

## Expungement of Customer Dispute Information

### FINRA Adopts Amendments to the Codes of Arbitration Procedure to Modify the Process Relating to the Expungement of Customer Dispute Information

Effective Date: October 16, 2023

#### Summary

FINRA has adopted amendments to its Codes of Arbitration Procedure (Codes) to modify the process relating to requests to expunge customer dispute information in the FINRA Dispute Resolution Services (DRS) arbitration forum. The amendments impose requirements on expungement requests (a) filed by an associated person during an investment-related, customer-initiated arbitration (customer arbitration), or filed by a party to the customer arbitration on behalf of an associated person (on-behalf-of request), or (b) filed by an associated person separate from a customer arbitration (straight-in request). The primary changes include:

- ▶ requiring that a straight-in request be decided by a three-person panel that is randomly selected from a roster of experienced public arbitrators with enhanced expungement training (Special Arbitrator Roster);
- ▶ prohibiting parties to a straight-in request from agreeing to fewer than three arbitrators to consider their expungement requests, striking any of the selected arbitrators, stipulating to an arbitrator's removal, or stipulating to the use of pre-selected arbitrators;
- ▶ providing notifications to state securities regulators of all requests to expunge customer dispute information and a mechanism for state securities regulators to attend and participate in expungement hearings in straight-in requests;
- ▶ imposing strict time limits on the filing of straight-in requests;
- ▶ specifying procedures for requesting expungement of customer dispute information during simplified customer arbitrations;

August 11, 2023

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ Arbitration
- ▶ Codes of Arbitration Procedure
- ▶ Dispute Resolution
- ▶ Expungement Requests

#### Referenced Rules & Notices

- ▶ Exchange Act Section 15A(i)
- ▶ FINRA Rule 2080
- ▶ FINRA Rule 2081
- ▶ FINRA Rule 8312
- ▶ FINRA Rule 9216
- ▶ FINRA Rule 9270
- ▶ FINRA Rule 12000 Series (Customer Code)
- ▶ FINRA Rule 13000 Series (Industry Code)
- ▶ Regulatory Notice 09-66

- ▶ codifying and updating the best practices in the Notice to Arbitrators and Parties on Expanded Expungement Guidance (Guidance) applicable to all expungement hearings, which include establishing additional requirements for expungement hearings, facilitating customer attendance and participation in all aspects of the expungement hearings and codifying the panel's ability to request any evidence relevant to the expungement request;
- ▶ requiring the unanimous agreement of the panel to issue an award containing expungement relief; and
- ▶ establishing procedural requirements for filing expungement requests, which include on-behalf-of requests.

The amendments become effective on October 16, 2023.

- ▶ The amendments to Rules 12800 and 12805 apply to requests to expunge customer dispute information from the Central Registration Depository (CRD®) associated with a customer arbitration filed in the DRS arbitration forum on or after October 16, 2023.
- ▶ The amendments to Rules 13805 and 13806 apply to straight-in requests filed in the DRS arbitration forum on or after October 16, 2023.

The rule text is available in Attachment A. The Guidance is available in Attachment B. The Form Requesting Expungement on Behalf of an Unnamed Person is available in Attachment C.

Questions concerning this *Notice* should be directed to:

- ▶ Victoria Crane, Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8104 or [email](#);
- ▶ Mignon McLemore, Associate General Counsel, Office of General Counsel, at (202) 728-8151 or [email](#); or
- ▶ Bria Adams, Principal Counsel, Office of General Counsel, at (202) 728-8829 or [email](#).

## Background & Discussion

### I. Customer Dispute Information in CRD

FINRA is mandated by federal statute to collect and maintain registration information about member firms and their associated persons. To satisfy this statutory responsibility, FINRA operates CRD, the central licensing and registration system for the benefit of FINRA, the SEC, other self-regulatory organizations (SROs), state securities regulators and firms.<sup>1</sup> In general, the registration information in CRD

is reported by firms, associated persons and regulatory authorities in response to questions on the uniform registration forms.<sup>2</sup> These forms are used to collect registration information, which includes, among other things, administrative, regulatory, criminal history, financial and other information about associated persons, such as investment-related, customer-initiated arbitrations, civil litigations or customer complaints (*i.e.*, customer dispute information). Customer dispute information maintained in CRD is reported through Forms U4 and U5.<sup>3</sup>

The registration information, including customer dispute information, maintained in CRD serves three important purposes. First, regulators use CRD as an important source of regulatory information to inform registrations, examinations, investigations and disciplinary actions. Second, firms use information in CRD for employment purposes. Third, FINRA makes specific registration information collected in CRD publicly available through BrokerCheck<sup>®</sup>,<sup>4</sup> which is a free tool available on FINRA's website to help investors make informed choices about the associated persons and firms with which they may conduct business.<sup>5</sup>

## II. Expungement of Customer Dispute Information from CRD

If associated persons seek to remove, or “expunge,” customer dispute information from CRD/ BrokerCheck, FINRA will do so only pursuant to a court order that directs expungement of the information or confirms an arbitration award that authorizes such expungement.<sup>6</sup>

FINRA rules specify a narrow set of circumstances in which expungement of customer dispute information from CRD is appropriate.<sup>7</sup> As discussed in more detail below, the amendments incorporate this narrow set of circumstances into Rules 12805 and 13805 by requiring an arbitrator considering an expungement request to make a finding that the customer dispute information to be expunged is factually impossible, clearly erroneous or false, or that the associated person was not involved in the alleged misconduct.<sup>8</sup> The amendments also make a number of significant enhancements to address concerns with the current expungement process<sup>9</sup> and to provide additional safeguards for ensuring that the information in CRD/BrokerCheck is accurate and complete.

