# United States Senate

## Committee on the Judiciary

113th Congress -- First Session

## STATEMENT OF THE PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION IN CONNECTION WITH THE COMMITTEE'S REVIEW OF THE FEDERAL ARBITRATION ACT AND ACCESS TO JUSTICE: WILL RECENT SUPREME COURT DECISIONS UNDERMINE THE RIGHTS OF CONSUMERS, WORKERS, AND SMALL BUSINESS?

My name is Jason Doss. I am a Georgia-based attorney that has been representing public investors in cases against securities broker-dealers for eleven (11) years.

I am president of The Public Investors Arbitration Bar Association (PIABA). PIABA is a non-profit, international bar association, whose members are dedicated to the representation of investors in disputes with members of the securities industry. Formed in 1990, the mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration by protecting public investors from abuses in the arbitration process, making securities and commodities arbitration as just and fair as possible; and creating a level playing field for the public investor in securities and commodities arbitration. Since its founding, PIABA and its individual members have been on "the front lines" of every significant issue relating to the securities arbitration process and the development of law, regulations and rules impacting the process. By virtue of its longstanding commitment to and involvement in the securities arbitration process, PIABA is uniquely qualified to render insight from the perspective of

investors who, in most cases, are contractually bound to resolve their disputes through arbitration.

PIABA supports ending the use of mandatory pre-dispute arbitration clauses in consumer contracts with the securities industry. Consumers should be given the choice as to whether they want to resolve their disputes with their financial professional in arbitration. It should not be forced upon them by the use of pre-dispute arbitration provisions.

In the context of the securities industry, the Financial Industry Regulatory Authority (FINRA) operates the arbitration forum that resolves virtually all investment disputes between investment professionals and their customers. FINRA also maintains the qualification, employment and disclosure histories of 5100 broker/dealers and approximately 660,000 of their registered representatives in the electronic CRD system.[1] Some of the information contained in the CRD system is publicly available. For example, some former customer complaints about a financial advisor can be accessed by the public. As such, the CRD system serves a very important investor protection purpose.

Through its arbitration forum, FINRA provides its financial professionals and their firms a process to request having customer complaints permanently removed (i.e. expunged) from their public regulatory record maintained in the CRD system.[2] FINRA arbitrators decide whether to recommend whether to grant these expungement requests.

PIABA recently conducted a study of FINRA expungement requests and identified many problems with FINRA's expungement process that harm the investing public, which provides

---

[1] *See* FINRA Dispute Resolution Expungement training materials at p. 5. The FINRA Dispute Resolution Expungement training materials are available at http://www.finra.org/ArbitrationAndMediation/Arbitrators/Training/WrittenMaterials/index.htm.

[2] Broker/dealers that are members of FINRA may also seek expungement of customer complaint information.

another reason that investors should be able to choose whether they want to resolve their investment disputes in FINRA arbitration. For example, for the time period May 18, 2009 through December 31, 2011, expungement relief was granted by arbitrators in 96.9% of the cases resolved by settlements or stipulated awards even though in many cases the financial firms and/or financial professional paid significant sums of money to settle the disputes. A copy of *Expungement Study of the Public Investors Arbitration Bar Association* (*PIABA Expungement Study*), authored by our Immediate Past-President, Scott C. Ilgenfritz, and released in October 2013 is attached hereto as Exhibit A.

## CONCLUSION

We appreciate the opportunity to share with the Committee the *PIABA Expungement Study*. It illustrates one of the many problems facing the consumer public as a result of forced Arbitration. It continues to be PIABA's position that consumers should not be required to arbitrate disputes with their trusted financial professionals.

We thank you for the opportunity to be heard on this important issue.

Jason Doss, President

Public Investors Arbitration Bar Association
(770) 578-1314
jasondoss@dossfirm.com

Robin S. Ringo, Executive Director
Public Investors Arbitration Bar Association
(800) 621-7484
rsringo@piaba.org

# EXPUNGEMENT STUDY OF THE PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION[1]

## INTRODUCTION

In the context of the securities industry, the term "expungement" refers to the process by which an individual stockbroker licensed through the Financial Industry Regulatory Authority, Inc., ("FINRA") can seek to have removed from his or her public regulatory record maintained through the Central Registration Depository ("CRD") information concerning a complaint or complaints made by investors which arise from the conduct of the broker.[2]

PIABA has undertaken this study of expungement requests in securities arbitration proceedings filed between January 1, 2007 and December 31, 2011, by investors against securities broker/dealers and/or individual brokers. PIABA requested that the Securities Arbitration Commentator ("SAC") search its database for arbitration awards in investor disputes with securities industry members that mention the term "expungement" and to extract from each award and place on spreadsheets specific types of data as requested by PIABA.[3]

The most alarming statistic arising from an analysis of the SAC data is the very high percentage of cases resolved by settlement or stipulated awards in which expungement relief has been granted. For the time period January 1, 2007 through May 17, 2009, expungement was granted in 89% of the cases resolved by stipulated awards or settlement. For the time period

---

[1] PIABA is an international, not-for-profit, voluntary bar association of lawyers who represent claimants in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect such investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights.

[2] Broker/dealers that are members of FINRA may also seek expungement of customer complaint information.

[3] The analysis, opinions, and conclusions expressed in this study are those of PIABA only. SAC has not participated in the preparation of the text of this study. SAC's role with respect to this study has been limited to providing arbitration award data to PIABA for its review and analysis.

May 18, 2009 through December 31, 2011, expungement relief was granted in 96.9% of the cases resolved by settlements or stipulated awards.

The data also revealed that one individual associated with a brokerage firm during the Review Period requested expungement relief 40 times, and arbitration panels granted expungement relief to that individual 35 times.

