

PICKARD DJINIS AND PISARRI LLP

ATTORNEYS AT LAW

1990 M STREET, N.W., SUITE 660

WASHINGTON, D.C. 20036

WWW.PICKDJIN.COM

TELEPHONE
(202) 223-4418

FACSIMILE
(202) 331-3813

March 17, 2021

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: FINRA Rules 13904(h) and 12904(h)

Dear Ms. Countryman:

Pickard Djinis and Pisarri LLP respectfully submits this petition to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Rule 192 of the SEC Rules of Practice to request that the SEC amend Financial Industry Regulatory Authority ("FINRA") Rules 12904 and 13904 to allow FINRA to cease publication of expunged arbitration awards and to redact identifying information in expunged arbitration awards.

I. Standing

Pickard Djinis and Pisarri LLP is a Washington, D.C. based law firm that has provided securities regulatory, compliance and enforcement defense services to a wide array of financial industry participants for over 30 years. We represent broker-dealers, investment advisers, independent research firms, NRSROs and providers of financial information and services before the SEC, FINRA and other federal, state and self-regulatory bodies. Most of our attorneys were previously associated with the SEC or FINRA/NASD. Through representation of our clients, we observed a deficiency in FINRA's Code of Arbitration Procedure that governs arbitration in FINRA's Dispute Resolution forum which prevents FINRA from protecting the public interest in certain defined circumstances where false or erroneous information is ordered expunged from the Central Registration Depository ("CRD") because it lacks meaningful investor protection or regulatory value but nevertheless cannot be removed from FINRA's Arbitration Awards Online forum ("AAO"). At Part III of this Petition, we submit a narrowly constructed proposed rule amendment which will correct this deficiency and will bring FINRA's Code of Arbitration Procedure consistent with the SEC's intended purpose of arbitration award disclosure and with FINRA's discretion to remove, redact or determine not to publicize disciplinary matters.

The FINRA Code of Arbitration Procedures requires that all arbitration awards be published pursuant to either Rule 12904(h), for awards in arbitrations between investors

and brokers, or Rule 13904(h), for awards in arbitrations between or among industry parties. Both rules state “All awards shall be made publicly available.” However, while FINRA has methods for expunging arbitration award information from the CRD system, which is the official recordkeeping system for FINRA members,¹ FINRA does not currently have a rule or method by which arbitration award information can be removed or redacted once it has been published on FINRA’s Arbitration Awards Online database, even if the information it contains is found to be untrue or erroneous or the award itself is expunged.² Anomalously and by contrast, FINRA can and does remove, redact, and refrain from publishing certain disciplinary action orders and settlements.³

Pursuant to Rule 192(a) of the SEC Rules of Practice, which states “[a]ny person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary,” we file this petition to ask the SEC to amend Rules 12904 and 13904 to correct this deficiency.

II. Background

a. Relevant history of the publication of arbitration awards

FINRA (and previously NASD⁴) arbitration awards have not always been publicly available, and the SEC’s interest in publicizing arbitration awards was not initially to provide information to investors about their brokers but rather to help potential arbitration participants and their counsel to review the track records of proposed arbitrators.

Prior to 1989, public information about arbitration awards “consist[ed] solely of the percentage of cases in which public customers were awarded some portion of the

¹The CRD system is managed by FINRA and contains the registration records of FINRA-member broker-dealer firms and registered representatives, as well as other information covered by FINRA such as employment and disclosure histories. FINRA, *Central Registration Depository (CRD)*, <https://www.finra.org/registration-exams-ce/classic-crd#:~:text=FINRA%20is%20responsible%20for%20the,securities%20industry%20and%20its%20regulators> (last visited Mar. 17, 2021).

² FINRA’s Office of Dispute Resolution and Office of General Counsel have each advised that FINRA is powerless to remove or redact information from the Arbitration Awards Online database because no FINRA Rule explicitly grants FINRA this power.