## III. Amendments to the Codes

The amendments to the Codes require an associated person seeking expungement of customer dispute information to comply with the requirements of Rules 12805 (expungement requests in a customer arbitration), 12800(d) (expungement requests in a simplified customer arbitration) or 13805 (straight-in requests).<sup>10</sup> The following discussion of the amendments is divided into seven areas:

- ▶ expungement requests during customer arbitrations under Rule 12805;
- ▶ expungement requests during simplified customer arbitrations under Rule 12800;
- ▶ straight-in requests under Rule 13805 and the Special Arbitrator Roster;
- ▶ requirements relating to all expungement hearings;
- ▶ notifications to customers of straight-in requests;
- ▶ notifications to state securities regulators of expungement requests and their attendance and participation in straight-in requests; and
- ▶ the Director's authority to deny the forum.

#### A. Expungement Requests During Customer Arbitrations Under Rule 12805

The amendments to Rule 12805 set forth requirements addressing the method and timing for, and required contents of, expungement requests filed during a customer arbitration by an associated person or as an on-behalf-of request, including the types of expungement requests that must (or cannot) be filed. The amendments provide that an associated person shall not file a request for expungement of customer dispute information if (1) a panel<sup>11</sup> held a hearing to consider the merits of the associated person's request for expungement of the same customer dispute information or (2) a court of competent jurisdiction previously denied the associated person's request to expunge the same customer dispute information.<sup>12</sup> Under such circumstances, the Director shall decline the use of the forum because the expungement request is ineligible for arbitration.<sup>13</sup>

##### 1. Expungement Requests Filed by an Associated Person Named in a Customer Arbitration

The amendments require that an associated person named in a customer arbitration (named associated person) seeking to expunge customer dispute information associated with the customer's statement of claim file the expungement request during the customer arbitration.<sup>14</sup> If the associated person does not request expungement of the customer dispute information associated with the customer's statement of claim during the customer arbitration, the associated person forfeits the opportunity to seek expungement of the same customer dispute information in any subsequent proceeding.<sup>15</sup>

##### a. Method of Requesting Expungement

The amendments limit how and when a request for expungement may be made during the customer arbitration. If a named associated person requests expungement during the customer arbitration, the request must be included

in the answer or a separate pleading requesting expungement.<sup>16</sup> If the request for expungement is included in the answer, it must be filed in accordance with existing requirements under the Codes—within 45 days of receiving the customer’s statement of claim.<sup>17</sup> If the named associated person requests expungement in a separate pleading, rather than the answer, the request must be filed no later than 60 days before the first scheduled hearing.<sup>18</sup> If a named associated person files the request for expungement in a separate pleading after the 60-day filing deadline, the associated person must file a motion pursuant to Rule 12503 requesting an extension, which would be decided by the panel.<sup>19</sup>

#### b. Required Contents of an Expungement Request

A request for expungement by a named associated person in a customer arbitration must include:

- ▶ the applicable filing fee under the Customer Code;
- ▶ the CRD number of the party requesting expungement;
- ▶ each CRD occurrence number that is the subject of the request;
- ▶ the case name and docket number associated with the customer dispute information; and
- ▶ an explanation of whether expungement of the same customer dispute information was (i) previously requested and, if so (ii) how it was decided.<sup>20</sup>

If an expungement request fails to include any of the requirements for requesting expungement, the request will be considered deficient and will not be served unless the deficiency is corrected.<sup>21</sup>

#### 2. Expungement Requests Filed by a Party Named in a Customer Arbitration On Behalf Of an Unnamed Person

Prior to the amendments, the Codes did not specifically address expungement requests made by a party named in a customer arbitration on behalf of an unnamed person (*i.e.*, on-behalf-of requests).<sup>22</sup> The amendments to Rule 12805 permit a party to the customer arbitration to file an on-behalf-of request (requesting party) during the customer arbitration that seeks to expunge customer dispute information associated with the customer’s statement of claim, provided the unnamed person consents in writing to the request and the request is eligible for arbitration under Rule 12805.<sup>23</sup> Filing an on-behalf-of request is permissive, not mandatory.<sup>24</sup>

If a named party files an on-behalf-of request, the named party must submit to the Director a signed Form Requesting Expungement on Behalf of an Unnamed Person (Form) together with the written request for expungement.<sup>25</sup> Rule 12805 does not

require that an on-behalf-of request be included in an answer or a separate pleading requesting expungement. However, the requesting party must file the request together with the Form, no later than 60 days before the first scheduled hearing.<sup>26</sup>

By filing an on-behalf-of request, the requesting party is agreeing to represent the unnamed person and the unnamed person's interests and to pursue the request for expungement on behalf of the unnamed person during the customer arbitration.<sup>27</sup> By signing the Form, the unnamed person is consenting to the filing of the on-behalf-of request and is agreeing to be bound by the terms of the Form and the panel's decision on the request.<sup>28</sup> In addition, by signing the Form, the unnamed person is acknowledging that (i) if the customer arbitration closes by award after a hearing, the unnamed person is barred from filing a request to expunge the same customer dispute information in any subsequent proceeding and (ii) if the requesting party withdraws or does not pursue the on-behalf-of request, the panel is required to deny the on-behalf-of request with prejudice.<sup>29</sup> The unnamed person's signature on the Form would serve as acknowledgement of these consequences.

In addition to the Form, an on-behalf-of request must include the same elements described above for a request for expungement by a named associated person during a customer arbitration.<sup>30</sup>

### 3. Deciding Expungement Requests Filed During Customer Arbitrations

The amendments to Rule 12805 specify whether a panel is required to decide an expungement request (whether filed by a named associated person or by a party on behalf of an unnamed person); specifically, whether the panel is required to decide an expungement request filed during a customer arbitration depends on how the customer arbitration closes: (1) by award after a hearing or (2) other than by award or by award without a hearing.