The purposes of PIABA's study include the following:

(1) PIABA has analyzed the data provided by SAC with respect to arbitration awards rendered in cases initiated by investors against broker/dealers and/or brokers for cases filed during the five year time period between January 1, 2007 and December 31, 2011, which mention the term "expungement" to determine whether any trends with respect to expungements can be discerned;

(2) To provide context of the above-described analysis, PIABA provides an overview of the Central Registration Depository ("CRD") system, Notices to Members issued by the National Association of Securities Dealers, Inc. ("NASD"), Regulatory Notices issued by FINRA, and rule changes adopted by NASD and FINRA with approval of the Securities and Exchange Commission ("SEC") with respect to the CRD system and expungements;

(3) PIABA discusses issues identified as a result of the analysis of the expungement data, expresses conclusions or opinions with respect to those issues, and expresses ideas about how the issues reflected in the expungement data should be addressed.

## THE CENTRAL REGISTRATION DEPOSITORY SYSTEM

FINRA maintains the qualification, employment and disclosure histories of 5100 broker/dealers and approximately 660,000 of their securities employees in the electronic CRD

system.[4] FINRA and the North American Securities Administrators Association ("NASAA") established a CRD system in 1981. In 1999, the CRD system was transformed from a paper-based system under which paper registration forms were submitted to the NASD and entered by it, to a web-based system in which the vast majority of registration forms are filed online via the Internet.[5] FINRA's predecessor, NASD[6], has described the CRD system as follows:

> The CRD system is an online registration and licensing system for the U.S. securities industry, state and federal regulators, and self-regulatory organizations ("SROs"). The CRD system contains broker/dealer information filed on Forms BD and BDW and information on associated persons filed on Forms U-4 and U-5. The CRD system also contains information filed by regulators via Form U-6. The CRD system contains administrative information (*e.g.*, personal, organizational, employment history, registration, and other information) and disclosure information (*e.g.*, criminal matters, regulatory disciplinary actions, civil judicial actions, and information relating to customer disputes) filed on these forms.
>
> NASD operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association (NASAA). NASD works with the SEC, NASAA, other members of the regulatory community, and member firms to establish policies and procedures reasonably designed to insure that information submitted to and maintained on the CRD system is accurate and complete. These procedures, among other things, cover expungement of information from the CRD system in narrowly defined circumstances.[7]

Thus, for each associated person licensed by NASD or FINRA, the CRD system contains disclosure information with respect to the associated person having been named in a criminal

---

[4] *See* FINRA Dispute Resolution Expungement training materials at p. 5. The FINRA Dispute Resolution Expungement training materials are available at http://www.finra.org/ArbitrationAndMediation/Arbitrators/Training/WrittenMaterials/index.htm.

[5] *See* FINRA Dispute Resolution Expungement training materials at 6.

[6] FINRA was formerly known as National Association of Securities Dealers, Inc. On July 30, 2007, NASD acquired the member regulation, enforcement, and arbitration operations of the New York Stock Exchange and changed its name to FINRA.

[7] NASD Notice to Members 04-16, which is available at http://www.finra.org/Industry/Regulation/Notices/2004/P003233.

matter, having been the subject of a regulatory disciplinary action, having been named in a civil judicial action, and having been named in an investor arbitration proceeding.

For many years, there was an anomaly in the reporting requirements with respect to customer complaints. Until May 18, 2009, the questions on the Form U-4 and Form U-5 only required the reporting of two categories of customer complaints: (1) written or oral customer-initiated, investment-related complaints involving alleged sales practice violations for damages in the amount of $5,000 or more; and (2) customer-initiated, investment-related, arbitration or civil litigation claims in which the broker was named as a respondent or defendant and was alleged to have been involved in one or more sales practice violations. Thus, if a registered representative was the subject of an oral or written investment-related complaint by a customer alleging one or more sales practice violations and seeking damages of $5,000 or more, which was conveyed to the broker/dealer employing the registered representative, that customer complaint had to be reported to NASD or FINRA. Likewise, if a registered representative was named as a respondent or defendant in an investment-related arbitration or civil action filed by a customer in which the customer alleged the registered representative's involvement in one or more sales practice violations, the broker/dealer employing the registered representative had an obligation to report to NASD or FINRA the filing of the arbitration proceeding or civil action. However, prior to May 18, 2009, if a registered representative was identified by name in a customer-initiated arbitration proceeding or civil action or otherwise identified as the person involved in one or more sales practice violations, but the registered representative was not named as a respondent or defendant, there was no requirement to report to NASD or FINRA the filing of the arbitration proceeding or civil action.

Investor advocates and others complained to FINRA about this anomaly. On March 6, 2009, FINRA filed a proposed rule change with the SEC for comment, review, and approval.[8] The rule amendments included in the proposed rule change addressed the above-described anomaly by incorporating two additional questions into the Forms U-4 and U-5. One of those questions required the reporting to FINRA of a registered representative being the subject of (without being named as a respondent or defendant) an investment-related, customer-initiated arbitration claim or civil action within the past twenty-four months in which the customer alleged one or more sales practice violations and requested compensatory damages of $5,000 or more.[9] On May 13, 2009, the SEC approved FINRA's proposed rule change described above[10] In May, 2009, FINRA announced the SEC's approval of the proposed rule change.[11] FINRA announced that the amendments with respect to the reporting of customer complaints on Forms U-4 and U-5 became effective on May 18, 2009. Additional questions on the Forms U-4 and U-5 applied to arbitration claims or civil actions filed on or after May 18, 2009.[12]

PIABA chose to base this study on arbitration awards which mention "expungement" in customer-initiated proceedings filed between January 1, 2007, and December 31, 2011, in part, to analyze the effect that the amendments announced in Regulatory Notice 09-23 have had on expungements. The May 18, 2009, effective date is approximately at the midpoint of the five year time period for which PIABA obtained arbitration award data from SAC.

---

[8] *See* Exchange Act Release No. 59916 (May 13, 2009) (SEC Order Approving SR-FINRA-2009-008).