³ FINRA Rule 8313, which governs the release of disciplinary complaints, decisions and other information, provides in pertinent part, “FINRA reserves the right to redact, on a case-by-case basis . . . information that raises significant . . . privacy concerns that are not outweighed by investor protection concerns.”

⁴ In 2007, NASD combined with NYSE Regulation and changed its name to FINRA. Order Approving Proposed Rule Change to Consolidate NASD and NYSE Regulation, Inc., Exchange Act Rel. No. 56145 (July 26, 2007), 72 Fed. Reg. 42169 (Aug. 1, 2007), available at <https://www.govinfo.gov/content/pkg/FR-2007-08-01/pdf/E7-14855.pdf>.

amount they claimed against their broker” and “[n]o data [was] available with respect to particular arbitrators’ awards.”⁵

In September 1987, the SEC wrote to members of the Securities Industry Conference on Arbitration recommending among other things that “SROs should make such [arbitration] awards publicly available in order to balance out the inherently unequal familiarity with the system of investors and member firms.”⁶ The recommendation to publicize arbitration awards was not for purposes of informing investors about the background of their broker-dealers and registered representatives. Rather, the SEC was focused on helping investors understand the arbitration system and check the track record of proposed arbitrators.⁷

Two years later, the SEC approved SRO rules making arbitration awards public.⁸ The SEC did not justify these rules upon a perceived need for investors to know more about their broker, but instead stated that “making awards publicly available is in our view very significant to promoting investor confidence in the arbitration system,” particularly as investors are “typically one time users of the arbitration system.”⁹

Arbitration awards were not used to provide investors information about their broker-dealers or representatives until after the enactment of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (“Reform Act”). The Reform Act was intended to “curb pervasive fraud and manipulation in the penny stock market” and mandated, among other things, “that the NASD establish a toll-free telephone number to receive customer inquiries concerning the disciplinary history of its members and their associated persons.”¹⁰ This mandate did not originally include arbitration awards, and while arbitration awards were public, they were hard to access. For instance, in 1993 the Government Accountability Office (“GAO”) published a report on the Reform Act, noting that “[u]nder current policies and procedures, for investors to obtain information on arbitration awards from NASD, they must (1) somehow learn that

⁵ Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE (Sept. 10, 1987).

⁶ *Id.* This letter was addressed separately to each of the other members of the Securities Industry Conference on Arbitration.

⁷ *Id.*

⁸ Self-Regulatory Organizations; Order Approving Proposed Rule Changes Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses, Exchange Act Release No. 26805 (May 10, 1989), 54 Fed. Reg. 21144, 21151 (May 16, 1989), available at <https://tile.loc.gov/storage-services/service/ll/fedreg/fr054/fr054093/fr054093.pdf>.

⁹ *Id.* at 21152.

¹⁰ Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change, Exchange Act Release No. 32568 (July 1, 1993), 58 Fed. Reg. 36723, 36724 (July 8, 1993). Available at <https://tile.loc.gov/storage-services/service/ll/fedreg/fr058/fr058129/fr058129.pdf>.

an arbitration award has been made against a broker-dealer, (2) request the results of the award from NASD, and (3) pay a \$6 fee.”¹¹ The GAO recommended that:

[T]here be improvements in the NASD's procedures for informing investors of broker-dealers' and their associated persons' disciplinary history and arbitration award history. Specifically, the GAO recommended that the NASD be required to "provide public investors who request information via the NASD's toll-free service with information on final arbitration awards."¹²

The SEC took the GAO's advice and approved NASD rule changes in 1993 that:

Permit[ted] the NASD to release certain additional information contained in the Central Registration Depository ("CRD") system regarding the disciplinary history of its members and their associated persons in response to telephonic inquiries from the general public via its existing toll-free telephone listing service plan. The proposed rule change will allow the NASD to release information on all . . . (4) arbitration decisions in securities and commodities disputes involving public customers.¹³

