My name is Seth E. Lipner. I am Professor of Law at the Zicklin School of Business at Baruch College, CUNY. I am also a member of the Garden City Law Firm Deutsch & Lipner; our practice concentrates on representing investors in arbitration.

I offer the following comments on the proposed rule change regarding the In re expungement procedure:

1. The proposed rules do not expressly require notice to the investor whose complaint is the subject of the In Re proceeding. Notice should be provided. The unnamed person will, in nearly every case, 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.The proposed rule gives the investor an opportunity to be heard and have counsel. But there seems to be no requirement that Notice of the In Re hearing be given.

2. For these same reasons, investors should be given the opportunity to submit an opposition to expungement in writing.

3. The proposed rule authorizing subpoenas to investors whose cases have settled is especially problematic. Settlements are driven by a desire to obtain finality and peace. The prospect that, following each and every settlement, an investor can be forced to compile documents and/or appear and give testimony will both 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. The problem now extant in the expungement rule -- which makes it seem like every complaint should be expunged if the Claimant does not prevail after an arbitration hearing -- is not resolved. 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 current vogue appears to be settlement agreements that preclude investors from later opposing a broker's expungement request. The rule should expressly make such agreements void, and declare their extraction to be a violation of FINRA's rule requiring honorable business practices.

Thank you for this opportunity to comment.

Seth E. Lipner