[9] FINRA maintains on its website at www.finra.org a public disclosure database concerning broker/dealers and brokers called "BrokerCheck". FINRA's BrokerCheck database for registered representatives includes employment history, licensure and registration information, and disclosure information, including customer complaints. FINRA's BrokerCheck database is available at http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/.

[10] Exchange Act Release No. 59916 (May 13, 2009) (SEC Order Approving SR-FINRA-2009-008), 74 Fed.Reg. 23750 (May 20, 2009) (Order Approving File No. SR-FINRA-2009-008).

[11] Regulatory Notice 09-23 is available at http://www.finra.org/Industry/Regulation/Notices/2009/P118706.

## REGULATORY BACKGROUND CONCERNING EXPUNGEMENTS

After the inception of the CRD system in 1981, the NASD generally honored court-ordered expungements.[13] In NASD Notice to Members ("NTM") 01-65, the NASD also stated, "Arbitrator-ordered expungements that met certain requirements also were honored until January 1999."[14] NASD did not describe in NTM 01-65 what those "certain requirements" were. In the same notice, NASD recognized that most customer/broker disputes are resolved in arbitration or are settled without any ruling by a finder of fact. NASD further noted that neither of those customer claim resolution methods results in a document that explicitly identifies the basis for granting expungement relief, because arbitrators are not required to provide the reasoning for a decision or award, and arbitrators typically do not do so.[15]

The reference in NTM 01-65 to arbitrator-ordered expungements that met certain requirements being honored until January, 1999, relates to NASD Regulation imposing a moratorium on arbitrator-ordered expungements effective January 19, 1999.[16] The moratorium was the result of a disagreement between NASD Regulation and NASAA concerning arbitrator-ordered expungements. At that time, the CRD system was operated pursuant to an agreement between NASD Regulation and NASAA. NASD Regulation had taken the position that expungement of information from the CRD system ordered by an arbitrator and contained in an award should be given the same treatment as a court-ordered expungement. NASAA disagreed because it was the opinion of NASAA that under some state laws information submitted to the

---

[12] *See* FINRA Regulatory Notice 09-23 at p. 4.
[13] *See* NASD Notice to Members 01-65, p. 564, which is available at http://finra.complinet.com/en/search/search.html?rulenumber=01-65.
[14] *Id.*
[15] *Id.* at p. 566 and fn. 8.
[16] *See* NASD Notice to Members 99-09 ("NTM 99-09") at p. 47, which is available at http://www.finra.complinet.com/en/search/search.html?rulenumber=99-09.

CRD system was a state public record, and such state laws did not recognize the authority of arbitrators to remove a state public record.[17]

Later in 1999, NASD Regulation issued Notice to Members 99-54 ("NTM 99-54") in which it recognized that information on the CRD system "has important investor protection implications, provided it is complete and accurate." NASD Regulation further stated, "Therefore, such information should not be expunged without good reason (*e.g.*, a finding that expungement relief is necessary because information on the CRD system is defamatory in nature, misleading, inaccurate, or erroneous)."[18]

In NTM 99-54, NASD Regulation sought comment on an approach that would establish standards which would have to be satisfied before NASD Regulation would expunge information from the CRD system based on an arbitrators' award.[19] In this notice, NASD Regulation also posed the following question:

> **Should consent awards (*i.e.*, those containing expungement directives) be treated differently than awards issued after full consideration of the merits of the dispute?** (emphasis in the original)[20]

NASD Regulation requested comments on whether the establishment of standards as outlined in the notice would provide a basis for NASD Regulation to treat stipulated awards with expungement directives in the same manner as awards containing expungement directives after a full hearing.[21]

---

[17] *Id.*
[18] *See* NASD Regulation Notice to Members 99-54 at p. 2, which is available at http://www.finra.org/Industry/Regulation/Notices/1999/P004218.
[19] *Id.* at p. 2.
[20] *Id.*
[21] *Id.* at pp. 2-3.

NASD Regulation noted the widely accepted authority of arbitrators to award equitable relief. It stated its belief that arbitrators ordering expungement of information from the CRD system which is determined to be defamatory, misleading, inaccurate, or erroneous is equitable relief within the authority of the arbitrators. However, as of the issuance of NTM 99-54, the NASD's Code of Arbitration Procedure and its arbitrator training materials did not address the granting of equitable relief in the form of expungement of information from the CRD system.[22]

NTM 01-65 also included a discussion of stipulated awards which result from a settlement between the parties and do not involve any findings of fact as to the merits of the investor's claim. In the discussion of stipulated awards, the NASD stated:

> [C]oncerns had been raised about the possibility of negotiated arrangements wherein a firm may agree to settle a claim filed by a customer against an associated person and the firm, provided the customer agrees to the inclusion of a directive to expunge all information about the claim from the associated person's CRD record. In some cases, a customer claim/allegation may have merit and, therefore should be reported on the uniform registration forms, included in the CRD system for use by regulators and broker/dealers, and made available to investors through NASD Regulation's PDP [Public Disclosure Program]. Expungement may be inappropriate under these circumstances.[23]

At the conclusion of the foregoing quotation, the NASD appended a footnote, which stated the following:

> **NASD Regulation is aware of allegations that firms have pressed customers/claimants into accepting expungement as a condition of settlement of arbitration proceedings. While we believe that the proposed rules would address these concerns, NASD Regulation would consider this practice to be a possible violation of Rule 2110.**[24] (Emphasis added)

[22] *Id.* at p. 3.
[23] NASD NTM 01-65 at 567.
[24] *Id.* at p. 570, fn 14.

