Dispute Resolution

Expungement

Version: April 2011

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FINRA Dispute Resolution Expungement

Expungement Training and Exam

Dear Arbitrator:

The following is a print version of the Expungement Training. You may complete this course and exam either through this printable version (instructions below) or online, depending on your individual preference and/or computing environment. Most arbitrators will be able to review the material, and complete the enclosed exam in one hour.

Please review the course material and complete the exam. After you complete the exam, you must send it to FINRA's Department of Neutral Management for grading. **You must score at least 80 percent to receive credit for the course.** We strongly recommend that you maintain a copy of the exam for your own records.

You may submit your exam to FINRA by fax or mail:

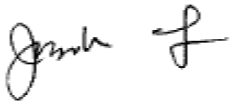
By Fax: FINRA Department of Neutral Management – FAX # 646-625-6028.

By Mail: FINRA
Attn: Luis Cruz – Neutral Management
One Liberty Plaza
165 Broadway, 27th Floor
New York, NY 10006

After grading your exam, you can be assured that FINRA will update your arbitrator disclosure report to reflect your completion of the Expungement Training. **Nothing further is required of you with regard to this course**.

We hope you enjoy the course.

Very truly yours,



Jisook Lee

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Course Objectives

The Financial Industry Regulatory Authority, Inc. (FINRA) developed a series of courses as part of its comprehensive Arbitrator Training Program. This course will:

- Explain the Central Registration Depository or CRD® system and the role it plays in protecting the public.
- Provide an overview of the expungement process in general.
- Review the procedures that arbitrators must follow when considering requests for expungement.

Discuss the specific findings that arbitrators must make in order for FINRA to waive its right to oppose the expungement request in court.

FINRA Dispute Resolution's Mission Statement

FINRA Dispute Resolution’s mission is to have all of its constituents – the investing public, brokerage firms and their employees, and neutrals (arbitrators and mediators) – view FINRA's forum as the preeminent provider of dispute resolution services. To accomplish this goal, it is our standing pledge to provide impartial arbitrators who are dedicated to delivering fair, effective dispute resolution services.

For more on FINRA and its services, see FINRA’s Web site.

FINRA’s Web site:- http://www.finra.org/index.htm

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Course Home

You must review each section, in the order presented, to complete the course.

Purpose of the Central Registration Depository

Expungement Rule

In-Depth Study of FINRA Rule 2080 and Code of Arbitration Procedure Rules 12805 and 13805

Awards and Expungements

Conclusion

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Section 1: Purpose of the Central Registration Depository

Purpose of the Central Registration Depository

FINRA maintains the qualification, employment and disclosure histories of 5,100 broker-dealers and approximately 660,000 of their registered securities employees in the electronic Central Registration Depository (CRD) system.

The CRD system is an online registration and licensing system for the United States securities industry, state and federal regulators, and self-regulatory organizations (SROs). The CRD system contains broker-dealer information filed on Form BD (the application for a broker-dealer's registration) and Form BDW (the application used to request withdrawal of the broker-dealer's registration) and information about registered persons (who may be known informally as registered representatives, principals or brokers) filed on Form U4 (the Uniform Application for Securities Industry Registration or Transfer) and Form U5 (the Uniform Termination Notice for Securities Industry Registration). The CRD system also contains information filed by regulators (typically relating to actions taken by that regulator) on Form U6.

Form BD:-
http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p005260.pdf

Form BDW:-
http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015785.pdf

Form U4:-
http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf

Form U5:-
http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015114.pdf

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Purpose of the Central Registration Depository (Continued)

FINRA maintains and operates the CRD system pursuant to FINRA Rules and an agreement between FINRA and the North American Securities Administrators Association (NASAA), an association whose members include state and other securities regulators in the United States, as well as other securities regulators in North America. FINRA and NASAA established the CRD system in 1981. In 1999, the CRD system transitioned from a paper-based system (where hard copy registration forms were submitted to and data entered by FINRA) to a Web-based system, where virtually all registration forms are filed online via the Internet.

