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Page 1 of \* 49

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 024

Amendment No. (req. for Amendments \*) 2

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Mignon Last Name \* McLemore

Title \* Associate General Counsel

E-mail \* Mignon.mclamore@finra.org

Telephone \* (202) 728-8151 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 04/03/2023

(Title \*)

By Victoria Crane

(Name \*)

Vice President and Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Victoria Crane

Digitally signed by Victoria Crane  
Date: 2023.04.03 13:30:53 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

FINRA-2022-024 Partial A-2.docx  
FINRA-2022-024 Partial A-2 Exhibit 4.c  
FINRA-2022-024 Partial A-2 Exhibit 5.c

On July 29, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change, SR-FINRA-2022-024, that would amend the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to modify the current process relating to the expungement of customer dispute information from the Central Registration Depository (“CRD®”) system (“Proposal”).<sup>1</sup>

Specifically, the Proposal would amend the Codes to impose requirements on expungement requests (a) filed by an associated person during an investment-related, customer-initiated arbitration (“customer arbitration”), or filed by a party to the customer arbitration on behalf of an associated person (“on-behalf-of request”), or (b) filed by an associated person separate from a customer arbitration (“straight-in request”). Specifically, the Proposal would: (1) require that a straight-in request be decided by a three-person panel that is randomly selected from a roster of experienced public arbitrators with enhanced expungement training; (2) prohibit parties to a straight-in request from agreeing to fewer than three arbitrators to consider their expungement requests, striking any of the selected arbitrators, stipulating to an arbitrator’s removal or stipulating to the use of pre-selected arbitrators; (3) provide notification to state securities regulators of all expungement requests and a mechanism for state securities regulators to attend and participate in expungement hearings in straight-in requests; (4) impose strict time limits on the filing of straight-in requests; (5) codify and update the best practices in the Notice to Arbitrators and Parties on Expanded Expungement Guidance applicable to all expungement hearings, including amendments to establish additional requirements for expungement hearings, to facilitate customer attendance and participation in expungement hearings and to codify the panel’s ability to request any evidence relevant to the expungement request; (6) require the unanimous agreement of the panel to issue an award containing expungement relief; and (7) establish procedural requirements for filing expungement requests, including for on-behalf-of requests. The Proposal would also amend the Customer Code to specify procedures for requesting expungement of customer dispute information during simplified arbitrations.

The Commission published the Proposal for public comment in the Federal Register on August 15, 2022 and received 45 comments in response. On November 10, 2022, FINRA responded to the comments and filed Partial Amendment No. 1 to the Proposal to propose amendments based on the comments received by the SEC.<sup>2</sup>

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<sup>1</sup> See Securities Exchange Act Release No. 95455 (August 9, 2022), 87 FR 50170 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-024) (“Initial Filing”).

<sup>2</sup> See Letter from Mignon McLemore, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated November 10, 2022 (“Response Letter”) and Partial Amendment No. 1 to SR-FINRA-2022-024 filed on

On November 16, 2022, the SEC published a notice and order in the Federal Register to solicit comments on the Proposal and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 in the above-referenced rule filing to determine whether to approve or disapprove the Proposal.<sup>3</sup> The SEC received seven comment letters in response to the Order.<sup>4</sup> PIABA and PIABA Foundation stated their support for the Proposal and recommended that the SEC approve the Proposal. NASAA generally supported the Proposal, but also suggested one additional modification. Grebenik supported some aspects of the Proposal, but opposed many other aspects of the Proposal and suggested modifications. Del Toro and SIFMA opposed the Proposal and suggested further modifications or that the SEC disapprove the Proposal. Wagner did not indicate whether he supported the Proposal.

FINRA is submitting by separate letter its response to comments on the Proposal contemporaneously with this Partial Amendment No. 2. As discussed in FINRA's Response to Comments No. 2, FINRA has determined to make the following amendments to the Proposal.

A. Finding of Liability in Customer Arbitration

FINRA amended the Initial Filing to, among other things, provide that an associated person shall not file a claim requesting expungement of customer dispute information from the CRD system if the customer dispute information is associated with a customer arbitration or civil litigation in which a panel or court of competent

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November 10, 2022 ("Partial Amendment No. 1"), <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2022-024>.

<sup>3</sup> See Securities Exchange Act Release No. 96298 (November 10, 2022), 87 FR 68779 (November 16, 2022) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-024) ("Order").

<sup>4</sup> See Letter from Tosh Grebenik, Founder, Judex Law, LLC, dated November 21, 2022 ("Grebenik"); letter from Andrew Hartnett, President, North American Securities Administrators Association, Inc., to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated December 7, 2022 ("NASAA"); letter from Hugh D. Berkson, President, Public Investors Advocate Bar Association, to Vanessa Countryman, Secretary, SEC, dated December 7, 2022 ("PIABA"); letter from Celiza P. Bragança, Past-President & Director, & Jason R. Doss, Past-President & Founding Director, The PIABA Foundation, Inc., to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated December 7, 2022 ("PIABA Foundation"); letter from Kevin M. Carroll, Managing Director & Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, SEC, dated December 7, 2022 ("SIFMA"); letter from Allen Wagner, dated December 7, 2022 ("Wagner"); and letter from Russell Del Toro, Esq., TCM, P.S.C., to Vanessa Countryman, Secretary, SEC, dated December 21, 2022 ("Del Toro"). The PIABA Foundation is a separate entity from PIABA.

jurisdiction previously found the associated person liable.<sup>5</sup> In the amendment, FINRA explained, in relevant part, that “[a]rbitration awards are final and binding unless vacated based on the limited grounds set forth in applicable state or federal statutes. Thus, if an associated person is found liable in a customer arbitration, FINRA considers the associated person legally bound by the award and the Director will decline the use of the FINRA arbitration forum if the associated person then requests expungement of customer dispute information that is associated with the customer arbitration in which the associated person was found liable.”<sup>6</sup>

NASAA commented that it “believes that customer dispute information that forms the basis for a finding of liability in any setting should not be subject to expungement.”<sup>7</sup> NASAA suggested, therefore, that “[a]ssociated persons should [] be prevented from seeking expungement of customer dispute information that forms the basis for a finding of liability in all of the contexts in which such information forms part of a regulatory record, such as state regulatory proceedings, proceedings brought by the SEC, or self-regulatory proceedings.”

