

FINRA Dispute Resolution Expungement



Dispute Resolution



Version: May 2015

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 and a half hours.

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:

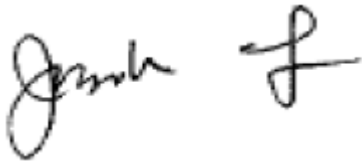
By Fax: FINRA Department of Neutral Management – FAX # 646-625-6028.

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,

A handwritten signature in black ink, appearing to read "Jisook Lee". The signature is written in a cursive, flowing style.

Jisook Lee

FINRA Dispute Resolution Expungement

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Additional Notice

FINRA Dispute Resolution attempts to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding concerning a rule in the Customer or Industry Code of Arbitration Procedure, the rule language prevails.

Course Objectives

FINRA developed the expungement course as part of its required Basic Arbitrator Training Program. This course will:

- explain the Central Registration Depository (CRD[®]) and its role in protecting the investing public;
- discuss the expungement process and the specific findings that arbitrators must make for FINRA to waive its right to oppose the expungement request in court;
- review the requirements for awards containing recommendations for expungement and the types of disclosures that cannot be expunged through the arbitration process; and
- clarify the distinction between expungement requests for customer dispute information and expungement requests in intra-industry cases.

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 website](http://www.finra.org).

[FINRA's website](http://www.finra.org): - www.finra.org

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Course Home

You must review each section to complete the course. Click the link beside the section title to begin that section.

Section 1: Central Registration Depository

Section 2: Expungement Rules

Section 3: Description of FINRA Rules 2080, 2081, 12805 and 13805

Section 4: Awards and Expungements

Section 5: Conclusion

Section 1: Central Registration Depository

The Central Registration Depository (CRD®) is an online registration and licensing system that contains administrative and disclosure information about registered securities firms and brokers. 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.

The CRD system is used by members of the securities industry, state and federal regulators and self-regulatory organizations (SROs). FINRA works with NASAA, the Securities and Exchange Commission (SEC), other members of the regulatory community and brokerage firms to ensure that information in the CRD system is accurate and complete.

The CRD system has several important uses:

- Investors rely on CRD information, most of which is available to them through [FINRA BrokerCheck®](#) (as described below), when making decisions about whether to do business with a particular broker or brokerage firm.
- Regulators use CRD to fulfill their regulatory responsibilities.
- Regulators also use the CRD system as a regulatory tool (e.g., to help identify trends or potential threats to investor protection).
- Brokerage firms rely on CRD when making hiring decisions.

[FINRA BrokerCheck®](#)

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

FINRA BrokerCheck

Although public investors cannot access the CRD system, most of the information submitted to CRD is made publicly available through [BrokerCheck](#). BrokerCheck is a free online tool that helps investors research the professional backgrounds, business practices and conduct of current and former FINRA registered securities firms and brokers.

Information provided through BrokerCheck 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/>

Reporting Requirements

In general, the information on the CRD system is submitted by registered securities firms and regulatory authorities in response to questions on the [Uniform Registration Forms](#). These forms are designed to elicit and collect administrative and disclosure information that is relevant to regulators in connection with their licensing and enforcement activities.

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The relevant uniform registration forms for this training are Form U4, Form U5 and Form U6. [Form U4](#) (the Uniform Application for Securities Industry Registration or Transfer) and [Form U5](#) (the Uniform Termination Notice for Securities Industry Registration) elicit information about brokers and are submitted by securities firms. The CRD system also contains information filed by regulators (typically relating to actions taken by that regulator) on Form U6 (Uniform Disciplinary Action Reporting Form).

Securities firms and regulatory authorities may report a variety of disclosure events to the CRD system, including civil judicial actions, criminal matters, customer disputes (customer complaints, arbitrations and court actions), employment terminations, internal reviews (*i.e.*, a review of a broker's conduct by his or her former firm), investigations, financial matters and regulatory actions.

At times, brokers may seek to expunge or delete one or more of these disclosure events from their CRD records through the arbitration process. In this training we will focus on the expungement process for brokers who seek to expunge customer dispute information from their CRD records through the arbitration process under Rules 2080, 2081, 12805 and 13805.

[Uniform Registration Forms](#)

<http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235>

[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>

Test Yourself

CRD stands for:

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

Question Feedback

CRD stands for the Central Registration Depository.

Test Yourself

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

- True
- False

Question Feedback

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

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Test Yourself

The information available to investors through FINRA BrokerCheck is based on the information in CRD.

