

Finra board to consider tougher expungement guidance to arbitrators

Inserting strong language into rules, such as that wiping clean a broker's record should only be considered 'an extreme remedy,' could give it more weight

By Mark Schoeff Jr. | September 15, 2015 - 1:52 pm EST

The Finra board is set to vote on a proposal Thursday that would incorporate into its dispute-resolution rules a reminder to arbitrators about the significance of clearing wrongdoing from a broker's record.

The board will consider making its expanded expungement guidance part of rules that govern the arbitration process for claims by customers against brokers and by brokers against their firms.

The guidance says expungement is "an extraordinary remedy that should be recommended only under appropriate circumstances." It goes on to say, "Customer dispute information should be expunged only when it has no

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meaningful investor protection or regulatory value.”

The [agenda for the meeting](#) of the board of the industry-funded broker-dealer regulator also includes consideration of a rule designed to curb abuse of senior investors. Finra would not provide more information about the board's agenda beyond what is posted online.

(More: [Expungement reform top issue for state regulators this year](#))

Inserting [the expungement language](#) into Finra rules would give it more weight, according to Robert S. Banks Jr., a partner at Samuels Yoelin Kantor.

“It becomes more official if there's a court challenge to anything,” said Mr. Banks, who serves as one of Finra's 6,420 arbitrators. “Once it's a rule, it has to be followed.”

The expungement process has long been controversial.

NOT FAR ENOUGH

Brokers use it to remove disciplinary actions from their profiles on the [BrokerCheck database](#). The Public Investors Arbitration Bar Association and other groups assert it is too easy for brokers to sanitize their records.

The item before the Finra board doesn't go far enough, said PIABA President Joe Peiffer. Finra itself, rather than arbitrators, should make expungement decisions.

“They need to get this [expungement] process out of arbitration and into the hands of regulators,” Mr. Peiffer said. “The system is really broken.”

One of the problems is that customers, who often already have their arbitration

award, rarely show up at expungement hearings to resist a broker's effort to cleanse his or her record.

"There's no one there to challenge it," said Mr. Banks, a member of the National Arbitration and Mediation Committee as well as PIABA. "It's a good thing that Finra is recognizing and trying to fix the expungement problem, but it's not going to affect the outcome of expungement hearings."

Under the senior-abuse rule, another topic to be considered at the Finra board meeting Thursday, brokerages would be able to place a temporary hold on the disbursement of funds or securities from the account of an elderly investor if a financial adviser suspects the client did not approve or understand the transaction. The firm also would be allowed to notify the client's relatives.

GREATER FOCUS ON OLDER INVESTORS

The proposal reflects an increased emphasis on exploitation of aging investors as baby boomers head into retirement. The North American Securities Administrators Association will [release a model rule](#) for public comment within the next couple weeks that would allow financial firms to report suspected senior financial abuse and freeze account distributions.

"It's pretty exciting to see that [Finra] is also looking at senior issues," said Judith Shaw, Maine securities administrator and incoming NASAA president. "I'm hopeful that whatever approach they take is a good complement to the NASAA model we have been working on."

Effectively stopping senior exploitation will require local, state and federal efforts.

"It's a perfect example of how everyone on all levels can cooperate and collaborate," Ms. Shaw said.

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