FINRA recognizes NASAA’s concern. To address the concern, FINRA is proposing to further amend the Initial Filing to provide that an associated person shall not file a claim requesting expungement of customer dispute information from the CRD system against a member firm at which the person was associated at the time the customer dispute arose if the customer dispute information involves the same conduct

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<sup>5</sup> See Response Letter, supra note 2, Section XII.B., “Finding of Liability in Customer Arbitration”; see also proposed Rule 13805(a)(2)(A)(iv).

<sup>6</sup> See Response Letter, supra note 2, Section XII.B., “Finding of Liability in Customer Arbitration.”

<sup>7</sup> Emphasis added.

that is the basis of a final regulatory action<sup>8</sup> taken by a securities regulator or self-regulatory organization.<sup>9</sup>

B. Technical Changes

Proposed Rule 13806(b)(4) provides, in relevant part, that the associated person requesting expungement of customer dispute information shall not be permitted to strike any arbitrators selected by the list selection algorithm nor stipulate to their removal, but shall be permitted to challenge any arbitrator selected for cause pursuant to Rule 13410. The intent of the proposed rule is to prohibit all parties to a straight-in request from striking or stipulating to the removal of any arbitrator on the panel, not solely the associated person. Thus, FINRA is proposing a clarifying change that would replace “associated person” with “parties” in proposed Rule 13806(b)(4).

FINRA notes that the proposed amendment to proposed Rule 13805(a)(2)(A), discussed above, would result in the re-lettering of the subsections within the proposed rule.

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<sup>8</sup> A “final regulatory action” includes any final action, including any action that is on appeal, by a securities regulator or self-regulatory organization. See Rule 8312(c); see also Regulatory Notice 09-66 (November 2009) (noting that “actions that are delineated in current Form U4 Questions 14C, 14D or 14E will be considered ‘final regulatory actions.’ Similarly, actions that are detailed in current Form U5 Question 7D, and have a status of ‘final’ or ‘on appeal,’ will be considered ‘final regulatory actions’ as such actions are also addressed in Form U4.”). For example, a Letter of Acceptance, Waiver, and Consent and an accepted Offer of Settlement are two examples, among others, of final regulatory actions taken by FINRA. See Rules 9216(a)(4) and 9270(g). A “final regulatory action” may also include a final action reported by a regulator on Form U6. See Regulatory Notice 09-66 (November 2009). For purposes of this proposed rule, a “final regulatory action” would not include a final action by a securities regulator or self-regulatory organization that is dismissed, vacated or withdrawn.

<sup>9</sup> See proposed Rule 13805(a)(2)(A)(v).

**EXHIBIT 4**

Exhibit 4 shows the changes proposed in this Partial Amendment No. 2, with the proposed changes in the original filing and Partial Amendment No. 1 shown as if adopted. Proposed new language in this Partial Amendment No. 2 is underlined; proposed deletions in this Partial Amendment No. 2 are in brackets.

\* \* \* \* \*

**12000. CODE OF ARBITRATION PROCEDURE FOR CUSTOMER DISPUTES**

\* \* \* \* \*

**12100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

(a) through (ff) No Change.

\* \* \* \* \*

**12203. Denial of FINRA Forum**

(a) through (d) No Change.

\* \* \* \* \*

**12307. Deficient Claims**

(a) through (c) No Change.

\* \* \* \* \*

**12604. Evidence**

(a) through (c) No Change.

\* \* \* \* \*

**PART VIII SIMPLIFIED ARBITRATION, DEFAULT PROCEEDINGS, AND  
EXPUNGEMENT PROCEEDINGS**

\* \* \* \* \*

**12800. Simplified Arbitration**

(a) through (i) No Change.

\* \* \* \* \*

**12805. Expungement of Customer Dispute Information from the Central  
Registration Depository (CRD) System**

This Rule applies to all requests to expunge customer dispute information from the CRD system, except that when a party requests expungement of customer dispute information during a simplified arbitration pursuant to Rule 12800(d), only those sections of this Rule that are specifically referenced in Rule 12800(d) through (f) shall apply. Except as otherwise provided in this Rule, all other provisions of the Code apply to such expungement requests.

(a) through (c) No Change.

\* \* \* \* \*

**13000. CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES**

\* \* \* \* \*

**13100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

(a) through (gg) No Change.

\* \* \* \* \*

**13203. Denial of FINRA Forum**

(a) through (d) No Change.

\* \* \* \* \*

**13214. Payment of Arbitrators**

(a) through (d) No Change.

\* \* \* \* \*

**13307. Deficient Claims**

(a) through (c) No Change.

\* \* \* \* \*

**13600. Required Hearings**

(a) through (c) No Change.

\* \* \* \* \*

**13604. Evidence**

(a) through (c) No Change.

\* \* \* \* \*

**PART VIII SIMPLIFIED ARBITRATION; DEFAULT PROCEEDINGS;  
SEXUAL ASSAULT CLAIMS, SEXUAL HARASSMENT CLAIMS,  
OR STATUTORY EMPLOYMENT DISCRIMINATION CLAIMS;  
INJUNCTIVE RELIEF; EXPUNGEMENT PROCEEDINGS; AND  
PROMISSORY NOTE PROCEEDINGS**

\* \* \* \* \*

**13805. Expungement of Customer Dispute Information from the Central  
Registration Depository (CRD) System**

This Rule applies to all requests to expunge customer dispute information from the CRD system. Except as otherwise provided in this Rule, all provisions of the Code apply to such expungement requests.

**(a) Filing an Expungement Request against a Member Firm**

(1) No Change.

**(2) Limitations**

(A) An associated person shall not file a claim requesting expungement of customer dispute information from the CRD system against the member firm at which the person was associated at the time the customer dispute arose if:

(i) through (iii) No Change.

