

Updated September 22, 2014

Award Information Sheet – Sole Topic is Determination of Expungement of Customer Dispute Information

Case Number:

To prepare an award, FINRA Dispute Resolution needs certain information from the panel. As soon as possible, after the panel has reached a decision, please provide the following information to the staff person assigned to the case.

Arbitrators have a unique, distinct role when deciding whether to grant a request to expunge information from a broker's CRD record. In making these determinations, arbitrators should consider the importance of maintaining the integrity of the information in the CRD system. Expungement is an extraordinary remedy that should be granted only under appropriate circumstances. Information should be expunged only when it has no meaningful investor protection or regulatory value. Once information is expunged from the CRD system, it is permanently deleted and thus no longer available to the investing public, regulators or prospective broker-dealer employers. For more information about expungement, please see the Notice to Arbitrators and Parties on Expanded Expungement Guidance and the Summary of Expungement Rules 12805 and 13805 (Including Rule 2080) in the attached Appendix.

1. Parties who did not appear, if any?

2. Change of party representation, if any?

3. Who did counsel/representative for **claimant** state that they want reflected on the Award as counsel/representative?

4. Who did counsel/representative for **respondent** state that they want reflected on the Award as counsel/representative?

5. Hearing dates, with the time the hearing started and concluded, excluding deliberation sessions:

6. Were any amendments made to the pleadings at the hearing? ☐ Yes ☐ No

(a) If an amendment was made, was it oral or written? ☐ Oral ☐ Written

(b) If any amendments were made to the pleadings, please describe below:

7. Did anything unusual occur at the hearing that the panel wishes to include in the award?

☐ Yes ☐ No

If the answer to this question is yes, please describe below

(Please provide additional pages if necessary):

8. Expungement

A. Was the expungement request made:

- ☐ In a pleading (i.e. Statement of Claim or Answer)?
- ☐ In a Stipulated Agreement?
- ☐ In a motion?

B. If the case was filed by a customer or is an intra-industry case that requests expungement of customer dispute information, the panel must follow Rule 2080 and comply with Rule 12805 or Rule 13805.

1. Is the panel recommending expungement?

- ☐ Yes ☐ No

If the answer is No, please go to question nine.

2. Did the panel conduct either a recorded in-person or a recorded telephonic hearing to determine the request for expungement?

- ☐ In-person hearing ☐ Telephonic hearing

Rule 2080 Grounds for Expungement

If expungement is recommended, the panel must identify which of the following Rule 2080 finding(s) it is making in order to grant the expungement request:

- ☐ 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.
- ☐ The claim, allegation, or information is false.

For the Award - Brief Written Explanation Recommending Expungement

The panel *must* provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement apply to the facts of the case. The panel's explanation should support its findings.

(Please provide additional pages, if necessary)

Documentary or Other Evidence

- A. Did the broker seeking expungement (or the party seeking expungement on the broker's behalf) provide a current copy of the BrokerCheck® report?

☐ Yes ☐ No

- B. What specific documentary or other evidence did the panel rely upon in recommending the expungement? If possible, please identify the documents or testimony that the panel relied upon.

(Please provide additional pages, if necessary):

Settlement Documents

Did the parties reach a settlement in this case?

☐ Yes ☐ No

- A. Did the panel review the settlement documents of this or any other underlying case that is the subject of the expungement request?

☐ Yes ☐ No

Please explain:

- B. Did the party seeking expungement contribute to the settlement?

☐ Yes ☐ No

- C. Did the panel consider the amount of payments made to any party and consider any other terms and conditions of settlement?

☐ Yes ☐ No

Please explain:

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-
- D. Did any party condition settlement of the arbitration upon an agreement not to oppose the request for expungement? If so, in light of that condition, please provide a brief explanation for your expungement recommendation.

☐ Yes ☐ No

E. Settlement Payments and Prohibited Conditions Relating to Expungement of Customer Dispute Information

Effective July 30, 2014 FINRA Rule 2081 prohibits firms and registered representatives from conditioning settlement of a customer dispute on—or otherwise compensating a customer for—the customer's agreement to consent to, or not to oppose, the firm's or representative's request to expunge such information from CRD. Arbitrators who learn of such prohibited conditions should review FINRA's information relating to **Disciplinary Referrals—FINRA**.

For Intra-Industry Claims Only

Please review **Defamation Claims in Intra-Industry Disputes** in the Appendix below.

