

VIA ELECTRONIC MAIL

May 14, 2014

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2014-020

Dear Ms. Murphy:

On April 14, 2014 the Financial Industry Regulatory Authority (FINRA) filed a proposed rule change to adopt FINRA Rule 2081 (Proposed Rule). The rule would prohibit member firms and associated persons from conditioning the settlement of a dispute with a customer on the customer's agreement to consent to, or not to oppose, the firm's or associated person's request to expunge such customer dispute information from the Central Registration Depository (CRD). The Proposed Rule would apply to both written and oral agreements and would apply to agreements entered into during the course of settlement negotiations as well as any agreements entered into separate from such negotiations. The Proposed Rule would also preclude a firm or associated person, following settlement of the underlying dispute, from compensating the customer in return for the customer not opposing the firm's or associated person's expungement request.

The Financial Services Institute¹ (FSI) appreciates the opportunity to comment on this important proposal. FSI supports the Proposed Rule's prohibition on conditioning or seeking settlement of a dispute based upon an agreement not to oppose a request for expungement. FSI believes that, contrary to reports that the FINRA expungement process is unfairly advantageous to the financial industry, FINRA has taken appropriate steps to ensure that the expungement process does not weaken investor protection or endanger the public interest. The circumstances under which arbitrators can provide expungement are extremely limited - the panel must find that the representative was not involved in the activities, that the investor's claim is false, or that there is a factual impossibility.² Arbitrators must hold a recorded hearing even if the investor has not requested one. If the arbitration panel does grant expungement, it must explain its reasoning in a written decision. FSI believes these high standards are very effective. Nonetheless, FSI supports

¹ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 broker-dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 37,000 financial advisor members.

² FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System).

the Proposed Rule as an additional investor protection and to further strengthen the integrity of the CRD system.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.³ These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

FSI appreciates the opportunity to provide comments on this important proposal. FSI supports FINRA in its mission to enhance investor protection. FSI understands that some groups have expressed concern with the rate of successful requests for expungement, and that this high rate

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

has been reported in the press as an area of concern.⁵ FSI believes this conclusion is unwarranted, and would point to the fact that, although investors filed 17,635 disputes with FINRA from 2007 through 2011, arbitration panels granted expungement requests only 838 times, or in 4.75 percent of all disputes filed.⁶ Despite this statistical evidence, FSI believes that FINRA's expungement process can be improved and supports the Proposed Rule because it will address FINRA's concern with respect to the integrity of CRD information.

FSI also believes it is important that FINRA continue to provide extensive arbitrator training and clear guidance with respect to the expungement process and the appropriate analysis required when determining whether to recommend expungement. The current expungement process requires an advisor to surpass a high bar to be granted expungement. While rulemaking can help to ensure that expungements are appropriately granted, education and training of arbitrators is the most effective method for ensuring that FINRA's CRD and BrokerCheck systems remain sound and reliable. Nonetheless, FSI believes the Proposed Rule will introduce important changes to ensure that information is expunged from the CRD system only when there is an independent judicial or arbitral decision underlying the granting of an expungement request.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA and the SEC on this and other important regulatory efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel

⁵ See Jean Eaglesham and Rob Barry, *Stockbroker Requests to Scrub Complaints Are Often Granted*, THE WALL STREET JOURNAL, (October 16, 2013), available at <http://online.wsj.com/news/articles/SB10001424052702303680404579139520100083360>.

⁶ Financial Industry Regulatory Authority, *FINRA's Statement on PIABA's Expungement Study*, (October 16, 2013), available at <http://www.finra.org/Newsroom/NewsReleases/2013/P365846>.