In addition to the discussion in 01-65 described above, NASD stated:

> "Stipulated" (or consent) awards or settlements are a source of particular concern because typically there has been no hearing on the merits, no independent fact finder involved in the negotiations, and no rationale provided for the expungement. While there may be legitimate reasons for the expungement, those reasons generally are not provided in a stipulated award or a settlement. Therefore, NASD Regulation is proposing that any approach dealing with the expungement of customer dispute information must address both expungement orders in arbitration awards after a hearing on the merits and "stipulated" or consent awards in which the parties agree to expungement as part of the settlement and then present the settlement to the arbitrator for inclusion in an award.[25]

Thus, as early as 1999, NASD Regulation had concerns about whether stipulated or consent awards containing expungement relief should be treated differently than awards issued after a hearing on the merits. NASD reiterated those concerns in NTM 01-65. Significantly, NASD Regulation took the position that it would consider respondents conditioning the settlement of arbitration proceedings on customer claimants' agreement to expungement relief to be a possible violation of the just and equitable principles of trade under Rule 2110.

The standards for granting expungement relief proposed by NASD Regulation in NTM 01-65 were factual impossibility or clear error, the claim being without legal merit, and the claim being defamatory in nature. The notice stated that NASD Regulation believed that it would be proper to include expungement relief in stipulated awards only in cases that involve factual impossibility or a party being mistakenly named.[26]

[25] *Id*. at p. 566.
[26] *Id.* at 567.

NASD's next effort to establish standards for the granting of expungement relief came with the filing of proposed Rule 2130 in a submission to the SEC on November 19, 2002.[27] NASD Rule 2130, entitled "Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System", established requirements to be met by member firms or associated persons to obtain the expungement of information from the CRD system arising from a customer complaint. First, the rule required that member firms and associated persons must obtain an order from a court of competent jurisdiction directing expungement or confirming an arbitration award containing expungement relief. Second, member firms and associated persons that petitioned a court for expungement relief or sought judicial confirmation of an arbitration award containing expungement relief were required to name NASD as an additional party and serve NASD with all appropriate documents, unless NASD waived that requirement. Third, the rule set forth three affirmative judicial or arbitral findings that might result in NASD waiving the obligation to name it as a party in a petition to a court for expungement relief or confirmation of an arbitration award granting such relief:

> (A) The claim, allegation, or information is factually impossible or clearly erroneous;
>
> (B) The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or
>
> (C) The claim, allegation, or information is false.

[27] SEC Order Granting Approval of Proposed Rule Change and Amendment No. 1, Thereto, and Notice of Filing Order Granting Accelerated Approval to Amendment No. 2, Thereto, Relating to Proposed NASD Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System, 68 Fed.Reg. 74667 (December 24, 2003), Exchange Act Release No. 48933 (File No. SR-NASD-2000-168 (Dec. 16, 2003, 68 Fed.Reg. 74667 (December 24, 2003). NASD Rule 2130 has been incorporated into the FINRA Manual as Rule 2080.

Fourth, NASD reserved the discretion under extraordinary circumstances to waive the obligation to name NASD as a party to a petition filed in court if the expungement relief and accompanying findings providing the basis for that relief are meritorious and expungement would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.[28]

In its order approving Rule 2130, the SEC noted that, "Currently, it is possible that respondents may agree to pay damages as a quid pro quo for expungement and obtain court confirmation of the expungement."[29] NASD took the position that the proposed rule would reduce, if not eliminate, the risk of expungement of information critical to investor protection and regulatory interests as a condition in settlement negotiations. NASD believed that any concern about members or associated persons "buying clean records" would be addressed by the requirement in the rule of an "affirmative determination" of one of the grounds specified in the rule by the arbitrators.[30] The SEC expressed its agreement with NASD's position that the "affirmative" determination requirement would provide sufficient regulatory protection and would not allow the "buying of clean records".[31]

Rule 2130 became effective on April 12, 2004, and applied to any request filed with a court of competent jurisdiction to expunge customer dispute information from the CRD system, which was based upon an arbitration proceeding or civil action filed on or after April 12, 2004.[32]

---

[28] *Id.*
[29] 68 Fed.Reg. 74667, 74670 (Dec. 24, 2003).
[30] *Id.*
[31] *Id.* at 74671.
[32] *See*, NASD Notice to Members 04-16, at p. 211, which is available at http://www.finra.org/Industry/Regulation/Notices/2004/P003233.

In June, 2004, NASD issued NTM 04-43[33] to provide guidance to member firms and associated persons with respect to the use of affidavits obtained from customers in connection with stipulated awards or settlements to obtain expungement of customer dispute information under Rule 2130. In NTM 04-43, NASD stated that it had recently become aware of situations in which respondents appeared to be settling customer claims, at least in part, for monetary compensation provided to the customer in return for an affidavit from the customer absolving one or more of the respondents from the wrongdoing alleged in the statement of claim.[34] NASD cautioned member firms and associated persons that paying consideration for affidavits from customers as part of settlement negotiations, the content of which is untrue and contradicts the allegations in the statement of claim, exposed member firms and associated persons to a variety of sanctions, including a potential disciplinary proceeding for violation of NASD rules, including Rule 2110.[35] NASD concluded NTM 04-43 by stating:

> NASD believes that abusing NASD's dispute resolution system by negotiating settlements with customers in return for exculpatory affidavits that the member or associated person knows or should know are false or misleading contravenes Rule 2110, which requires members and their associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.[36]

Thus, with the issuance of NTM 04-43, NASD put member firms and associated persons on notice that it was a prohibited practice and a violation of NASD rules for member firms and associated persons to bargain for as part of settlement negotiations a contrived affidavit from the customer claimant which contradicts the allegations of the statement of claim for the purpose of

[33] NASD Notice to Members 04-43 is available at http://www.finra.org/Industry/Regulation/Notices/2004/P003014.
[34] *Id.* at p. 544.
[35] *Id.*
[36] *Id.* at p. 555.

obtaining expungement relief. Bargaining for such an affidavit from a customer claimant could clearly result in the "buying of a clean record" and would make a mockery of any "affirmative determination" of one of the three grounds in Rule 2130 by a panel of arbitrators.

