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Mission Statement

We publish *The Neutral Corner* to provide arbitrators and mediators with current updates on important rules and procedures within securities dispute resolution. FINRA Dispute Resolution Services' (DRS') dedicated neutrals better serve parties and other participants in the DRS forum by taking advantage of this valuable learning tool.

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

By Carissa Laughlin, Principal Counsel, FINRA Office of General Counsel

FINRA adopted amendments to the 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 became effective October 16, 2023. This article provides background on expungement, information about the primary changes to the Codes and a list of training resources for arbitrators.

Background on Expungement

FINRA operates the Central Registration Depository (CRD®), the central licensing and registration system, to maintain registration information about member firms and their associated persons (APs). Registration information includes administrative, regulatory, criminal history, financial and other information about APs, such as investment-related, customer-initiated arbitrations, civil litigations or customer complaints (i.e., customer dispute information). Firms use information in CRD for employment purposes.

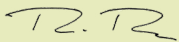
FINRA also makes specific registration information in CRD publicly available through [BrokerCheck](#)®. BrokerCheck is a free tool available on FINRA's website that helps investors make informed choices about the APs and firms they may conduct business with.

APs may seek to remove, or "expunge," customer dispute information from their CRD/BrokerCheck record. FINRA Rules [12805](#) and [13805](#) specify a narrow set of circumstances where expungement of customer dispute information from CRD is appropriate. To obtain an award for expungement through the DRS arbitration forum, an arbitrator or a panel of arbitrators must

Year End Message

As we close out 2023, we extend a heartfelt thank you to our arbitrators and mediators for their outstanding work this year. We are grateful for the flexibility and commitment of our neutrals who always find a way to provide fair hearings.

We wish you a joyous and healthy holiday season and look forward to working together in 2024.



Rick Berry
Executive Vice President,
FINRA Dispute Resolution
Services

determine that the party requesting expungement has established one of the narrow grounds under FINRA rules:

1. the claim, allegation or information is factually impossible or clearly erroneous;
2. the AP 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.

Changes to the Codes

The amendments impose additional requirements on three types of expungement requests:

| Customer Arbitration | On-Behalf-Of Request | Straight-in Request |
|---|---|---|
| Filed by an AP during an investment-related, customer-initiated arbitration | Filed by a party to the customer arbitration on behalf of an unnamed AP | Filed by an AP separately from a customer arbitration |

This article covers five of the primary changes to the Codes.

1. Special Arbitrator Roster

If an AP requests expungement under FINRA Rule [13805](#), a three-person panel, randomly selected from the Special Arbitrator Roster, must hold an expungement hearing, decide the straight-in expungement request, and issue an award.

To serve on the Special Arbitrator Roster, arbitrators must:

- qualify as public arbitrators who are eligible for the chairperson roster;
- have evidenced successful completion of, and agreement with, [Enhanced Expungement Training](#), provided by DRS; and
- have served as an arbitrator through award on at least four customer arbitrations administered by FINRA or by another self-regulatory organization in which a hearing was held. This requirement will not be satisfied by serving on arbitrations administered under the special proceeding option of the simplified arbitration rules.

2. No List Selection in Straight-In Expungement Requests

- The list selection algorithm¹ will randomly select the three public arbitrators from the Special Arbitrator Roster to decide a straight-in expungement request filed by an AP. Parties are not permitted to agree to fewer than three arbitrators, strike any arbitrators selected by the list selection algorithm or stipulate to their removal. However, parties may challenge a selected arbitrator for cause. If an arbitrator is removed, the list selection algorithm randomly selects a replacement.

3. Procedures for Expungement Requests in Simplified Arbitrations

- The amendments to FINRA Rule [12800](#) establish procedures for requesting and deciding expungement requests in simplified customer arbitrations. If a named AP or a requesting party requests expungement in a simplified customer arbitration, the single arbitrator must decide the expungement request, regardless of how the arbitration closes. The single arbitrator does not need to be on the Special Arbitrator Roster, but the arbitrator must evidence successful completion of, and agreement with, the [Enhanced Expungement Training](#) before deciding any expungement request in a simplified customer arbitration.

4. Expungement Hearing Requirements

The amendments expand the expungement hearing requirements in FINRA Rules [12805](#) and [13805](#) and incorporate relevant provisions from the [Notice to Arbitrators and Parties on Expanded Expungement Guidance](#) applicable to all expungement hearings. For example:

- The amendments require the AP whose information in CRD is the subject of the expungement request to appear in person or by video conference at the expungement hearing, as determined by the panel.
- The amendments facilitate customer attendance and participation in all aspects of the expungement hearing and allow customers to participate by telephone, in person or by

1. FINRA's arbitrator appointment process uses the list selection algorithm, a computer algorithm, to randomly generate lists of arbitrators from FINRA's arbitrator roster.

video conference.