The CRD system has several important uses:

- It assists regulators (the SEC, SROs and jurisdictions) in making registration and licensing decisions on brokerage firms and their registered persons.
- Regulators use the CRD system as a regulatory tool (for example, to assist in identifying trends or potential threats to investor protection).

Certain information on the CRD system, which has been reported via the uniform registration forms, is made available to public investors to assist them in making decisions about whether to do business with a particular broker or brokerage firm.

FINRA's BrokerCheck Program

FINRA's BrokerCheck Program formerly known as the Public Disclosure Program, is a resource tool for investors and other members of the public to learn about the professional background, the registration/license status and the conduct of FINRA registered firms and their registered brokers. FINRA makes certain information about securities professionals and firms available online and, upon request, may supply additional information in writing by email or regular mail. Information provided through the BrokerCheck Program is derived from the CRD system, but BrokerCheck does not provide all of the information that is available to regulators through the CRD system.

BrokerCheck:- http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/index.htm

Reporting Requirements

Brokerage firms and their registered persons are required initially to complete their respective applications for registration and to keep them current thereafter. Both firms and their registered persons are required to report certain criminal charges and convictions, regulatory actions and bankruptcies, among other matters. In addition, registered persons are required to report certain customer complaints and customer-initiated arbitration claims.

When a registered person is named as a respondent in a customer-initiated arbitration proceeding, that fact is required to be reported on the registered person's Form U4; and, once reported, is recorded on the registered person's CRD record. If the arbitration claim against the registered person is denied by the arbitrators, the registered person may seek to have any reference to the arbitration removed from his or her CRD record because arbitration claims (and any allegations of wrongdoing contained in the claim) are available to the public and, notwithstanding the dismissal, such information could reflect negatively on that person's reputation. The process of removing this information is known as "expungement."

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Test Yourself

CRD stands for:

- Central Registration Depository.
- Central Records Department.
- Center for Reporting and Demographics.

Question feedback:

CRD stands for the Central Registration Depository.

Test Yourself

Customer dispute information on the CRD system includes information about customer complaints and arbitration claims.

- True.
- False.

Question feedback:

True. The Form U4 describes the specific types of customer dispute information that must be reported, including court filings made by customers.

Test Yourself

The information available to investors through FINRA's BrokerCheck Program is based on the CRD database.

- True.
- False.

Question feedback:

True. Information made available to investors through FINRA's BrokerCheck Program is derived from the CRD system as reported on the industry registration forms: Form U4 and Form BD. Information that is expunged from CRD is no longer available to the public.

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Section 2: Purpose of the Central Registration Depository

Expungement Rule (FINRA Rule 2080)

In prior years, associated persons sought relief in arbitration to expunge certain information from their CRD records. In January 1999, after consultation with NASAA, FINRA imposed a moratorium on arbitrator-ordered expungements of customer dispute information from the CRD system. Under that moratorium, FINRA would expunge information from CRD only when a directive contained in an arbitration award, rendered in a dispute between a public customer and a firm or its associated persons, was confirmed by a court of competent jurisdiction. In 2004, FINRA created Rule 2080 to allow FINRA and CRD to effectively challenge expungement directives that might impair the integrity of the system.

FINRA developed Rule 2080 with the intent that it would not have an overly broad, chilling effect on the settlement process, or inappropriately interfere with the authority of arbitrators to award appropriate remedies. Since expungement is an extraordinary relief, the additional safeguards and procedures provided for in Rule 2080 will permit fact-finders to consider all competing interests, before directing expungement of customer dispute information from the CRD system.

Rule 2080:- http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=8468

Rule 2080 is not part of FINRA's Customer or Industry Code of Arbitration Procedure (Customer Code or Industry Code). Rather, it is a FINRA rule that establishes procedures for members and associated persons to obtain expungement of customer dispute information.

For claims filed on and after April 12, 2004, FINRA will only expunge customer dispute information from a CRD record if ordered to do so by a court. This part of Rule 2080 is not different from the moratorium procedure, which also required that an award be taken to court to be confirmed before the expungement would take place. Rule 2080 requires that there be a specific finding by the arbitrators to support the expungement order, or that FINRA be named as a party in any court proceeding seeking or confirming expungement relief.

