



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 21, 2012

Via electronic submission to pubcom@finra.org

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

Re: Comments in Response to Regulatory Notice 12-18

Dear Ms. Asquith:

The North American Securities Administrators Association, Inc. (“NASAA”)¹ submits the following comments in response to the above referenced regulatory notice. NASAA is encouraged by FINRA’s efforts to improve the expungement process by providing a clear procedure for unnamed persons to seek expungements. NASAA appreciates the need for such a procedure and offers the following comments which we believe will strengthen the proposal, as well as strengthen the expungement process in terms of notice to both customers and the states.

Notice to Customer-Complainants.

NASAA believes that it is important to ensure that the customer-complainants in the underlying arbitration have notice of the expungement request and the opportunity to object. Accordingly, NASAA encourages FINRA to codify a procedure for mandatory customer notification of an unnamed person’s request for expungement. It is unclear from the regulatory notice that such a process is contemplated. Further, such a procedure should involve little if any cost to the customer-complainants. At a minimum, FINRA should send a notice to the complainant once the unnamed person has filed the submission agreement. The notice should explain that the unnamed person is seeking to expunge the reportable event and provide the customer-complainant with sufficient information to appear and object should the complainant wish to do so. Complainants should have at least 30 days to object to the *In re* expungement request. We address accessibility of hearing location for the customer, should the customer wish to attend the hearing, below in the section entitled Location of *In re* Hearing. While

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

NASAA believes it is important for a customer to have the opportunity to attend a hearing, NASAA also strongly encourages FINRA to include in the procedure that no presumption be made or conclusions drawn based on a customer's absence from a hearing. Such absence does not constitute and should not be construed as an assent to the expungement request.

Expungement Panels

NASAA appreciates the need to address the efficiency of the expungement process. However, the issue of whether or not a customer complaint should be deleted from an associated person's CRD record is of such import that it should be fully considered by a panel of arbitrators who are familiar with the underlying case. Furthermore, NASAA believes that whether a person seeking expungement was a named party or remained unnamed should not determine the number of arbitrators making the decision to expunge a person's record. The *In re* proceeding should be considered a part of the arbitration process, even if procedurally it occurs after the customer's case in chief has been concluded. For these reasons, the standard option for *In re* expungement hearing panels, as is the standard for a named party's expungement request heard during a typical arbitration, should be a hearing by the entire panel that heard the underlying case.

Under proposed Rule 13807(h) FINRA would appoint a single public arbitrator who was the public chairperson of the panel, if willing and available. NASAA believes that it is in the public interest and the interest of the unnamed party that the arbitrators most familiar with the intricacies of the dispute be charged with deciding the appropriateness of expungement. Panels should understand that they will be asked to decide all requests for expungement as an integral part of the process, which could include expungement requests after the conclusion of the arbitration. If the full panel is unavailable to hear the case, the next option would be for the other remaining panel members to be appointed to hear the *In re* expungement proceedings.

We understand that on occasion the entire panel may not be willing or available to serve in the *In re* expungement proceeding. Such instances should be minimal if FINRA makes it clear to the panel at the onset of the arbitration that it may be called on to address an expungement request after the customer's case in chief has been concluded. Having a full panel familiar with the details of the dispute should be the standard approach, with fewer panel members or new panelists used only when the full panel cannot preside over the *In re* expungement proceeding. FINRA should set expectations with arbitrators through revising the expungement process as we suggest, and in future communications with arbitrators once this process has been adopted.

Location of *In re* hearing

NASAA also believes that it is important that the customer be able to attend the expungement hearing, should the customer wish to do so. If FINRA requires the original panel to hear the *In re* expungement (as NASAA believes, see above), NASAA recommends that FINRA Rule 12213, which requires consideration of the customer's location when choosing a hearing location, also apply to *In re* proceedings. If, however, FINRA does not require the original panel to determine the *In re* hearing outcome, NASAA urges that additional procedures be put into place to consider the customer's location when choosing the hearing location and that these procedures reflect FINRA Rule 12213.

Application of the 2080 Standards

NASAA believes that it is important that FINRA clarify that all Rule 2080 provisions will apply to the new *In re* expungement proceedings. These provisions provide safeguard procedures that serve to uphold the integrity of the CRD system and, thereby, strengthen investor protection by providing an accurate record of an associated person's customer dispute history.

Opportunity to Improve the Expungement Process

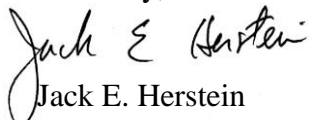
Finally, NASAA urges FINRA to use this opportunity to take additional steps to further improve the expungement process by 1) providing additional guidance to arbitrators clarifying that a decision to deny relief to customers is not a sufficient reason to then grant an expungement request and 2) codify a process whereby state regulators who may want to object to expungement are provided notice, even when FINRA intends to grant a waiver request.

On the first point, one of the grounds for granting expungement is a finding that the claim is "false." Arbitrators should be reminded that a decision in favor of the associated person does not equate to a finding that the claim is false. The Rule 2080 prong "false" does not equate to failure to find fault.

Second, NASAA and FINRA have established a process whereby state regulators are notified of an expungement and given an opportunity to review relevant information. While this process works well in most instances, there will be occasions when FINRA and state regulators take a different position on the appropriateness of the expungement. In such instances where a state regulator intends to formally object to an expungement by seeking to intervene in the court confirmation process and notifies FINRA of this intent, FINRA should formalize a process that ensures states are provided the information necessary to intervene in the court confirmation process. FINRA and the states have differing statutory requirements for registration and licensing of associated persons and disclosure of arbitration proceedings in public records. Therefore, NASAA urges that states be notified regarding court confirmation proceedings involving expungements, even when FINRA waives its role as a party. NASAA recommends that the expungement process be improved to include such standard notification.

Thank you again for the opportunity to comment on the proposed *In re* expungement rules. As a partner in the expungement review process, NASAA is encouraged by FINRA's efforts to improve the process for unnamed persons. Should you have any questions regarding the comments in this letter, please do not hesitate to contact Joseph Brady, NASAA General Counsel, at jb@nasaa.org or 202-737-0900, or A. Valerie Mirko, NASAA Assistant General Counsel, at vm@nasaa.org or 202-737-0900.

Sincerely,



Jack E. Herstein
NASAA President and

Assistant Director, Nebraska Department of Banking and Finance, Bureau of Securities