- The amendments require DRS to notify state securities regulators of expungement requests filed in the DRS arbitration forum. For straight-in expungement requests, the amendments provide a mechanism for state securities regulators to attend and participate, as a non-party, in expungement hearings. They may attend in person or by video conference.

5. Award Requirements

The panel must unanimously agree that one or more of the three narrow grounds for expungement enumerated in FINRA Rules [12805\(c\)\(8\)\(A\)\(i\)](#) or [13805\(c\)\(9\)\(A\)\(i\)](#) has been established to issue an award containing expungement relief. The panel must also identify any specific documentary, testimonial or other evidence on which it relied in awarding expungement relief. The panel's written explanation of the reason(s) for its finding that one or more grounds for expungement apply to the facts of the request must be complete and not solely a recitation of one of the grounds or language provided in the expungement request.

Training Resources

- [Regulatory Notice 23-12](#) provides a detailed summary of the revised rule requirements.
- The [Expungement of Customer Dispute Information](#) key topics page on FINRA.org has information about relevant FINRA [Rules](#), [FAQs](#), [training](#), and more.
- Information about the [Enhanced Expungement Training](#) is available on DRS' Advanced Arbitrator Training web page.
- A [General Expungement Training](#) course is available on DRS' Neutral Workshop web page.

DRS and FINRA News

Arbitration Case Filings and Trends



[Arbitration case filings](#) from January through November 2023 reflect a 30 percent increase compared to cases filed during the same 11-month period in 2022 (from 2,423 cases in 2022 to 3,159 cases in 2023). During this period, customer-initiated claims increased by 12 percent, and intra-industry claims increased by 63 percent.

Regulatory Notice 23-20: FINRA Highlights Available Guidance and Resources Related to Regulation Best Interest

[Regulatory Notice 23-20](#) (*Notice*) discusses the guidance and other resources available to assist members with their compliance efforts in connection with the Securities and Exchange Commission's (SEC) Regulation Best Interest (Reg BI). In particular, FINRA highlights the SEC's series of Staff Bulletins (Bulletins) reiterating standards of conduct for broker-dealers (BDs or members) and investment advisers (IAs):

- [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Account Recommendations for Retail Investors](#);
- [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest](#); and
- [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations](#).

Proposed Rule Change to Amend the FINRA Codes of Arbitration Procedure and Code of Mediation Procedure to Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations

On October 5, 2023, FINRA filed with the SEC a proposal to revise and restate the qualifications for representatives in arbitrations and mediations in the forum administered by DRS; to disallow compensated representatives who are not attorneys from representing parties in the DRS forum; to codify that a student enrolled in a law school participating in a law school clinical program or its equivalent and practicing under the supervision of an attorney may represent investors in the DRS forum; and to clarify the circumstances in which any person, including attorneys, would be prohibited from representing parties in the DRS forum. FINRA extended the time for SEC action on this rule filing to January 11, 2024.

Please see [SR-FINRA-2023-013](#) for more information.

Approved Rule Change to Amend the Codes of Arbitration Procedure to Make Various Clarifying and Technical Changes

On September 7, 2023, the SEC approved the proposed rule change to make various clarifying and technical changes to the Codes in response to the [Lowenstein Report](#), as modified by Amendment No. 1. FINRA will announce the effective date in a *Regulatory Notice*.

Please see [SR-FINRA-2022-033](#) for more information.

2023 Demographic Survey Thank You

Thank you for participating in the 2023 demographic survey. As in previous years, the survey was administered by a third-party consulting firm, and participation in the survey was voluntary.

As part of our ongoing recruitment campaign, DRS continues to seek individuals from varied backgrounds to serve as arbitrators. The data from this annual survey helps us track our progress toward enhancing the diversity of the roster and helps to determine future recruitment events.

DR Portal Help

If you have any questions about logging into the DR Portal, please contact the FINRA Support Center at (301) 590-6500. If you have any other technical difficulties using the DR Portal other than issues logging in, please contact the DR Portal Help Desk at (800) 700-7065.

The 2023 results are now posted on our [website](#).

Register for the DR Portal Today

DRS strongly encourages arbitrators and mediators to register for the [DR Portal](#). It allows you to:

- file case documents, including the electronic Oath of Arbitrator and Arbitrator Disclosure Checklist, the IPHC Scheduling Order, general orders, dismissal and postponement orders, the Award Information Sheet and the Arbitrator Experience Survey;
- access information about assigned cases, including case documents, upcoming hearings and arbitrator payment information;
- schedule hearings;
- update profile information;
- view and print the Arbitrator Disclosure Report (ADR);
- update the last affirmation date on the ADR; and
- review list selection statistics to see how often your name has appeared on arbitrator ranking lists sent to parties and how often you have been ranked or struck on those lists.

DR Portal registration is reflected on the ADRs that parties review when selecting arbitrators and mediators.