These specific findings are that:

- 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. (Also see the approval order of the Securities and Exchange Commission for this rule.)

All requests to expunge customer dispute information from the CRD system arising from arbitrations or civil lawsuits filed before April 12, 2004, including any settlements, will continue to be subject to the terms of the moratorium in effect as of January 19, 1999, as discussed in Notice to Members 99-09. If you have any questions relating to the process for expungements on cases filed prior to April 12, 2004, please feel free to contact the case administrator assigned to the case.

Approval Order:- http://www.finra.org/Industry/Regulation/RuleFilings/2002/P001160

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Expungement Rule (FINRA Rule 2080) (Continued)

The standards for expungement apply only to cases that involve customer dispute information. Normally, such cases involve customers who have brought claims against member firms and associated persons. Expungements ordered in arbitration cases between industry parties (between individual registered persons and their firms or between firms) based on the defamatory nature of the information will continue to be honored, without a court order.

The expungement standard contained in Rule 2080 and described in this course balances the interests of:

- Regulators, who have an interest in retaining broad access to customer dispute information to fulfill their regulatory responsibilities;
- Individuals in the brokerage community, who have an interest in securing a fair process that recognizes their stake in protecting their reputations and permits expungement when appropriate; and
- Public investors, who have an interest in having access to relevant information about brokers with whom they do or may do business.

Customer Code of Arbitration Procedure Rule 12805 / Industry Code of Arbitration Procedure Rule 13805

Rule 2080 established procedures for members and associated persons to obtain expungement of customer dispute information. Rules 12805 and 13805 establish procedures that arbitrators must follow when considering requests for expungement relief under Rule 2080. **The rules apply to ALL expungement orders issued on or after January 26, 2009.**

Rule 12805 of the Customer Code and Rule 13805 of the Industry Code state the following:

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

1. Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph applies to cases administered under Rules 12800 and 13800 (Simplified Arbitration) even if a customer or claimant did not request a hearing on the merits.

2. 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.

3. Indicate in the arbitration award which of the Rule 2080 grounds for expungement are being used. Provide a brief written explanation of the reason(s) for the finding that one or more Rule 2080 grounds for expungement applies to the facts of the case.

4. 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.

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How the Standards for Expungement of Customer Dispute Information Were Determined

In crafting the standards set forth in Rule 2080, FINRA was guided by the interests of regulators in having accurate and relevant information to fulfill their regulatory responsibilities, the interests of the brokerage community in having a fair process to protect their reputations where appropriate, and the interests of investors in having access to accurate and meaningful information about brokers with whom they now or in the future may engage in business.

FINRA recognizes that expungement of a CRD record under any circumstances is an extraordinary remedy and should be used only when the expunged information has no meaningful regulatory or investor protection value. FINRA believes that the criteria enumerated meet this standard and that the procedures outlined in Rules 12805 and 13805 will add transparency to the process and safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.

The Role of Arbitrators in the Expungement Process

Arbitrators play an important role in the expungement process. Parties may seek an expungement order either directly from a court or they may ask the arbitrators, who are most familiar with the facts of the case, to order expungement as part of the award and then ask a court to confirm the arbitration award. If the arbitrators have ordered expungement based on the specific findings described in this course, FINRA may waive its right to be named as a party to the judicial expungement proceeding meaning, in effect, that it waives its right to oppose the request.

A party is far more likely to obtain a court order directing expungement if it first obtains an arbitrator’s expungement order that is based on one of the specified criteria in Rule 2080. Therefore, arbitrators should be familiar with the procedures for consideration of expungement and the established expungement criteria.
Arbitration should also understand when it is (and is not) appropriate to make such findings.

FINRA has developed a standard for expunging customer dispute information from the CRD system, based on a directive contained in an arbitration award that gives arbitrators' expungement orders meaningful effect.

This standard applies only to cases that involve customer dispute information. Expungements ordered in cases between industry parties, based on the defamatory nature of information on CRD and not involving any customer dispute information, will continue to be honored without a court order.