While acknowledging that arbitration award information was useful for investors to learn about their broker-dealers and representatives, the SEC explicitly grounded the information provided to investors to the information currently stored and available in the CRD.

b. FINRA Rules and databases today

FINRA today provides investors two methods of searching publicly for arbitration awards: BrokerCheck, which provides a subset of information stored on the CRD, and the AAO database.¹⁴ BrokerCheck provides a summary of a FINRA member's "customer disputes, disciplinary events, and certain criminal and financial matters on the

¹¹ U.S. General Accounting Office, GAO-93-59, Penny Stocks: Regulatory Actions to Reduce Potential for Fraud and Abuse 7 (1993), available at <https://www.gao.gov/assets/160/152965.pdf>. Note that the General Accounting Office changed its name to the Government Accountability Office in 2004, and any reference to the General Accounting Office is considered to refer and apply to the Government Accountability Office. GAO Human Capital Reform Act of 2004, Pub. L. No. 108-271, § 8, 118 Stat. 814.

¹² 58 Fed. Reg. at 36724, quoting GAO-93-59.

¹³ 58 Fed. Reg. at 36724.

¹⁴ Since 1993, NASD has provided information about arbitration awards dating back to 1989, while NYSE had a website since 1992 providing access to arbitration awards. *Id.* at 36724, 35724 n.5; NASD Notice to Members 93-73 (Jun. 1993); U.S. General Accounting Office, GAO/GGD-00-115, Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards 21 (2000), available at <https://www.gao.gov/assets/160/156962.pdf>.

broker's record," among other registration and employment information.¹⁵ With regard to arbitration awards, a BrokerCheck report for a member firm or registered representative includes, but is not limited to, the case or docket number, a summary of the allegation, the alleged damages, the disposition date, whether the arbitration is still pending, and the outcome. In certain instances, BrokerCheck reports will provide a direct link to the award on AAO. The AAO database provides copies of arbitration awards.

FINRA requires that its members report certain information to it promptly.¹⁶ Individual members generally do this by filing a Form U-4 through the CRD system. Information requested on a Form U-4 includes whether or not the individual has been named as a respondent in an arbitration.¹⁷ If information reported on a member's Form U-4 has changed, registered individuals and their firms have a duty to update this information "by submitting a Form U4 amendment electronically through Web CRD...."¹⁸

Since BrokerCheck gets its information from the CRD, investors using BrokerCheck are able to access the most recent information available about their broker-dealers and registered representative. This information is also reviewed by FINRA prior to being made available on BrokerCheck.¹⁹ Overall, this makes BrokerCheck a reliable method of checking a broker's past regulatory history.

The same cannot be said about the AAO. The AAO search page explicitly notes that information may be incorrect or out-of-date, stating "FINRA does not necessarily receive notice if an award is later vacated or confirmed by a court," and "FINRA's Arbitration Awards Online database may not reflect whether a party has appealed an order or the outcome of any such appeal."²⁰ There is also no indication that FINRA reviews the information before it is posted.

Other differences between these databases further highlight concerns about the reliability of the information disclosed on the AAO. FINRA Rule 2210(d)(8) requires

¹⁵ FINRA, *About BrokerCheck*, <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck#:~:text=A%20BrokerCheck%20Report%20for%20a%20brokerage%20firm%20contains%3A,influence%20the%20firm's%20daily%20operations> (last visited Mar. 17, 2021).

¹⁶ FINRA Rule 4530.

¹⁷ See sample Form U-4, item 14I, available at <https://www.finra.org/sites/default/files/form-u4.pdf>.

¹⁸ FINRA, *Update an Individual's Registration*, <https://www.finra.org/registration-exams-ce/individuals/update> (last visited Mar. 17, 2021).