- True
- False

Question Feedback

True. Information made available to investors through FINRA BrokerCheck is derived from the CRD system as reported on the uniform registration forms. Information that is expunged from the CRD is no longer available to the investing public, regulators or prospective broker-dealer employers. For this reason, arbitrators should recommend expungement of customer dispute information only when it has no meaningful investor protection or regulatory value.

Section 2: Expungement Rules

What Is Expungement?

Brokers who seek to expunge disclosure events from their CRD records generally look to remove a customer dispute, employment termination or internal review. For example, when a broker is named as a respondent in, or is the subject of, a customer-initiated arbitration proceeding, that event must be reported on the broker's Form U4. Once the event is reported, it is recorded on the broker's CRD record. To protect the broker's reputation, brokers may seek to have any reference to the arbitration removed from their CRD record. The process of permanently removing this information is known as "expungement."

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

Role of Arbitrators in Expungement Cases

Arbitrators have a unique, distinct role when deciding whether to recommend expungement of customer dispute information from a broker's CRD record. Customer dispute information includes allegations of misconduct made by customers against brokers in complaints, arbitrations and court actions. In making these determinations, arbitrators must consider the importance of maintaining the integrity of the information in the CRD system.

Given their significant role, arbitrators should ensure they have all the information necessary to make an informed and appropriate recommendation on expungement. Arbitrators should request any documentary or other evidence they believe is relevant to the expungement request. This is particularly important in cases that settle before an evidentiary hearing or in cases where only the party requesting expungement participates in the expungement hearing.

Expungement Rule 2080: Grounds for Expungement

FINRA rules provide a framework for arbitrators to follow when considering requests to expunge customer dispute information. The framework is intended to ensure that arbitrators recommend expungement only when the information is found to have no meaningful investor protection or regulatory value.

In 2004, FINRA developed [Rule 2080](#) (previously Rule 2130) to establish procedures for securities firms and brokers to obtain expungement of customer dispute information from the CRD system. Rule 2080 is a FINRA conduct rule and thus is not set out in FINRA's Customer or Industry Codes of Arbitration Procedure (Customer Code or Industry Code).

The procedures are intended to ensure that expungement occurs only after the arbitrators find and document one of the narrow grounds specified in Rule 2080:

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

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Before recommending expungement of customer dispute information under Rule 2080, the arbitrators must indicate in the arbitration award which of the Rule 2080 grounds for expungement serves as the basis for expungement. If the award does not contain this information, parties must name FINRA as a party in any court proceeding seeking or confirming expungement relief. FINRA will expunge customer dispute information from CRD only by court order pursuant to Rule 2080(a). If the arbitrators recommend expungement based on the specific findings described in Rule 2080, FINRA may waive its right to be named as a party to the judicial expungement proceeding, thus waiving its right to oppose the request.

Please also see the SEC's [approval order](#) related to Rule 2080.

[SEC approval order](#)

<http://www.finra.org/Industry/Regulation/RuleFilings/2002/P001160>

[Rule 2080](#)

<http://www.finra.org/finramanual/rules/r2080>

Rule 2081: Prohibited Conditions Relating to Expungement

Effective July 30, 2014, FINRA [Rule 2081](#) prohibits firms and registered representatives from conditioning settlement of a customer dispute on—or otherwise compensating a customer for—the customer's agreement to consent to, or not to oppose, the firm's or representative's request to expunge such information from CRD. Arbitrators must be aware of the new rule when they conduct expungement hearings.

Please see [Regulatory Notice 14-31](#).

[Regulatory Notice 14-31](#)

<http://www.finra.org/Industry/Regulation/Notices/2014/P565275>

[Rule 2081](#)

<http://www.finra.org/finramanual/rules/r2081>

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

In 2009, FINRA adopted Rules [12805](#) and [13805](#) to establish procedures that arbitrators must follow before recommending expungement of customer dispute information under Rule 2080. The following rules apply to all expungement orders issued on or after January 26, 2009.

Before ruling on requests to recommend expungement of customer dispute information under Rule 2080, the panel must complete the following:

1. Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This requirement also 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 the settlement.

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3. Indicate in the arbitration award which of the Rule 2080 grounds for expungement serves as the basis for recommending expungement and provide a brief written explanation of the reasons for the panel's finding.
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.

As previously stated, expungement of customer dispute information from the CRD system under any circumstances is an extraordinary remedy and should be recommended only when the information to be expunged has no meaningful investor protection or regulatory value. FINRA believes that the criteria under Rule 2080 and the procedures outlined in Rules 12805 and 13805 meet this standard and add transparency to the process. We will go through Rules 2080, 2081, 12805 and 13805 in more detail in the next section.