#### a. Panel Decides the Expungement Request if the Customer Arbitration Closes by Award after a Hearing

If a named associated person files an expungement request or a party files an on-behalf-of request during a customer arbitration, and the customer arbitration closes by award after a hearing, the panel must decide the expungement request during the customer arbitration in accordance with Rule 12805(c).<sup>31</sup> The panel's decision on the expungement request must be included in the same award as the decision on the customer arbitration.<sup>32</sup> If an expungement request is filed during the customer arbitration, the panel must decide the expungement request, even if the associated person or requesting party withdraws or fails to pursue the request, in which case, the panel shall deny the expungement request with prejudice.<sup>33</sup>

b. Panel Does Not Decide Expungement if the Customer Arbitration Closes Other than by Award or by Award without a Hearing

If, however, a named associated person files an expungement request or a party files an on-behalf-of request during the customer arbitration, and the customer arbitration closes other than by award or by award without a hearing, the panel from the customer arbitration shall not consider the expungement request.<sup>34</sup> Instead, the associated person may file a request for expungement of the customer dispute information as a straight-in request under Rule 13805 against the member firm at which the person was associated at the time the customer dispute arose, provided the straight-in request is not barred under Rule 13805(a)(2). A panel that is randomly selected from the Special Arbitrator Roster will decide the straight-in request.<sup>35</sup>

B. Expungement Requests During Simplified Customer Arbitrations Under Rule 12800

The amendments to Rule 12800 governing simplified customer arbitrations<sup>36</sup> establish procedures for requesting and deciding expungement requests in these types of arbitrations that are consistent with the expedited nature of the arbitrations.<sup>37</sup>

In a simplified customer arbitration, if a named associated person or party on behalf of an unnamed person does not submit a request for expungement, the associated person or unnamed person may file a straight-in request, provided the straight-in request is not barred under Rule 13805(a)(2). If, however, a named associated person or a requesting party submits a request for expungement in a simplified customer arbitration, the single arbitrator deciding the simplified customer arbitration must decide the expungement request, regardless of how the simplified customer arbitration closes.<sup>38</sup> The single arbitrator who is appointed from the public chairperson roster to decide a simplified customer arbitration must evidence successful completion of, and agreement with, enhanced expungement training provided by DRS prior to deciding any expungement request in a simplified customer arbitration.<sup>39</sup> Thus, the arbitrator must complete the same enhanced expungement training as the arbitrators on the Special Arbitrator Roster.<sup>40</sup>

1. Expungement Requests Filed by an Associated Person Named in a Simplified Customer Arbitration

If a named associated person files an expungement request during the simplified customer arbitration, the request must be included in an answer or a separate pleading requesting expungement.<sup>41</sup> If the associated person requests expungement in a separate pleading, the request must be filed within 30 days after the date FINRA

notifies the parties of the appointment of the arbitrator.<sup>42</sup> The written expungement request must include the same information as a request filed in a customer arbitration not administered as a simplified proceeding.<sup>43</sup>

## 2. Expungement Requests Filed by a Party Named in a Simplified Customer Arbitration On Behalf Of an Unnamed Person

The requirements for a party to file an on-behalf-of request during a simplified customer arbitration are the same as the requirements for a named associated person filing an expungement request during a simplified customer arbitration. As with a customer arbitration filed under Rule 12805(a)(2), a named party may only file an on-behalf-of request during a simplified customer arbitration with the written consent of the unnamed person evidenced by the requesting party's submission of the Form that is signed by the requesting party and the unnamed person.<sup>44</sup>

## 3. Deciding Expungement Requests during Simplified Customer Arbitrations

As noted above, if a named associated person or a party on behalf of an unnamed person files an expungement request during a simplified customer arbitration, the arbitrator must decide the expungement request, regardless of how the simplified customer arbitration closes (e.g., even if the simplified customer arbitration settles).<sup>45</sup> How and when the expungement request is decided depends on which option the customer selects to decide the simplified customer arbitration. In a simplified customer arbitration, the customer has the option of having the case decided in one of three ways: (1) without a hearing (referred to as "on the papers"), where the arbitrator decides the dispute on the pleadings or other materials; (2) in an "Option One" full hearing, in which prehearings and hearings on the merits take place pursuant to the regular provisions of the Customer Code; or (3) in an "Option Two" special proceeding, whereby the parties present their case in a hearing to the arbitrator in a compressed timeframe, so that the hearings last no longer than one day.<sup>46</sup> If an associated person or requesting party files and then withdraws or does not pursue the expungement request, the arbitrator must deny the request with prejudice.<sup>47</sup>

### a. No Hearing or Option Two Special Proceeding

If the customer opts not to have a hearing or chooses an "Option Two" special proceeding, the arbitrator must decide the customer's dispute first and issue an award.<sup>48</sup> After the arbitrator decides the customer's dispute, the arbitrator must hold a separate expungement hearing to decide the expungement request, and the arbitrator must issue a decision on the expungement request in a separate, subsequent award.<sup>49</sup>



#### b. Option One Hearing

If the customer chooses to have a full “Option One” hearing and the customer arbitration closes by award after a hearing, the arbitrator must decide the expungement request during the customer arbitration and include the decision on the expungement request in the same award as the decision on the customer’s dispute.<sup>50</sup> (This process is the same as deciding an expungement request during a customer arbitration not administered as a simplified proceeding that closes by award after a hearing, where the customer’s claim and expungement request are addressed during the customer arbitration.)

If the customer chooses to have a full “Option One” hearing and the simplified customer arbitration closes other than by award or by award without a hearing, the arbitrator must hold a separate expungement-only hearing to decide the expungement request and issue a separate award containing the decision on the expungement request.<sup>51</sup>

#### C. Straight-In Requests Under Rule 13805 and the Special Arbitrator Roster

An associated person may file a straight-in request under Rule 13805 if: (1) the associated person is named in a customer arbitration or a party submits an on-behalf-of request and the arbitration closes other than by award or by award without a hearing; (2) the associated person is the subject of a customer arbitration, but is not named in the arbitration and did not consent to an on-behalf-of request; or (3) the associated person was named in a simplified customer arbitration or was the subject of the simplified customer arbitration, but no expungement request was filed during the simplified customer arbitration.

