

August, 2014

## SEC Approves FINRA Rule to Prohibit Conditioning Settlements on Expungement



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On July 22, 2014, the Securities and Exchange Commission ("SEC") approved the adoption of a new FINRA rule dealing with broker expungements. Rule 2081 prohibits the conditioning of settlement of a securities dispute on the customer's agreement to consent to a request to expunge the FINRA record for the involved registered representative or, alternatively, not to oppose such a request. Rule 2081 as approved states:

*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.*

Rule 2081 applies to both written and oral agreements entered into with a customer. FINRA made clear in its discussions of the proposed rule that it was intended to have broad application and stated that "it would consider **any actions** by a member firm to influence another party to a settlement agreement for purposes of obtaining expungement relief, **whether expressly or otherwise**, to be a potential violation of the proposed rule." S.E.C. Release No. 34-72649 (emphasis added).

The rule change is a further continuation of FINRA's efforts to decrease the number of expungements granted in connection with customer complaints. The Rule also supplements previous changes to FINRA Rules 12805 and 2080, as well as written guidelines distributed to arbitrators last year which require an arbitrator to consider the terms of any settlement agreement in deciding an expungement request. FINRA will announce the effective date of the new rule in a forthcoming Notice to Members.

The SEC release approving the rule change and FINRA statements on the rule can be found at <http://www.sec.gov/rules/sro/finra/2014/34-72649.pdf> and <https://www.finra.org/Newsroom/NewsReleases/2014/P559723>.

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