[Rule 12805](http://www.finra.org/finramanual/rules/r12805)

<http://www.finra.org/finramanual/rules/r12805>

[Rule 13805](http://www.finra.org/finramanual/rules/r13805)

<http://www.finra.org/finramanual/rules/r13805>

Customer Dispute Information

The standards for expungement under Rules [2080](#), [2081](#), [12805](#) and [13805](#) apply only to cases that involve customer dispute information. Generally, these cases involve customers who have brought claims, including allegations of misconduct, against brokers and securities firms.

Occasionally, a broker may be the subject of an arbitration claim but not named as a party in the arbitration; however, the arbitration would still be reported on the broker's CRD record. In these instances, a party involved in the arbitration case may file an expungement claim during the arbitration proceeding on behalf of the unnamed broker. Unnamed brokers may also file a separate arbitration claim on their own seeking expungement. If arbitrators choose to recommend expungement under these circumstances, they must still find and document one of the narrow grounds under Rule 2080 and satisfy the procedural requirements under Rules 12805 and 13805 for FINRA to waive its right to be named as a party in the judicial expungement proceeding. If the unnamed broker did not testify during the arbitration, arbitrators may need to seek testimony and documentary evidence from the unnamed broker during the recorded expungement hearing before ruling on the expungement request.

Rules 2080, 2081, 12805 and 13805 do not apply to expungement requests in arbitration cases between industry parties (between individual brokers and securities firms or between firms) based on the defamatory nature of the information. CRD will continue to honor these types of expungements without a court order. Expungement requests in intra-industry cases will be discussed later in the training.

Test Yourself

Rule 2080 does not require a court of competent jurisdiction to confirm the arbitrators' arbitration award containing a recommendation for expungement.

- True
- False

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Question Feedback

False. Securities firms and brokers seeking to expunge information from CRD arising from disputes with customers must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing a recommendation for expungement.

Test Yourself

Arbitrators must satisfy either the criteria under Rule 2080, or the procedural requirements under Rules 12805 and 13805, before recommending expungement in an arbitration award.

- True
- False

Question Feedback

False. Arbitrators should be guided by FINRA Rule 2080 and recommend expungement only after making an affirmative finding of one of its grounds and only after following the procedures under Rules 12805 and 13805.

Section 3: Description of FINRA Rules 2080, 2081, 12805 and 13805

Rule 2080

When recommending expungement of customer dispute information, arbitrators must indicate in the award which of the grounds under [Rule 2080](#) serves as the basis for expungement. For example, if the broker was not handling the customer's account at the time of the dispute and no liability was found, it may be reasonable for arbitrators to recommend expungement based on a finding that the claim is factually impossible or clearly erroneous. However, if the arbitrators found that the broker was liable for making unsuitable recommendations and awarded the claimant monetary damages, expungement would not be appropriate. These findings would not satisfy any of the three grounds under Rule 2080.

Let's explore Rule 2080(b) more closely.

Rule 2080(b)(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....

Amplification: *The "factually impossible or clearly erroneous" standard has clear meaning to regulators and public investors. For example, if the evidence shows that the broker was not even employed by the securities 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 recommend expungement of any mention of the claim from the CRD record under this standard.*

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

Amplification: *The above standard would require an affirmative arbitral or judicial finding that the broker was not involved in any of the activities listed above. This list of activities is taken from Question 14 of 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 keeping the reported claim on an individual's CRD record.*

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

Amplification: *This basis for expungement 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 broker or securities firm. For example, if the customer alleged that the broker made unauthorized trades and the broker provided evidence contrary to this claim, such as a document signed by the customer directing the trades, arbitrators could find that the claim or allegation was false.*

[Rule 2080](#)

<http://www.finra.org/finramanual/rules/r2080>

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Rule 2081

In 2014, FINRA developed [Rule 2081](#), which provides that no firm or registered representative shall condition or seek to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the firm's or registered representative's request to expunge such customer dispute information from the CRD system.

The completeness of information in CRD, including accurate customer dispute information is critical for the protection of investors and effective regulatory oversight. In the context of settlement or other negotiations, the aggrieved customer's individual interests in compensation or other remedies may dominate, without due consideration for the effect of expungement on the public or regulatory interests. Rule 2081 removes the ability of parties to a customer arbitration to bargain for expungement relief as part of a settlement negotiation. Thus, the rule helps ensure that negotiated customer consents or agreements not to oppose do not influence the arbitral decision to recommend expungement. This prohibition will enhance the integrity of information in CRD to the benefit of the investing public and regulators.

