Director of Investor Protection

cc: Acting Chair Allison Herren-Lee  
Commissioner Hester M. Peirce  
Commissioner Elad L. Roisman  
Commissioner Caroline A. Crenshaw