

Expungement of Customer Dispute Information

FINRA Amends Arbitration Codes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information

Effective Date: September 14, 2020

Summary

FINRA has amended its Codes of Arbitration Procedure for Customer and Industry Disputes (Codes) to apply minimum fees to requests for expungement of customer dispute information, whether the request is made as part of the customer arbitration or the associated person files an expungement request in a separate arbitration (straight-in request).¹ The amendments also apply a minimum process fee and member surcharge to straight-in requests, as well as a minimum hearing session fee to expungement-only hearings.

The amendments are effective for cases filed on or after September 14, 2020.

Questions concerning this *Notice* should be directed to:

- ▶ Victoria Crane, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104 or victoria.crane@finra.org; or
- ▶ Mignon McLemore, Assistant General Counsel, OGC, at (202) 728-8151 or mignon.mclemore@finra.org.

Background & Discussion

A. Customer Dispute Information in the CRD System

Information regarding customer disputes involving associated persons is contained in the Central Registration Depository (CRD®) system, the central licensing and registration system used by the U.S. securities industry and its regulators.² FINRA operates the CRD system pursuant to policies developed jointly with NASAA. FINRA works with the Securities and Exchange Commission (SEC), NASAA, and other members of the regulatory community to ensure that information submitted and maintained in the CRD system is accurate and complete.

July 20, 2020

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives

Key Topics

- ▶ Arbitration
- ▶ Codes of Arbitration Procedure
- ▶ Dispute Resolution
- ▶ Expungement Request
- ▶ Filing Fee
- ▶ Hearing Session Fees
- ▶ Member Surcharge
- ▶ Process Fee
- ▶ Straight-in Request

Referenced Rules & Notices

- ▶ FINRA Rule 12900
- ▶ FINRA Rule 12901
- ▶ FINRA Rule 12902
- ▶ FINRA Rule 12903
- ▶ FINRA Rule 13900
- ▶ FINRA Rule 13901
- ▶ FINRA Rule 13902
- ▶ FINRA Rule 13903

In general, the information in the CRD system is submitted by registered securities firms, associated persons and regulatory authorities in response to questions on the uniform registration forms.³ Among other things, these forms collect administrative, regulatory, criminal history and disciplinary information about associated persons, including customer complaints, arbitration claims and court filings made by customers (*i.e.*, customer dispute information). FINRA, state and other regulators use this information in connection with their licensing and regulatory activities, and member firms use this information to help them make informed employment decisions.

Pursuant to rules approved by the SEC, FINRA makes specified current CRD information publicly available through BrokerCheck®.⁴ BrokerCheck is part of FINRA's ongoing effort to help investors make informed choices about the brokers and broker-dealer firms with which they may conduct business.

The regulatory framework governing the CRD system and BrokerCheck has long contemplated the possibility of expunging certain customer dispute information from these systems in limited circumstances, such as where the allegations made about the associated person are factually impossible or clearly erroneous. The expungement framework seeks to balance the important benefits of disclosing information about customer disputes to regulators and investors with the goal of protecting associated persons from the publication of false allegations against them.

An associated person can seek expungement of customer dispute information by going through the FINRA arbitration process or directly to court (without first going through arbitration). Regardless of whether expungement of customer dispute information is sought directly through a court or through arbitration, FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the CRD System), which was developed in close consultation with representatives of NASAA and state regulators, requires a broker-dealer firm or associated person seeking expungement to obtain an order of a court of competent jurisdiction directing such expungement or confirming an award containing expungement relief. FINRA will expunge customer dispute information only after the court orders it to execute the expungement.⁵

B. Current Fee Structure for Expungement Requests

An associated person or a requesting party, if it is an on-behalf-of request,⁶ may request expungement through the FINRA arbitration process by making the request during a customer arbitration. Alternatively, an associated person may request expungement by filing a "straight-in request," which is a separate arbitration claim filed by the associated person against a former or current member firm or the customer.