NASD issued NTM 04-44 along with NTM 04-43.[37] NTM 04-44 provided guidance to member firms and associated persons concerning impermissible confidentiality provisions in settlement agreements, impermissible complaint withdrawal provisions, and procuring false or misleading affidavits as a condition to settlement.[38] Impermissible confidentiality provisions include those that prohibit, limit, or discourage customer claimants or other persons from disclosing settlement terms or facts giving rise to the dispute in response to inquiries from regulatory agencies.[39] Impermissible complaint withdrawal provisions included conditioning a settlement on a customer claimant withdrawing a pending complaint filed with NASD or another regulatory agency.[40] NASD notified member firms and associated persons that these two practices, as well as the procurement of false or misleading affidavits from customer claimants as a condition of settlement, were violations of Rule 2110.[41]

With NTM 04-43 and NTM 04-44, NASD made it clear that practices designed to "game" the expungement system established by Rule 2130 or to prevent or discourage regulatory inquiry concerning settlement of customer disputes constitute violations of NASD rules, including Rule 2110.

Despite the approval and implementation of Rule 2130, FINRA determined that there were still problems that needed to be addressed with respect to requests to expunge customer

[37] NASD Notice to Members 04-44 is available at http://finra.org/Industry/Regulation/Notices/2004/P003011.
[38] *Id.* at pp. 558-559.
[39] *Id.* at 558.
[40] *Id.* at 559.

dispute information under the rule. There was no requirement that arbitrators hold a recorded hearing session regarding the propriety of expungement. There was no requirement that in cases involving settlements, arbitrators review the settlement documents and consider them when determining whether expungement was appropriate. There was no requirement that arbitrators base their granting of an award of expungement on one of the three grounds set forth in Rule 2130. There was no requirement that arbitrators provide a written explanation of the reasons for a finding that one or more of the Rule 2130 grounds for expungement apply to the facts of the case. There was no requirement that all forum fees pertaining to a request for expungement relief be assessed against the party requesting that relief.

FINRA addressed these problems in March, 2008, with a proposed rule change, proposing the adoption of Rule 12805 as an addition to the Code of Arbitration Procedure for Customer Disputes and Rule 13805 of the Code of Arbitration Procedure for Industry Disputes.[42] Rule 12805 contains express provisions addressing each of the problems in the expungement process identified above. In its order approving Rules 12805 and 13805, the SEC made note of a number of important statements and positions of FINRA, and the SEC made several statements of consequence with respect to the expungement process.

FINRA advised the SEC that while arbitrators may order expungement after a hearing on the merits in a customer's case, it is more common for arbitrators to order expungement at a party's request to facilitate a settlement. FINRA advised the SEC that the terms of the settlement could require a customer to consent to or not oppose ordering of expungement relief in a stipulated award. In determining whether to grant expungement in conjunction with a settlement

[41] *Id.* at 558.

or a stipulated award, FINRA expected arbitrators to review the settlement agreement regarding the amount paid and other terms and conditions of the agreement which might raise concerns about whether expungement relief was appropriate. However, apparently, arbitrators frequently did not review the terms of settlement agreements before granting expungement relief.[43]

One of the arguments made by commenters on the proposed rule change was that arbitrators would hear only the position of the party requesting expungement if customer claimants did not participate in the expungement hearing. In response to this argument, FINRA assured the SEC that it would take appropriate steps to ensure that arbitrators perform the essential fact-finding that is required by Rule 12805, whether or not a customer appears at the expungement hearing.[44]

Another argument made in comment letters submitted with respect to the proposed rule change was that the rule should deter excessive expungement relief, particularly in situations involving settlements or the agreement not to oppose expungement relief as a condition of the payment of settlement consideration to the customer. In response to this argument, FINRA stated, as it had many times before, that expungement relief should be an extraordinary remedy.[45] In approving the proposed rule change, the SEC made specific note of FINRA's repeated position that expungement relief is to be an extraordinary remedy and FINRA's position that expungement should be granted only when the information to be expunged has "no meaningful

---

[42] *See* Exchange Act Release No. 58886 (October 30, 2008), 73 Fed.Reg. 66086 (November 6, 2008) (File No. SR-FINRA-2008-010).
[43] 73 Fed.Reg. 66086 at p. 66087.
[44] 73 Fed.Reg. 66086 at p. 66088.
[45] *Id.* (citations omitted)

regulatory or investor protection value".[46] The SEC also stated that it believes FINRA should review expungement requests to ensure that expungement is an extraordinary remedy.[47]

The SEC made the following significant statements in support of its decision to approve the proposed rule change:

> **[T]he Commission believes that having accurate and complete information in the CRD is vital; information that has regulatory value or that could assist investors in protecting themselves should not be removed from CRD.**
>
> *** * ***
>
> **The Commission believes that the training and education FINRA provides in conjunction with the proposed rule change will be critical to the implementation and proper application of the rules. Proper training of arbitrators should help make expungement the extraordinary remedy that it was meant to be and should convey to the arbitrators the importance of their role in maintaining the integrity of the CRD.**
>
> *** * ***
>
> **Given the importance of CRD for regulators and to customers who want to get information about registered persons or member firms before they do business with them, the Commission urges FINRA in its regulatory role to monitor how this rule is applied by arbitrators to assure that it is achieving its goals, and to propose additional changes if needed.**[48] (Emphasis added)

With Regulatory Notice 08-79 ("NTM 08-79), FINRA announced the SEC's approval of Rules 12805 and 13805 with an effective date of January 26, 2009.[49] In NTM 08-79, FINRA stated the following:

---

[46] 73 Fed.Reg. 66086 at p. 66089. (citations omitted)
[47] 73 Fed.Reg. 66086 at p. 66090.
[48] *Id.*
[49] *See* Regulatory Notice 08-79 at p. 1, which is available at http://www.finra.org/Industry/Regulation/Notices/2008/P117541.