(iv) a panel or court of competent jurisdiction previously found the associated person liable in a customer arbitration or civil litigation associated with the same customer dispute information;

(v) the customer dispute information involves the same conduct that is the basis of a final regulatory action taken by a securities regulator or self-regulatory organization;

(vi) more than two years have elapsed since the investment-related, customer-initiated arbitration or civil litigation associated with the customer dispute information has closed;

(vii) there was no investment-related, customer-initiated arbitration or civil litigation associated with the customer dispute information, and more than three years have elapsed since the date

that the customer complaint was initially reported to the CRD system; or

(viii) the associated person is prohibited from seeking to expunge the customer dispute information under Rule 12805(a)(1)(A).

(B) No Change.

(3) through (4) No Change.

(b) through (c) No Change.

**13806. Panel to Decide Requests for Expungement of Customer Dispute Information Filed by an Associated Person under Rule 13805**

(a) No Change.

**(b) Selection of Panel**

(1) through (3) No Change.

(4) The [associated person]parties requesting expungement of customer dispute information shall not be permitted to strike any arbitrators selected by the list selection algorithm nor stipulate to their removal, but shall be permitted to challenge any arbitrator selected for cause pursuant to Rule 13410. If an arbitrator is removed, the list selection algorithm shall randomly select a replacement.

(5) No Change.

**13807. Promissory Note Proceedings**

No Change.

\* \* \* \* \*

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**12000. CODE OF ARBITRATION PROCEDURE FOR CUSTOMER DISPUTES**

\* \* \* \* \*

**12100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

(a) through (w) No Change.

**(x) Pleadings**

A pleading is a statement describing a party's causes of action or defenses. Documents that are considered pleadings are: a statement of claim, an answer, a counterclaim, a cross claim, a third party claim, a separate document requesting expungement, and any replies.

(y) through (ee) No Change.

**(ff) Unnamed Person**

For purposes of Rule 12800 and Rule 12805, the term “unnamed person” means an associated person, including a formerly associated person, who is identified in a Form U4, Form U5, or Form U6 as having been the subject of an investment-related, customer-initiated arbitration that alleged that the associated person or formerly associated person

was involved in one or more sales practice violations, but who is not named as a respondent in the arbitration.

\* \* \* \* \*

**12203. Denial of FINRA Forum**

(a) No Change.

(b) The Director shall decline the use of the FINRA arbitration forum if the Director determines that the expungement request is ineligible for arbitration under Rule 12805.

(c) The Director may decline the use of the FINRA arbitration forum if the Director determines that the expungement request was not filed under, or considered in the arbitration forum in accordance with, Rule 12805.

[(b)](d) Disputes that arise out of transactions in a readily identifiable market may be referred to the arbitration forum for that market, if the claimant agrees.

\* \* \* \* \*

**12307. Deficient Claims**

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

(1) through (5) No Change.

(6) The claimant did not pay all required filing fees, unless the Director deferred the fees; [or]

(7) The claim does not comply with the restrictions on filings with personal confidential information under Rule 12300(d)(1);

(8) A request to expunge customer dispute information from the CRD system does not include the CRD number of the party requesting expungement;

(9) A request to expunge customer dispute information from the CRD system does not include the CRD occurrence number that is the subject of the request;

(10) A request to expunge customer dispute information from the CRD system does not include the case name and docket number of the arbitration that is associated with the customer dispute information; or

(11) A request to expunge customer dispute information from the CRD system does not include an explanation of whether expungement of the same customer dispute information was (i) previously requested and, if so (ii) how it was decided.

(b) through (c) No Change.

\* \* \* \* \*

#### **12604. Evidence**

(a) through (b) No Change.

(c) Notwithstanding paragraph (a) of this Rule, a prior expungement award shall not be admissible.

\* \* \* \* \*

### **PART VIII SIMPLIFIED ARBITRATION, [AND] DEFAULT PROCEEDINGS, AND EXPUNGEMENT PROCEEDINGS**

\* \* \* \* \*

**12800. Simplified Arbitration**

(a) No Change.

**(b) Single Arbitrator**

All arbitrations administered under this [r]Rule will be decided by a single public arbitrator appointed from the FINRA chairperson roster in accordance with the list selection algorithm, unless the parties agree in writing otherwise. An arbitrator must evidence successful completion of, and agreement with, enhanced expungement training provided by FINRA Dispute Resolution Services prior to considering a request to expunge customer dispute information in an arbitration administered under this Rule.

(c) No Change.

**(d) Requests to Expunge Customer Dispute Information**

**(1) When an Associated Person is Named as a Respondent**

(A) An associated person named as a respondent in a simplified investment-related, customer-initiated arbitration may request expungement during the arbitration of the customer dispute information associated with the customer's statement of claim, provided the request is not barred pursuant to Rule 12805(a)(1)(B).

(B) If an associated person named as a respondent requests expungement during the simplified investment-related, customer-initiated arbitration:

(i) the request must be filed in the answer or a separate pleading requesting expungement and meet the requirements of Rule 12805(a)(1)(C)(ii). If the associated person requests

expungement in a pleading other than an answer, the request must be filed within 30 days after the date FINRA notifies the associated person of the appointment of the arbitrator; and

(ii) the arbitrator from the simplified arbitration shall consider and decide the expungement request in accordance with Rule 12805(c).

(C) If the associated person named as a respondent withdraws or does not pursue an expungement request after filing the request during the simplified investment-related, customer-initiated arbitration, the arbitrator shall deny the expungement request with prejudice.

**(2) On Behalf of an Unnamed Person**

(A) A party to a simplified investment-related, customer-initiated arbitration may request expungement on behalf of an unnamed person during the arbitration of the customer dispute information associated with the customer's statement of claim with the written consent of the unnamed person, provided the request is not barred pursuant to Rule 12805(a)(1)(B).