FINRA is concerned about practices to avoid fees applicable to expungement requests, particularly straight-in requests. For example, associated persons who file a straight-in request often add a small monetary claim (typically, one dollar) to the expungement request to reduce the fees assessed against the associated person and qualify for an arbitration heard by a single arbitrator.⁷

An expungement request is a non-monetary or not specified claim (non-monetary claim). The fees applicable to non-monetary claims are higher than those applicable to small monetary claims. If an associated person files a straight-in request and does not add a monetary claim to the request, the associated person will be assessed the filing fee associated with a non-monetary claim.⁸ The member named as a respondent or that employed the associated person at the time the dispute arose must pay the process fee associated with a non-monetary claim.⁹ A member named as a respondent or that employed the associated person at the time the dispute arose is also assessed the surcharge associated with a non-monetary claim.¹⁰ Further, the hearing session fee will be the hearing session fee for a non-monetary claim.¹¹ Non-monetary claims are decided by a three-person panel, unless the parties agree in writing to one arbitrator.¹²

To help ensure that parties requesting expungement pay the fees intended for such requests under the Codes and that the fees charged when expungement is requested are more consistent, FINRA has amended the Codes to apply a minimum filing fee for all expungement requests, irrespective of whether the request is made as part of the customer arbitration or the associated person files a straight-in request, or the requesting party adds a small damages claim. The amendments also apply a minimum process fee and member surcharge to straight-in requests, as well as a minimum hearing session fee to expungement-only hearings held after a customer arbitration or in connection with a straight-in request.

C. Amendments to Current Fee Structure for Expungement Requests

Filing Fees

Under the amendments, an associated person, or requesting party if it is an on-behalf-of request, must pay the filing fee for a non-monetary claim (currently \$1,575) for an expungement request made during a customer arbitration¹³ or filed as a straight-in request.¹⁴ If an associated person or requesting party adds a monetary claim to the expungement request, the filing fee will be the greater of the fee for a non-monetary claim or the applicable filing fee based on the claim amount, whichever is greater.¹⁵

Member Surcharge for Straight-in Requests

The amendments apply a minimum member surcharge when an associated person files a straight-in request against a member firm.¹⁶ Under the amendments, if an associated person files a straight-in request against a member firm, that firm will be assessed the

member surcharge for a non-monetary claim under the Industry Code (currently \$1,900).¹⁷ If the associated person adds a separate claim for damages to the straight-in request against the member firm, the member surcharge will be the greater of the non-monetary member surcharge or the applicable surcharge under the Codes.¹⁸

Process Fees for Straight-in Requests

Under the amendments, a minimum process fee will apply when an associated person files a straight-in request against a member firm.¹⁹ If an associated person files a straight-in request against a member firm, that firm will be assessed the process fee for a non-monetary claim under the Industry Code (currently \$3,750).²⁰ If the associated person adds a separate claim for damages to the straight-in request, the process fee will be the greater of the non-monetary process fee or the applicable process fee under the Codes.²¹

Hearing Session Fees

Under the amendments, the hearing session fee for a non-monetary claim heard by three arbitrators (currently \$1,125) will apply to each hearing session in which the sole topic is the determination of a request for expungement relief.²² Thus, the hearing session fee will apply when a customer arbitration does not close by award after a hearing (*e.g.*, settles) and there is a separate hearing session held after the customer arbitration to decide an expungement request that was made during the customer arbitration, and to straight-in requests.²³ If the requesting party adds a monetary claim to the expungement request, the hearing session fee will be the greater of the fee for a non-monetary claim with three arbitrators or the applicable hearing session fee under the Codes based on the claim amount.²⁴ In addition, consistent with the Codes today, the hearing session fee will be assessed against the party requesting expungement.²⁵

Effective Date

The amendments are effective for cases filed on or after September 14, 2020.

