



Regulatory Affairs
1 North Jefferson Ave
St. Louis, MO 63103
HO004-11D
314-955-6851 (t)
314-955-4308 (f)

May 21, 2012

Via E-mail to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: FINRA Regulatory Notice 12-18, Request for Comment Proposed New *In re* Expungement Procedures for Persons Not Named in a Customer-Initiated Arbitration.

Dear Ms. Asquith:

Wells Fargo Advisors (“WFA”) takes this opportunity to comment briefly on FINRA’s Regulatory Notice 12-18 (“Regulatory Notice 12-18” or “Expungement Proposal”). The proposal establishes new rules that would permit persons who are the “subject of” allegations of sales practice violations made in arbitration claims, but who are not named as parties to the arbitration (unnamed persons), to seek expungement relief by initiating *In re* expungement proceedings at the conclusion of the underlying customer-initiated arbitration case. WFA supports the general intent of these proposed rules and writes this brief comment letter to highlight issues that will enhance the rules.

WFA consists of brokerage operations that administer almost \$1.2 trillion in client assets. It accomplishes this task through 15,134 full-service financial advisors in 1,100 branch offices in all 50 states and the District of Columbia and 3,352 licensed financial specialists in retail bank branches in 39 states.¹

¹ WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has \$1.3 trillion in assets and more than 270,000 team members across 80+ businesses. Wells Fargo’s brokerage affiliates also include First Clearing LLC, which provides clearing

As a result of rules passed in 2009 that require firms to report allegations against registered persons who are not named in customer arbitration complaints, many have concerns about how to expunge such reports when the allegations are baseless. The Expungement Proposals are designed to offer an effective means of clearing one's name while at the same time not unduly interfering with or burdening the underlying customer initiated arbitration. Proposed Rule 13807(a) would allow an unnamed person to initiate an *In re* proceeding where the unnamed person would be the sole party in the case and would be limited to seeking expungement relief only. As proposed, the proceeding on behalf of unnamed party would commence only after the underlying customer arbitration has concluded and there would be a specific prohibition on the unnamed person intervening in the arbitration filed by the customer. The new proposal would not displace the ability of a named party firm to request expungement for an unnamed party.

The Filing Process Should be Reviewed

In general, this process should work well. One condition that raises concern is the two-step filing process. Proposed Rule 13807(c) would require that an unnamed person notify FINRA of the intent to file for relief by submitting a signed "Notice of Intent to File." In the Expungement Procedures, FINRA would notify an unnamed person of the customer arbitration. The Notice of Intent to File for expungement would have to be filed within 180 days of that notice to the unnamed person. Then the actual expungement case would be filed after the conclusion of the arbitration. An unnamed person would have only 60 days after notice that the arbitration has ended to then file the expungement. This two-step process creates uncertainty and confusion for unnamed persons. It is preferable to collapse the process into a single process of filing by the unnamed person. From the point at which FINRA notifies an unnamed person until 60 days after the arbitration's conclusion should be the window for filing the *In Re* proceeding. Earlier in the process, the filing would more approximate a "notice" filing similar to that currently described in the Expungement Proposal. As the arbitration proceeding gets closer to conclusion, the filing is more complete such that if filed in the 60 days after conclusion of an arbitration, it would almost be similar to the second step of the Expungement Proposal. For those doing the "notice" filing earlier in the process, they would have the opportunity to amend that filing with more detail near or after the conclusion of the arbitration.

FINRA's rationale seems to justify the concept of a two-step process as providing the arbitration panel with notice that an expungement claim might be filed. It is more efficient, however, to have all involved in the arbitration system assume that the unnamed persons will seek relief. Allowing a one-step process that can include amendments to the notice filing and then permitting a filing up to 60 days after the arbitration should appropriately balance concerns for the panel and the customer.

Ms. Marcia E. Asquith

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Definition of “Unnamed Person”

Another issue that is worthy of clarification and amendment is the definition of “unnamed person.” The phrase “unnamed person” refers to individual who is the subject of an arbitration claim but is not named as a respondent. It is a reality, however, that such “unnamed” persons can be “named” and identified throughout an arbitration complaint. The definition should make clear that the term unnamed person refers to a person is not named in the caption and was not served in the underlying case.

Finally, as FINRA works to finalize a rule concerning expungement, it likely would be very important for it to study the issue using separate focus groups of investors, arbitrators and registered representatives. While the comment letter process does a good job of ferreting out views on the Expungement Proposal, live interactive sessions with those impacted by the rules could be invaluable. FINRA’s District Office system could be utilized to obtain that live interaction in different locales. As the rules should benefit the entire arbitration system, focus groups could go far in helping refine and improve the proposal.

Conclusion

WFA is encouraged by the thrust of FINRA’s Expungement Proposals. With some minor changes, it should create a system that will help smoothly resolve issues where a broker’s record is impacted by unfounded allegations even though the broker is not actually named in the complaint.

If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long

Director of Regulatory Affairs