[Rule 2081](#)

<http://www.finra.org/finramanual/rules/r2081>

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

When considering expungement under Rule 2080, arbitrators must follow the procedures under Rules 12805 and 13805. These rules are designed to ensure that arbitrators:

- have the opportunity to consider the facts that support or weigh against a decision to recommend expungement; and
- recommend expungement only when they find and document one of the narrow grounds specified in Rule 2080.

Hold a Recorded Hearing

Rules 12805(a) and 13805(a) require arbitrators to hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. Even if the claimant does not object to the expungement, arbitrators must hold a hearing before deciding the expungement issue. The expungement issue can effectively be heard during the hearing on the merits. If a hearing on the merits was not held, arbitrators must convene a hearing on the record to specifically address expungement. The broker or firm requesting expungement must demonstrate to the arbitrators that the facts provide a basis for expungement under one of the grounds in Rule 2080.

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

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

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Settled cases involving expungement requests present unique challenges. Investors often stipulate to the expungement request or declare that they are not opposed to expungement and rarely attend the required expungement hearing. When the investor does not attend the hearing, arbitrators will hear only the position of the party requesting expungement. Typically, because the case has settled, there has been no hearing on the merits and, thus, no testimony or documentary evidence presented before the parties reach settlement.

Even if the opposing party does not appear at the expungement hearing, the party seeking expungement must still demonstrate to the arbitrators that expungement would be appropriate under one of the grounds in Rule 2080. The panel should not rely on the fact that the claimant did not appear at the expungement hearing as a factor weighing in favor of or against recommending expungement. In the absence of an opposing party, arbitrators should ask questions of the broker or firm and request any other evidence they believe is relevant to the expungement request.

In fact, the [AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes](#) (Code of Ethics) permits arbitrators to ask questions, call witnesses and request documents or other evidence, including expert testimony, when the arbitrators determine that more information is required to decide the case. In these situations, FINRA recommends the following:

- Arbitrators may request any documentary or other evidence they believe is relevant to the expungement request, particularly in cases that settle without an evidentiary hearing or in cases where only the requesting party participates in the expungement hearing.
- Arbitrators may require the testimony of additional witnesses when necessary to make an informed decision on the expungement request.
- In settled cases, arbitrators may request an in-person expungement hearing, as opposed to a telephonic hearing, to best evaluate the credibility of testimony and evidence offered in support of or against expungement.

Review Settlement Documents

Rules 12805(b) and 13805(b) 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 brokerage firm or broker's involvement in the alleged misconduct before recommending expungement.

To make sure that a recommendation for expungement comports with one of the grounds under Rule 2080 and is recommended only under appropriate circumstances, arbitrators must critically evaluate the settlement and determine whether it raises any concerns. Particularly, arbitrators should question whether expungement is appropriate in situations where the broker, or the firm, has agreed to pay a large monetary settlement—a settlement amount beyond a nuisance value. Arbitrators should evaluate this fact and consider whether a financial settlement raises questions about some culpability on the part of the broker or firm. If arbitrators nevertheless recommend expungement, they should explain in their written rationale why expungement is still appropriate despite a large settlement.

Arbitrators should also inquire and fully consider whether a party conditioned a settlement of arbitration upon agreement not to oppose the request for expungement. This is particularly important in cases where the investor does not participate in the expungement hearing or the requesting party indicates that the investor does not oppose the expungement request.

Effective July 30, 2014, FINRA Rule 2081 prohibits firms and registered representatives from conditioning settlement of a customer dispute on—or otherwise compensating a customer for—the customer's agreement to consent to, or not to oppose, the firm's or representative's request to expunge such information from CRD. This prohibition applies to written and oral agreements and to agreements entered into during the course of settlement negotiations, as well as to any agreement entered into, separate from such negotiations. The rule also precludes such agreements even if the customer offers

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not to oppose expungement as part of negotiating a settlement agreement, and applies to any settlements involving customer disputes, not only to those related to arbitration claims. In addition, Rule 2081 precludes the firm or broker, following settlement of the underlying customer dispute, from compensating the customer in return for not opposing the expungement request.

A stipulated award that contains a prohibited condition casts doubt on the integrity of the process. Arbitrators should not accept a stipulated award that contains documentation of an offer that would violate Rule 2081. Arbitrators who learn of such prohibited conditions should review FINRA's information relating to [Disciplinary Referrals](#).

