FA Expungement

TO: **FINRA, Office of the Corporate Secretary**

FROM: **Tosh Grebenik, Chief In-House Counsel, FA Expungement, LLC**

DATE: **January 29, 2018**

SUBJECT: **Response to Regulatory Notice 17-42**

To Whom It May Concern,

I am writing to express my concerns regarding this proposed rule change. There are multiple issues with this proposed rule change, I will attempt to explain my concern below.

1) 12805(a)(1) states: "If the associated person does not request expungement in the investment-related, customer-initiated arbitration, the associated person shall be prohibited from seeking to expunge the customer dispute information arising from the customer's statement of claim during any subsequent proceeding."

a. There are multiple issues with this language. First, one of the reasons that a financial advisor does not request expungement in the initial hearing is because that arbitrator may have bias. The arbitrator has heard comments and issues from the customer for the actual claim. The expungement aspect is separate and should be evaluated from an entirely independent panel.

2) 13800(a)(f): There is a grammatical error under subsection f that should read "at the conclusion of the case" instead of "at the conclusion of the a case."

3) Under 13805(a)(3)(D) and (E), these are extremely limiting. There are thousands of advisors who have customer disputes and do not know about the expungement process. This time limit should be removed. There are advisors who have never been told that expungement is an option and this will make is to that FINRA's intent - only show disclosures that have no investor protection or regulatory value – will be nearly impossible to achieve.

There are lots of customer disputes relating to market-driven failures like Auction Rate Securities, Real Estate Investment Trusts (around 2008), and Puerto Rico bonds. These disputes, which were vastly outside of the advisor's control, do not have any investor protection or regulatory value. As a result, they will be forced to keep and maintain these old, irrelevant disclosures due to this rule.

Customer disputes are the single most common disclosure for advisors. This rule will remove the possibility of getting a more accurate BrokerCheck and CRD system for a large number of disclosures.

4) 13805(c)(2) states that the advisor must appear in person for the expungement hearing. This is going to limit the value of the process and increase costs. As it stands now, arbitrators can be selected from across the country and these arbitrators can be selected solely upon their resumes. If this rule going into effect, either FINRA will have the added expense of flying the arbitrators around the country for hearings or the arbitrators will have to be selected from a pool geographically located together. In addition, the advisor (and his/her counsel) may need to

travel to the location as an added expense for expungement. This acts as a disincentive and indirect tax on the process.

Respectfully,

Tosh Grebenik

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