##### 1. Filing a Straight-in Request Under Rule 13805

###### a. Applicability and Required Contents of Straight-in Requests

An associated person requesting expungement of customer dispute information as a straight-in request under the Industry Code must file a statement of claim in accordance with Rule 13302 against the member firm at which the person was associated at the time the customer dispute arose, provided the straight-in request is not barred under Rule 13805(a)(2).<sup>52</sup> The requirement that an associated person file a straight-in request against the member firm at which the person was associated at the time the customer dispute arose is intended to help ensure that there is a connection between the respondent firm and the subject matter of the expungement request. If the associated person does not name a respondent firm with the requisite connection, the Director is authorized to deny use of the DRS arbitration forum for the request.<sup>53</sup> If the associated person files and then withdraws or does not pursue the request for expungement, the panel shall deny the expungement request with prejudice.<sup>54</sup>

The required contents of a straight-in request are the same as those required for expungement requests filed in customer arbitrations under Rule 12805.<sup>55</sup>

#### b. General Limitations on Filing Straight-in Requests

The amendments limit when straight-in requests may be filed under the Industry Code. Specifically, Rule 13805(a)(2) provides that straight-in requests are ineligible for arbitration under the Industry Code, if:

- ▶ a panel held a hearing to consider the merits of the associated person's request for expungement of the same customer dispute information;
- ▶ a court of competent jurisdiction previously denied the associated person's request to expunge the same customer dispute information;
- ▶ the customer arbitration, civil litigation or customer complaint associated with the customer dispute information has not closed;
- ▶ a panel or court of competent jurisdiction previously found the associated person liable in a customer arbitration or civil litigation associated with the same customer dispute information;
- ▶ the customer dispute information involves the same conduct that is the basis of a final regulatory action taken by a securities regulator or SRO;<sup>56</sup> or
- ▶ the associated person is prohibited from seeking expungement because they did not request expungement in a customer arbitration in accordance with Rule 12805(a)(1)(A).<sup>57</sup>

#### c. Time Limitations Applicable to Filing Straight-in Requests

The amendments establish time limits for filing straight-in requests under the Industry Code that are tied to when a customer arbitration or civil litigation closes, or when a customer complaint is initially reported to CRD.

##### i. Time Limitations Associated with Customer Arbitrations or Civil Litigations Closed, and with Customer Complaints Initially Reported to CRD, After the Effective Date

If an associated person is seeking to expunge in a straight-in request customer dispute information associated with a customer arbitration or civil litigation, including any associated customer complaint disclosures, and the customer arbitration or civil litigation closes after the effective date of the amendments, the associated person must file the straight-in request within *two years* after the close of the customer arbitration or civil litigation.<sup>58</sup> If an associated person is seeking to expunge a customer complaint in a straight-in request when there is no customer

arbitration or civil litigation associated with the customer complaint, and the customer complaint was initially reported to CRD after the effective date of the amendments, the associated person must file the straight-in request within *three years* after the customer complaint was initially reported to CRD.<sup>59</sup>

ii. Time Limitations Associated with Customer Arbitrations or Civil Litigations Closed, and with Customer Complaints Initially Reported to CRD, On or Before the Effective Date

If an associated person is seeking to expunge in a straight-in request customer dispute information associated with a customer arbitration or civil litigation that closed on or before the effective date of the amendments, the associated person must file the straight-in request within *two years* after the effective date of the amendments.<sup>60</sup> If an associated person is seeking to expunge in a straight-in request customer dispute information associated with a customer complaint initially reported to CRD on or before the effective date of the amendments, the associated person must file the straight-in request within *three years* after the effective date of the amendments.<sup>61</sup>

These straight-in requests to expunge customer dispute information are also subject to the *six-year* eligibility requirement of Rule 13206(a), which provides that no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim.<sup>62</sup> This six-year eligibility rule applies to all arbitration claims, including those requesting expungement of customer dispute information.

2. Panel from the Special Arbitrator Roster Under Rule 13806

If an associated person requests expungement under Rule 13805, the amendments require that a three-person panel randomly selected from the Special Arbitrator Roster in accordance with Rule 13806 must hold an expungement hearing, decide the straight-in request and issue an award.<sup>63</sup>

To help ensure that arbitrators on the Special Arbitrator Roster have the qualifications and training to decide straight-in requests under the amendments, there are several requirements. They must:

- ▶ qualify as public arbitrators<sup>64</sup> who are eligible for the chairperson roster;<sup>65</sup>
- ▶ have evidenced successful completion of, and agreement with, enhanced expungement training provided by DRS;<sup>66</sup> and
- ▶ have served as an arbitrator through award on at least four customer arbitrations administered by FINRA or by another SRO in which a hearing was held.<sup>67</sup>

The list selection algorithm<sup>68</sup> will select randomly the three public arbitrators from the Special Arbitrator Roster to decide a straight-in request filed by an associated person.<sup>69</sup> The parties are not permitted to agree to fewer than three arbitrators.<sup>70</sup> The parties also are not permitted to strike any arbitrators selected by the list selection algorithm or stipulate to their removal, but the parties are permitted to challenge an arbitrator selected for cause.<sup>71</sup> If an arbitrator is removed, the list selection algorithm randomly selects a replacement.<sup>72</sup>

#### D. Requirements Relating to All Expungement Hearings

The amendments expand the expungement hearing requirements in Rules 12805 and 13805 and incorporate relevant provisions from the Guidance:

- ▶ a panel must hold one or more recorded hearing sessions regarding the expungement request;<sup>73</sup>
- ▶ the associated person whose information in CRD is the subject of the expungement request must appear in person or by video conference at the expungement hearing;<sup>74</sup>
- ▶ all customers whose customer arbitrations, civil litigations or customer complaints are the subject of an expungement request are entitled to have a representative attend and participate in all aspects of the expungement hearing;<sup>75</sup>
- ▶ the panel may request from the associated person, the party filing an on-behalf-of request and the member firm at which the person was associated at the time the customer dispute arose, as applicable, any documentary, testimonial or other evidence that the panel deems relevant to the expungement request;<sup>76</sup>
- ▶ the panel must review any settlement documents related to the customer dispute information that is the subject of the expungement request and consider the amount of payments made to any party and any other terms and conditions of the settlement;<sup>77</sup>
- ▶ the panel must agree unanimously<sup>78</sup> that one or more of the three narrow grounds for expungement enumerated in Rules 12805(c)(8)(A)(i) or 13805(c)(9)(A)(i), as applicable, has been established to issue an award containing expungement relief;<sup>79</sup>
- ▶ the panel must provide a written explanation of the reason(s) for its finding that one or more of the grounds for expungement identified in Rules 12805(c)(8)(A)(i) and 13805(c)(9)(A)(i) apply to the facts of the request, and identify any specific documentary, testimonial or other evidence on which the panel relied in awarding expungement relief;<sup>80</sup>

- ▶ the panel must not give any evidentiary weight to a decision by a customer (or an authorized representative of the state securities regulators (authorized representative) in the case of a straight-in request) not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate;<sup>81</sup> and
- ▶ the panel must assess against the party or parties requesting expungement all DRS arbitration forum fees for each hearing session in which the sole topic is the determination of the appropriateness of expungement.<sup>82</sup>

#### E. Notifications to Customers of Straight-in Requests

To help facilitate customer awareness of and participation in straight-in requests, the amendments require an associated person seeking expungement relief and the Director to provide notifications to customers.

Specifically, the amendments require that the associated person serve all customers whose customer arbitrations, civil litigations or customer complaints are the subject of the expungement request with a copy of the statement of claim requesting expungement and any answer within 10 days of filing.<sup>83</sup> The associated person must provide a current address for the customer,<sup>84</sup> or the expungement request will be considered deficient and will not be served.<sup>85</sup> The associated person must also file with the panel proof of service to the customers of the statement of claim filed by the associated person and any answers filed by a member firm, copies of all documents provided by the associated person to the customers and copies of all communications sent by the associated person to the customers and any responses received from the customers.<sup>86</sup>

Furthermore, the amendments require the Director to notify all customers whose customer arbitrations, civil litigations or customer complaints are the subject of the expungement request, of the time, date and place of any prehearing conferences and the expungement hearing.<sup>87</sup> The Director will also provide the notified customers with access to all documents that are relevant to the expungement request that are filed in (a) the straight-in request and (b) any prior customer arbitration brought by the customer that is a subject of the expungement request.<sup>88</sup> This provides the notified customer with access to documents surrounding the request for expungement prior to their attendance and participation in the expungement hearing.

#### F. Notifications to State Securities Regulators of Expungement Requests and their Attendance and Participation in Straight-In Requests

To help ensure that state securities regulators are timely notified of expungement requests, the amendments require the Director to notify state securities regulators,

in the manner determined by the Director in collaboration with state securities regulators, of an expungement request within 15 days of receiving an expungement request that includes all of the required elements.<sup>89</sup>

In addition, the amendments provide a mechanism for an authorized representative to provide the state securities regulators' position(s) on an expungement request made in a straight-in request in writing or by attending and participating in the expungement hearing in person or by video conference.<sup>90</sup> Including states securities regulators in straight-in requests provides states the opportunity to satisfy their regulatory obligations, while at the same time increasing the likelihood that the panel in a straight-in request hears evidence from multiple viewpoints, thereby allowing the panel to make informed decisions.

The Director will also provide state securities regulators with access to all documents relevant to (a) the straight-in request and (b) any prior customer arbitration brought under the Customer Code that is associated with the customer dispute information that is a subject of the straight-in request.<sup>91</sup>

If an authorized representative notifies the Director no later than 30 days after the last answer is due that the authorized representative intends to attend and participate in the expungement hearing, the Director will notify the authorized representative of the time, date and place of any prehearing conferences and the expungement hearing.<sup>92</sup> At the expungement hearing, the authorized representative may: (1) introduce documentary, testimonial, or other evidence; (2) cross-examine witnesses; and (3) present opening and closing arguments if the panel allows any party to present such arguments.<sup>93</sup> The other participants appearing at the expungement hearing could state objections to the authorized representative's evidence and cross-examine the authorized representative's witnesses.<sup>94</sup>

#### G. Director's Authority to Deny the Forum

The amendments explicitly authorize the Director to decline the use of the DRS arbitration forum to request expungement if an associated person files an expungement request that the Director determines is ineligible for arbitration under Rules 12805 and 13805.<sup>95</sup> The amendments also provide the Director with express authority to decline the use of the DRS arbitration forum if the Director determines that the expungement request was not filed under, or considered in, the arbitration forum in accordance with Rules 12805 or 13805.<sup>96</sup>