Although arbitrators must make an affirmative finding under Rule 2080 before recommending expungement, they do not need to make findings on other matters that have been settled by the parties and incorporated into a stipulated award. 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 review when ruling on expungement requests.

Rules 2080, 12805 and 13805 are not intended to have a chilling effect on the settlement process, or interfere with the authority of arbitrators to award appropriate remedies. However, as we state in the [Rule 2080 \(previously Rule 2130\) filing](#), expungement is an extraordinary remedy; therefore, the additional safeguards and procedures provided in the expungement rules allow arbitrators as fact finders to consider all competing interests before recommending expungement of customer dispute information from the CRD system. Rule 2080 also allows FINRA to challenge recommendations for expungement that might impair the integrity of the system.

BrokerCheck Report

Although it is not required under Rules 12805 and 13805, arbitrators should ask the broker seeking expungement (or the party seeking expungement on behalf of the broker) to provide a current copy of the broker's BrokerCheck report. Arbitrators should review the information on the report that the broker is seeking to expunge. Arbitrators should also pay attention to the "Disclosure Events" section when considering whether expungement is appropriate. This section shows the broker's additional disclosures, if any, that arbitrators should consider before recommending expungement. Specifically, this section shows all regulatory actions, civil judicial actions, investigation disclosures, customer complaints, criminal matters, financial matters and arbitrations and court actions in which a broker has been involved. For example, a disclosure event may include regulatory information that may be relevant to the matter that is the subject of the expungement request. In such cases, arbitrators should consider the regulatory information when determining whether an expungement recommendation is appropriate. Reviewing the report allows arbitrators to consider the expungement request in the context of the broker's entire securities industry employment record. Additionally, arbitrators should ask whether the broker has other pending expungement requests. If a broker is requesting expungement in more than one case, arbitrators should consider the circumstances under which multiple requests are being made. This may be a factor in their decision to recommend expungement.

Provide a Brief Written Explanation

If the arbitrators determine that expungement is appropriate, Rules [12805\(c\)](#) and [13805\(c\)](#) require arbitrators to identify which of the grounds under Rule 2080 serves as a basis for expungement and provide a brief written explanation of the reasons for recommending expungement. The written explanation should provide regulators and other interested parties with additional insight into why the arbitrators recommended expungement and any facts and circumstances they found in support of the recommendation.

When recommending expungement, arbitrators should ensure that the explanation is complete. They should not simply restate one of the grounds under Rule 2080 or recite the language provided by the party requesting expungement without providing specific case facts. For example, stating that the panel

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recommends expungement based on the ground that the claim, allegation or information is false is not, on its own, sufficient. The panel must also explain how this ground for expungement applies to the facts of the case. Arbitrators should also keep in mind that prevailing in an arbitration case is not, by itself, a sufficient reason for recommending expungement of information about the proceeding. Arbitrators should identify in the award the reason(s) for and any specific documentary or other evidence relied on in recommending expungement.

If the panel does not provide an adequate explanation, FINRA may choose not to waive the obligation to name FINRA as a party when the party seeks to confirm the arbitration award in court.

Please see FINRA's [Expanded Expungement Guidance](#).

Assess Fees Associated With Expungement Hearing

Rules 12805(d) and 13805(d) require the panel to assess forum fees for hearing sessions held solely for the purpose of considering expungement against the parties requesting such relief.

[Rule 2080](#)

<http://www.finra.org/finramanual/rules/r2080>

[Rule 2081](#)

<http://www.finra.org/finramanual/rules/r2081>

[Rule 12805](#)

<http://www.finra.org/finramanual/rules/r12805>

[Rule 13805](#)

<http://www.finra.org/finramanual/rules/r13805>

[AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes](#)

<http://www.finra.org/arbitration-and-mediation/code-ethics-arbitrators-commercial-disputes>

[Disciplinary Referrals](#)

<http://www.finra.org/arbitrationandmediation/arbitrators/caseguidanceresources/disciplinaryreferrals>

[Notice to Arbitrators and Parties on Expanded Expungement Guidance:](#)

<http://www.finra.org/ArbitrationAndMediation/Arbitration/SpecialProcedures/Expungement/index.htm>

Test Yourself

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

- True
- False

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Question Feedback

True. If the party seeking expungement can demonstrate that the allegations are factually impossible or clearly erroneous because the broker was not employed at the securities firm during the relevant time period, the arbitrators could reasonably recommend expungement under this standard.