If the claim is between a FINRA member firm and a current or former associated person, and the panel intends to recommend the expungement of information not related to a customer dispute from the Central Registration Depository ("CRD"), state whether the expungement recommendation is based on the defamatory nature of the information, and if so, clearly state in the award that the "expungement recommendation is based on the defamatory nature of the information in the CRD system."

(Please provide additional pages, if necessary)

If the panel does not base its expungement recommendation on the defamatory nature of the information, FINRA will require the requesting party to obtain court confirmation of the award before executing the expungement recommendation.

9. Forum Fees:

Assessment of Forum Fees Related to Expungement

Under Rules 12805/13805 in order to grant expungement of customer dispute information under rule 2080, the panel must 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.

Indicate *below* the specific parties against whom the forum fees are to be assessed *and* the specific percentage amounts.

Claimant(s) _____ %

_____ %

Respondent(s) _____ %

_____ %

Please indicate whether forum fees are to be assessed ***jointly and severally*** against any of the parties. ☐ Yes ☐ No

If yes, please state below the parties to be assessed ***jointly and severally***.

Assessment of Forum Fees Not Related to Expungement

Indicate *below* the specific parties against whom the forum fees are to be assessed *and* the specific percentage amounts.

Claimant(s) _____ %

_____ %

Respondent(s) _____ %

_____ %

Please indicate whether forum fees are to be assessed ***jointly and severally*** against any of the parties. ☐ Yes ☐ No

If yes, please state below the parties to be assessed ***jointly and severally***.

Disciplinary Referral

Is the panel making a disciplinary referral? ☐ Yes ☐ No

If yes, please contact the staff assigned to the case for guidance and a copy of the Arbitrator Disciplinary Referral Form.

For Cases with In-Person Hearings:

Has the panel returned one set of hearing exhibits to FINRA? ☐ Yes ☐ No

Has the panel returned extra copies of hearing materials to FINRA or shredded the documents? ☐ Yes ☐ No

Thank you for your service in this matter. FINRA Dispute Resolution looks forward to working with you again in the future.

Appendix

Notice to Arbitrators and Parties on Expanded Expungement Guidance

FINRA adopted FINRA Rules 12805 and 138051 to establish procedures that arbitrators must follow before recommending expungement of customer dispute 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.

FINRA Dispute Resolution is publishing the following guidance and reminder for arbitrators when considering expungement requests.

Extraordinary Nature of Expungement Relief

Expungement is an extraordinary remedy that should be recommended only under appropriate circumstances. Customer dispute information should be expunged only when it has no meaningful investor protection or regulatory value. Once information is expunged from the CRD system, it is permanently deleted and thus no longer available to the investing public, regulators or prospective broker-dealer employers.

Role of Arbitrators in Expungement Cases

Arbitrators have a unique, distinct role when deciding whether to recommend a request to expunge customer dispute information from a broker's CRD record. In making these determinations, arbitrators should 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.

Given this significant role, arbitrators should ensure that they have all of the information necessary to make an informed and appropriate recommendation on expungement. Thus, arbitrators should request any documentary or other evidence they believe is 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.

Importance of Allowing Customers and their Counsel to Participate in the Expungement Hearing in Settled Cases

It is important to allow customers and their counsel to participate in the expungement hearing in settled cases if they wish to. Specifically, arbitrators should:

1. Allow the customer and their counsel to appear at the expungement hearing;
2. Allow the customer to testify at the expungement hearing;
3. Allow counsel for the customer or a pro se customer to introduce documents and evidence at the expungement hearing;
4. Allow counsel for the customer or a pro se customer to cross-examine the broker and other witnesses called by the party seeking expungement; and
5. Allow counsel for the customer or a pro se customer to present opening and closing arguments if the panel allows any party to present such arguments.

BrokerCheck Report Review

Arbitrators should 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 should carefully review the report when considering whether expungement is appropriate. Arbitrators should pay particular attention to the "Disclosure Events" section of the report.

Importance of Providing an Explanation for Recommending Expungement

FINRA 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 recommending expungement should ensure that the explanation is complete and is not solely a recitation of one of the Rule 2080 grounds or language provided in the expungement request. Specifically, arbitrators should identify in the award the reason(s) for and any specific documentary or other evidence relied on in recommending expungement.