> Accurate and complete reporting in CRD, including the reporting of required customer dispute information, is an important aspect of investor protection.
>
> * * *
>
> The new procedures ensure that arbitrators have the opportunity to consider the facts that support or weigh against a decision to grant expungement. The procedures add transparency to the process and safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.[50]

## ANALYSIS OF DATA CONCERNING EXPUNGEMENT REQUESTS AND ARBITRATORS' RULINGS ON THOSE REQUESTS FOR ARBITRATION PROCEEDINGS FILED BETWEEN JANUARY 1, 2007, AND DECEMBER 31, 2011

In preparing this study, PIABA reviewed data that it requested SAC to provide with respect to all arbitration awards entered in cases filed between January 1, 2007 and December 31, 2011 (the "Review Period"), which mention the term "expungement".[51] PIABA requested that SAC identify each arbitration proceeding by docket number and caption in the order in which the cases were filed for two time periods: from January 1, 2007 through May 17, 2009; and from May 18, 2009 through December 31, 2011. For each case, PIABA requested that SAC also provide the following information:

(a) The venue of the proceeding;

(b) The date the claim was filed;

(c) The date the award was issued;

(d) Whether or not the broker was named as a party;

(e) Whether expungement was granted or denied;

---

[50] *Id.* at p. 2.

[51] SAC provided data concerning and access to only awards that mention the term "expungement". The awards examined do not include all awards in cases tried on the merits or all awards resulting from cases resolved by settlement.

(f) If expungement was granted, the Rule 2130/2080 basis or bases on which expungement was granted;

(g) Which party prevailed in cases that were tried; and

(h) Identify cases concluded by stipulated awards or settlements.

For each case in which expungement requests were granted, PIABA requested data concerning the amount of compensatory damages claimed and the amount awarded.

SAC provided the requested data for the two time periods on the spreadsheets attached to this study. Each set of spreadsheets is accompanied by a report key to facilitate the interpretation of the data reported on the spreadsheets.

PIABA requested that FINRA provide to it the total number of customer-initiated cases against member firms and/or associated persons in each year. FINRA provided the following information for customer-initiated cases in each of the five years in the Review Period:

2007 – 1,895

2008 – 3,677

2009 – 5,247

2010 – 3,752

2011 – 3,064

PIABA's analysis of the awards in which expungement was requested in cases filed in 2007, 2008, and 2009 on or before May 17, 2009, resulted in the statistics set forth in the charts below:[52]

[52] The term "Respondent" in the charts is abbreviated "Resp." The term "Claimant" in the charts is abbreviated "Cl." The term "Expungement" in the charts is abbreviated "Exp."

## 2007

### Stipulated Awards/Settlements

| Exp. Granted | Exp. Denied | Total Stipulated Awards | Percentage of Cases Exp. Granted | Percentage of Cases Exp. Denied |
|---|---|---|---|---|
| | | | | |
| 38 | 5 | 43 | 88.4 | 11.6 |

### Cases Tried on the Merits

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Cl. Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 40 | 32 | 6 | 33 | 72 | 39 | 55.6 | 44.4 | 15.4 | 84.6 |

## 2008

### Stipulated Awards/Settlements

| Exp. Granted | Exp. Denied | Total Stipulated Awards/Settlements | Percentage of Cases Exp. Granted | Percentage of Cases Exp. Denied |
|---|---|---|---|---|
| | | | | |
| 53 | 6 | 59 | 89.8 | 10.2 |

### Cases Tried on the Merits

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Claimant Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 44 | 32 | 13 | 49 | 76 | 62 | 57.9 | 42.1 | 21 | 79 |

## January 1, 2009-May 17, 2009

### Stipulated Awards/Settlements

| Exp. Granted | Exp. Denied | Total Stipulated Awards/Settlements | Percentage of Cases Exp. Granted | Percentage of Cases Exp. Denied |
|---|---|---|---|---|
| | | | | |

| | | | | |
|---|---|---|---|---|
| 39 | 5 | 44 | 88.6 | 11.4 |

**Cases Tried on the Merits**

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Cl. Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 48 | 23 | 7 | 38 | 71 | 45 | 67.6 | 32.4 | 15.6 | 84.4 |

**Summary of Expungements for the Time Period**
**January 1, 2007-May 17, 2009**

**Stipulated Awards**

| Exp. Granted | Exp. Denied | Total Stipulated Awards/Settlements | Percentage of Cases Exp. Granted | Percentage of Cases Exp. Denied |
|---|---|---|---|---|
| | | | | |
| 130 | 16 | 146 | 89 | 11 |

**Cases Tried on the Merits**

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Cl. Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 132 | 87 | 26 | 120 | 219 | 146 | 60.3 | 39.7 | 17.8 | 82.2 |

PIABA's analysis of the awards in which expungement was requested in cases filed in 2009 on or after May 18, 2009, 2010, and 2011 resulted in the statistics set forth in the charts below:

## May 18, 2009-December 31, 2009

### Stipulated Awards/Settlements

| Exp. Granted | Exp. Denied | Total Stipulated Awards/Settlements | Percentage of Cases Exp. Granted | Percentage of Cases Exp. Denied |
|---|---|---|---|---|
| | | | | |
| 133 | 6[53] | 139 | 95.7 | 4.3 |

### Cases Tried on the Merits

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Cl. Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 81 | 41 | 22 | 63 | 122 | 85 | 66.4 | 33.6 | 25.9 | 74.1 |

## 2010

### Stipulated Awards/Settlements

| Exp. Granted | Exp. Denied | Total Stipulated Awards/Settlements | Percentage of Cases Exp. Granted | Percentage of Case Exp. Denied |
|---|---|---|---|---|
| | | | | |
| 202 | 6[54] | 208 | 97.1 | 2.9 |

### Cases Tried on the Merits

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Cl. Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 91 | 56 | 18 | 69 | 147 | 87 | 61.9 | 38.1 | 20.7 | 79.3 |

[53] During this time period, there were three cases in which expungement was granted to one registered representative and expungement was denied to another. Each of these three awards was treated as two separate awards for calculating the total stipulated awards/settlements and for the purpose of calculating percentages.