Test Yourself

In settled cases where no hearings on the merits have occurred, arbitrators may want to request an in-person expungement hearing.

- True
- False

Question Feedback

True. Arbitrators can request an in-person expungement hearing, as opposed to a telephonic hearing, to best evaluate the credibility of testimony and evidence offered in support of or against expungement.

Test Yourself

The prohibition from conditioning settlement of a customer dispute on—or otherwise compensating a customer for—the customer's agreement to consent to, or not to oppose, the firm's or representative's request to expunge such information from CRD applies to written and oral agreements.

- True
- False

Question Feedback

True. This prohibition applies to written and oral agreements and to agreements entered into during the course of settlement negotiations, as well as to any agreement entered into separate from such negotiations. In fact, the rule prohibits **seeking** to condition the customer's agreement to consent to, or not to oppose, the request to expunge such information from CRD.

Test Yourself

There is no need for arbitrators to make specific findings under Rule 2080 if the parties agree on expungement and seek a stipulated award.

- True
- False

Question Feedback

False. Even if the parties settle and agree to include expungement relief in a stipulated award, arbitrators must still find and document one of the grounds under Rule 2080 and satisfy all of the procedural requirements under Rules 12805 and 13805 before recommending expungement. The award must also be confirmed in court. Arbitrators may require additional testimony and evidence to gather the facts necessary to make an informed decision on the expungement request.

Section 4: Awards and Expungements

Awards

If, after considering the required factors, a panel decides that expungement is appropriate in a customer dispute, the record will be expunged from the CRD system only if the panel clearly identifies and documents in the award one or more of the following conditions under Rule 2080, and the award is confirmed by a court:

- 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 findings under Rule 2080 cannot be implied in the award. Arbitrators must affirmatively find and document at least one of the three grounds under Rule 2080 for FINRA to waive its right to oppose the expungement. One or more of the three above standards must be included in the award to effectuate expungement; otherwise FINRA will oppose the expungement.

Rules 12805 and 13805 require arbitrators to indicate which of the Rule 2080 grounds for expungement serves as the basis for expungement and provide a brief written explanation of the reasons for recommending expungement under Rule 2080. The written explanation should be fact-based and should clearly connect the arbitrators' reasons for recommending expungement to the Rule 2080 expungement standard they cited. Inclusion of legal authorities and damage calculations is not required. The panel must assess forum fees for hearing sessions held solely for the purpose of considering expungement against the parties requesting expungement relief.

If a party requests expungement, arbitrators must provide their findings on expungement in the [Award Information Sheet](#) they complete at the end of the case. In some cases, FINRA staff may ask for additional information to satisfy the requirements under Rules 2080, 12805 and 13805. Arbitrators should be responsive to staff inquiries.

[Award Information Sheet](#)

<http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbion/documents/arbmed/p009465.pdf>

Stipulated Awards

On occasion, parties may settle a case and request that expungement relief be incorporated into a stipulated award. Arbitrators must still ensure that expungement under these circumstances would meet the standards under Rules 2080 and 2081 and the procedural requirements under Rules 12805 and 13805 before recommending expungement.

An arbitrator who is uncomfortable signing a stipulated award containing a recommendation for expungement is not required to do so. A stipulated award that contains a prohibited condition casts doubt on the integrity of the process. Arbitrators should not accept a stipulated award that contains documentation of an offer that would violate Rule 2081. This is consistent with the [Code of Ethics](#). The arbitrator's refusal 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.

FINRA Dispute Resolution Expungement

[Code of Ethics](http://www.finra.org/ArbitrationAndMediation/Arbitrators/Responsibilities/CodeofEthics/index.htm)

<http://www.finra.org/ArbitrationAndMediation/Arbitrators/Responsibilities/CodeofEthics/index.htm>

When Expungement Is Not Appropriate

There are circumstances under which expungement of customer dispute information in a broker's CRD record would not be appropriate. For example, expungement should not be recommended when there is an adverse arbitration award against the broker (i.e., where the arbitrators found that the customers prevailed on claims against the broker). However, when a broker prevails in an arbitration case, that is not, in and of itself, an appropriate ground for expunging information about the proceeding from the CRD system. Arbitrators must still find and document one of the grounds under Rule 2080 and satisfy Rules 12805 and 13805 before recommending expungement.

Arbitrators might believe erroneously that it is reasonable to recommend expungement in cases where the:

- information to be expunged is aged;
- matter to be expunged is the only event reported on the broker's otherwise clean record; or
- customer allegations reported on the broker's CRD record relate to a single investment product.