## Endnotes

- 1 The concept for CRD was developed by FINRA and the North American Securities Administrators Association (NASAA). CRD fulfills FINRA's statutory obligation to establish and maintain a system to collect and retain registration information set forth in Section 15A(i) of the Securities Exchange Act of 1934 (Exchange Act). NASAA and state securities regulators play a critical role in the ongoing development and implementation of CRD.
- 2 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).
- 3 FINRA, NASAA and state securities regulators developed Forms U4 and U5, and they were approved by the SEC. Any amendments to these uniform registration forms require collaboration with, and agreement between FINRA, NASAA and state securities regulators before being filed with the SEC for approval. Several questions on Forms U4 and U5 require associated persons to disclose certain investment-related, customer-initiated arbitrations, civil litigations or customer complaints which allege sales practice violations. See [Form U4, Question 14I](#) and [Form U5, Question 7E](#).
- 4 BrokerCheck fulfills FINRA's statutory obligation under Section 15A(i) of the Exchange Act to establish and maintain a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information on, among others, firms and their associated persons. A detailed description of the information can be found at [BrokerCheck](#).
- 5 As part of its statutory obligation, FINRA publishes on BrokerCheck extensive disclosure information, including customer dispute information for associated persons who are currently or were formerly registered with FINRA. Formerly registered associated persons, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors. Pursuant to FINRA rules, which are approved by the SEC, records for formerly registered associated persons are available in BrokerCheck for 10 years after an associated person leaves the brokerage industry, and records for formerly registered associated persons who were the subject of disciplinary actions and certain other disclosure events remain on BrokerCheck permanently.
- 6 See Rule 2080(a).
- 7 See Rule 2080(b)(1).
- 8 See Rules 12805(c)(8)(A)(i) and 13805(c)(9)(A)(i).
- 9 See Securities Exchange Act Release No. 95455 (August 9, 2022), 87 FR 50170, 50174 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-024) (Proposing Release) (discussing concerns with the current expungement process).
- 10 See Securities Exchange Act Release No. 97294 (April 12, 2023), 88 FR 24282 (April 19, 2023) (Order Approving File No. SR-FINRA-2022-024).

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- 11 Under the Codes, the term “panel” means the arbitration panel, whether it consists of one or more arbitrators. *See* Rules 12100(u) and 13100(s). Unless otherwise specified, this *Notice* uses the term “panel” to mean either a panel or single arbitrator.
- 12 *See* Rule 12805(a)(1)(B).
- 13 *See* Rule 12203(b).
- 14 *See* Rule 12805(a)(1)(A). The customer dispute information associated with a customer’s statement of claim would include a written customer complaint or civil litigation brought by the same customer that addresses the same allegations.
- 15 *See* Rule 12805(a)(1)(A).
- 16 *See* Rule 12805(a)(1)(C)(i). Rules 12100(x) and 13100(v) define a “separate document requesting expungement” as a pleading under the Codes.
- 17 *See* Rule 12303(a) and (b).
- 18 *See* Rule 12805(a)(1)(C)(i).
- 19 *See* Rule 12805(a)(1)(C)(i). Pursuant to Rule 12503, if an associated person files a motion seeking an extension of the 60-day deadline, the opposing parties may state objections to extending the deadline, and the panel would decide the motion.
- 20 *See* Rule 12805(a)(1)(C)(ii)a. through e. To comply with the requirement that the request for expungement include an explanation of whether expungement of the same customer dispute information was (i) previously requested and, if so, (ii) how it was decided, the associated person should include any arbitration award or court order denying expungement of the same customer dispute information, and, if applicable, any court order modifying, vacating or otherwise setting aside an arbitration award of the same customer dispute information.
- 21 *See* Rules 12307(a)(8) through (11) and 12805(a)(1)(C)(ii).
- 22 The amendments define an unnamed person as “an associated person, including a formerly associated person, who is identified in a Form U4, Form U5, or Form U6, as having been the subject of an investment-related, customer-initiated arbitration claim that alleged that the associated person or formerly associated person was involved in one or more sales practice violations, but who is not named as a respondent in the arbitration.” *See* Rule 12100(ff).
- 23 *See* Rule 12805(a)(2)(A) and (B).
- 24 *See* Rule 12805(a)(2)(A). If a party to the customer arbitration does not request expungement on behalf of the unnamed person, the unnamed person is prohibited from intervening in the customer arbitration to request expungement. *See* Rule 12805(a)(2)(E)(iii)a. The unnamed person may, however, file the request for expungement of the customer dispute information as a new claim under Rule 13805 against the member firm at which the person was associated at the time the customer dispute arose. *See* Rule 12805(a)(2)(E)(iii)b. Provided that the request for expungement is not barred, a panel from the Special Arbitrator Roster would decide the request for expungement after the customer arbitration has closed. *See* Rule 13805(a)(2)(A)(iii).
- 25 *See* Rule 12805(a)(2)(C)(i) and (ii); *see also* Attachment C. The unnamed person whose CRD record would be expunged and the party requesting expungement on the unnamed person’s behalf must sign the Form.
- 26 *See* Rule 12805(a)(2)(C)(iii).



