

Below is the text of proposed Rules 12100(z), 12806, 13100(cc), 13806 and 13807.

Rule 12100(z). Unnamed Person.

The term “unnamed person” means an associated person who is identified in a Form U4 or Form U5 as having been the subject of an investment-related customer-initiated arbitration proceeding that alleged that the associated person was either named in or can be reasonably identified from the body of the arbitration claim as an associated person who was involved in one or more of the alleged sales practice violations, but who was not named as a respondent in such proceeding.

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Rule 12806. Expungement of Customer Dispute Information by Persons Named as Parties.

(a) An associated person named as a respondent in an investment-related customer-initiated arbitration proceeding may seek expungement of the associated customer dispute information from the CRD system only during that customer arbitration.

(b) An associated person named as a respondent in an investment-related customer-initiated arbitration proceeding may not seek expungement of the customer dispute information under Rule 13807 or during any subsequent proceeding under the Code.

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Rule 13807. Expungement of Customer Dispute Information by an Unnamed Person.

(a) *In re* expungement proceedings

(1) Applicability

An unnamed person may seek expungement of customer dispute information by initiating an *In re* expungement proceeding. *In re* expungement proceedings are subject to the following requirements:

- an unnamed person may not name respondents;
- an unnamed person may request expungement relief only, as an arbitrator has no authority to award monetary damages or other relief in an *In re* expungement proceeding; and
- a proceeding may commence only after the underlying investment-related customer-initiated arbitration proceeding has concluded.

(2) Limitations

An unnamed person may not seek expungement relief by initiating an arbitration case that names the customer, member or any other party as the respondent. An unnamed person may not seek expungement relief by attempting to intervene in the arbitration filed by the customer. An unnamed person may seek expungement relief directly in the customer-initiated arbitration proceeding only if a party to the proceeding requests the relief on behalf of the unnamed person.

(3) Representation of an Unnamed Person

An unnamed person has the right to be represented by an attorney or other individual in accordance with Rule 13208.

(b) Notice to Unnamed Person

FINRA shall notify an unnamed person in writing when a member reports to the CRD system, through a Form U4 or Form U5, that the person was the subject of an investment-related customer-initiated arbitration proceeding alleging sales practice violations. Such notice shall include a copy of the statement of claim from the underlying investment-related customer-initiated arbitration proceeding. FINRA shall send the written notice and statement of claim using overnight mail or express courier service to the unnamed person's residential address, as reflected in the CRD, unless FINRA has actual knowledge of a more current address for the unnamed person.

(c) Unnamed Person's Notice of Intent to File for Expungement Relief

An unnamed person shall notify FINRA of the intent to file for expungement relief by submitting a signed Notice of Intent to File an *In re* expungement claim within 180 days from the date FINRA sends written notice pursuant to paragraph (b). An unnamed person who does not timely notify FINRA of the intent to file shall not be permitted to seek relief through an *In re* expungement proceeding, unless the Director extends or modifies the time period for good cause. An unnamed person who provides such notice of intent may elect not to file a claim to initiate an *In re* expungement proceeding at the conclusion of the underlying investment-related customer-initiated arbitration.

(d) Conclusion of Underlying Investment-Related Customer-Initiated Arbitration

(1) Notice of Underlying Case Closure

An *In re* expungement proceeding shall commence only after FINRA closes the underlying investment-related customer-initiated arbitration proceeding. At the conclusion of such proceeding, FINRA shall notify the unnamed person, who filed a Notice of Intent to File an *In re* expungement claim, in writing that it has closed the proceeding. The unnamed person shall have 60 days from the date FINRA sends notice that it has closed the proceeding to file an *In re* expungement claim. An unnamed person who does not timely file within the 60-day period shall not be permitted to file such a claim, unless the Director extends or modifies the time period for good cause.

(2) Access to Documents

FINRA shall provide a copy of the pleadings (including any exhibits) submitted in the underlying proceeding, and a copy of the award, if any, along with the notice provided pursuant to Rule 13807(d)(1). If the parties settled the underlying investment-related customer-initiated arbitration proceeding, the FINRA-registered party in that arbitration shall provide a copy of any settlement agreements to the unnamed person within 10 days from the date that the unnamed person requests such documents.

(e) Motions to Vacate an Award in the Underlying Investment-Related Customer-Initiated Arbitration

(1) Motion to Vacate Pending

If there is a pending motion to vacate an award in the underlying investment-related customer-initiated arbitration proceeding, FINRA shall accept an *In re* expungement claim that is filed within 60 days from the date FINRA sends written notice pursuant to paragraph (d), but declare it inactive until the conclusion of the court action.

(2) Motion to Vacate Denied

If a court denies a party's motion to vacate an award in the underlying investment-related customer-initiated arbitration proceeding, the public chairperson of the arbitration panel in the underlying proceeding shall be appointed to the *In re* expungement proceeding. If the public chairperson is unable or unwilling to serve, FINRA shall appoint a replacement arbitrator pursuant to Rule 13807(h)(1).