(B) If a party requests expungement on behalf of an unnamed person during a simplified investment-related, customer-initiated arbitration:

(i) the request must be filed: (a) in compliance with Rules 12805(a)(1)(C)(ii), 12805(a)(2)(C)(ii), and 12805(a)(2)(D); and (b)

within 30 days after the date FINRA notifies the parties of the appointment of the arbitrator; and

(ii) the arbitrator from the simplified arbitration shall consider and decide the expungement request in accordance with Rule 12805(c).

(C) If the requesting party withdraws or does not pursue an expungement request after filing the request during a simplified investment-related, customer-initiated arbitration, the arbitrator shall deny the expungement request with prejudice.

(D) If a party to the simplified investment-related, customer-initiated arbitration does not request expungement on behalf of the unnamed person, the unnamed person shall not file a motion to intervene in the simplified arbitration to request expungement of customer dispute information associated with the customer's statement of claim.

**(e) Deciding Expungement Requests**

(1) If an associated person named as a respondent, or a party on behalf of an unnamed person, requests expungement during a simplified investment-related, customer-initiated arbitration, the expungement request shall be decided by the arbitrator from the simplified arbitration, as follows:

(A) No Hearing or Option Two Special Proceeding. If a customer requests no hearing pursuant to Rule 12800(c)(2), or an Option Two special proceeding pursuant to Rule 12800(c)(3)(B), the arbitrator shall hold a separate expungement hearing pursuant to Rule 12805(c) to

consider and decide the expungement request and issue the decision on the expungement request in a separate, subsequent award in accordance with Rule 12805(c)(8).

(B) Option One Hearing. If a customer requests an Option One hearing pursuant to Rule 12800(c)(3)(A), the arbitrator shall consider and decide the expungement request, as follows:

(i) If the simplified arbitration closes by award after a hearing, the arbitrator shall consider and decide the expungement request during the Option One hearing in accordance with Rule 12805(c), and issue the decision on the expungement request in the same award in accordance with Rule 12805(c)(8).

(ii) If the simplified arbitration closes other than by award or by award without a hearing, the arbitrator shall hold a separate expungement hearing, pursuant to Rule 12805(c), to consider and decide the expungement request. At the conclusion of the expungement hearing, the arbitrator shall issue a separate award in accordance with Rule 12805(c)(8).

(2) If an associated person named as a respondent, or a party on behalf of an unnamed person, does not request expungement of the customer dispute information associated with the customer's statement of claim during the simplified investment-related, customer-initiated arbitration, the associated person may request expungement pursuant to Rule 13805 after the simplified arbitration has closed, provided that the request is not barred by Rule 13805(a)(2).

**(f) Notifications**

**(1) Notification to State Securities Regulators**

The Director shall notify state securities regulators, in the manner determined by the Director in collaboration with state securities regulators, of an expungement request within 15 days of receiving an expungement request that includes all the elements described in Rule 12805(a)(1)(C)(ii).

**(2) Notification to Customers**

The Director shall notify all customers from the simplified arbitration of an expungement hearing conducted pursuant to Rule 12800(e)(1) or Rule 13805, and the customers shall be permitted to attend and participate in the hearing in accordance with Rule 12805(c) or Rule 13805(c), as applicable.

**[(d)](g) Discovery and Additional Evidence**

No Change.

**[(e)](h) Increases in Amount in Dispute**

No Change.

**[(f)](i) Arbitrator Honoraria**

No Change.

\* \* \* \* \*

**12805. Expungement of Customer Dispute Information from the Central**

**Registration Depository (CRD) System[under Rule 2080]**

This Rule applies to all requests to expunge customer dispute information from the CRD system, except that when a party requests expungement of customer dispute information during a simplified arbitration pursuant to Rule 12800(d), only those sections

of this Rule that are specifically referenced in Rule 12800(d) through (f) shall apply.

Except as otherwise provided in this Rule, all other provisions of the Code apply to such expungement requests.

**(a) Requesting Expungement Under the Customer Code**

**(1) Requesting Expungement When Named as a Respondent**

**(A) Applicability**

An associated person named as a respondent in an investment-related, customer-initiated arbitration may request expungement during the arbitration of the customer dispute information associated with the customer's statement of claim, unless barred by Rule 12805(a)(1)(B). If the associated person does not request expungement in the arbitration, the associated person shall be prohibited from seeking to expunge the customer dispute information associated with the customer's statement of claim in any subsequent proceeding.

**(B) Limitations**

An associated person shall not file a request for expungement of customer dispute information if:

(i) a panel held a hearing to consider the merits of the associated person's request for expungement of the same customer dispute information; or

(ii) a court of competent jurisdiction previously denied the associated person's request to expunge the same customer dispute information.

**(C) Expungement Request**

(i) An associated person must include the expungement request in the answer or a separate pleading requesting expungement. If the associated person requests expungement in a pleading other than an answer, the request must be filed no later than 60 days before the first scheduled hearing; otherwise, the associated person must file a motion pursuant to Rule 12503 requesting an extension to file the expungement request.

(ii) The expungement request must include:

- a. the applicable filing fee;
- b. the CRD number of the party requesting expungement;
- c. each CRD occurrence number that is the subject of the request;
- d. the case name and docket number associated with the customer dispute information; and
- e. an explanation of whether expungement of the same customer dispute information was (i) previously requested and, if so (ii) how it was decided.

**(D) Panel Decides Expungement Request**

(i) During Investment-Related, Customer-Initiated Arbitration

If an associated person requests expungement pursuant to Rule 12805(a)(1)(C) and the investment-related, customer-initiated arbitration closes by award after a hearing, the panel shall consider and decide the expungement request during the arbitration in accordance with Rule 12805(c), and issue its decision on the expungement request in the same award in accordance with Rule 12805(c)(8). If the associated person withdraws or does not pursue the expungement request, the panel shall deny the expungement request with prejudice.

(ii) Investment-Related, Customer-Initiated Arbitration Closes Other Than by Award or by Award Without a Hearing

If an associated person requests expungement pursuant to Rule 12805(a)(1)(C) and the investment-related, customer-initiated arbitration closes other than by award or by award without a hearing:

a. the panel shall not consider the associated person's request for expungement of customer dispute information; and

b. the associated person may file a request for expungement of the customer dispute information as a new claim under Rule 13805(a) against the member firm at which the person was associated at the time the customer

dispute arose, provided the expungement request is not barred pursuant to Rule 13805(a)(2).