Even though it may seem appropriate to recommend expungement under one of the above circumstances, they are not—on their own—sufficient grounds for expungement. As with all requests seeking expungement of customer dispute information, arbitrators must affirmatively find and document one or more of the grounds under Rule 2080 and satisfy the procedural requirements under Rules 12805 and 13805 before recommending expungement.

Disclosure Events That Cannot Be Expunged

Brokers who seek to expunge disclosure events from their CRD records generally look to remove a customer dispute, employment termination or internal review. The rules, requirements and procedures applicable to the expungement of such events depend on the matter that the broker is trying to expunge. Infrequently, brokers will attempt to expunge an event from a disclosure category that is not eligible for expungement from the CRD system through arbitration. These disclosure categories are described in further detail below.

Civil Judicial Actions

Civil judicial actions are proceedings in which a domestic or foreign court has enjoined a broker in connection with any investment-related activity; found that a broker was involved in a violation of any investment-related statutes or regulations; or dismissed, pursuant to a settlement agreement, an investment-related civil action brought against a broker by a state or foreign financial regulatory authority.

Criminal Matters

Criminal disclosures encompass charges and convictions for any felony and for those misdemeanors referenced on Forms U4 and U5, such as fraud, wrongful taking of property or bribery.

FINRA Dispute Resolution Expungement

Financial Matters

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

Investigations

The investigation disclosure category includes investigations or proceedings by a domestic or foreign governmental body or SRO with jurisdiction over investment-related businesses.

Regulatory Actions

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

All of these disclosure events are ineligible for expungement from the CRD system through arbitration. (Although these disclosure events cannot be expunged from the CRD system, there are certain circumstances under which they no longer will be disclosed publicly in BrokerCheck. For example, once a broker satisfies a judgment or lien, the event will be removed from BrokerCheck even though it still remains on the CRD system.) As such, arbitration panels should deny all requests they receive for the expungement of any of these disclosure events. Furthermore, attorneys who represent brokers should note that even if an arbitration award recommends the expungement of one or more of these ineligible disclosure events, FINRA will not remove the matter from the CRD system.

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 the broker prevailed in an arbitration case is not, in and of itself, an appropriate ground for recommending expungement of information about the proceeding from the CRD system. Arbitrators must still affirmatively find and document one of the grounds under Rule 2080 and satisfy the procedural requirements under Rules 12805 and 13805 before recommending expungement.

Test Yourself

Arbitrators must satisfy all of the following requirements under Rules 12805 and 13805 in order to recommend expungement of customer dispute information under Rule 2080:

FINRA Dispute Resolution Expungement

- a. Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This requirement also 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.
 - b. In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of the settlement.
 - c. Indicate in the arbitration award which of the Rule 2080 grounds for expungement serves as the basis for recommending expungement and provide a brief written explanation of the reasons for the arbitrators' finding.
 - d. Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.
- True
 - False

Question Feedback

True. Arbitrators must satisfy all of the listed procedural requirements before recommending expungement of customer dispute information under Rule 2080.

Test Yourself

All disclosure events on a broker's CRD record are eligible for expungement through the arbitration process.

- True
- False

Question Feedback

False. Arbitrators may recommend expungement of customer dispute information and certain employment-related dispute information (for disputes between or among industry parties). However, disclosure events related to civil judicial actions, criminal matters, financial matters, investigations and regulatory actions are ineligible for expungement from the CRD system through arbitration. As such, arbitrators should deny all requests for the expungement of any of these disclosure events.

The Effect of Dismissal on an Expungement Request

In some cases, arbitrators might dismiss a broker early in the arbitration and recommend expungement relief—before the underlying case has concluded. In this situation, the panel can order that a new case be opened, before the same arbitrators as the underlying case, to address the expungement request. If the panel recommends expungement, a signed award will be issued to the dismissed broker who can seek confirmation of the award in court. The award remains subject to the standards of Rules 2080, 12805 and 13805. The underlying arbitration case will continue to proceed as usual under the original case number.

Arbitrators who wish to grant an early dismissal and recommend expungement should consult with FINRA staff about the procedure.

