

May 21, 2012

Via Email Only
pubcom@finra.org

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

Re: Proposed Rule Change Regarding The In Re Expungement Procedure

Dear Ms. Asquith

I offer the following comments on the proposed rule change regarding the In re expungement procedure. This proposal will impose serious burdens on customers who will have to respond to subpoena's and may force them to name each associated member involved rather than simply naming the brokerage firm who is legally responsible for the representatives conduct. This will increase the expense and length of time to conduct an arbitration due to potentially multiple defense attorneys who can cooperate to try and tilt the panel toward a more industry favorable composition. This proposed rule change should be scrapped, but if it is not, at least the following modifications should be made.

1. Notice should be provided to the investor whose complaint is the subject of the In Re proceeding. The unnamed person will be seeking a finding that the investor's claim was "false." Investors have an interest in such an adjudication because it carries the inference that investor has made defamatory and/or frivolous claims.
2. Investors should be given the opportunity to submit an opposition to expungement in writing.
3. Settlements are driven by a desire to obtain finality and peace. The prospect that, following settlement, an investor can be forced to compile documents and/or appear and give testimony will discourage and undermine settlements. The rule should expressly prohibit such subpoenas to investors. In most events, the documents needed by the unnamed person are in the hands of the brokerage firm anyway. But even if they are not, the goals of finality and peace associated with settlements greatly outweigh a broker's interest in obtaining expungement.

4. The proposed procedures do not provide sufficient guidance on the meaning of "false" as the term is used in the existing Rule. FINRA should take this opportunity to clarify what the "false" standard means in that context of a completed hearing.
5. In cases where an arbitration panel has ruled after a contested hearing, and the unnamed person seeks expungement, the expungement issue should be decided by the full panel, and not by a single arbitrator. All those who heard the evidence and participated in the award should have a part in deliberations, and have a vote as to whether to grant expungement.
6. The procedures do not go far enough to discourage the still-existing problems associated with "purchased expungements." The rule should expressly make settlement agreements that preclude investors from later opposing a broker's expungement request void, and declare their inclusion to be a violation of FINRA's rule requiring honorable business practices.

Very truly yours,



Mike Layne