(3) Motion to Vacate Granted

(A) If a court vacates an award in an underlying investment-related customer-initiated arbitration proceeding without remand, the public chairperson from the new arbitration panel in the underlying proceeding shall be appointed to the *In re* expungement proceeding at the conclusion of the subsequent underlying investment-related customer-initiated arbitration proceeding. If the public chairperson is unable or unwilling to serve, FINRA shall appoint a replacement arbitrator pursuant to Rule 13807(h)(1).

(B) If a court vacates an award in an underlying investment-related customer-initiated arbitration proceeding and remands the matter, the public chairperson of the arbitration panel in the underlying proceeding shall be appointed to the *In re* expungement proceeding after FINRA closes the underlying investment-related customer-initiated arbitration proceeding. If the public chairperson is unable or unwilling to serve, FINRA shall appoint a replacement arbitrator pursuant to Rule 13807(h)(1).

(f) Filing a Claim in an *In re* Expungement Proceeding

To file a claim for expungement relief in an *In re* expungement proceeding, an unnamed person shall submit to FINRA: (1) a statement of claim requesting expungement relief; and (2) a signed Submission Agreement for *In re* expungement proceedings. FINRA shall

provide a copy of the pleadings (including any exhibits) submitted in the underlying customer arbitration proceeding within 10 days from the date the unnamed person files an expungement claim, if the unnamed party did not receive a copy of them.

(g) Filing Fees

An unnamed person shall pay a nonrefundable filing fee of \$750, which includes one hearing session with the arbitrator. Additional hearing session fees shall be calculated at a rate of \$450 per session. An unnamed person shall be responsible for fees for any additional hearing sessions. The Director may defer or waive payment of all or part of the filing or hearing session fees on a showing of financial hardship.

(h) Arbitrator Appointment

FINRA shall appoint a single public arbitrator to hear *In re* expungement proceedings. Once appointed, the arbitrator shall follow the requirements enumerated in Rule 13805.

(1) Panel Appointed in Underlying Investment-Related Customer-Initiated Arbitration

If FINRA appointed a panel in the underlying investment-related customer-initiated arbitration, FINRA shall appoint the public chairperson of that arbitration panel to hear the *In re* expungement proceeding.

(A) Replacement in Majority Public Panel Arbitration

If the public chairperson is unable or unwilling to serve, FINRA shall appoint the public arbitrator from that panel to hear the *In re* expungement proceeding. If the public arbitrator is unable or unwilling to serve, FINRA shall appoint randomly, pursuant to Rule 13400, a new public chair-qualified arbitrator to hear the *In re* proceeding.

(B) Replacement in an Optional All Public Panel Arbitration

If the public chairperson is unable or unwilling to serve, FINRA shall appoint the public arbitrator from that panel who was the most highly ranked public arbitrator on the combined list to hear the *In re* expungement proceeding. If that public arbitrator is unable or unwilling to serve, FINRA shall appoint the remaining public arbitrator from that panel to hear the *In re* expungement proceeding. If the public arbitrators are unable or unwilling to serve, FINRA shall appoint randomly, pursuant to Rule 13400, a new public chair-qualified arbitrator to hear the *In re* expungement proceeding.

(2) No Panel Appointed in Underlying Investment-Related Customer-Initiated Arbitration

If FINRA did not appoint a panel in the underlying investment-related customer-initiated arbitration proceeding, FINRA shall appoint randomly, pursuant to Rule 13400, a single public chair-qualified arbitrator to hear the *In re* expungement proceeding.

(i) Arbitrator Challenges

An unnamed person shall be permitted to challenge arbitrators pursuant to Rule 13410. An unnamed person may not challenge arbitrators based on their rulings and decisions in the underlying investment-related customer-initiated arbitration proceeding.

(1) Panel Appointed in Underlying Investment-Related Customer-Initiated Arbitration

If the Director grants an unnamed person's challenge to the public chairperson of the arbitration panel, FINRA shall appoint a replacement arbitrator as described in Rule 13807(h)(1).

(2) No Panel Appointed in Underlying Investment-Related Customer-Initiated Arbitration

If FINRA appoints an arbitrator under Rule 13807(h)(2) and the Director grants an unnamed person's challenge, FINRA shall appoint randomly, pursuant to Rule 13400, a single public chair-qualified arbitrator as the replacement arbitrator.

(j) Hearing Location

(1) Arbitrator Available to Serve

If a public arbitrator from the underlying investment-related customer-initiated arbitration proceeding is available to serve on the *In re* expungement proceeding, the hearing location shall be the hearing location of the underlying investment-related customer-initiated arbitration proceeding.

(2) Arbitrator Unavailable to Serve

If none of the public arbitrators from the underlying investment-related customer-initiated arbitration proceeding is available to serve, the hearing location shall be the hearing location closest to where the unnamed person was employed at the time of the customer dispute, and the arbitrator for the *In re* expungement proceeding shall be selected from this location.