Settlement Payments and Prohibited Conditions Relating to Expungement of Customer Dispute Information

Arbitrators should consider whether the party seeking expungement contributed to the settlement. In addition, arbitrators should inquire and fully 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 he or she will not oppose the expungement request.

Effective July 30, 2014 FINRA Rule 2081 prohibits firms and registered representatives from conditioning settlement of a customer dispute on—or otherwise compensating a customer for—the customer's agreement to consent to, or not to oppose, the firm's or representative's request to expunge such information from CRD. Arbitrators who learn of

such prohibited conditions should review FINRA's information relating to [Disciplinary Referrals—FINRA](#).

Conclusion

In summary, arbitrators have a unique, distinct role in ensuring that customer dispute information is expunged from the CRD system only when it has no meaningful investor protection or regulatory value. In addition to the standards outlined in FINRA Rules 2080, 2081, 12805 and 13805, arbitrators should consider the guidance in this notice when considering expungement requests.

Summary of Expungement Rules 12805 and 13805 (Including Rule 2080)

FINRA Codes of Arbitration Procedure for Customer and Industry Disputes, Rules 12805 and 13805 establish procedures that arbitrators must follow when considering requests for expungement relief of customer dispute information from the CRD System under Conduct Rule 2080. These procedures are designed to: (1) make sure that arbitrators have the opportunity to consider the facts that support or oppose a decision to grant expungement; and (2) to ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2080.

Pursuant to the rules, 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, the Simplified Arbitration procedures, 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. Therefore, the arbitrators must make one of the following findings:
 - 1. The claim, allegation, or information is factually impossible or clearly erroneous; or
 - 2. The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or
 - 3. The claim, allegation, or information is false.
- (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.

Rule 2080 requires that all directives to expunge customer dispute information from the CRD system be confirmed by or ordered by a court of competent jurisdiction. It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award.

FINRA will generally oppose confirmation of the expungement portion of the arbitration award in most cases where it participates in the judicial proceeding.

These rules do not affect FINRA's practice of permitting expungement, without judicial intervention, of information from the CRD system as directed by arbitrators in intra-industry arbitration awards that involve associated persons and firms based on the defamatory nature of the information ordered expunged.

For more information about expungement please review:

- FINRA Rules:
 - [FINRA Rule 12805](#)
 - [FINRA Rule 13805](#)
 - [FINRA Rule 2080](#)
 - [FINRA Rule 2081](#)
- [Regulatory Notice 08-79](#)
- [Regulatory Notice 14-31](#)

Defamation Claims in Intra-Industry Disputes

Under existing CRD policy, FINRA will expunge information from the CRD system – without the need for judicial intervention – if the expungement directives contained in intra-industry awards that involve associated persons and firms are based on the defamatory nature of the information ordered expunged and do not involve any customer dispute information. Arbitrators must clearly state in the award that they are ordering expungement relief based on the defamatory nature of the information in the CRD system. Rule 2080 applies in intra-industry cases that request expungement of customer dispute information.

View Rule 2080 Frequently Asked Questions at the FINRA website at:
<http://www.finra.org/RegulatorySystems/CRD/FilingGuidance/p005224>.

CRD Disclosures Ineligible for Expungement in Arbitration

The following CRD disclosures are ineligible for expungement through FINRA arbitration:

Regulatory actions: These generally involve proceedings by a federal or state regulatory authority, foreign financial regulatory authority, or self-regulatory organization (like FINRA). These events typically include actions where a regulator has made certain enumerated findings or imposed penalties against a broker. The regulatory action disclosure category also encompasses instances where a broker's authorization to act as an attorney, accountant, or federal contractor has been revoked or suspended.

Civil judicial actions: These include court injunctions in connection with investment-related activity; court findings that a broker was involved in a violation of any investment-related statutes or regulations; or investment-related civil actions brought by a regulator that are dismissed by a court following a settlement agreement.

Investigations: This category includes investigations or proceedings by a domestic or foreign governmental body or self-regulatory organization with jurisdiction over investment-related businesses.

Criminal matters: This includes charges or convictions for any felony and misdemeanors that have been reported to the CRD system, such as fraud, wrongful taking of property, or bribery.

Financial matters: This includes compromises with creditors and bankruptcies occurring within the prior 10 years; a bonding company's denial, payment on, or revocation of a bond for a broker; and any unsatisfied judgment or liens.