[54] During this time period, there was one case in which expungement was granted to one registered representative and expungement was denied to another. This case was treated as two separate awards for calculating the total stipulated awards/settlements and for the purpose of calculating percentages.

**2011**

**Stipulated Awards/Settlements**

| Exp. Granted | Exp. Denied | Total Stipulated Awards/Settlements | Percentage of Cases Exp. Granted | Percentage of Cases Exp. Denied |
|---|---|---|---|---|
| | | | | |
| 133 | 3 | 136 | 97.8 | 2.2 |

**Cases Tried on the Merits**

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Cl. Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 54 | 30 | 10 | 34 | 84 | 44 | 64.3 | 35.7 | 22.7 | 77.3 |

**Summary of Expungements for the Time Period**
**May 18, 2009-December 31, 2011**

**Stipulated Awards/Settlements**

| Exp. Granted | Exp. Denied | Total Stipulated Awards/Settlements | Percentage of Cases Exp. Granted | Percentage of Cases Exp. Denied |
|---|---|---|---|---|
| | | | | |
| 468 | 15 | 483 | 96.9 | 3.1 |

**Cases Tried on the Merits**

| Resp. Prevails Exp. Granted | Resp. Prevails Exp. Denied | Cl. Prevails Exp. Granted | Cl. Prevails Exp. Denied | Total Cases Resp. Prevails | Total Cases Cl. Prevails | Percentage of Cases Resp. Prevails Exp. Granted | Percentage of Cases Resp. Prevails Exp. Denied | Percentage of Cases Cl. Prevails Exp. Granted | Percentage of Cases Cl. Prevails Exp. Denied |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| 226 | 127 | 50 | 167 | 353 | 217 | 64 | 36 | 23 | 77 |

**ISSUES ARISING FROM THE EXPUNGEMENT DATA**
**AND PROPOSALS TO ADDRESS THOSE ISSUES**

The data set forth on the SAC spreadsheets, the foregoing statistics, and a review of the stipulated awards identified on the SAC spreadsheets reveal some expected and some alarming trends.

An expected result of FINRA's amendment of the Form U-4 effective May 18, 2009, requiring associated persons not named as parties in a customer's arbitration claim to report the claim, is in an increase in expungement requests and an increase in non-named brokers seeking expungements. The amount of the increase, however, is dramatic. For the pre-NTM 09-23 time period, January 1, 2007 through May 17, 2009, expungement requests in cases resolved by stipulated awards or settlement and cases tried on the merits totaled 511. For the time period May 18, 2009 through December 31, 2011, expungement requests in cases resolved by stipulated awards or settlements and cases tried on the merits totaled 1,053.[55] For the time period January 1, 2007 through May 17, 2009, there were only 20 cases in which non-named associated persons sought expungement. For the time period May 18, 2009 through December 31, 2011, there were 407 cases in which non-named associated persons sought expungement, a twenty fold increase.[56]

FINRA has repeatedly stated that expungements should be an extraordinary remedy and that a respondent prevailing on the merits or obtaining a dismissal of a customer claimant's claim are not by themselves an appropriate ground for expunging the proceeding from the CRD system.[57] The relatively high percentage of cases reported in the SAC data in which the respondents prevailed and expungements were granted suggests that these pronouncements may not be getting through to arbitrators. For the time period January 1, 2007 through May 17, 2009, arbitration panels granted expungements in 60.3% of such cases. For the time period May 18,

[55] Part of this increase may be attributable to a greater number of customer-initiated cases filed in 2009 after May 17, 2009, as compared to before May 18, 2009, and the greater number of customer-initiated cases filed in 2011 as compared to 2007.

[56] FINRA is in the process of drafting a proposed rule change for submission to the SEC proposing a rule or rules establishing procedures for non-named associated persons to seek expungements. If the SEC approves the proposed rule change, expungement requests will likely increase even more dramatically.

[57] *See*, *e.g.*, NTM 01-65 at p. 566; FINRA Dispute Resolution Expungement Training Materials at p. 18.

2009 through December 31, 2011, arbitration panels granted expungement relief in 61.9% of such cases.

The most alarming statistic arising from an analysis of the SAC data is the very high percentage of cases resolved by settlement or stipulated awards in which expungement relief has been granted. For the time period January 1, 2007 through May 17, 2009, expungement was granted in 89% of the cases resolved by stipulated awards or settlement. For the time period May 18, 2009 through December 31, 2011, expungement relief was granted in 96.9% of the cases resolved by settlements or stipulated awards.

In cases resolved by settlement, expungement is far from being an extraordinary remedy. To the contrary, it is, indeed, extraordinary for expungement relief not to be granted in cases resolved by settlement. It appears that NASD's and FINRA's attempts to mandate narrow grounds for granting expungement relief and to require arbitrators to hold hearings to receive evidence with respect to expungement relief, to review the terms and provisions of settlement agreements and the amounts paid, and to weigh the evidence and the competing interests regarding the granting or denial of expungement relief have failed with respect to cases resolved by settlement. The apparent result is that the accuracy and completeness of disclosure information concerning customer claims in the CRD system has been adversely affected by the rubber stamping of expungement relief by arbitration panels in cases resolved by settlement. The high percentage of expungement relief granted in cases resolved by settlements or stipulated awards may be attributable to a number of factors, including the following: (1) inadequate training of arbitrators; (2) arbitrators' failure to appreciate the importance of the integrity of the disclosure information in the CRD system; and (3) respondents and their counsel demanding or

requesting as part of settlement negotiations that claimants and their counsel either agree to expungement relief or agree not to oppose expungement relief.