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Grounds for Expungement

An effective expungement order must be based on an affirmative determination by the arbitrators and articulated in the award. The award must include that:

- The claim, allegation or information is factually impossible or clearly erroneous; or
- 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.

It is unlikely that an arbitrator could make one of the specific findings unless the allegations were dismissed against the registered person whose record is to be expunged. **However, the fact that a person prevailed in an arbitration case is not, in and of itself, an appropriate ground for expunging information about the proceeding from the CRD system**. Customer dispute information will be expunged from the CRD system only if an arbitrator orders expungement based on one of the three specific findings, and a court of competent jurisdiction confirms the arbitrator's directive.

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Test Yourself

Prevailing in an arbitration case is an appropriate ground for expunging information about the proceeding from the CRD system.

- True.
- False.

Question Feedback:

False. The fact that an industry party merely prevailed in an arbitration case is not, in and of itself, an appropriate ground for expunging information about the proceeding from the CRD system.

Test Yourself

Rule 2080 does not require a court of competent jurisdiction to confirm the arbitrator's directive.

- True.
- False.

Question Feedback:

False. 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.

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Section 3: In–Depth Study of FINRA 2080 and Code of Arbitration Procedure Rules 12805 and 13805

FINRA Rule 2080 ("Obtaining an Order of Expungement of Customer Dispute Information from the CRD System")

The following is a reprint of FINRA Rule 2080:

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 documentation 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 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 of Transfer ("Form U4") in effect at the time of issuance of the subject expungement order.*

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An In-Depth Study of Rule 2080

Let's explore the Rule more closely.

"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:"

Rule 2080(b)(1)(A) states:

(A) "The claim, allegation or information is factually impossible or clearly erroneous…."

The “factually impossible or clearly erroneous” standard has clear meaning to regulators and public investors. For example, if the evidence shows that an individual was not even employed by the member firm during the relevant time period, the arbitrators could find that he or she was erroneously named in the arbitration claim, dismiss the claim against the individual and grant expungement of any mention of the claim from his or her CRD record under this standard.

Rule 2080(b)(1)(B) states:

(B) "The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds…."

The above standard would require an affirmative arbitral or judicial finding that the registered person was not involved in any of the activities listed above. This list of activities is taken from current Question 14-I (1) of the Form U4, which specifies the types of customer complaints that registered persons must report. Therefore, if arbitrators make the required finding, no logical basis would exist for reporting the claim on an individual's CRD record.

Rule 2080(b)(1)(C) states:

(C) "The claim, allegation or information is false."

This basis for expungement relief is premised on a finding that the claim, allegation or information given was false. Arbitrators should make such a finding only after considering the merits of the allegations against the associated person or member firm.

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An In-Depth Study of Customer Code of Arbitration Procedure Rule 12805 / Industry Code of Arbitration Procedure Rule 13805

The procedures that arbitrators must follow when considering for expungement relief under Rule 2080 were designed to: (1) make sure that arbitrators have the opportunity to consider the facts that support or weigh against a decision to grant expungement; and (2) ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2080.

Rules 12805 and 13805 require arbitrators considering an expungement request to hold a recorded hearing session by telephone or in person. At the beginning of the hearing, the arbitrators, the parties and witnesses will be sworn. The Chair, or sole arbitrator, will read into the record from a script provided by the staff. Among the items covered in the script is the order in which the parties may make opening and closing statements and present evidence. The arbitration hearing may proceed in the absence of a party, after the arbitrator is satisfied that the party received adequate notice of the hearing from FINRA.

Rules 12805 and 13805 also require arbitrators to provide a brief written explanation of the reasons for ordering expungement. The brief written explanation should be fact-based and should clearly connect the arbitrators' reasons for ordering expungement to the Rule 2080 expungement standard they cited. Inclusion of legal authorities and damage calculations is not required. For example, if an arbitrator is ordering expungement based on factual impossibility, he or she would explain why. Such as, “These events occurred between 2005 and 2006, but Broker Smith did not join the firm until 2008 and it is factually impossible that he was involved in this matter.”