- 27 See Rule 12805(a)(2)(D)(iii).
- 28 See Rule 12805(a)(2)(D)(i). By signing the Form, the unnamed person is also agreeing to maintain the confidentiality of documents and information from the customer arbitration to which the unnamed person may be given access and to adhere to any confidentiality agreements or orders associated with the customer arbitration. See Rule 12805(a)(2)(D)(ii). A breach of this provision by the unnamed person could potentially subject the unnamed person to a claim for damages by an aggrieved party.
- 29 See Rule 12805(a)(2)(E)(i).
- 30 See Rules 12805(a)(1)(C)(ii) and 12805(a)(2)(C)(i); see also *supra* Section III.A.1.b (Required Contents of an Expungement Request).
- 31 See Rules 12805(a)(1)(D)(i) and 12805(a)(2)(E)(i).
- 32 See Rules 12805(a)(1)(D)(i) and 12805(a)(2)(E)(i).
- 33 See Rules 12805(a)(1)(D)(i) and 12805(a)(2)(E)(i).
- 34 See Rules 12805(a)(1)(D)(ii)a. and 12805(a)(2)(E)(ii) a.
- 35 See Rules 12805(a)(1)(D)(ii)b. and 12805(a)(2)(E)(ii) b.
- 36 Simplified customer arbitrations are arbitrations involving \$50,000 or less.
- 37 See Rule 12800(d) and (e). Rule 12800 provides customers with expedited procedures to make the DRS arbitration forum economically feasible for these smaller claims. Simplified customer arbitrations are decided on the pleadings and other materials submitted by the parties, unless the customer requests a hearing. Further, a single arbitrator from the public chairperson roster is appointed to decide simplified customer arbitrations, unless the parties agree in writing otherwise. For ease of reference, when discussing expungement requests in simplified customer arbitrations, this *Notice* uses the term “arbitrator,” unless otherwise specified, to mean either a panel or single arbitrator.
- An associated person may not seek expungement in a simplified customer arbitration administered under Rule 13800 under the Industry Code. See Proposing Release, *supra* note 9 at 50186 n. 189.
- 38 See Rules 12800(d)(1)(B)(ii) and 12800(e)(1).
- 39 See [FINRA DRS Arbitrator Training](#).
- 40 See Rule 12800(b); see also *supra* note 39; *infra* Section III.C.2. (Panel from the Special Arbitrator Roster Under Rule 13806).
- 41 See Rule 12800(d)(1)(B)(i). A respondent’s answer must be submitted within 45 days of receipt of the statement of claim.
- 42 See Rule 12800(d)(1)(B)(i). When FINRA notifies the parties that an arbitrator has been appointed, FINRA informs the parties that they have 30 days from the date of notification to submit additional documents or other information before the case is submitted to the arbitrator.
- 43 See Rules 12800(d)(1)(B)(i) and 12805(a)(1)(C)(ii); see also *supra* Section III.A.1.b. (Required Contents of an Expungement Request).
- 44 See Rule 12800(d)(2). The request must also meet the same requirements as an on-behalf-of request filed under Rule 12805(a)(2). See Rules 12805(a)(1)(C)(ii), 12805(a)(2)(C)(ii) and 12805(a)(2)(D); see also *supra* Section III.A.1.b. (Required Contents of an Expungement Request).
- 45 See Rule 12800(e)(1).

- 46 See Rule 12800(c).
- 47 See Rule 12800(d)(1)(C).
- 48 See Rule 12800(e)(1)(A).
- 49 See Rule 12800(e)(1)(A). The arbitrator must conduct the expungement hearing pursuant to Rule 12805(c). The expungement award must meet the requirements of Rule 12805(c)(8), and the DRS arbitration forum fees will be assessed pursuant to Rule 12805(c)(9).
- 50 See Rule 12800(e)(1)(B)(i).
- 51 See Rule 12800(e)(1)(B)(ii).
- 52 See Rule 13805(a)(1). An associated person is prohibited from filing a straight-in request for expungement of customer dispute information against a customer as a new claim that is separate from the customer arbitration. See Rule 12805(a)(3).
- 53 See Rule 13203(b); see also Proposing Release, *supra* note 9 at 50179.
- 54 See Rule 13805(a)(4).
- 55 See Rule 13805(a)(3); see also *supra* Section III.A.1.b. (Required Contents of an Expungement Request).
- 56 A “final regulatory action” includes any final action, including any action that is on appeal, by a securities regulator or SRO. See Rule 8312(c); see also [Regulatory Notice 09-66](#) (November 2009) (noting that “actions that are delineated in current Form U4 Questions 14C, 14D or 14E will be considered ‘final regulatory actions.’ Similarly, actions that are detailed in current Form U5 Question 7D, and have a status of ‘final’ or ‘on appeal,’ will be considered ‘final regulatory actions’ as such actions are also addressed in Form U4.”). For example, a Letter of Acceptance, Waiver, and Consent and an accepted Offer of Settlement are two examples, among others, of final regulatory actions taken by FINRA. See Rule 9216(a)(4) and Rule 9270(g). A “final regulatory action” may also include a final action reported by a regulator on Form U6. See *Regulatory Notice 09-66* (November 2009). For purposes of Rule 13805, a “final regulatory action” does not include a final action by a securities regulator or SRO that is dismissed, vacated or withdrawn.
- 57 See Rule 13805(a)(2).
- 58 See Rule 13805(a)(2)(A)(vi).
- 59 See Rule 13805(a)(2)(A)(vii).
- 60 See Rule 13805(a)(2)(B)(i).
- 61 See Rule 13805(a)(2)(B)(ii).
- 62 See Rules 12203(a) and 13203(a); see also Rules 12206(a) and 13206(a). The issue of eligibility may be raised in a motion by the parties or *sua sponte* by the arbitrators. See *Horst v. FINRA, slip op.*, No. A-18-777960-C (Nev. Dist. Ct. Oct. 25, 2018) (Order Denying Motion to Vacate Arbitration Award). In addition, Rules 12409 and 13413 provide that the arbitrators have the authority to interpret and determine the applicability of all provisions under the Codes. Thus, the decision of whether to dismiss a claim pursuant to this six-year eligibility rule is within the sole discretion of the panel. See *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 85-86 (2002) (finding that an arbitrator properly decides issues of eligibility). Such interpretations and decisions are final and binding upon the parties.
- 63 See Rule 13805(a)(4).
- 64 Among other requirements, public arbitrators are not employed in the securities industry and do not devote 20 percent or more of their professional work to the securities industry or

