

**PIABA FOUNDATION STUDY WARNS OUT-OF-CONTROL FINRA BROKER  
EXPUNGEMENT PROCESS IS “BROKEN,” URGES INDEPENDENT INVESTOR ADVOCATE**

***Sham “\$1.00 Expungement Cases” Are Exploited by Brokers, Lawyers to Line Up Friendly Arbitrators ... and Cost FINRA Millions of Dollars; Given Extent of Abuses, FINRA’s BrokerCheck System No Longer Seen as a Reliable Information Source for Investors.***

**WASHINGTON, DC. – October 15, 2019** – An in-depth review of the handling of 1,078 FINRA arbitration cases from 2015-2018 where brokers sought to erase (or “expunge”) investor complaints from their record shows that the process is “broken” as a result of being “systematically gamed, exploited and abused” by brokers and brokerage firms. Among the key problems found: bogus “\$1.00 Expungement Cases” involving the filing of sham charges in a bid to slash costs and reduce the number of arbitrators reviewing the request from three arbitrators to one; and gaming FINRA’s procedures and coordinating to select friendly arbitrators.

Finding a skyrocketing 1,000+% rise in the number of investor complaints challenged in the expungement process, the new report from the nonprofit PIABA Foundation warns that investors can no longer rely on the BrokerCheck background disclosure system to investigate the background of brokers. The report calls for a number of extraordinary steps, including FINRA freezing all pending expungements until a complete independent investigation is conducted and all procedural safeguards are put into place to correct the problems identified in the study. The study also recommends that Securities and Exchange Commission (SEC) or FINRA appoint an independent investor advocate to participate in all future expungement proceedings to protect the integrity of the regulatory record.

PIABA Foundation President Jason Doss, report co-author and an Atlanta area attorney, said: **“Take your worst fears about a mandatory arbitration system run by the industry tasked with protecting investors, multiply that by 10 and you are in the territory where these outrageous abuses of the broker expungement process are today. Based on the results of this study, BrokerCheck can no longer be considered a reliable tool for investors to use when researching the background of brokers.”**

PIABA Foundation Board Member Celiza (Lisa) Bragança, a former SEC branch chief and a Chicago area attorney, said: **“FINRA has always maintained that expungement is an ‘extraordinary’ remedy, but the truth is the floodgates are wide open and we have large-scale erasure of broker misconduct taking place. We can see that these one-sided proceedings mean arbitrators do not see evidence of why expungement should be denied. When someone – anyone – opposes the request, arbitrators are much more likely to deny expungement.”**

Incoming Public Investors Advocate Bar Association (PIABA) President Samuel Edwards, a Houston, TX, attorney, said: **“The cases being expunged are often very significant, not small**

**matters or mistaken complaints. PIABA’s members have complained for years that cases they settled with firms, often for hundreds of thousands of dollars, are being erased from the record based on an allegation from the broker that the investor’s claims were ‘false.’ Of course, brokerage firms don’t settle ‘false’ claims for large amounts. The Foundation’s research confirmed this is a significant problem, turning up many, many examples of cases where investors received settlements exceeding \$100,000, and yet, after the conclusion of the case, the broker is able to get that complaint expunged through suing the same firm that just paid the six-figure settlement and that same firm not arguing against the broker’s position that the claim was ‘false.’ This makes no sense, does not protect investors, and perpetuates a sham of a program that allows brokers to manipulate their public regulatory record.”**

Since 2015, there has been an explosive increase in the filing of what are known as “Expungement-Only” cases, which rose 924% from 59 in 2015 to 545 in 2018. (An Expungement-Only case is an arbitration initiated by a broker against their own member firm solely for the purpose of seeking expungement, without naming the customer). The 2,194 customer complaints contained in 1,078 arbitration proceedings that brokers requested be expunged increased by 1016% from 102 in 2015 to 1,026 in 2018.