12805:- http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4096

13805:- http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4193

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An In-Depth Study of Customer Code of Arbitration Procedure Rule 12805 / Industry Code of Arbitration Procedure Rule 13805 (Continued)

Finally, in cases involving a settlement, Rules 12805 and 13805 require arbitrators to review the settlement documents to examine the amount paid to any party and any other terms and conditions of the settlement that might raise concerns about the associated person's involvement in the alleged misconduct before awarding expungement. The panel must assess forum fees for hearings sessions held solely for the purpose of considering expungement against the parties requesting relief. As a reminder, the panel has an ongoing obligation to maintain confidential all matters relating to the arbitration proceedings and decision. This confidentiality extends to information contained in settlement documents that arbitrators may review when ruling on expungement requests.

Rules 12805 and 13805 do not affect FINRA's current practice of permitting expungement, without judicial intervention, of information in 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.

If the arbitrators do not fully adhere to these procedures, FINRA may determine not to waive the obligation under Rule 2080 to be named as a party to an expungement proceeding.

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Test Yourself

The “factually impossible or clearly erroneous” standard would enable an individual who was erroneously named in an arbitration, because he or she was not even employed by the member firm during the relevant time, to obtain expungement of a dismissed complaint.

- False.
- True.

Question Feedback:

True. The “factually impossible or clearly erroneous” standard has a clear meaning to regulators and public investors.

Test Yourself

Upon request, FINRA may waive the obligation to name FINRA as a party if FINRA determines that the expungement relief is based on affirmative arbitral findings that the claim, allegation or information is false.

- True.
- False.

Question Feedback:

True. Upon request, FINRA may waive the obligation to name FINRA as a party if FINRA determines that the expungement relief is based on affirmative arbitral findings that the claim, allegation or information is false.

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Section 4: Awards and Expungements

Awards and Expungements

As stated earlier, there are several conditions under which expungement of a CRD record would not be appropriate:

Simply prevailing in an arbitration case is not, in and of itself, an appropriate ground for expunging information about the proceeding from the CRD system.

Expungement relief should not be granted when there is an adverse arbitration award against the associated person (for example, where the arbitrators have found that customers prevailed on claims against an associated person).

Dismissal of a claim is not, in and of itself, a sufficient basis for ordering expungement.

In Review

If, after considering the factors, an arbitrator decides that expungement is appropriate in a customer dispute, the record will be expunged from the CRD system only if the arbitrator clearly and expressly includes one or more of the following conditions in his/her award:

- The claim, allegation or information is factually impossible or clearly erroneous; or
- 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.

The above findings cannot merely be implied in the award. Depending on the circumstances of the case, one or more of the three (3) statements bulleted above must be included in the awards to effectuate expungement; otherwise, FINRA will oppose expungement. The award should identify the circumstances that warrant the finding(s). Rules 12805 and 13805 require arbitrators to indicate which of the Rule 2080 grounds for expungement serve as the basis for their expungement order, and provide a brief written explanation of the reasons for ordering expungement under Rule 2080. The brief written explanation should be fact-based and should clearly connect the arbitrators' reasons for ordering expungement to the Rule 2080 expungement standard they cited. Inclusion of legal authorities and damage calculations are not required. The panel must assess forum fees for hearings sessions held solely for the purpose of considering expungement against the parties requesting relief.

Additionally, in order for expungement to occur, a court of competent jurisdiction must confirm the arbitrator's award.

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Stipulated Awards

On occasion, parties may reach a settlement and ask arbitrators to incorporate the parties' settlement into a "stipulated award." Before ordering expungement following a settlement, arbitrators are required to review the settlement documents, consider the amount paid to any party, and consider any other terms and conditions of the settlement that might raise concerns about the associated person's involvement in the alleged misconduct before awarding expungement. In order for arbitrators to perform this critical fact finding before granting expungement, Rules 12805 and 13805 require arbitrators to hold a recorded hearing session by telephone or in person. The requirement of a hearing session ensures that arbitrators consider the facts that support or weigh against a decision to grant expungement.