(k) Appearance

All parties in the underlying investment-related customer-initiated arbitration proceeding are entitled to appear at the *In re* expungement proceeding. Parties to the underlying investment-related customer-initiated arbitration proceeding may elect to appear and testify either in-person or by telephone. FINRA shall notify the parties in the underlying investment-related customer-initiated arbitration proceeding in writing with details of the date, time, and location of the *In re* expungement proceeding. The absence of a party at a hearing shall not create a presumption that the absent party either consents to or opposes the expungement request. All parties from the underlying investment-related customer-initiated arbitration proceeding shall have the right to representation at the *In re* expungement proceeding in accordance with Rules 12208 and 13208.

(l) Discovery

(1) Arbitrators shall determine whether an unnamed person may receive documents on a case-by-case basis as follows:

(A) Additional document requests by an unnamed person, including requests for orders of production, are limited to only those documents which the unnamed person has demonstrated are substantially and directly related to establishing the grounds for expungement under Rule 2080.

- i. An unnamed person shall request additional documents at least 45 days before the first hearing session. For purposes of this rule, documents shall include tapes, digital or other recordings or transcripts. FINRA shall provide the documents upon an unnamed person's request, if the arbitrator rules in favor of production, after considering any objections under Rule 13807(l)(1)(A)(iii).
- ii. The party from the underlying investment-related customer-initiated arbitration proceeding that is the subject of the request shall provide the documents or object to the request within 10 days from the date of the unnamed person's request.

iii. If the party from the underlying investment-related customer-initiated arbitration proceeding objects to the additional document request, the party must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on the unnamed person and arbitrator at the same time and in the same manner. The party from the underlying proceeding must produce all applicable listed documents, or other requested documents or information not specified in the objection. Any objection not made within the required time is waived unless the arbitrator determines that the party from the underlying proceeding had good cause for failing to object within the required time. The arbitrator shall make any rulings on objections to additional document requests.

(B) Subpoena requests by an unnamed person, including orders of appearance, shall be made at least 45 days before the first hearing session and are limited to only those witnesses which the unnamed person has demonstrated are substantially and directly related to establishing the grounds for expungement under Rule 2080.

i. An unnamed person may make a written motion requesting that the arbitrator issue a subpoena to any respondent in the underlying investment-related customer-initiated arbitration proceeding. The motion shall include a draft subpoena and shall be filed with the Director, with an additional copy for the arbitrator.

ii. The unnamed person shall not subpoena a customer in the underlying investment-related customer-initiated arbitration proceeding, unless the unnamed person demonstrates that the customer's testimony is not available from tape, digital or other recording or transcript, and that no other approach or method exists to obtain documents or information that substantially and directly relate to establishing grounds for expungement under Rule 2080.

iii. If a respondent in the underlying investment-related customer-initiated arbitration proceeding receiving a motion and draft subpoena objects to the scope or propriety of the subpoena, that party shall, within 10 days of service of the motion, file written objections with the Director, with an additional copy for the arbitrator, and shall serve a copy on the unnamed person at the same time and in the same manner as on the Director. The unnamed person may respond to the objections within 10 days of receipt of the objections. After considering all objections, the arbitrator shall rule promptly on the issuance and scope of the subpoena.

(C) The unnamed person requesting the appearance of witnesses or the production of documents under this rule shall pay all costs of the appearance and/or production.

(2) An unnamed person shall be bound by any confidentiality agreements and orders associated with the documents produced in the underlying investment-related customer-initiated arbitration proceeding. The party to the underlying proceeding who is the subject of the production request must produce the confidentiality agreement and order when producing documents that are subject to such agreement and order.

(m) Petitioning a Court Concerning Expungement Relief

(1) If an unnamed person seeks to vacate an award issued under this rule, the unnamed person shall name FINRA as a party to any court proceedings.

(2) If an unnamed person seeks to confirm an award granting expungement relief issued under this rule, the unnamed person shall comply with the requirements of Rule 2080.

Supplementary Material:

.01 Applicable rules of the Industry Code

The following rules of the Industry Code apply to *In re* expungement proceedings: IM-13000, Rules 13100, 13102, 13103, 13104, 13203(a), 13207(c), 13208, 13209, 13213(a)(3), 13213(b), 13214(a)-(d), 13300(a), 13300(c)-(f), 13302, 13307(a)-(b), 13312, 13314, 13400, 13408, 13409, 13410, 13412, 13413, 13501, 13502, 13600(b)-(c), 13601(a)(2), 13601(b)(2), 13601(b)(3) – last two bullets, 13601(c), 13602, 13603, 13604, 13605, 13606, 13608, 13609, 13700, 13805, 13806, 13902(c), 13904(a)-(f) and (h)-(i), and 13905(a)(1)-(2) and (b)-(c). Rules not listed will not apply to these proceedings.