¹⁹ FINRA, *BrokerCheck Terms of Use* § 8, <https://brokercheck.finra.org/> (last visited Mar. 17, 2021), states "Member firms, registered persons, government agencies, and other sources file disclosure data with FINRA. Consistent with its responsibilities as a self-regulatory organization, FINRA performs a regulatory review of the disclosure data filed before it makes the data available through BrokerCheck."

²⁰ FINRA, *Arbitration Awards Online*, <https://www.finra.org/arbitration-mediation/arbitration-awards> (last visited Mar. 17, 2021)

broker-dealers to include a “readily apparent reference and hyperlink to BrokerCheck” on “the initial webpage that the member intends to be viewed by retail investors.” FINRA launched an ad campaign to urge investors to use BrokerCheck when choosing a broker.²¹ These actions indicate that FINRA considers BrokerCheck an official, accurate source of information to the investing public. On the other hand, no FINRA rule requires broker-dealers to include a link to the AAO on their website, and we found no similar campaign directing investors to AAO.

As discussed further below, FINRA Rule 2080 provides a process for expunging arbitration awards from BrokerCheck and the CRD; expunged awards no longer appear in investor searches on BrokerCheck because they are deemed to have no meaningful regulatory value.²² As FINRA concedes, once an award is published on the AAO database, it lives on forever irrespective of an order of expungement, vacatur or any other event. Even more misleadingly, FINRA does not make, because its rules do not allow it to make, any indication or note on the AAO that an arbitration award has been expunged from the CRD and BrokerCheck, or vacated by a Court. Expunged arbitration awards look no different from any other on the AAO website.

The fact that arbitration awards granting expungement of other arbitration awards are also made available on the AAO website is not curative. While investors can theoretically pull up an award granting expungement and thereby learn that a previous arbitration award has been expunged, FINRA does not connect or link awards in the AAO system. It is therefore possible, and even probable, that an investor searching for their broker’s name will not find every arbitration award he or she was involved with, particularly if the broker has a common name, or if the investor uses the AAO date filtering feature to only bring up awards in a particular year. Further, many investors are unlikely to carefully read the awards to understand that one arbitration award expunges another arbitration award; instead, they may just note that their broker was involved in two arbitration actions. Additionally, pursuant to FINRA Rule 2080, parties seeking expungement are not required to obtain an expungement award in arbitration but may go directly to a court of competent jurisdiction for an order directing expungement.²³ In those instances, there is no arbitration award granting expungement for an investor to find.²⁴ In any event, we can surmise that neither FINRA nor the SEC consider the

²¹ FINRA, *FINRA Launches National Ad Campaign Promoting BrokerCheck*, June 1, 2015, <https://www.finra.org/media-center/news-releases/2015/finra-launches-national-ad-campaign-promoting-brokercheck>.

²² Notice to Arbitrators and Parties on Expanded Expungement Guidance, FINRA.org (last updated Sept. 2017), <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance>.

²³ FINRA Rule 2080.

²⁴ While FINRA began posting court orders it received relating to arbitration awards in 2012, it does not claim to include all relevant court orders. The AAO website warns investors that “FINRA does not necessarily receive notice if an award is later vacated or confirmed by a court” and “[b]ecause FINRA does not automatically receive notice of court orders confirming, modifying or vacating arbitration awards, FINRA encourages parties to perform independent

publishing of expungement awards curative, otherwise FINRA Rule 2080, which provides a procedure for the removal of expunged information from a broker's CRD and BrokerCheck records, would not have been approved.

There is no regulatory reason to include all arbitration awards, including expunged awards, in the AAO. While FINRA considers the AAO a useful tool to prospective arbitration participants in the vetting of potential arbitrators, this rationale hardly justifies maintaining publication of decades-old awards where those arbitrators are very likely retired or deceased and in any case, highly unlikely to be on current arbitrator lists. In any event, such rationale does not provide a reasonable argument against redaction of the parties to the case.

