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FINRA Agrees to Dump Expungement Agreements.

Rule change would stop brokers from placing conditions on settlements stipulating that customers agree not to oppose brokers' move to clear record

It may become harder for financial advisers and brokerage firms to expunge investor complaints from their disciplinary records.

Finra Rule 2081, which was approved by the Financial Industry Regulatory Authority Inc. on Thursday, will prevent firms and brokers from placing conditions on settlements stipulating that customers agree not to oppose an expungement request, the regulator said. The rule will now go to the SEC for further review.

"While we are committed to providing an effective means for a registered person to expunge allegations that are false — which is something I strongly believe in — Finra feels that expungement of dispute information shouldn't be bargained for through settlement negotiations or otherwise," said Finra chairman and chief executive Richard Ketchum in a summary video posted to Finra's website.

Finra does not disclose how often expungement is used as a condition of settlement, but the rule comes as pressure had been mounting from investor plaintiffs' attorneys and Congress.

The concern was that it was too easy for brokers to scrub customer complaints from Finra's Central Registration Depository, which maintains a record of such complaints and regulatory and disciplinary actions. Much of the database is publicly available through Finra's BrokerCheck database, the regulator said.

The Public Investors Arbitration Bar Association, which represents investors in arbitration cases, published a highly publicized study last October that claimed brokers are able to obtain expungement in around nine out of 10 cases resolved by settlement or a stipulated award.

Several senators, including Sen. Jack Reed, D-R.I., and Sen. Charles Grassley, R-Ia., had also chimed in with letters to Finra seeking more information about the frequency of expungements granted in settlements.

But others in the industry felt that the controversy was overblown, saying that expungements were difficult to obtain.

During the five-year period from 2007 to 2012, Finra erased disputes in less than 5%, or 838 cases, of the total 17,765 customer disputes filed, the self-regulator said.

Those who seek expungement must obtain court approval validating any arbitration award granting expungement before an event can be erased.

Some attorneys who help brokers obtain expungements felt that the process could inconvenience customers and brokers who are legitimately pursuing expungement. Marc Dobin of the Dobin Law

Group P.A. said that many times the agreement not to oppose expungement was tacked onto a settlement after the terms, including the monetary amount, had been negotiated.

“They’re actually going to inconvenience the customer more if the customer’s now going to be a constant player after the settlement of the case,” he said.

The proposal will be sent to the Securities and Exchange Commission, where it will be subject to public comment before a final decision on adoption will be made.

By Mason Braswell

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