**(2) Requesting Expungement on Behalf of an Unnamed Person**

**(A) Applicability**

With the written consent of the unnamed person, a party to an investment-related, customer-initiated arbitration may request expungement on behalf of the unnamed person during the arbitration of the customer dispute information associated with the customer's statement of claim.

**(B) Limitations**

A party to an investment-related, customer-initiated arbitration shall not request expungement on behalf of an unnamed person if the request is barred pursuant to Rule 12805(a)(1)(B).

**(C) Expungement Request**

(i) A party requesting expungement on behalf of an unnamed person must file the request with the Director in accordance with Rule 12805(a)(1)(C)(ii).

(ii) The request must include the Form Requesting Expungement on Behalf of an Unnamed Person, signed by the unnamed person and the party that is seeking expungement of customer dispute information on the unnamed person's behalf.

(iii) The request must be filed as soon as practicable, but no later than 60 days before the first scheduled hearing; otherwise,

the requesting party must file a motion pursuant to Rule 12503 requesting an extension to file the expungement request.

**(D) Form Requesting Expungement on Behalf of an Unnamed Person**

(i) By signing the Form Requesting Expungement on Behalf of an Unnamed Person, the unnamed person agrees that the person shall be bound by the panel's decision on the expungement request.

(ii) By signing the Form Requesting Expungement on Behalf of an Unnamed Person, the unnamed person agrees to maintain the confidentiality of any documents and information from the investment-related, customer-initiated arbitration to which the unnamed person is given access and to adhere to any confidentiality agreements or orders associated with the arbitration.

(iii) By filing and serving an expungement request, the requesting party agrees to represent the unnamed person and the unnamed person's interests and to pursue the request for expungement on behalf of the unnamed person during the investment-related, customer-initiated arbitration.

**(E) Deciding Expungement Request**

(i) Investment-Related, Customer-Initiated Arbitration

Closes by Award After a Hearing

If the investment-related, customer-initiated arbitration closes by award after a hearing, the panel shall consider and decide the expungement request during the arbitration in accordance with Rule 12805(c), and issue its decision on the expungement request in the same award in accordance with Rule 12805(c)(8). If the requesting party withdraws or does not pursue the expungement request, the panel shall deny the expungement request with prejudice.

(ii) Investment-Related, Customer-Initiated Arbitration

Closes Other than by Award or by Award Without a Hearing

If the investment-related, customer-initiated arbitration closes other than by award or by award without a hearing:

a. the panel shall not consider the party's request for expungement of customer dispute information on behalf of the unnamed person; and

b. the unnamed person may file a request for expungement of the customer dispute information as a new claim under Rule 13805(a) against the member firm at which the person was associated at the time the customer

dispute arose, provided the expungement request is not barred pursuant to Rule 13805(a)(2).

(iii) Unnamed Person May Not Intervene in the Investment-Related, Customer-Initiated Arbitration

a. If a party to the investment-related, customer-initiated arbitration does not request expungement on behalf of the unnamed person, the unnamed person shall not file a motion to intervene in the arbitration to request expungement of customer dispute information associated with the customer's statement of claim.

b. The unnamed person may file a request for expungement of the customer dispute information as a new claim under Rule 13805(a) against the member firm at which the person was associated at the time the customer dispute arose, provided the filing of the request is not barred pursuant to Rule 13805(a)(2).

**(3) No Separate Requests For Expungement Filed Against a**

**Customer**

An associated person shall not file a request for expungement of the customer dispute information as a new claim against a customer separate from the investment-related, customer-initiated arbitration.

**(b) Notification to State Securities Regulators**

The Director shall notify state securities regulators, in the manner determined by the Director in collaboration with state securities regulators, of an expungement request within 15 days of receiving an expungement request that includes all the elements described in Rule 12805(a)(1)(C)(ii).

**(c) Expungement Hearing**

In order to issue an award containing [grant] expungement of customer dispute information [under Rule 2080], the panel must comply with the following requirements[:].

**(1) Recorded Hearing Sessions**

[(a)]The panel must [H]hold one or more separate [a]recorded hearing sessions[(by telephone or in person)] regarding the [appropriateness of]expungement request. [This paragraph will apply to cases administered under Rule 12800 even if a customer did not request a hearing on the merits.]

**(2) Appearance by Associated Person and Party Requesting Expungement**

The associated person whose information in the CRD system is the subject of the request to expunge customer dispute information must appear in person or by video conference at the expungement hearing. A party requesting expungement on behalf of an unnamed person or the party's representative must also appear in person or by video conference at the expungement hearing. The panel shall decide the method of appearance.

**(3) Customer's Attendance and Participation**

**(A) Entitled to Attend and Participate**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request are entitled to attend and participate in all aspects of the expungement hearing. The customer may provide the customer's position on the expungement request in writing.

**(B) Method of Attendance and Participation**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request may attend and participate in the expungement hearing by telephone, in person, or by video conference.

**(4) Customer Representation**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request are entitled to representation at the expungement hearing pursuant to Rule 12208.

**(5) Customer and Customer's Representative Participation during the Expungement Hearing**

**(A) Customer Introduces Evidence**

The panel must allow the customer or customer's representative to introduce evidence during the expungement hearing. If the customer or

customer's representative introduces evidence during the expungement hearing, a party may state objections to the introduction of the evidence.

**(B) Customer's Testimony**

The panel must allow the customer and witnesses called by the customer or the customer's representative to testify at the expungement hearing and be questioned by the customer or customer's representative.

If a customer or witnesses called by the customer or customer's representative testify during the expungement hearing, the associated person or party requesting expungement on behalf of an unnamed person may cross-examine them.

**(C) Associated Person's or Others' Testimony and Evidence**

The panel must allow the customer or the customer's representative to state objections to evidence presented during the expungement hearing. The panel must also allow the customer or the customer's representative to cross-examine the associated person, the party requesting expungement on behalf of an unnamed person and any other witnesses called during the expungement hearing.

