



Primer: Expungements Through FINRA Arbitration



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Expungement

Definition

The Process of permanently removing disclosure events from a broker's CRD₁ report

Type of events that may be expunged through the arbitration process:

1. Customer dispute information

- Allegations of misconduct
- Arbitrations
- Customer complaints

- Subject to additional rules and procedures
- Requires court confirmation, even if expungement is awarded in arbitration
- FINRA is named as a party in court proceedings, unless a waiver is granted
- Unnamed brokers (i.e. brokers not named as a party but subject to arbitration) may also request expungement.

2. Intra-industry dispute information

- Reasons for employment termination
- Breach of contract

- Generally less complex. Not subject to certain rules and procedures
- It may not require court confirmation



Expungement should be recommended by an arbitrator only when the information to be expunged has no meaningful investor protection or regulatory value

Grounds for Expungement

Arbitrators may grant expungement relief based on the following grounds, which need to be documented:

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.

Source: www.finra.org

Procedure Rules 12805 / 13805



Before ruling on request to recommend expungement, the arbitration panel must complete the following:

- Hold a recorded hearing session (by phone or in person) regarding the appropriateness of expungement.
 - Applies to simplified arbitration cases, even if claimant did not request a hearing
- 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.
- Indicate in the arbitration award which of the Rule 2080 grounds for expungement serves as basis for recommendation, and provide a written explanation of the reasons for the panel's finding.
- Assess forum fees for hearing sessions in which the sole topic is the determination of appropriateness of expungement against the parties requesting the relief.

Source: www.finra.org

Expungement-Only and Settled Cases



Expungement- only cases

- An arbitration can be filed with the sole purpose of seeking expungement
- In such cases, the broker files a claim against a member firm (current or former employer of the broker) without naming the customer as a respondent
- FINRA indicates arbitrators they should order the claimant to provide a copy of the statement of claim to the customer. This is to ensure that the customers are aware of the expungement request and have the opportunity express their position to the panel

Settled cases

- In settled cases, investors often stipulate to the expungement request or declare they are not opposed. They rarely attend to an expungement hearing after the settlement
- The broker or firm will have to demonstrate that the facts provide basis for expungement under the rule 2080
- FINRA indicates arbitrators should allow customers and their counsel to attend and testify in the hearings, if they wish to do so

Note:

While it is important to notify investors about an expungement-only hearing, they are not required to be named as respondents in the claim.

Source: www.finra.org

What happens after expungement is recommended in arbitration?



- The party seeking expungement must obtain an order from a court of competent jurisdiction confirming the arbitration award containing expungement, naming FINRA as a party.
 - Upon request, FINRA may waive the obligation to name FINRA as a party, if FINRA determines that the expungement relief is supported and complies with Rule 2080.
- If waiver is not granted, FINRA then must be named as a party on a court proceeding. FINRA will evaluate whether or not to oppose the confirmation, based on the reasons for requesting the expungement and supporting evidentiary material.
- The foregoing notwithstanding, 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.

Court order or confirmation is always required when the case involves a customer claim. If the claim is about an intra-industry dispute, a court order may not be required.

Source: www.finra.org

Expungement in Intra-Agency Disputes



- For disputes exclusively related to workplace issues, rules 2080, 2081, 12805 and 13805 do not apply.

- Process is likely to be quicker, less complex and more affordable

- 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.

Note:

If a determination is made that the information in the disclosure is defamatory in nature, the arbitrator must clearly state in the award that they are recommending expungement based on the defamatory nature of the information in the CRD system.

Source: www.finra.org



Information that Cannot be Expunged

The following disclosure categories are not eligible for expungement through arbitration:

- Civil judicial actions
- Criminal matters
- Financial matters
- Investigations
- Regulatory actions
- Expungement request previously denied in arbitration

Rule 2081 prohibits brokers and firms from conditioning the settlement of a dispute on the customer's agreement to consent – or not oppose- a request for expungement

Under these disclosure events, FINRA will not remove the matter from the CRD system, even if the request is granted by an arbitration panel.

Source: www.finra.org



Remarks on Strategy

- Evaluate carefully the viability of pursuing expungement. Consult with an experienced counsel or a qualified expert before initiating the process.
- The fact that an arbitration was decided in favor of the broker is not necessarily a ground for expungement.
- If there is an ask for monetary damages, the amount of the ask will influence in the cost and complexity of the process.
- Keep in mind that, while the customer involved in the case has to be notified about the expungement request, not necessarily has to be named as a party to the case.
- A claim for expungement can either be included as part of the original customer dispute, or taken as a stand -alone claim (Expungement only arbitration). The later may be less complex and more cost-effective.

- The expungement process is currently subject to scrutiny by FINRA and other interested parties.
- There is strong advocacy to modify certain provisions of the expungement process. Such changes can impact significantly how expungements are carried out.



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