Please note that affirmative findings are required only for the ordering of expungement relief; arbitrators do not need to make findings on other matters that have been settled by the parties and incorporated into a stipulated award.

An arbitrator who is uncomfortable with signing any stipulated award is not required to do so. This is consistent with the AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes. The arbitrator's failure to sign a stipulated award should not affect the validity of the parties' settlement. However, an award must be signed by a majority of the arbitrators for it to meet the requirements of Rule 2080. Therefore, on a three-member panel, at least two of the arbitrators must sign the stipulated award for the settlement agreement to have the status of an award.

AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes:-
http://www.finra.org/web/idcplg?IdcService=GET_PROBLEM_PAGE&siteId=www.finra.org&siteRelativeUrl=/ArbitrationMediation/ResourcesforArbitratorsandMediators/p009525

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Test Yourself

There is no need for arbitrators to make specific findings if the parties agree on expungement relief and seek a stipulated award.

- False.
- True.

Question Feedback:

False. In order for FINRA to honor the expungement order, arbitrators must make one or more of the specific findings listed in Rule 2080, and the award must be confirmed in court. Arbitrators may require additional evidence or a hearing in order to gather the facts necessary to enable the arbitrators to make such findings.

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Test Yourself

Arbitrators must do **ALL** of the following in order to grant expungement of customer dispute information under Rule 2080 if the expungement relief is ordered on or after January 26, 2009:

1. Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph applies to cases administered under Rules 12800 and 13800 (Simplified Arbitration) even if a customer or claimant did not request a hearing on the merits; and,

2. 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; and,

3. 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; and,

4. 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.

- True.
- False.

Question Feedback:

True. Arbitrators must do ALL of the following in order to grant expungement of customer dispute information under Rule 2080 if the expungement relief is ordered on or after January 26, 2009:

1. Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph applies to cases administered under Rules 12800 and 13800 (Simplified Arbitration) even if a customer or claimant did not request a hearing on the merits; and,

2. 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; and,

3. 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; and,

4. 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.

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The Effect of Rule 2080 on Requests for Dismissal

If arbitrators wish to dismiss an associated person early in an arbitration and grant expungement relief before the rest of the case is concluded, FINRA has developed a procedure that may be used to accomplish this result. In brief, a new case will be opened to deal only with expungement relief, and the dismissed registered person will receive a signed award that may be confirmed in court. The award remains subject to the standards of Rule 2080. The rest of the arbitration case will continue to proceed as usual, under the original case number. Arbitrators who wish to grant an early dismissal with expungement relief should consult with assigned FINRA staff about the procedure.

The Role of FINRA

You have seen that FINRA may waive participation in the court confirmation process if, prior to filing with the court, the parties give FINRA a copy of the award to review and the arbitrators have: followed the procedures outlined in Rules 12805 and 13805; and ordered expungement based on one or more of the standards in Rule 2080. If the award does not contain one or more of the affirmative findings previously discussed, FINRA most likely will not waive its obligation to be named as a party in the court confirmation. However, if the expungement relief is based on other judicial or arbitral findings, FINRA in its sole discretion and under extraordinary circumstances – also may waive the obligation to name FINRA as a party if FINRA determines that:

- The expungement relief and accompanying findings on which it is based are meritorious; and
- The expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

FINRA Participation in Court Proceeding to Confirm an Expungement Directive

Member firms and associated persons may ask FINRA to waive the requirement to name FINRA as a party on the basis that the expungement order meets at least one of the standards for expungement articulated in Rule 2080. This will save members and FINRA both time and expense by enabling FINRA to review the findings of the arbitrators and determine to waive participation in the judicial proceeding if FINRA determines that a waiver is appropriate under Rule 2080.

Although FINRA expects that arbitrators will consider the overwhelming majority of expungement requests, a judge may also make the affirmative finding required under Rule 2080. However, member firms or associated persons seeking expungement relief in court (as plaintiff or defendant) will be required to name FINRA as a party. FINRA will determine whether to oppose the expungement request based on the reason(s) for requesting expungement.