- c. AAO is the only public database FINRA maintains that does not have a rule or method for removing or redacting information that is misleading, lacking regulatory value or contrary to the public interest

By creating and approving rules that provide processes for expunging arbitration awards from CRD and BrokerCheck, and allowing FINRA to remove, redact, or refrain from publishing certain non-arbitration disciplinary actions from the FINRA Disciplinary Actions Online database, the SEC and FINRA have acknowledged that there is value in removing information from a public recordkeeping system.

- i. FINRA allows for the removal of expunged information from the CRD and BrokerCheck because it serves no regulatory value

Getting an arbitration award expunged is not an easy process. FINRA has called expungement “an extraordinary remedy that should be recommended only under appropriate circumstances,” and stated that “[c]ustomer dispute information should be expunged only when it has no meaningful investor protection or regulatory value.”²⁵ FINRA considers expungement extraordinary because “[o]nce information is expunged from the CRD system, it is permanently deleted and thus no longer available to the investing public, regulators or prospective broker-dealer employers.”²⁶ As we have observed, this statement is untrue in that the expunged arbitration award remains permanently available on FINRA's AAO.²⁷

research to determine whether a court has vacated, confirmed, or modified a prospective arbitrator's past awards.” FINRA, *Arbitration Awards Online*, <https://www.finra.org/arbitration-mediation/arbitration-awards> (last visited Feb. 3, 2021).

²⁵ Notice to Arbitrators and Parties on Expanded Expungement Guidance, FINRA.org (last updated Sept. 2017), <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance>.

²⁶ *Id.*

²⁷ A search of AAO shows that arbitration awards going back to 1988 are available to this day. In 1993, when NASD first began publicizing arbitration awards, NASD only provided information going back to May 1989. NASD Notice to Members 93-37 (June 1993), see also *supra* note 14.

FINRA's method for expungement is described in FINRA Rule 2080. To expunge information from the CRD database, an associated person must go beyond FINRA and obtain an order from a court of competent jurisdiction that directs such expungement or confirms an arbitration award containing expungement relief.²⁸ The Exchange Act Release adopting NASD Rule 2130, the precursor to FINRA Rule 2080, specifically requires that an expungement order "must be premised on an affirmative determination by the arbitrator that the respondent was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds."²⁹ In approving this rule, the SEC stated that Rule 2130 would "strengthen the expungement process, by ensuring that only information that is not valuable to regulators and investors is expunged from the CRD system."³⁰

When FINRA grants expungement pursuant to FINRA Rule 2080 procedures, it means FINRA has made a conclusive determination that there is no meaningful investor protection or regulatory value in publishing the expunged information. Since the information has no meaningful investor protection or regulatory value, FINRA removes expunged matters from the CRD and BrokerCheck, a widely-used source of information for investors. The AAO, which is also widely available to any member of the investing public, regulator or prospective employer, is not updated. Instead, arbitration awards that have been expunged, removed from the CRD and BrokerCheck, and that no longer must be reported by broker-dealers or representatives on Form U-4, remain permanently available on the AAO.

- ii. FINRA has discretion to remove, redact, or determine not to publish disciplinary matters

In addition to the databases previously mentioned, FINRA also maintains the FINRA Disciplinary Actions Online ("DAO") database. This is another public database like BrokerCheck and AAO. DAO allows for the release to the public of certain disciplinary complaints or disciplinary decisions made by FINRA. Like the AAO, investors can pull up copies of final actions or settlements. However, unlike the AAO, FINRA's rules permit information on the DAO to be removed or redacted by FINRA.

FINRA Rule 8313 governs the release of disciplinary complaints, decisions and other information. Rule 8313(c)(1) provides in pertinent part, "FINRA reserves the right to redact, on a case-by-case basis, . . . information that raises significant identify theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns." Further, Rule 8313(c)(2) provides "FINRA may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any

²⁸ FINRA Rule 2080(a).