Endnotes

1. See Securities Exchange Act Release No. 88945 (May 26, 2020), 85 FR 33212 (June 1, 2020) (Order Approving File No. SR-FINRA-2020-005).
2. The concept for CRD was developed by FINRA jointly with the North American Securities Administrators Association (NASAA), and NASAA and state regulators play a critical role in its ongoing development and implementation.
3. The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form).
4. There is a limited amount of information in the CRD system that FINRA does not display in BrokerCheck, including personal or confidential information. A detailed description of the information made available through BrokerCheck is available at www.finra.org/investors/about-brokercheck.
5. FINRA Rule 2080 also requires that firms and associated persons seeking a court order or confirmation of the arbitration award containing expungement relief name FINRA as a party, and FINRA will challenge the request in court in appropriate circumstances. FINRA may, however, waive the requirement to name it as a party if it determines that the award containing expungement relief is based on affirmative judicial or arbitral findings that: (1) the claim, allegation or information is factually impossible or clearly erroneous; (2) the associated 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. In addition, FINRA has sole discretion “under extraordinary circumstances” to waive the requirement if the request for expungement relief and accompanying award are meritorious and expungement would not have a material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements. See FINRA Rule 2080.
6. In 2009, the SEC approved amendments to Forms U4 and U5 to require, among other things, the reporting of allegations of sales practice violations made against unnamed persons. See Securities Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009) (Order Approving SR-FINRA-2009-008). Specifically, Forms U4 and U5 were amended to add questions to elicit whether the applicant or registered person, though not named as a respondent or defendant in a customer-initiated arbitration, was either mentioned in or could be reasonably identified from the body of the arbitration claim as a registered person who was involved in one or more of the alleged sales practice violations. A party (typically, the firm) named in a customer arbitration may request expungement on-behalf-of an associated person who is a subject of, but not named in, the arbitration. Such on-behalf-of requests occur in customer-initiated arbitrations only.
7. Whether the claimant specifies damages, and the amount specified, determines the fees assessed in arbitration cases and whether a single arbitrator or a three-person panel will decide the case. See FINRA Rules 12401 and 13401.
8. See FINRA Rule 13900(a)(1).

9. Each member that is a party to an arbitration claim in which more than \$25,000 is in dispute, or that is non-monetary or not specified, is required to pay a process fee based on the amount or nature of the claim. If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose is charged the process fee. See FINRA Rules 12903(a) and (b) and FINRA Rules 13903(a) and (b).
10. A member surcharge is assessed against a member if, for example, the member files an arbitration claim, is named as a respondent in a claim, or employed, at the time the dispute arose, an associated person who is named as a respondent; the amount of the surcharge is based on the amount of the claim. See FINRA Rules 12901(a)(1)(B) and 12901(a)(1)(C) and FINRA Rules 13901(a)(2) and 13901(a)(3).
11. Parties are charged hearing session fees for each hearing session. In the award, the panel determines the amount of each hearing session fee that each party is required to pay. See FINRA Rules 12902 and 13902. Under the Codes, fees for hearing sessions held solely to decide an expungement request must be charged to the party or parties requesting expungement. See FINRA Rules 12805(d) and 13805(d).
12. See FINRA Rules 12401(c) and 13401(c).
13. Under the amendments, an associated person who requests expungement of customer dispute information during an industry arbitration will also be required to pay the filing fee for a non-monetary claim. However, these requests are rare.
14. If the requesting party chooses to seek expungement in the customer arbitration, but later determines not to pursue the request and then files a straight-in request for expungement of the same customer dispute information, the requesting party will be required to pay the filing fee applicable to the straight-in request, notwithstanding previous payment of the filing fee applicable to the expungement request during the customer arbitration.
15. See FINRA Rules 12900(a)(3) and 13900(a)(3). An associated person could add a monetary or non-monetary claim to the expungement request. FINRA notes, however, that it is rare that significant dollar claims accompany expungement requests.
16. See *supra* note 10 (discussing the member surcharge under the Codes). An associated person may also file a straight-in request against a customer; however, these cases are rare in the forum. If an associated person files such a request, each member that employed the associated person at the time the customer dispute arose will be assessed the member surcharge for a non-monetary claim under the Customer Code (currently \$1,900). See FINRA Rule 12901(a)(3).
17. See FINRA Rule 13901(c). If an associated person files the straight-in request against another associated person, each firm that employed the respondent associated person at the time the dispute arose will be assessed the member surcharge for a non-monetary claim under the Industry Code.
18. Consistent with how the member surcharge is assessed today, under the amendments, FINRA will not assess a member more than one surcharge in any arbitration.