Key report findings include the following:

- The rise of “\$1.00 Expungement Cases” is evidence of the corruption of the broker expungement process. Brokers and brokerage firms have been gaming FINRA’s arbitration system by falsely including a bogus \$1.00 demand in damages to reduce the number of arbitrators reviewing expungement requests and to make it cheaper for brokers to get customer complaints expunged. From 2015-2018, the number of cases in which nominal damages were requested in the broker’s statement of claim increased from six to 456 cases. In 2018, 84% of all Expungement-Only cases included a request for nominal damages. In total, brokers requested nominal damages 780 times and 756 (97%) sought the \$1.00 expungement arrangement and then withdrew the request at the evidentiary hearing.
- A handful of law firms represent brokers and brokerage firms as repeat players and appear to be coordinating to secure favorable expungement results. Firm #1 and another law firm, Firm #2, represented at least one party to Expungement-Only cases in 785 out of 1,078 cases (73% of all cases). Data show that the parties to Expungement-Only case may be colluding to hand-pick known “friendly” arbitrators who will be more likely to grant expungement.
- FINRA is essentially subsidizing the most abusive expungement cases with the sham \$1.00 damage claims. FINRA lost at least \$8,050.00 per case in revenue in the “\$1.00 cases,” which amounts to more than \$6 million in lost revenue.
- Stockbrokers and their firms have an interest in erasing customer complaints from the brokers’ records and, as a result, are not truly in opposition to each other. Of the 1,078 cases, the respondent brokerage firm did not object or otherwise oppose the individual broker’s expungement request in 1,055 cases – over 98% of the time.

- Customers are supposed to receive notice and be able to appear and object at an expungement proceeding, although it is not clear that always happens. FINRA does not have a process to ensure that the notice provided to customers adequately explains their right to appear and oppose it. Of the 1,078 cases, customers whose complaints are the subject of expungement requests participated and objected to brokers' expungement requests only 141 times –13% of the time.
- When a brokerage firm or a customer opposes a request for expungement, arbitrators are significantly more likely to deny the request. Even though respondent brokerage firms opposed expungement less than 2% of the time, doing so resulted in arbitrators denying the expungement requests about 48% of the time. In contrast, when brokerage firms did not object, arbitrators denied the expungement requests only 11% of the time.
- FINRA does not have procedural safeguards in place to ensure that expungement requests aren't being granted based upon one-sided and possibly false evidence presented to arbitrators. There is no basis for concluding that 1,000+ customer complaints were false or so flawed as to require being expunged. To the contrary, a number of the expunged complaints involved arbitration cases that were settled for hundreds of thousands of dollars that should remain part of the record.

The PIABA Foundation report makes the following recommendations:

- FINRA should halt all pending expungement proceedings immediately and any efforts to confirm expungement awards issued from January 1, 2015 to the present;
- FINRA should commission an independent outside investigation of whether expungements have been granted based upon false and/or fraudulent information;
- FINRA's BrokerCheck and the state-FINRA Central Registration Depository (CRD) should carry a prominent warning that they are unreliable inasmuch as they do not include all customer complaints because expungement may have resulted in the removal of pertinent information; and
- The U.S. Securities and Exchange Commission (SEC) or FINRA should intervene and establish an Investor Protection Advocate who would participate in all expungement cases to advocate against brokers' expungement requests to ensure the integrity of the process.

The PIABA Foundation was formed in 2012. The PIABA Foundation's mission is to promote investor literacy to consumers, in part, by providing educational materials that are designed to prevent investment abuse as well as to raise awareness about the investment-related securities arbitration dispute resolution process. The work of the PIABA Foundation is funded through donations. [www.PIABAFoundation.org](http://www.PIABAFoundation.org)

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**EDITOR'S NOTE:** A streaming audio recording of a related news event will be available online at [www.PIABAFoundation.org](http://www.PIABAFoundation.org) as of 5 p.m. ET/2 p.m. PT on October 15, 2019.