

PIABA FOUNDATION/PIABA: NEW FINRA STEPS TO FIX FLAWS IN BROKER MISCONDUCT “EXPUNGEMENT” PROCESS WON’T WORK, INDEPENDENT INVESTOR ADVOCATE NEEDED

1,000+ Percent Increase in Expungement Awards: As SEC Heads to May 28th Review of FINRA Rules, Third PIABA Foundation/PIABA Study of Process Wiping Clean Broker Records Finds Major Problems Persist and New Steps Needed to Prevent “Unchallenged” Expungements.

WASHINGTON, D.C. – May 18, 2021 – The “expungement” process in which brokers facing complaints from aggrieved investors are allowed to erase all evidence of misconduct is surging out of control and just underwent its [third major review by the PIABA Foundation and the Public Investors Advocate Bar Association](#) (PIABA). After analyzing 700 expungements from August 1, 2019 to October 31, 2020, the two groups concluded FINRA’s proposed rules headed for May 28th review by the U.S. Securities and Exchange Commission (SEC) do not go far enough and that significant new steps – including the creation of an independent Investor Advocate empowered to oppose expungement requests – need to be taken.

Key findings of the report include the following:

- **More than 1,000 Percent Increase in Awards.** The number of expungement awards has exploded, rising from 59 in 2015 to 545 in 2018 and, in the most recent study, 700 expungement awards in the roughly one-year-period from August 1, 2019 to October 31, 2020. Brokers requested that 1,360 customer complaints be expunged in the 700 awards, approximately two complaints per case.
- **Rubberstamping of Expungement Requests.** “Arbitrators have continued to grant expungement requests 90 percent of the time and the reason is that FINRA’s arbitration process allows brokers and brokerage firms to make expungement requests to arbitrators that are unopposed the vast majority of the time.”
- **Three Arbitrators Just as Likely As One to Expunge.** “The data from all three PIABA/PIABA Foundation studies, which analyzed 3,378 expungement awards over a period spanning 14 years, show that FINRA’s current proposed plan to require a panel of three randomly selected arbitrators from a special roster will not significantly reduce the percentage of expungement requests. This is because the proposed rule will still allow brokers to present their expungement request unopposed in the vast majority of cases.”
- **Rules Make It Easy to Get Expungement, Difficult to Oppose It.** “To effectively reduce the number of expungements being granted, FINRA must provide a meaningful opportunity for all parties with an interest in the outcome of the expungement request, e.g., securities regulators and the customers who submitted the complaints, to present evidence opposing expungement, when appropriate. FINRA’s current expungement process does not provide that opportunity in a meaningful way.”
- **Broken Expungement Process Sees Few Objections, But They Do Make a Difference.** Brokerage firms object to expungements only 2 percent of the time and investors only 13 percent of the time, due, in the latter case, to such real issues as cost, lack of meaningful notice, and a decidedly “investor unfriendly” process. However, the new 2021 report data show that arbitrators are 5.4 times more likely to deny expungement when the broker-dealer respondent opposes expungement and are 4.3 times more likely to deny expungement when customers oppose expungement.
- **Independent Investor Advocate Needed as Check on Expungement Abuses.** “If the expungement process is going to remain in FINRA arbitration, PIABA and the PIABA Foundation recommend that

FINRA and/or the SEC create and embed an Advocate into the expungement process similar to the role that *guardian ad litem* serves in a court case. The purpose of the Advocate would be to protect the (BrokerCheck)/CRD data ... which the investing public is encouraged to rely on as current and accurate.”

PIABA Foundation President Jason Doss said: **“The SEC needs to put this program under a microscope and take a very close look at our 14 years’ of findings. Right now, the states and FINRA jointly run the CRD system underlying BrokerCheck but the states get no notice of expungements until after they are granted in the arbitrations. FINRA’s proposed rule changes don’t go far enough on that point, since they provide earlier notice but no way for states to intervene into the arbitration where the decision is made. This is a huge regulatory black hole that is just getting worse with every passing year. An investor advocate empowered to intervene to oppose expungements to represent interested parties is the only way to fix this system and keep thousands of additional customer complaints from being wrongfully erased from the public records. States can only regulate the broker conduct that they can see and investors can only avoid the problem brokers they are informed about.”**

PIABA President David P. Meyer said: **“Investors are supposed to be able to rely on FINRA’s BrokerCheck tool to provide critical information about brokers. With so many brokers’ records being erased through unopposed expungements, how can BrokerCheck be relied upon today by investors to make informed decisions about whom they trust to manage their life savings? Accurate and complete complaint history on brokers is also critical to preserve the ability of state and federal securities regulators to police the marketplace, including identifying bad brokers.”**

PIABA Foundation Vice President Lisa Bragança said: **“While we appreciate the fact that FINRA has taken a number of steps over the years to address abuses of its expungement process, the bottom line is that what is in front of the SEC right now is just not good enough. As a result of expungement abuses, the public record about hundreds of brokers – including a number of genuinely problem brokers – has been wiped clean. Regulators, investors, brokers, and the public have lost customer dispute information, including disputes that were settled for hundreds of thousands of dollars.”**

For years, PIABA and the Foundation has documented and studied how FINRA’s expungement arbitration process has allowed brokers and brokerage firms to erase valid complaints from their publicly available complaint histories. [In 2013, PIABA released a report that analyzed approximately 1,600 arbitration awards](#) rendered in cases initiated by investors against broker/dealers and/or brokers for cases filed during the five-year time period between January 1, 2007 and December 31, 2011.

[In October 2019, the PIABA Foundation released a study](#) which examined 1078 expungement arbitration awards from January 2015 to July 2019 (“2019 Study”). The 2019 Study found that beginning in 2014-2015, brokers and brokerage firms changed tactics and gamed FINRA’s expungement process by including a bogus demand for \$1.00 in damages to reduce the number of arbitrators considering expungement requests from a panel of three arbitrator to a single arbitrator. The “\$1.00 trick” also saved brokers and broker-dealers thousands of dollars per case to get customer complaints expunged.

ABOUT THE GROUPS

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. piabafoundation.org

The Public Investors Advocate Bar Association is an international bar association whose members represent investors in disputes with the securities industry. Currently, there are members from 44 states, Puerto Rico, and Japan. The mission of PIABA is to advocate for equal access to justice for investors in all forums. PIABA works to promote fairness in the rules governing dispute resolution for investor claims against securities and commodities brokerage firms, registered investment advisory firms, and their associated representatives. PIABA also works toward creating, improving, and enforcing statutes, rules, regulations, case law, and policies designed to promote investor rights and to prevent misconduct by those who sell investments to the public. www.piaba.org @piabanews

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EDITOR'S NOTE: A streaming version of a related video-based news event will be available after 6 p.m. ET on May 18, 2021 at <https://piabafoundation.org/>.