19. If an associated person files a straight-in request against a customer, the member that employed the associated person at the time the customer dispute arose will be assessed the process fee for a non-monetary claim under the Customer Code (currently \$3,750). *See* FINRA Rule 12903(c).
20. *See* FINRA Rule 13903(c). If an associated person files the straight-in request against another associated person, the firm that employed the respondent associated person at the time the dispute arose would be assessed the process fee for a non-monetary claim under the Industry Code. *See* FINRA Rules 13903(b) and 13903(c).
21. Consistent with how the process fee is assessed today, under the amendments, FINRA will not assess a member more than one process fee in any arbitration.
22. FINRA notes that the \$1,125 hearing session fee for expungement hearings will apply if a party requests expungement as part of a simplified arbitration and no hearings are held to decide the underlying customer claim, regardless of whether a single arbitrator or a panel hears the simplified arbitration. *See* FINRA Rules 12800 and 13800.
23. If an associated person requests expungement during a customer arbitration, the customer arbitration closes by award after a hearing, and the arbitrator or panel decides the expungement request during the customer arbitration, the hearing session fee will be based on the amount of the customer's claim.
24. *See* FINRA Rules 12902(a)(5) and 13902(a)(4).
25. *See* FINRA Rules 12902(a)(5) and 13902(a)(4). *See also supra* note 11.

Attachment A

12000. CODE OF ARBITRATION PROCEDURE FOR CUSTOMER DISPUTES

12900. Fees Due When a Claim Is Filed

(a) Fees for Claims Filed by Customers, Associated Persons and Other Non-Members

(1) Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee in the amount indicated in the schedule below. [The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 12307.]

(2) No Change.

(3) The Non-Monetary/Not Specified filing fee under Rule 12900(a)(1) must be paid by an associated person who requests expungement of customer dispute information under the Code; or a party to an investment-related, customer-initiated arbitration who requests expungement of customer dispute information on-behalf-of an associated person during the arbitration case. If the associated person or other party requesting expungement adds a monetary claim to the expungement request, the filing fee shall be the Non-Monetary/Not Specified filing fee or the applicable filing fee provided in Rule 12900(a)(1), whichever is greater.

(4) The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 12307.

(b) through (d) No Change.

12901. Member Surcharge

(a) Member Surcharge

(1) through (2) No Change.

(3) If an associated person files a request for expungement of customer dispute information against the customer pursuant to Rule 12302, the Non-Monetary/Not Specified member surcharge under Rule 12901(a)(1) shall be assessed against each member that employed the associated person at the time the customer dispute arose. If the associated person adds a monetary claim to the expungement request, the Non-Monetary/Not Specified member surcharge or the applicable surcharge provided in Rule 12901(a)(1), whichever is greater, shall be assessed against each member that employed the associated person at the time the customer dispute arose.

~~[3]~~(4) If the claim is filed by the member, the surcharge is due when the claim is filed. If the claim is filed against the member, or against an associated person employed by the member at the time of the events giving rise to the dispute, the surcharge is due when the Director serves the Claim Notification Letter or the initial statement of claim in accordance with Rule 12300.

(5) If a claim is filed by an associated person pursuant to paragraph (a)(3), the surcharge is due when the Director serves the Claim Notification Letter or the initial statement of claim in accordance with Rule 12300.

~~[4]~~(6) No member shall be assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.

(b) No Change.

12902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

(1) through (4) No Change.

(5) The fee for each hearing session in which the sole topic is the determination of a request for expungement of customer dispute information shall be the Non-Monetary/Not Specified fee under Rule 12902(a)(1) for a hearing session with three arbitrators. If a request for expungement of customer dispute information includes a monetary claim, the hearing session fee shall be the Non-Monetary/Not Specified fee for a hearing session with three arbitrators or the applicable hearing session fee provided in Rule 12902(a)(1), whichever is greater. The arbitrator or panel shall assess the hearing session fees against the party or parties requesting expungement.