Respondents and their counsel should only be making requests for expungement relief when the facts of the case clearly fall into one of the three Rule 2080 categories. There may be ethical issues with respect to respondents' counsel requesting that claimants agree to expungement relief or agree to not oppose expungement relief. For example, under Rule 4-3.4 of the Florida Rules of Professional Conduct, a lawyer shall not "request a person other than a client to refrain from voluntarily giving relevant information to another party unless the person is a relative or an employee or other agent of a client . . .."

Arbitrators must appreciate the critical importance of the integrity of the disclosure information in the CRD system. Particularly in cases involving expungement relief arising from settlements when the claimant nor his counsel appear at the expungement hearing, arbitrators must ensure that adequate inquiry is made with respect to the one-sided presentation made to them and must critically assess any settlement agreement which provides for payment of more than a nuisance value settlement.

For the cases filed during the Review Period, which were resolved by settlements or stipulated awards and in which expungement relief was granted, the awards in those cases reveal the following information. In the vast majority of those cases, claimants did not oppose expungement, agreed to expungement, or withdrew their claims against the associated person. The awards do not reflect whether the claimants not opposing expungement, agreeing to expungement, or withdrawing their claims against the associated person was a condition of settlement or was requested as part of settlement negotiations. However, the frequency with

which claimants do not oppose expungements, agree to expungement, or withdraw their claims strongly suggests that respondents are demanding or requesting such from claimants.

Arbitrators do not appear to be applying FINRA Rules 2080 and 12805 to make expungement relief an extraordinary remedy as FINRA and the SEC have repeatedly stated it should be, particularly with respect to cases resolved by settlement. Arbitrators do not appear to appreciate the importance of the accuracy of disclosure information in the CRD system to investor protection.

Under the current procedures of FINRA Dispute Resolution, motions seeking expungement relief are filed with FINRA in the arbitration proceeding with respect to which the expungement relief is sought. The FINRA case administrator for that proceeding then mails a copy or copies of the motion for expungement relief to the arbitrator or arbitrators presiding in that proceeding. FINRA does not review or critically assess motions seeking expungement relief. A filed motion for expungement relief is then set for a telephonic or in person hearing before the presiding arbitrator or arbitrators to rule on the motion. It is not until a brokerage firm or broker files an action in court seeking confirmation of an arbitration award granting expungement relief that FINRA undertakes a review of the arbitration award, the motion seeking expungement relief, or any settlement agreement.

At present, the training required by FINRA for arbitrators to be able to rule upon a motion seeking expungement relief is limited. Arbitrators must take an online training course, which takes approximately one hour, and pass a test concerning the materials included in the online training course.

FINRA needs to propose a rule change with respect to respondents and their counsel bargaining for in settlement negotiations or conditioning a settlement upon an investor's agreement to not oppose expungement or an agreement to expungement. Changes need to be made with respect to the content and thoroughness of the training arbitrators are required to complete before they can rule upon a motion seeking expungement relief. Changes should also be made with respect to the procedures applicable to motions seeking expungement relief.

As the SEC suggested in its order approving Rules 12805 and 13805, FINRA should use its authority to review expungement requests, particularly those associated with settlements, to ensure that expungement is an extraordinary remedy. Member firms do not pay substantial sums to claimants when investors' claims are clearly erroneous, factually impossible, or false or when their associated person was not involved in wrongdoing.

FINRA should file a proposed rule change making it a violation of FINRA Rule 2010 for respondents, as part of settlement discussions, to negotiate for claimants to agree to not oppose expungement relief, to agree to expungement relief, or to withdraw their claims against associated persons. FINRA has already advised member firms and associated persons that conditioning settlement on claim withdrawal is a violation of Rule 2010. At a minimum, FINRA should issue a regulatory notice advising member firms and associated persons that bargaining for claimants to agree to expungement or to agree not to oppose expungement in settlement negotiations constitutes a violation of Rule 2010.

FINRA needs to significantly improve the training arbitrators receive concerning requests for expungement relief. That training should include an emphasis on the critical importance of the integrity of the disclosure information on the CRD system. FINRA should also attempt to

ensure that arbitrators make the necessary inquiry during expungement hearings, particularly those arising from settlements at which neither claimants nor their counsel appear. That required inquiry should include the following:

(1) Asking an associated person whether he or she has other customer complaints pending, and if so, the number;

(2) Examining the associated person's CRD;

(3) Inquiring of the associated person whether he or she is or has been the subject of any regulatory proceedings and if so, the outcome;

(4) Inquiring whether the associated person has previously requested expungement relief and if so, the number of times it was granted or denied; and

(5) Inquiring whether in the settlement with the claimant having the claimant agree to not oppose expungement, agree to expungement relief, or withdraw his or her claim against the associated person was bargained for or required.

Finally, for FINRA to fulfill its mission of investor protection, the procedures applicable to motions for expungement relief need to be changed. FINRA needs to play a more active role in arbitrators' rulings on motions for expungement relief. FINRA needs to review and critically assess all motions for expungement relief, particularly those made in cases resolved by settlement. FINRA also needs to review and critically assess settlement agreements. A proposed rule change should include the requirement that the hearing on any motion for expungement relief be scheduled no sooner than 60 days after service of the motion on the customer and FINRA. In cases resolved by settlement, FINRA should require respondents to provide to FINRA the settlement agreement along with the motion for expungement relief. Upon receipt of

any motion for expungement relief and any settlement agreement, FINRA should provide those documents to the securities commissioner for the state in which the case was filed. The amended procedures should provide for FINRA and the designee of the state securities commissioner to have the right to appear at the hearing on the motion for expungement relief and to oppose expungement relief when such opposition is appropriate.