FINRA Dispute Resolution Expungement

FINRA Participation in Court Proceeding to Confirm Expungement

Parties seeking expungement of customer dispute information from the CRD system must obtain an order from a court of competent jurisdiction confirming the arbitration award containing expungement. Upon request, FINRA may waive the obligation to name FINRA as a party if FINRA determines that expungement relief is based on one or more of the arbitral findings under Rule 2080. However, FINRA will generally participate in the court confirmation proceeding and oppose confirmation of the recommendation for expungement if it does not meet at least one of the specified standards under Rule 2080 and satisfy the procedural requirements under Rules 12805 and 13805. To further ensure that the court is aware of the potential 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.

Although FINRA expects that arbitrators will consider the majority of expungement requests, a judge may also make the affirmative finding required under Rule 2080. However, securities firms or brokers 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.

Expungement in Intra-Industry Disputes

Rules 2080, 2081, 12805 and 13805 do not apply to intra-industry disputes, unless the information to be expunged involves customer dispute information. For example, a broker may request expungement of the reason for termination (*e.g.*, failure to meet production standards) reported on his or her CRD record by a former employer. Since this request does not involve customer dispute information, arbitrators may recommend expungement of this information from the CRD system without addressing the standards set forth in Rule 2080 or the procedural requirements under Rules 12805 and 13805. FINRA will expunge the referenced information if the award is confirmed by a court of competent jurisdiction.

If the arbitrators recommend expungement of non-customer dispute information and also determine that the information is defamatory in nature, FINRA will expunge the information without a court order. When requesting expungement in these situations, parties should present evidence to the arbitrators that demonstrates that the information in the broker's CRD record is defamatory in nature, thereby portraying the broker in a negative light. If the arbitrators are satisfied that the information is defamatory in nature, they must clearly state in the award that they are recommending expungement based on the defamatory nature of the information in the CRD system. Arbitrators, however, are not required to find or to state explicitly in the award that all elements required to satisfy a claim in defamation under governing law have been met.

Test Yourself

Rules 2080, 2081, 12805 and 13805 apply to intra-industry disputes where a party seeks expungement of non-customer dispute information.

- True
- False

FINRA Dispute Resolution Expungement

Question Feedback

False. Rules 2080, 2081, 12805 and 13805 do not apply to intra-industry disputes, unless the information to be expunged involves customer dispute information.

Section 5: Conclusion

Summary

Having completed this course, you should now understand the:

- CRD system and the role it plays in protecting the public;
- expungement process and the specific findings that arbitrators must make for FINRA to waive its right to oppose the expungement request in court;
- requirements for awards containing recommendations for expungement and the types of disclosures that cannot be expunged through the arbitration process; and
- distinction between expungement requests for customer dispute information and expungement requests in intra-industry cases.

Next Steps

To test your understanding of the course material, please take the Assessment: DR – Expungement. To successfully complete the expungement training and receive credit, you must score at least 80 percent on the exam.

You may access the exam by following these instructions:

- Click the “X” (Exit) button in the upper right hand corner to close the course window.
- Return to your Current Learning tab.
- Launch Assessment: DR – Expungement.
- Click the “Next” arrow button to start the exam.

After answering all of the questions, click on the “view your results” link for your score. Click on the “exit” link to return to the learning center.

If you prefer, you may complete the attached Expungement Training 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.

FINRA Dispute Resolution Expungement

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.

1. The information in CRD is submitted by regulatory authorities (for example, state securities regulators and SROs) and by registered securities firms, most of which is provided to investors through BrokerCheck.

TRUE FALSE

2. When considering an expungement request, arbitrators should ask the broker seeking expungement to provide a current copy of the broker's BrokerCheck report to review both the information that the broker is seeking to expunge as well as all Disclosure Events.

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. Arbitrators should not recommend expungement in cases where the broker was found liable to a customer for an investment-related sales practice violation.

TRUE FALSE

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5. When drafting the award, arbitrators can simply restate one of the grounds under Rule 2080 or recite the language provided by the party requesting expungement without providing specific case facts to justify a recommendation for expungement.

TRUE FALSE

6. Expungement is an extraordinary remedy that arbitrators should recommend only under appropriate circumstances. Arbitrators should recommend expungement of customer dispute information only when it has no meaningful investor protection or regulatory value.

TRUE FALSE

7. The expungement standards under Rule 2080 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 and satisfied the requirements under Rules 2081, 12805 and 13805.

TRUE FALSE

9. If the customer does not appear at the expungement hearing to oppose the expungement request, the arbitrators can issue an award recommending expungement without conducting a hearing.

TRUE FALSE

10. Arbitrators should inquire and consider fully whether a party conditioned a settlement of arbitration upon agreement not to oppose the request for expungement.

TRUE FALSE