(b) through (e) No Change.

12903. Process Fees Paid by Members

(a) No Change.

(b) If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose will be charged the process fees, even if the member is not a party. [No member shall be assessed more than one process fee in any arbitration.]

(c) If an associated person files a request for expungement of customer dispute information against the customer pursuant to Rule 12302, the process fee for the member that employed the associated person at the time the customer dispute arose shall be the Non-Monetary/Not Specified fee under Rule 12903(a)(1). If the associated person adds a monetary claim to the expungement request, the process fee for the member that employed the associated person at the time the customer dispute arose shall be the Non-Monetary/Not Specified fee or the applicable process fee provided in Rule 12903(a)(1), whichever is greater.

[(c)](d) The panel may not reallocate to any other party any process fees paid by a member.

(e) No member shall be assessed more than one process fee in any arbitration.

13000. CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES

13900. Fees Due When a Claim Is Filed

(a) Fees for Claims Filed by Associated Persons

(1) Associated persons who file a claim, counterclaim, cross claim or third party claim must pay a filing fee in the amount indicated in the schedule below. [The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 13307.]

(2) No Change.

(3) An associated person who requests expungement of customer dispute information under the Code must pay the Non-Monetary/Not Specified filing fee under Rule 13900(a)(1). If the associated person adds a monetary claim to the expungement request, the filing fee shall be the Non-Monetary/Not Specified filing fee or the applicable filing fee provided in Rule 13900(a)(1), whichever is greater.

(4) The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 13307.

(b) through (d) No Change.

13901. Member Surcharge

(a) through (b) No Change.

(c) If an associated person files a request for expungement of customer dispute information pursuant to Rule 13302, the member surcharge shall be the Non-Monetary/Not Specified member surcharge under Rule 13901(a)(1). If the associated person adds a monetary claim to the expungement request, the member surcharge shall be the Non-Monetary/Not Specified member surcharge or the applicable surcharge provided in Rule 13901(a)(1), whichever is greater.

[(c)](d) If the claim is filed by the member, the surcharge is due when the claim is filed. If the claim is filed against the member, or against an associated person employed by the member at the time of the events giving rise to the dispute, the surcharge is due when the Director serves the Claim Notification Letter or the initial statement of claim in accordance with Rule 13300.

(e) If a claim is filed by an associated person pursuant to paragraph (c), the surcharge is due when the Director serves the Claim Notification Letter or the initial statement of claim in accordance with Rule 13300.

[(d)](f) No member shall be assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.

[(e)](g) The Director may also refund or waive the member surcharge in extraordinary circumstances.

13902. Hearing Session Fees, and Other Costs and Expenses**(a) Hearing Session Fees**

(1) through (3) No Change.

(4) The fee for each hearing session in which the sole topic is the determination of a request for expungement of customer dispute information shall be the Non-Monetary/Not Specified fee under Rule 13902(a)(1) for a hearing session with three arbitrators. If a request for expungement of customer dispute information includes a monetary claim, the hearing session fee shall be the Non-Monetary/Not Specified fee for a hearing session with three arbitrators or the applicable hearing session fee provided in Rule 13902(a)(1), whichever is greater. The arbitrator or panel shall assess the hearing session fees against the party or parties requesting expungement.

(b) through (e) No Change.

13903. Process Fees Paid by Members

(a) No Change.

(b) If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose will be charged the process fees, even if the member is not a party. [No member shall be assessed more than one process fee in any arbitration.]

(c) If an associated person files a request for expungement of customer dispute information pursuant to Rule 13302, the process fee shall be the Non-Monetary/Not Specified fee under Rule 13903(a). If the associated person adds a monetary claim to the expungement request, the process fee shall be the Non-Monetary/Not Specified fee or the applicable surcharge provided in Rule 13903(a)(1), whichever is greater.

~~[(c)]~~(d) The panel may not reallocate to any other party any process fees paid by a member.

(e) No member shall be assessed more than one process fee in any arbitration.

* * * * *