

Expungement of Customer Dispute Information

SEC Approves FINRA Rule 2081 Regarding Prohibited Conditions Relating to Expungement of Customer Dispute Information

Effective Date: July 30, 2014

Executive Summary

The SEC has approved FINRA Rule 2081 (Prohibited Conditions Relating to Expungement of Customer Dispute Information) to prohibit member firms and associated persons from conditioning or seeking 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 associated person's request to expunge such customer dispute information from the Central Registration Depository (CRD®).¹ The rule is effective immediately.

The text of Rule 2081 is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Victoria L. Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104; or
- ▶ Mignon McLemore, Assistant Chief Counsel, Dispute Resolution, at (202) 728-8151.

July 2014

Notice Type

- ▶ New Rule

Suggested Routing

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

Key Topics

- ▶ Arbitration
- ▶ BrokerCheck
- ▶ CRD
- ▶ Customer Dispute Information
- ▶ Expungement

Referenced Rules & Notices

- ▶ FINRA Rule 2080
- ▶ FINRA Rule 2081
- ▶ NTM 04-16

Background & Discussion

The CRD system is the central licensing and registration system for the U.S. securities industry and its regulators. In general, the information in the CRD system is submitted by registered securities firms and regulatory authorities in response to questions on the uniform registration forms. These forms collect administrative and disciplinary information about registered personnel, including customer complaints, arbitration claims and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings (*i.e.*, “customer dispute information”).² FINRA, state and other regulators use this information in connection with their licensing and regulatory activities. Firms also use the information when making hiring decisions. In addition, the information that FINRA releases to the public through BrokerCheck[®] is derived from the CRD system. BrokerCheck helps investors make more informed decisions about member firms and associated persons with which they conduct business. Hence, it is critical to investor protection that the underlying records in the CRD system include accurate and complete customer dispute information.

Brokers who wish to have customer dispute information removed from the CRD system (and thereby, from BrokerCheck) because, for example, they believe that the allegations made against them are unfounded or that they have been incorrectly identified, must seek expungement pursuant to FINRA Rule 2080.³ FINRA has long had concerns about the practice of firms and associated persons conditioning settlement agreements for the purpose of obtaining expungement relief and, thereby, potentially removing from the CRD system information that helps protect investors. Over the years, FINRA has taken numerous steps towards addressing these concerns. Despite these previous steps, FINRA continues to have concerns regarding such conduct.

Accordingly, new FINRA Rule 2081 prohibits expressly such conduct by providing that no member firm or associated person 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 member firm’s or associated person’s request to expunge such customer dispute information from the CRD system. The prohibition applies to both written and oral agreements and to agreements entered into during the course of settlement negotiations, as well as to any agreements entered into separate from such negotiations. The rule also precludes such agreements even if the customer offers 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.

Once information is expunged from the CRD system, it is permanently deleted and, therefore, no longer available to the investing public or regulators. By removing the ability of the parties to a customer dispute to “bargain-for” expungement relief as part of a settlement agreement, or otherwise, Rule 2081 will help ensure that information is expunged from the CRD system only when there is an independent judicial or arbitral decision that expungement is appropriate.

Endnotes

1. See Securities Exchange Act Release No. 72649 (July 22, 2014), 79 FR 43809 (July 28, 2014) (Order Approving File No. SR-FINRA-2014-020).
2. See [Notice to Members 04-16](#) (March 2004).
3. FINRA Rule 2080 provides that member firms and associated persons seeking expungement of customer dispute information from the CRD system must obtain a court order that either directs expungement or confirms an arbitration award containing expungement relief. The rule requires that member firms and associated persons seeking such a court order or confirmation name FINRA as a party. Upon request, FINRA may waive the obligation to name it as a party if FINRA determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (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.

Attachment A

2081. Prohibited Conditions Relating to Expungement of Customer Dispute Information

No member or associated person 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 member's or associated person's request to expunge such customer dispute information from the CRD system.