²⁹ Approval of NASD Rule 2130 [now FINRA Rule 2080], Exchange Act Rel. No. 48933 (Dec. 16, 2003), 68 Fed. Reg. 74667, 74670 (Dec. 24, 2003) (hereafter, "Approval of FINRA Rule 2080").

³⁰ *Id.* at 74672.

disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.”³¹

Pursuant to its Rule 8313 authority, FINRA has regularly redacted information identifying the respondent in disciplinary decisions and has even done so where FINRA found the respondent had violated its rules.³² This leads to a strange situation where FINRA cannot remove or redact an expunged arbitration award that no longer appears on a broker’s record, but FINRA can and has removed disciplinary actions or redacted identifying information about a person found to have broken its rules.³³ Without a rule amendment, FINRA is placed in the anomalous situation in which it may protect the privacy of individuals who have violated its rules, but identifies and thereby tars individuals who have never violated FINRA rules, whose only relationship to FINRA is to be falsely accused in arbitration, and who have sought and earned an order of expungement at considerable cost and expense paid to FINRA.

- iii. FINRA has previously amended its rules after finding inconsistency among the public availability of information from its databases

FINRA has previously found the confusion caused by one FINRA database including regulatory information absent from another FINRA database to be an issue requiring guidance and amendments to its rules. For instance, in 2013, the SEC approved an amendment to FINRA Rule 8313 after FINRA found that the older

³¹ To this end, FINRA Regulatory Notice 13-27 concerning the SEC’s approval of the 2013 amendments to FINRA Rule 8313 made explicit FINRA’s “Discretion to Redact Certain Information or Waive Publication,” and advised, “The amendments aim to broaden the information released by FINRA to the public to establish a principled basis for disclosure that meets FINRA’s investor protection objectives, yet fairly addresses privacy interests.” *Publicity Rule*, FINRA Regulatory Notice 13-27 8 (Aug. 2013).

³² A brief review of FINRA’s website reveals various instances in which FINRA removed the names of the parties in disclosing:
disciplinary decisions (see, e.g., FINRA Expedited Proceedings No. ARB160009, STAR No. 20160490787 (Aug. 22, 2016), available at https://www.finra.org/sites/default/files/OHO_Gimblet_ExpeditedDecision_ARB160009.pdf,
membership application decisions (see, e.g., FINRA NAC Decision, Application Number Withheld (May 4, 2015), available at https://www.finra.org/sites/default/files/NAC_Redacted_MembershipDecision_M00010006_0_0_0.pdf)
disciplinary orders (see, e.g., FINRA OHO Order 16-18 (2014043020901) (May 24, 2016), available at <https://www.finra.org/sites/default/files/OHO-Order-16-18-2014043020901.pdf>;
FINRA OHO Order 16-17 (2013038333001) (May 20, 2016), available at https://www.finra.org/sites/default/files/OHO-Order-16-17-2013038333001_0_0_0.pdf; FINRA
OHO Order 16-15 (2013036681701) (Mar. 30, 2016), available at https://www.finra.org/sites/default/files/OHO_Order%2016-15_2013036681701_0_0_0.pdf).

³³ See, e.g., FINRA Expedited Proceedings No. ARB160009, STAR No. 20160490787 (Aug. 22, 2016).

“publicity thresholds in Rule 8313 created an inconsistency in FINRA’s release of information given that information that may not be disclosed under the [old] rule [was] often publicly available through other sources.”³⁴ As an example of this inconsistency, FINRA noted that under the prior Rule 8313, some information would be redacted when published on the DAO, but would not be redacted on BrokerCheck.³⁵ The 2013 rule change dealt with this inconsistency with regard to disciplinary actions.

A similar inconsistency exists with regard to expunged arbitration awards since an arbitration award expunged from CRD and BrokerCheck will still appear in AAO. In fact, the need for a rule change or amendment is even more striking with regard to the arbitration awards because the information being published on the AAO has been determined to have no meaningful regulatory or investor protection value.