**(D) Opening and Closing Arguments by Customer or Customer's Representative**

The panel must allow the customer or the customer's representative to present opening and closing arguments if the panel allows any party to present such arguments.

**(6) Panel Requests Additional Documents or Evidence**

The panel may request from the associated person, or party requesting expungement on behalf of an unnamed person, any documentary, testimonial or other evidence that it deems relevant to the expungement request.

**(7) Review Settlement Documents**

[(b) In cases involving settlements,]The panel shall review any settlement documents related to customer dispute information that is the subject of the expungement request and consider the amount of payments made to any party and any other terms and conditions of [a]the settlement. In addition, the panel shall inquire and fully consider whether a party conditioned a settlement of the arbitration upon any agreement, written or otherwise, not to oppose the request for expungement in cases in which the customer does not participate in the expungement hearing or the requesting party states that a customer has indicated that the customer will not oppose the expungement request.

**(8) Award**

**[(c)](A) Unanimous Decision Required to Issue Award**

**Containing Expungement Relief**

(i) In order to issue an award containing expungement relief, the panel must find unanimously that one or more of the following grounds for expungement has been established:

- a. the claim, allegation or information is factually impossible or clearly erroneous;

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

c. the claim, allegation or information is false.

(ii) The panel shall not issue, and the Director shall not serve, an award containing expungement relief based on grounds other than those specified in paragraph (c)(8)(A)(i) of this Rule.

**(B) Required Contents of Award Containing Expungement Relief**

The panel must [I]indicate in the arbitration award which of the [Rule 2080]grounds for expungement identified in paragraph (c)(8)(A)(i) of this Rule serve(s) as the basis for its expungement order, [and]provide a [brief]written explanation of the reason(s) for its finding that one or more of [Rule 2080]those grounds [for expungement applies]apply to the facts of the [case]request, and identify any specific documentary, testimonial or other evidence on which the panel relied in awarding expungement relief.

**(C) Evidentiary Weight of Customer's Decision Not to Attend or Participate**

The panel shall not give any evidentiary weight to a customer's decision not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate.

**(9) Forum Fees**

[(d)]The panel must [A] assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the party or parties requesting expungement[relief].

\* \* \* \* \*

**13000. CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES**

\* \* \* \* \*

**13100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

(a) through (u) No Change.

**(v) Pleadings**

A pleading is a statement describing a party's causes of action or defenses. Documents that are considered pleadings are: a statement of claim, an answer, a counterclaim, a cross claim, a third party claim, a separate document requesting expungement and any replies.

(w) through (gg) No Change.

\* \* \* \* \*

**13203. Denial of FINRA Forum**

(a) No Change.

(b) The Director shall decline the use of the FINRA arbitration forum if the Director determines that the expungement request is ineligible for arbitration under Rule 13805.

(c) The Director may decline the use of the FINRA arbitration forum if the Director determines that the expungement request was not filed or considered in the arbitration forum in accordance with Rule 13805.

[(b)](d) Disputes that arise out of transactions in a readily identifiable market may be referred to the arbitration forum for that market, if the claimant agrees.

\* \* \* \* \*

#### **13214. Payment of Arbitrators**

(a) Except as provided in paragraph (b) of this Rule, Rule 13800, and Rule [13806]13807(f), FINRA will pay the panel an honorarium, as follows:

(1) through (6) No Change.

(b) No Change.

(c) Payment for Deciding Discovery-Related Motions, Contested Subpoena Requests, and Contested Orders for Production or Appearance without a Hearing Session

(1) FINRA will pay each arbitrator an honorarium of \$200 to decide without a hearing session: (i) a discovery-related motion, (ii) a motion that contains one or more contested subpoena requests or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena requests and contested orders for production or appearance. This paragraph does not apply to cases administered under Rule 13800 or pursuant to Rule [13806]13807(d)(1).

(2) through (3) No Change.

(d) No Change.

\* \* \* \* \*

**13307. Deficient Claims**

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

(1) through (4) No Change.

(5) The claimant did not pay all required filing fees, unless the Director deferred the fees; [or]

(6) The claim does not comply with the restrictions on filings with personal confidential information under Rule 13300(d)(1);

(7) A request to expunge customer dispute information from the CRD system does not include a customer's current address;

(8) A request to expunge customer dispute information from the CRD system does not include the CRD number of the party requesting expungement;

(9) A request to expunge customer dispute information from the CRD system does not include each CRD occurrence number that is the subject of the request;

(10) A request to expunge customer dispute information from the CRD system does not include the case name and docket number of the arbitration associated with the customer dispute information, if applicable; or

(11) A request to expunge customer dispute information from the CRD system does not include an explanation of whether expungement of the same

customer dispute information was (i) previously requested and, if so (ii) how it was decided.

(b) through (c) No Change.

\* \* \* \* \*

**13600. Required Hearings**

(a) Hearings will be held, unless:

(1) The arbitration is administered under Rule 13800(c), Rule 13801, or Rule [13806]13807(e)(1);

(2) through (3) No Change.

(b) through (c) No Change.

\* \* \* \* \*

**13604. Evidence**

(a) through (b) No Change.

(c) Notwithstanding paragraph (a) of this Rule, a prior expungement award shall not be admissible.

\* \* \* \* \*

**PART VIII SIMPLIFIED ARBITRATION; DEFAULT PROCEEDINGS;  
SEXUAL ASSAULT CLAIMS, SEXUAL HARASSMENT CLAIMS,  
OR STATUTORY EMPLOYMENT DISCRIMINATION CLAIMS; [AND]  
INJUNCTIVE RELIEF; EXPUNGEMENT PROCEEDINGS; AND  
PROMISSORY NOTE PROCEEDINGS**

\* \* \* \* \*

**13805. Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System[under Rule 2080]**

This Rule applies to all requests to expunge customer dispute information from the CRD system. Except as otherwise provided in this Rule, all provisions of the Code apply to such expungement requests.

