



The Ins and Outs of FINRA's Broker Expungement Process

Expungement Process

Arbitrators considering a request for expungement relief under Rule 2130 are required to:

- Hold a recorded hearing session by phone or in person;
- Review any settlement documents to examine the amount paid to any party and other terms and conditions of the settlement;
- Provide a written explanation for ordering expungement; and
- Assess forum fees for hearing sessions held to consider expungement.

FINRA's Expungement Rules

FINRA Rules 12805 and 13805 establish procedures that arbitrators must follow before ordering expungement of information related to arbitration cases from a broker's Central Registration Depository (CRD®) record. The procedures are intended to ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2080:

- ❖ the claim, allegation or information is factually impossible or clearly erroneous;
- ❖ the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
- ❖ the claim, allegation or information is false.



3

Rule 2080

2080. Obtaining an Order of Expungement of Customer Dispute Information from CRD System

- (a) Members or associated persons seeking to expunge information from the CRD system arising from disputes with customers must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing expungement relief.
- (b) Members or associated persons petitioning a court for expungement relief or seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents unless this requirement is waived pursuant to subparagraph (1) or (2) below.
- (1) Upon request, FINRA may waive the obligation to name FINRA as a party if FINRA determines that the expungement relief is based on affirmative judicial or arbitral findings that: (A) the claim, allegation or information is factually impossible or clearly erroneous;
- (B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
- (C) the claim, allegation or information is false.
- (2) If the expungement relief is based on judicial or arbitral findings other than those described above, FINRA, in its sole discretion and under extraordinary circumstances, also may waive the obligation to name FINRA as a party if it determines that: (A) the expungement relief and accompanying findings on which it is based are meritorious; and
- (B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.
- (c) For purposes of this Rule, the terms "sales practice violation," "investment-related," and "involved" shall have the meanings set forth in the Uniform Application for Securities Industry Registration or Transfer ("Form U4") in effect at the time of issuance of the subject expungement order.



4

Rules 12805/13805

In order to grant expungement of customer dispute information under Rule 2080, the panel must:

- (a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800 even if a customer did not request a hearing on the merits.
- (b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.
- (c) Indicate in the arbitration award which of the Rule 2080 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case.
- (d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.



5

Extraordinary Nature of Expungement Relief

- Information should be expunged only when it has no meaningful investor protection or regulatory value.
- Why? Once information is expunged from the CRD system, it is no longer available to the investing public, regulators or prospective broker-dealer employers.



6

Examples of When Expungement is Granted

- Frivolous lawsuits
- Actions against directors and officers not involved in the subject transactions
- Arbitrators issue a finding of no fault and dismiss customer claims



7

Role of Arbitrators in Expungement Cases

In making expungement determinations, arbitrators consider the importance of maintaining the integrity of the information in the CRD system. Ensuring that CRD information is accurate and meaningful is essential to investors, who may rely on the information when making decisions about brokers with whom they may conduct business; to regulators, who rely on the information to fulfill their regulatory responsibilities; and to prospective broker-dealer employers, who rely on the information when making hiring decisions.

Arbitrators look for documents and other evidence relevant to the expungement request, particularly in cases that settle before an evidentiary hearing or in cases where only the requesting party participates in the expungement hearing.



Arbitrators' Analysis

- Arbitrators ask the broker seeking expungement (or the party seeking expungement on a broker's behalf) to provide a current copy of the BrokerCheck® report.
- Arbitrators pay particular attention to the "Disclosure Events" section of the report.



9

Explanation for Granting Expungement

Rules 12805 and 13805 require arbitrators to provide a written explanation of the reasons for finding that one or more of the Rule 2080 grounds for expungement apply to the facts of the case before them. Arbitrators generally support their explanation with documentary evidence.



10

Whether Settlements Are Conditioned on Agreements Not to Oppose Expungement

Arbitrators inquire and consider whether a party conditioned a settlement of the arbitration upon agreement not to oppose the request for expungement in cases in which the investor does not participate in the expungement hearing or the requesting party states that an investor has indicated that s/he will not oppose the expungement request.



11

Do the rules apply to expungement of non- customer dispute information in intraindustry disputes?

- The rules only apply to the expungement of customer dispute information. The rules do not affect FINRA's current practice of permitting expungement, without judicial intervention, of information from CRD as directed by arbitrators in intraindustry arbitration awards in which the arbitration panel states that expungement relief is being granted because of the defamatory nature of the information ordered expunged.



12

Closing

Q & A



13

Sources

- FINRA Rules:
 - FINRA Rule 12805
 - FINRA Rule 13805
 - FINRA Rule 2080
- Regulatory Notice 08-79



14