

May 17, 2012

By Email (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 2006-1509

Re: FINRA Regulatory Notice 12-18

Dear Ms. Asquith,

Morgan Keegan appreciates and supports FINRA's Regulatory Notice 12-18 ("Notice"), which proposes new rules permitting persons who are the "subject of" allegations of sales practice violations made in arbitration claims, but are not named as parties to the arbitration, to seek expungement relief by initiating proceedings at the conclusion of the underlying customer-initiated arbitration case. The reporting changes effected in 2009, as detailed in FINRA Regulatory Notice 09-23, had numerous negative implications, most especially the potential for permanent harm to an associated person's regulatory record while offering little or no opportunity for the associated person to defend their regulatory record. The issuance of the Notice is a necessary step in providing a remedy to these negative implications by providing an avenue to seek recourse concerning allegations that could impact their livelihoods, both within the industry and in many cases professional activities outside of the industry, while maintaining the protections of FINRA's expungement rules to ensure the integrity of the CRD records that the investing public relies on.

We would like to take the opportunity to comment on FINRA Regulatory Notice 12-18. Specifically, our comments relate to the Time Limitations, Access to Documents, Historical Claims and Settlements.

- Time Limitations – We don't believe there should be a time limitation, as it is not necessary. The client nor others are harmed if the associated person fails to advise of an intention to file an expungement proceeding. There are numerous reasons why an associated person may choose to wait before deciding to file an expungement proceeding, including knowing the resolution of the proceeding, particularly if the Arbitration Panel determines the claim lacked merit, should be dismissed or one of the 2080 elements existed (factually impossible or clearly erroneous; registered person was not involved in the alleged activity; or the claim, allegation or information is false). As the request for documents pursuant to proposed Rule 13807(d)(2) is made to a "FINRA-registered party," there should be no one prejudiced as long as it is within the document retention time and the arbitration has been concluded. If FINRA determines to maintain the time limitations, we believe there should be additional time allowed. We believe that in some cases the 180 days notice requirement in the proposed Rule 13807(c) may not be sufficient time for an unnamed person to notify

Morgan Keegan

FINRA of the intention to file for expungement relief, such as in the case of individuals on military leave out of the country.

- Access to Documents – We believe that FINRA should automatically provide any and all documents related to the proceedings pursuant to proposed Rule 13807(I)(1)(A)(i) to an unnamed person and should not require the unnamed person to subpoena FINRA for the documents. The unnamed person may not be adequately familiar with the process to effectively request all pertinent documents. This thereby places the unnamed person at a disadvantage or requires said person to obtain legal counsel, both of which unnecessarily contributes to the unnamed person’s financial obligations and may represent a financial hardship. This is especially significant in situations where the Arbitration Panel determined the claim lacked merit, dismissal or one of the 2080 elements existed.
- Historical Claims – The Notice does not address the resolution process for historical arbitration claims that have since been resolved. As noted above, by other commenters and FINRA in the Notice, the 2009 changes had numerous negative effects. It would be unfair and unjust to provide a resolution process to those unnamed persons for arbitrations filed after the proposed Rules are enacted and not address those harmed in the interim between the initial changes in 2009 and FINRA’s efforts to rectify a problematic situation.
- Settlements – The Notice does not address the matter of settlements prior to arbitration. Unnamed persons have no control or authority over the determination to settle such matters prior to arbitration, as they are not a named party. Only those named parties, typically the registered firm, make the determination whether to settle prior to arbitration. These named parties may choose to settle the matter purely based on business reasons, such as the costs of ongoing legal fees represents a smaller amount than the settlement amount. In these cases, we believe the expungement proceedings should be addressed as if the member(s) of the Arbitration Panel were unavailable as outlined in the Notice.

FINRA should address these matters to ensure unnamed persons in these situations have the same avenues to clear their regulatory records. Thank you in advance for consideration of these comments.

Sincerely,

Denise Morrison

Denise Morrison
Managing Director, Regulatory Affairs