**(a) Filing an Expungement Request against a Member Firm**

**(1) Applicability**

An associated person may request expungement of customer dispute information from the CRD system by filing a statement of claim under Rule 13302 against a member firm at which the person was associated at the time the customer dispute arose, unless barred by Rule 13805(a)(2).

**(2) Limitations**

(A) An associated person shall not file a claim requesting expungement of customer dispute information from the CRD system against the member firm at which the person was associated at the time the customer dispute arose if:

(i) a panel held a hearing to consider the merits of a request for expungement of the same customer dispute information;

(ii) a court of competent jurisdiction previously denied a request to expunge the same customer dispute information;

(iii) the investment-related, customer-initiated arbitration, civil litigation or customer complaint associated with the customer dispute information has not closed;

(iv) a panel or court of competent jurisdiction previously found the associated person liable in a customer arbitration or civil litigation associated with the same customer dispute information;

(v) the customer dispute information involves the same conduct that is the basis of a final regulatory action taken by a securities regulator or self-regulatory organization;

(vi) more than two years have elapsed since the investment-related, customer-initiated arbitration or civil litigation associated with the customer dispute information has closed;

(vii) there was no investment-related, customer-initiated arbitration or civil litigation associated with the customer dispute information, and more than three years have elapsed since the date that the customer complaint was initially reported to the CRD system; or

(viii) the associated person is prohibited from seeking to expunge the customer dispute information under Rule 12805(a)(1)(A).

(B) Subject to the six-year eligibility requirement of Rule 13206(a), an associated person is not barred from requesting expungement of customer dispute information pursuant to Rule 13805(a)(2) if:

(i) the request for expungement is made pursuant to Rule 13805 within two years of [insert the effective date of the proposed rule change], and the disclosure sought to be expunged is associated with an investment-related, customer-initiated arbitration or civil litigation that closed on or prior to [insert the effective date of the proposed rule change]; or,

(ii) the request for expungement is made pursuant to Rule 13805 within three years of [insert the effective date of the proposed rule change], and the disclosure sought to be expunged is associated with a customer complaint initially reported to the CRD system on or prior to [insert the effective date of the proposed rule change].

**(3) Expungement Request**

The expungement request must be filed with the Director, pursuant to Rule 13302, and include:

(A) the applicable filing fee;

(B) the CRD number of the party requesting expungement;

(C) each CRD occurrence number that is the subject of the request;

(D) the case name and docket number associated with the customer dispute information, if applicable; and

(E) an explanation of whether expungement of the same customer dispute information was (i) previously requested and, if so (ii) how it was decided.

**(4) Panel Decides Expungement Request**

A three-person panel selected pursuant to Rule 13806 must hold an expungement hearing, pursuant to Rule 13805(c), to consider and decide the expungement request. At the conclusion of the expungement hearing, the panel must issue an award in accordance with Rule 13805(c)(9). If the associated person withdraws or does not pursue the expungement request, the panel shall deny the expungement request with prejudice.

**(b) Notifications**

(1) To Customers

(A) The associated person shall:

(i) serve all customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request with a copy of the statement of claim within 10 days of filing the statement of claim with the Director, unless the panel determines that extraordinary circumstances make such service impracticable;

(ii) serve all customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request with a copy of any answer within 10 days of the filing of each answer with the

Director, unless the panel determines that extraordinary circumstances make such service impracticable;

(iii) serve the customers by first-class mail, overnight mail service, overnight delivery service, or hand delivery; and

(iv) file with the panel proof of service for the statement of claim and any answers, copies of all documents provided by the associated person to the customers, and copies of all communications sent to the customers and responses received by the associated person from the customers.

(B) The Director shall:

(i) notify all customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request of the time, date and place of any prehearing conferences and the expungement hearing using the customers' current addresses provided by the party seeking expungement; and

(ii) provide the notified customers with access to all documents relevant to the expungement request that are filed in (a) the arbitration requesting expungement relief and (b) a customer-initiated arbitration brought by the customer under the Customer Code that is a subject of the expungement request.

(2) To State Securities Regulators

(A) The Director shall notify state securities regulators, in the manner determined by the Director in collaboration with state securities regulators, of an expungement request within 15 days of receiving an expungement request that includes all the elements described in Rule 13805(a)(3).

(B) The Director shall provide state securities regulators with access, subject to confidentiality restrictions, to all documents relevant to the expungement request that are filed in (i) the arbitration requesting expungement relief and (ii) any other customer-initiated arbitration brought under the Customer Code that is associated with the customer dispute information that is a subject of the expungement request.

(3) Notification of Participation by State Securities Regulators

If an authorized representative of the notified state securities regulators notifies the Director no later than 30 days after the last answer is due under the Code that the authorized representative intends to attend and participate in the expungement hearing (i) the Director shall notify the authorized representative of the time, date and place of any prehearing conferences and the expungement hearing and (ii) the panel shall allow the authorized representative to attend and participate in the prehearing conferences and the expungement hearing in accordance with the requirements of Rule 13805(c)(6).

**(c) Expungement Hearing**

In order to [grant] issue an award containing expungement of customer dispute information [under Rule 2080], the panel must comply with the following requirements[:].

**(1) Recorded Hearing Sessions**

[(a)] The panel must [H]hold one or more [a]recorded hearing sessions[(by telephone or in person)] regarding the [appropriateness of]expungement request.  
[This paragraph will apply to cases administered under Rule 13800 even if a claimant did not request a hearing on the merits.]

**(2) Appearance by Associated Person**

The associated person whose information in the CRD system is the subject of the request to expunge customer dispute information must appear in person or by video conference at the expungement hearing. The panel shall decide the method of appearance.

**(3) Customer's Attendance and Participation**

**(A) Entitled to Attend and Participate**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request are entitled to attend and participate in all aspects of the prehearing conferences and expungement hearing. The customer may provide the customer's position on the expungement request in writing.

**(B) Method of Attendance and Participation**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request may attend and participate at the expungement hearing by telephone, in person, or by video conference.

