



NASAA

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NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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March 18, 2020

Submitted electronically to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

RE: **File Number SR-FINRA-2020-005: Proposed Rule Change to Amend the FINRA Code of Arbitration Procedure for Customer Disputes and the FINRA Code of Arbitration Procedure for Industry Disputes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information**

Dear Ms. Countryman:

On behalf of the North American Securities Administrators Association (“NASAA”),<sup>1</sup> I hereby submit the following comments regarding the above-referenced proposal (“the Proposal”), published by the Commission on February 26, 2020.

As a general matter, NASAA supports the Proposal. Like FINRA, states expend significant resources reviewing expungement filings. And while the increased fees will not ameliorate the burden for states, it will help offset the costs incurred by FINRA. The benefits of the Proposal aside, NASAA remains deeply concerned with how far the current expungement process has strayed from the original intent of FINRA Rule 2080 and related arbitration rules.

NASAA has a unique expertise in the expungement process because it has been involved in developing – and reforming – the process since its inception. NASAA also has a long-standing interest in ensuring that there is no compromise in the integrity of the information housed on the Central Registration Depository (“CRD”) and its investment adviser equivalent, the Investment Adviser Registration Depository (“IARD”). Each system contains information filed with state securities administrators by applicants for registration as broker-dealers, investment advisers, and their representatives. State securities administrators use this information as part of their licensing and oversight responsibilities, and are generally obligated under state securities and public records

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<sup>1</sup> Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

laws to retain all information filed as part of a registration application or an amendment to the application.

As FINRA is aware, state securities administrators are not the only stakeholders that rely on the data in the CRD and IARD systems. These systems also contain critical information that allow the investing public to make informed decisions about selecting financial professionals to guide them in building a sound financial future. Industry also uses this data to evaluate and hire the representatives who will in turn be trusted with customers' financial futures. Given its clear importance, confidence in the integrity of this data is imperative to all stakeholders.

Unfortunately, the current expungement process is compromising the integrity of the data, and will continue to do so without significant changes. NASAA's position on expungement is clear: expungement is an extraordinary remedy to be granted solely in limited circumstances.<sup>2</sup> The frequency of arbitrator-awarded expungement demonstrates that this is not in fact the case.<sup>3</sup> In light of expungement's evolution from an extraordinary remedy into routinely granted relief, the integrity of the data on the CRD and IARD systems is suffering.

In order to try to restore the expungement process at least in part to what it was intended to be – an extraordinary remedy – NASAA strongly urges the Commission to require FINRA to enhance the proposal by requiring unanimous decisions by three-person arbitration panels. FINRA states in the Proposal that they believe most expungement requests should be decided by a three-

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<sup>2</sup> See NASAA's 2018 Letter from Joseph Borg, NASAA President, to Marcia E. Asquith, EVP, Board and External Relations, *Re, Request for Comments – 17-42 Proposed Amendments to the Codes of Arbitration Procedure Relating to Requests to Expunge Customer Dispute Information* (Feb. 5, 2018) (the "17-42 Letter"), available at <https://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comments-to-FINRA-Regarding-Reg-Notice-17-42-Expungement.pdf>; Letter from William Beatty, NASAA President, to Barbara Black, FINRA Dispute Resolution Taskforce, *Re, NASAA Comments on Expungement of Matters from the Central Registration Depository* (Aug. 31, 2015), available at <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/NASAA-Expungement-Letter-enclosure.pdf>; Letter from Joseph Borg, NASAA President, to Barbara Sweeney, Secretary NASD Regulation, Inc., *Re, Request for Comments – 01-65 Proposed Rules and Policies Relating to the Expungement of Information from the Central Registration Depository* (Dec. 31, 2001), available at <http://www.nasaa.org/wp-content/uploads/2011/07/95-Letter.37262-47637.pdf>; Letter from Deborah Bortner, NASAA CRD Steering Committee Co-Chair, to Margaret H. McFarland, Deputy Secretary, U.S. Securities and Exchange Commission, *Re, File No. SR-NASD-2002-168; Proposed Rule 2130 Concerning the Expungement of Customer Dispute Information from CRD* (June 4, 2003), available at <https://www.nasaa.org/wp-content/uploads/2011/07/82-ProposedNASDRule-202130.37775-72237.pdf>; Letter from Karen Tyler, NASAA President, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, *Re, Release No. 34-57572; File No. SR-FINRA-2008-010, Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Establish New Procedures for Arbitrators To Follow When Considering Requests for Expungement Relief* (Apr. 24, 2008), available at <http://www.nasaa.org/wp-content/uploads/2011/07/31-Release-No34-57572SR-FINRA-2008-010NASAA.pdf>; Letter from Andrea Seidt, NASAA President, to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, *Re, Release No. 34-71959, File No. SR-FINRA-2014-020 Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 2081 (Prohibited Conditions Relating to Expungement of Customer Dispute Information)* (May 14, 2014), available at <https://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-Letter-Release-No-34-71959-File-No-SR-FINRA-2014-020.pdf>.

<sup>3</sup> See The PIABA Foundation's 2019 Study on FINRA Expungements, available at <https://piabafoundation.org/wp-content/uploads/2019/10/Expungement-Study-101519-FINAL-VERSION.pdf>.

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person panel. It is NASAA's position that all expungement recommendations should be made by a three-person panel, as proposed in FINRA Regulatory Notice 17-42,<sup>4</sup> and that any such recommendation be unanimous. A divided panel indicates that there is doubt that the broker has met the higher burden attendant to eligibility for extraordinary relief, and thus should not merit an expungement recommendation.

While NASAA supports the Proposal, it maintains that further expungement reform is required to improve a failed system. NASAA encourages FINRA to continue to close gaps in the existing process and to initiate steps towards more meaningful expungement reform. NASAA looks forward to continuing its dialogue with FINRA in this regard, and we appreciate the opportunity to offer comments on the Proposal. Should you have any questions regarding the comments in this letter, please do not hesitate to contact either Melanie Senter Lubin ([mlubin@oag.state.md.us](mailto:mlubin@oag.state.md.us)), Maryland Securities Commissioner, Chair, NASAA's CRD/IARD Steering Committee, or Vince Martinez ([vlm@nasaa.org](mailto:vlm@nasaa.org)), NASAA General Counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Gerold". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Gerold  
NASAA President  
Chief, New Jersey Bureau of Securities

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*See 17-42 Letter supra note 2.*