- d. Not allowing for the removal or redaction of expunged information published on AAO is unfair to members, confusing to investors, and not in the public interest

FINRA’s Office of Dispute Resolution and Office of General Counsel are in agreement that under current FINRA rules, FINRA is powerless to remove expunged, outdated, and incorrect information from the AAO other than through a FINRA Rule amendment initiated by the SEC.³⁶

On behalf of a client of the firm, we have made several written and verbal requests to the FINRA Office of Dispute Resolution and Office of General Counsel asking for the removal or redaction of expunged arbitration awards from the AAO which were issued nearly 30 years ago.³⁷ In each instance, FINRA indicated it was sympathetic but could not comply with our request. Our understanding of FINRA’s reasoning was that FINRA Rules 12904(h) and 13904(h) state “All [arbitration] awards shall be made publicly available,” and there is not a rule explicitly providing for expunged arbitration awards to be unpublished, irrespective of the fact that the expunged arbitration awards can and have been removed from the CRD and BrokerCheck databases, and that Rule 8313 states that FINRA can waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or *other* decision, *order*, notification, or notice. FINRA’s

³⁴ *Publicity Rule*, FINRA Regulatory Notice 13-27 3 (Aug. 2013).

³⁵ *Id.*

³⁶ To the extent the SEC determines that FINRA maintains inherent power to remove or redact expunged arbitration awards from the AAO, we respectfully request that the SEC issue a public advisement to FINRA.

³⁷ For reasons that are obvious, we have not identified the client who has brought this deficiency to our attention. It suffices to say that the continued publication of expunged arbitration awards is of career-threatening concern to this client. While our client has long since left the brokerage industry, any information involving our client in a FINRA arbitration, no matter how old or erroneous, has done, and will continue to do substantial financial and reputational harm to him and his company.

understanding of its power with regard to removal of expunged arbitration awards from publication on AAO causes additional stress and is unfair to individuals who successfully completed the expungement process, confuses investors who may find expunged arbitration awards with no indication that the respondent has been cleared and the award has no meaningful regulatory value, and fails to protect the public interest.

III. Proposed Rule

For the reasons set forth, we propose the following amendments to Rules 12904 and 13904, section (h) which currently states in both rules “All awards shall be made publicly available”:

Section (h):

All awards shall be made publicly available, except in the following instances:

- (i) Arbitration awards that have been expunged from the Central Registration Depository, or that contain information about expunged events, shall be removed from publication, or shall be redacted so that all identifying information about the individual(s) or firm(s) involved is removed;
- (ii) Arbitration Awards may be removed from publication or redacted for any other reason if FINRA determines, in its discretion, that publishing unredacted versions of the award would violate fundamental notions of fairness and work an injustice.

IV. Conclusion

Information provided to investors about their broker-dealer’s or representative’s arbitration awards is supposed to be derived from information available on the CRD. FINRA’s past rules and policies show that FINRA believes information accessible to investors should be reliable and consistent across databases. Currently, this is not the case for current and former FINRA members or associated persons with expunged arbitration awards. FINRA’s stated inability to remove or redact an arbitration award from the AAO for any reason, once published, is unfair to individuals who have gone through the expungement process, is unfair to investors who have no indication that the information they are reviewing has been deemed false and is no longer applicable, and challenges basic notions of fairness and justice when other types of final regulatory actions, such as disciplinary settlements, can be redacted or removed from publication but expunged arbitration awards cannot. The rule amendments proposed above would not only be consistent with previous FINRA policies, but would also protect investors by ensuring the public has access to the most accurate information available.

Ms. Vanessa Countryman
March 17, 2021
Page 12

Please feel free to contact the undersigned to discuss any of the matters above in more detail.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "P. J. Bazil". The signature is stylized and cursive.

Paul J. Bazil
Pickard Djinis and Pisarri LLP
Washington, D.C.