**(4) Customer Representation**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request are entitled to representation at the prehearing conferences and expungement hearing pursuant to Rule 13208.

**(5) Customer and Customer's Representative Participation during the Expungement Hearing**

**(A) Customer Introduces Evidence**

The panel must allow the customer or the customer's representative to introduce evidence during the expungement hearing. If the customer or the customer's representative introduces evidence during the expungement hearing, a party may state objections to the introduction of the evidence.

**(B) Customer's Testimony**

The panel must allow the customer and witnesses called by the customer or the customer's representative to testify at the expungement hearing and be questioned by the customer or the customer's representative. If a customer or witnesses called by the customer or the

customer's representative testify during the expungement hearing, the associated person requesting expungement may cross-examine them.

**(C) Associated Person's or Others' Testimony and Evidence**

The panel must allow the customer or the customer's representative to state objections to evidence presented during the expungement hearing. The panel must also allow the customer or the customer's representative to cross-examine the associated person requesting expungement and any other witnesses called during the expungement hearing.

**(D) Opening and Closing Arguments by Customer or Customer's Representative**

The panel must allow the customer or the customer's representative to present opening and closing arguments if the panel allows any party to present such arguments.

**(6) Attendance and Participation of An Authorized Representative of State Securities Regulators**

(A) If the required notice has been received by the Director from an authorized representative of the notified state securities regulators pursuant to Rule 13805(b)(3), the authorized representative may attend and participate in the prehearing conferences and the expungement hearing. The authorized representative may (i) provide the position or positions of the notified state securities regulators on the expungement request in writing or (ii) attend and participate at the expungement hearing

in person or by video conference. The panel shall not allow the participation of the authorized representative to materially delay the scheduling of the expungement hearing.

(B) At the expungement hearing, the authorized representative may (i) introduce documentary, testimonial or other evidence; (ii) cross-examine any witnesses; and (iii) present opening and closing arguments if the panel allows any party to present such arguments.

(C) The panel must allow any persons participating in the expungement hearing to state objections to evidence presented by the authorized representative during the expungement hearing. The panel must also allow any persons participating in the expungement hearing to cross-examine any witnesses called by the authorized representative during the expungement hearing.

**(7) Panel Requests Additional Documents or Evidence**

The panel may request from the associated person requesting expungement, and from the member firm at which the person was associated at the time the customer dispute arose, any documentary, testimonial or other evidence that it deems relevant to the expungement request.

**(8) Review Settlement Documents**

[(b) In cases involving settlements,]The panel shall review any settlement documents related to customer dispute information that is the subject of the expungement request and consider the amount of payments made to any party and any other terms and conditions of [a]the settlement. In addition, the panel shall

inquire and fully consider whether a party conditioned a settlement of the arbitration upon any agreement, written or otherwise, not to oppose the request for expungement in cases in which the customer does not participate in the expungement hearing or the requesting party states that a customer has indicated that the customer will not oppose the expungement request.

**(9) Award**

**[(c)](A) Unanimous Decision Required to Issue Award**

**Containing Expungement Relief**

(i) In order to issue an award containing expungement relief, the panel must find unanimously that one or more of the following grounds for expungement has been established:

a. the claim, allegation or information is factually impossible or clearly erroneous;

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

c. the claim, allegation or information is false.

(ii) The panel shall not issue, and the Director shall not serve, an award containing expungement relief based on grounds other than those specified in paragraph (c)(9)(A)(i) of this Rule.

**(B) Required Contents of Award Containing Expungement Relief**

The panel must [I]indicate in the arbitration award which of the [Rule 2080] grounds for expungement identified in paragraph (c)(9)(A)(i)

of this Rule serve(s) as the basis for its expungement order, [and] provide a [brief] written explanation of the reason(s) for its finding that one or more [Rule 2080] of those grounds [for expungement applies] apply to the facts of the [case] request, and identify any specific documentary, testimonial or other evidence on which the panel relied in awarding expungement relief.

**(C) Evidentiary Weight of Decision of Customer or Authorized Representative Not to Attend or Participate**

The panel shall not give any evidentiary weight to a decision by a customer or an authorized representative of the state securities regulators not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate.

**(10) Forum Fees**

[(d)] The panel must [A] assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the party or parties requesting expungement [relief].

**13806. Panel to Decide Requests for Expungement of Customer Dispute**

**Information Filed by an Associated Person under Rule 13805**

**(a) Applicability**

This Rule applies to claims that request expungement of customer dispute information filed by an associated person against a member firm, pursuant to Rule 13805. Except as otherwise provided in this Rule, all provisions of the Code apply to such claims.

**(b) Selection of Panel**

(1) The list selection algorithm shall randomly select three public arbitrators who are eligible for the chairperson roster and have the additional qualifications described in Rule 13806(b)(2) to decide a request for expungement of customer dispute information from the CRD system filed by an associated person pursuant to Rule 13805. The parties shall not be permitted to stipulate to the use of pre-selected arbitrators.

(2) Each arbitrator selected for the panel must have fully met the following additional qualifications:

(A) evidenced successful completion of, and agreement with, enhanced expungement training provided by FINRA Dispute Resolution Services; and

(B) service as an arbitrator through award on at least four customer-initiated arbitrations administered by FINRA Dispute Resolution Services pursuant to the Rule 12000 Series or another self-regulatory organization, in which a hearing was held, except a hearing pursuant to Rule 12800(c)(3)(B).

(3) The first arbitrator selected by the list selection algorithm shall be the chairperson of the panel.

(4) The parties requesting expungement of customer dispute information shall not be permitted to strike any arbitrators selected by the list selection algorithm nor stipulate to their removal, but shall be permitted to challenge any

arbitrator selected for cause pursuant to Rule 13410. If an arbitrator is removed, the list selection algorithm shall randomly select a replacement.

(5) Notwithstanding Rules 13401(b) and (c), the parties shall not be permitted to stipulate to fewer than three arbitrators on the panel to hear the expungement request.

**[13806]13807. Promissory Note Proceedings**

No Change.

\* \* \* \* \*