- to parties in disputes concerning investment accounts or transactions or employment relationships within the financial industry. See Rules 12100(aa) and 13100(x).
- 65 See Rule 13806(b). Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by FINRA and: (1) have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least one arbitration administered by an SRO in which hearings were held; or (2) have served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held. Public arbitrators who are eligible for the chairperson roster would include those arbitrators who have met the chairperson eligibility requirements of Rules 12400(c) or 13400(c), regardless of whether they have already served as a chair on an arbitration case.
- 66 See Rule 13806(b)(2)(A); see also *supra* note 39.
- 67 See Rule 13806(b)(2)(B). This requirement will not be satisfied by serving on arbitrations administered under the special proceeding option of the simplified arbitration rules. See Rule 12800(c)(3)(B).
- 68 FINRA uses a list selection algorithm that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators. See Rule 13400(a); see also Rule 12400(a).
- 69 See Rule 13806(b)(1). The first arbitrator selected will be the chair of the panel.
- 70 See Rule 13806(b)(5). The parties also are not permitted to stipulate to the use of pre-selected arbitrators (*i.e.*, arbitrators that the parties find on their own to use in their cases). See Rule 13806(b)(1).
- 71 See Rule 13806(b)(4). Specifically, the Codes provide that before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative. See Rule 13410(a).
- 72 See Rule 13806(b)(4).
- 73 See Rules 12805(c)(1) and 13805(c)(1).
- 74 See Rules 12805(c)(2) and 13805(c)(2). The panel will determine the method of appearance for the associated person. In addition, when a party files an on-behalf-of request during a customer arbitration, the requesting party or the party's representative is also required to appear in person or by video conference at the hearing, as determined by the panel. See Rule 12805(c)(2).
- 75 See Rules 12805(c)(3)(A), 12805(c)(4), 12800(f)(2), 13805(c)(3)(A) and 13805(c)(4). Customers can choose to attend and participate by telephone, in person or by video conference. Customers also have the option to provide their position on the expungement request in writing. In addition, all customers whose customer arbitrations, civil litigations or customer complaints are a subject of the expungement request are entitled to attend and participate in all aspects of any prehearing conferences held for straight-in requests. See Rule 13805(c)(3). For a list of ways in which customers can attend and participate in expungement hearings, see Rules 12805(c)(5)(A)-(D) and 13805(c)(5)(A)-(D).
- 76 See Rules 12805(c)(6) and 13805(c)(7). FINRA also continues to encourage arbitrators to request a current copy of the associated person's BrokerCheck report, paying particular attention to the "Disclosure Events" section of the report. It is an essential part of the arbitrator's role when determining whether expungement

is appropriate to consider the expungement request in the context of the associated person's entire securities industry record. An associated person's securities industry record may include disclosure events related to regulatory actions, investigations, criminal matters, and any other registration information that might be relevant to the expungement request.

- 77 See Rules 12805(c)(7) and 13805(c)(8). The panel must review settlement documents that are related to the customer dispute information that is the subject of the expungement request, regardless of whether the associated person was a party to the settlement. The amendments require the panel to inquire and fully consider whether a party conditioned a settlement of a customer's dispute upon any agreement, written or otherwise, not to oppose the request for expungement in cases in which the customer does not participate in the expungement hearing or the requesting party states that a customer has indicated that the customer will not oppose the expungement request. These types of conditioned settlements violate Rule 2081 and may be grounds to deny an expungement request. See Rules 12805(c)(7), 13805(c)(8) and 2081; see also [Prohibited Conditions Relating to Expungement of Customer Dispute Information FAQ](#).
- 78 The unanimity requirement does not apply when deciding a customer's dispute; a majority decision of the arbitrators will continue to be sufficient.
- 79 See Rules 12805(c)(8)(A)(i) and 13805(c)(9)(A)(i). The three grounds are that (i) the claim, allegation or information is factually impossible or clearly erroneous; (ii) the associated person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (iii) the claim, allegation or information is false. The amendments provide that the Director shall not serve an award containing expungement relief based on grounds other than those specified in Rules 12805(c)(8)(A)(i) or 13805(c)(9)(A)(i).
- 80 See Rules 12805(c)(8)(B) and 13805(c)(9)(B). The panel's explanation must be complete and not solely a recitation of one of the Rule 12805(c)(8)(A)(i) or 13805(c)(9)(A)(i) grounds or language provided in the expungement request.
- 81 See Rules 12805(c)(8)(C) and 13805(c)(9)(C).
- 82 See Rules 12805(c)(9) and 13805(c)(10).
- 83 See Rule 13805(b)(1)(A)(ii). The panel is authorized to decide whether extraordinary circumstances exist that make service on the customers impracticable. See Rule 13805(b)(1)(A)(i).
- 84 See Rule 13805(b)(1)(B)(i).
- 85 See Rule 13307(a)(7).
- 86 See Rule 13805(b)(1)(A)(iv).
- 87 See Rule 13805(b)(1)(B)(i). Notice to customers is not necessary for requests filed under Rules 12800 or 12805 of the Customer Code as the customer will be a named party. However, the Director will notify all customers from a simplified customer arbitration of a separate expungement-only hearing. The Director's notice serves as a reminder of the expungement request and provides the customers with timely notice of the expungement hearing so that the customers and their representatives may plan to attend and participate if they choose. See Rule 12800(f)(2).

- 88 See Rule 13805(b)(1)(B)(ii). DRS will provide customers with access to the documents through the DR Portal. See FINRA DRS, [DR Portal](#).
- 89 See Rules 12800(f)(1), 12805(b) and 13805(b)(2)(A).
- 90 See Rule 13805(c)(6)(A).
- 91 See Rule 13805(b)(2)(B). The state securities regulators' access to the documents will be subject to confidentiality restrictions. Outside of the process provided in the rules for straight-in requests, state securities regulators can continue to seek access to documents filed in the DRS arbitration forum pursuant to their separate authority.
- 92 See Rule 13805(b)(3).
- 93 See Rule 13805(c)(6)(B).
- 94 See Rule 13805(c)(6)(C). The authorized representative will not be considered a party to the proceeding and their attendance and participation is limited to what is authorized by Rule 13805(c)(6). As such, an authorized representative is not entitled to seek discovery from the parties through the DRS arbitration forum, file motions, or seek to postpone a hearing. In addition, the panel may not allow the attendance or participation of the authorized representative to materially delay the scheduling of the expungement hearing.
- 95 See Rules 12203(b) and 13203(b).
- 96 See Rules 12203(c) and 13203(c).