

VIA EMAIL TO RULE-COMMENTS@SEC.GOV

April 7, 2023

Vanessa Countryman, Secretary
J. Matthew DeLesDernier, Assistant Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number SR-FINRA-2022-024 - Addendum

Dear Secretary Countryman and Assistant Secretary DeLesDernier:

This letter is an addendum to the comment letter I previously submitted. Its purpose is to point out two important consequences should the proposed rule changes be approved.

**IF APPROVED, THE PROPOSED RULE CHANGES DESTROY THE
INTEGRITY OF THE CRD SYSTEM BY DEFINITION**

Because the proposed rule changes impose inflexible strict time limits to seek expungement of information that in many cases is factually impossible, and therefore untrue, the proposed rule changes effectively destroy the integrity of the CRD system by ensuring that inaccurate, untrue, and factually impossible information cannot be removed from the system. A system that contains inaccurate, untrue, and factually impossible information with rules that make it impossible to remove said information, has no integrity.

**IF APPROVED, THE PROPOSED RULES CHANGES AGGRAVATE
THE CIVIL LIABILITY FINRA IS ARGUABLY EXPOSED TO
UNDER EXISTING RULES AND ARGUABLY
CREATE CRIMINAL LIABILITY**

Many customer complaints are clearly factually impossible. Take this hypothetical that does occur; I know because I have represented registered representatives in expungements with the exact same fact pattern. If a customer complains that an annuity was misrepresented when sold and in the complaint the customer includes the name of his current advisor, but the annuity was sold by a prior advisor, it is reported to the current advisor's CRD record. In this scenario, the broker-dealer obviously knows that the complaint is factually impossible, and FINRA could and should know that the complaint is factually impossible, meaning it is untrue. However, despite both the broker-dealer and FINRA knowing, or that they should have known, that the complaint is factually impossible and therefore untrue, FINRA requires that the broker-dealer report it to the CRD system which FINRA publishes to the public, a third party. As FINRA either knew or should have known that the statement published to the third-party public is untrue, yet it requires the firm to report it and it then publishes it to the third-party public regardless, in every single instance that follows this fact pattern, every single Registered Representative with such a complaint published to their CRD record arguably has a claim for defamation against FINRA.

While broker-dealers have no choice but to follow FINRA's rules, FINRA does have the ability to do something so that it does not knowingly publish untrue statements about a Registered Representative to the third-party public, and therefore any kind of qualified immunity it might be able to rely upon in many situations, could arguably not be allowed as a defense against defamation claims. Taken one step further, as this exact fact pattern likely applies to thousands of Registered Representatives located in every state in the country, FINRA's rule that requires knowingly publishing untrue statements to the third-party public potentially opens FINRA to a class action lawsuit filed by the affected individuals. Taken another step forward, FINRA then imposing time limitations on the Registered Representatives right to even seek to remove the information that FINRA required to be published to the third-party public despite the fact that the firm knew, and FINRA should have known, is untrue and factually impossible based on something as arbitrary as when the expungement was sought, aggravates the potential claims of defamation, and could even potentially rise to negligent disregard of the law and intentionally inflicting emotional distress on the individuals forced to live the remainder of their lives with untrue defamatory statements on their public record without any recourse to remove it for no reason other than FINRA says so!

I urge the SEC to weigh these concerns and arguments before approving the proposed rule changes. Any rule changes must balance the need for investor protection with industry integrity and the rights and interests of registered representatives. The proposed rule changes should be denied because they will destroy the integrity of the CRD system and expose FINRA to potential liability beyond the potential liability existing rules already expose it to.

Thank you for your attention to this matter. I hope you will take these arguments into account when considering the proposed rule changes.

Respectfully submitted,

/s/ James P Galvin
James P. Galvin, Esq.