Become a FINRA Mediator

Do you have experience working as a mediator? Consider joining the FINRA mediator roster. Please email the [Mediation Department](#) for more information.

Mediation Update

Mediation Case Filings and Trends



From January through November 2023, parties initiated 596 [mediation cases](#), a decrease of 17 percent from the same period in 2022. DRS closed 547 cases during this time. Approximately 85 percent of these cases concluded with successful settlements.

FINRA Mediation Settlement Month

The DRS Mediation Department is offering its [annual reduced fee program](#) through the end of the year. As a reminder, all participants under this program should endeavor to complete their mediations by December 31, 2023. Thank you to the participants who contributed to another successful Mediation Settlement Month.

Mediator Disclosure Updates

Mediators can update their profile anytime through the [DR Portal](#). Keeping your mediator disclosure report up to date—including the number of times you have mediated cases, your success rate and the types of cases you have mediated—helps parties during selection. References who can attest to your skills and mediation style also help parties choose the most appropriate mediator for their case. Remember to include your cancellation policy if you have one.

In early 2024, DRS Mediation Staff will be reaching out to the mediator roster with our yearly mediator questionnaire. This will also be an opportunity to provide any updates.



Questions and Answers

Apportioning Damages in an Award

Question: How should an arbitration panel in an employment-related arbitration decide how to apportion a damages award?

Answer: The parties are responsible for specifying how they think any damages award should be apportioned. The arbitration panel may request briefing from the parties on the type and amount of damages that may be awarded. Arbitrators should not conduct independent legal research.

Question: Should the arbitration panel specify what, if any, portion of an award for compensatory damages represents back wages?

Answer: Yes. If an arbitration panel does not specify what, if any, portion of an award of compensatory damages represents damages for back wages, it may be unclear to the parties what damages amounts are subject to employment-related tax withholding or not taxable at all. This may lead to post-award disputes between the employer and the employee, and possible disputes with the taxing authorities.

Question: Will the Award Information Sheet (AIS) remind the arbitration panel to apportion damages in the award?

Answer: Yes. The AIS prompts the arbitration panel to specify the amount of any compensatory damages, punitive damages, prejudgment interest, attorneys' fees, costs or other damages or relief awarded. If the arbitration panel awards compensatory damages to an associated person in an employment-related arbitration, beginning in December 2023, the AIS will ask the panel to specify what portion, if any, is for back wages.

Education and Training



2023 Neutral Workshop: General Expungement Training

This [neutral workshop](#) provides an overview of the amended rules modifying the process relating to the expungement of customer dispute information. OGC Principal Counsel, Bria Adams and Carissa Laughlin, and DRS Associate Director, Lisa Lasher, discuss the requirements for issuing an award containing expungement relief under the Customer Code, including the distinctions between expungement requests for non-simplified and simplified cases, and provide a brief overview of expungement under the Industry Code. The rule amendments became effective on October 16, 2023.

Note: For a comprehensive discussion of the revised expungement rules, including information on straight-in expungement requests and the Special Arbitrator Roster, please take the [Enhanced Expungement Training](#).

Updated Chairperson Training

In July, DRS released a new and dynamic version of the [Chairperson Training](#). It was revamped to create a more engaging training experience, which now includes active graphics, narration and closed captioning throughout the course. Current chairpersons are not required to retake the course but can review it as a refresher. We also encourage arbitrators interested in serving on the chairperson roster to take the training. The Chairperson Training is available on the [DRS learning system](#).

Arbitrator Disclosure Reminder



As a reminder, arbitrators should review their disclosure reports regularly to ensure all information is accurate and current. Even if arbitrators are not currently assigned to cases, their disclosure reports may be sent to parties during the arbitrator selection process. Providing parties with the most current and complete information helps them make informed decisions when selecting their panel. Complete disclosures also minimize arbitrator challenges and delays to the case. Arbitrators should log in to the [DR Portal](#) to update their disclosure reports.

Last Affirmation Dates on Arbitrator Disclosure Reports

In 2017, DRS enhanced arbitrator disclosure reports by publishing the date that arbitrators last affirmed their accuracy. The affirmation date is displayed prominently at the top of the disclosure report that parties review during the arbitrator selection process. Parties may consider the affirmation date when making decisions about ranking and striking arbitrators.

To provide parties with the most current information, DRS asks arbitrators to review their disclosure reports regularly and affirm the information. Arbitrators can affirm their disclosures and refresh the affirmation date by submitting an update through the DR Portal or by submitting an Oath when assigned a case. Even if you do not have any changes, you can update the affirmation date through the DR Portal. If you would like to register for the DR Portal or need to reactivate a dormant account, please send an email to the [Department of Neutral Management](#) to request an invitation. Please include “request portal invitation” in the subject line.

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The Neutral Corner is published
by FINRA Dispute Resolution
Services in conjunction with FINRA
Corporate Communications.
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CCSD-6106-06/23