FINRA will generally participate in the court confirmation proceeding and oppose confirmation of the expungement directive if the expungement order does not meet at least one of the specified standards. As further means to ensure that the court is made aware of the investor protection and regulatory implications of an expungement, states may choose to intervene if they have concerns regarding whether investor protection or regulatory issues will be fairly considered.

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Test Yourself

If the expungement relief is based on judicial or arbitral findings that do not meet the specific standards described above, FINRA – in its sole discretion and under extraordinary circumstances – also may waive the obligation to name FINRA as a party if FINRA determines which of the following:

- That the expungement relief and accompanying finding on which it is based are meritorious.
- That the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.
- Both.

Question Feedback:

Both. If the expungement relief is based on judicial or arbitral findings that do not meet the specific standards described above, FINRA – in its sole discretion and under extraordinary circumstances – also may waive the obligation to name FINRA as a party if FINRA determines: (1) That the expungement relief and accompanying finding on which it is based are meritorious; and (2) That the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

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Section 5: Conclusion

Summary

Having completed this course, you should now be able to:

- Explain the Central Registration Depository or CRD system and the role it plays in protecting the public.
- Give a general overview of the expungement process.
- Discuss the procedures that arbitrators must follow when considering requests for expungement.
- Discuss the specific findings that arbitrators must make in order for FINRA to waive its right to oppose the expungement request in court.

Next Steps

To test your understanding of the course material, please complete the attached Expungement in Arbitration Exam and mail or fax it to FINRA for grading. To successfully complete the Expungement training and receive credit, you must score at least 80 percent on the exam. Thereafter, FINRA will update your Arbitrator Disclosure Report to reflect that you have completed this course.

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FINRA Dispute Resolution
Expungement Training
Exam

Name: _____ Arbitrator ID#: A_____

Return Fax Number: 646-625-6028

Directions:

After reviewing the course, you must complete and submit the following exam to demonstrate your understanding of the material. **You must score at least 80 percent to receive credit for completing the course.** Upon successful completion of the course and test, FINRA will automatically update your disclosure profile to reflect that you completed the course. If, however, you do not receive the minimum score of 80 percent, FINRA will notify you, and you may attempt the test again.

CLEARLY mark your answer.

Include your name and arbitrator ID# on EVERY page.

When you have completed the test, please FAX your pages to FINRA – Neutral Management Department at 646-625-6028.

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1. The information on CRD is submitted by regulatory authorities (for example, state securities regulators and SROs) and by registered broker-dealers.

   TRUE FALSE

2. The expungement standards balance the interests of public investors, regulators, and individuals in the brokerage community.

   TRUE FALSE

3. The fact that a party prevailed in an arbitration case is, in and of itself, an appropriate ground for expunging information about the proceeding from the CRD system.

   TRUE FALSE

4. A party who has been found liable to a customer for an investment-related sales practice violation should not be able to obtain expungement relief.

   TRUE FALSE

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Name: _____ Arbitrator ID#: A_____

5. The “factually impossible or clearly erroneous” standard would enable an individual, who has been erroneously named in an arbitration because he or she was not even employed by the member firm during the relevant time, to obtain expungement of a dismissed complaint.

   TRUE FALSE

6. Upon request, FINRA may waive the obligation to name FINRA as a party if FINRA determines that the expungement relief is based on affirmative arbitral findings that the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

   TRUE FALSE

7. The expungement standards may be implied in the award.

   TRUE FALSE

8. FINRA may rely on arbitrators' findings and waive participation in the court confirmation process if arbitrators have appropriately awarded expungement; that is, if arbitrators have made affirmative findings based upon one or more of the standards in Rule 2080.

   TRUE FALSE

9. FINRA does not intend for the rule to have any effect on the authority of arbitrators to grant or deny motions to dismiss a claim prior to a hearing on the merits.

   TRUE FALSE

10. Before granting expungement by signing settlement stipulation, arbitrators should inquire into the terms of the settlement agreements. In order for arbitrators to perform this critical fact finding before granting expungement, arbitrators are required to hold a recorded hearing session by telephone or in person.

    TRUE FALSE

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