

California Northern District Court Adopts 'Regulatory Value' Standard in Granting Motion for Expungement of CRD Records

Article By:

Adil M. Khan

In *Bridge v. E*Trade Securities LLC*, 2012 WL 3249508 (N.D. Cal. Aug. 7, 2012), the District Court granted E*Trade's motion for an order directing expungement of plaintiffs' complaint from the **Central Registration Depository ("CRD")** record of its employee pursuant to **FINRA Rule 2080**. In doing so, the court noted that "case law regarding the standard for CRD expungement is scarce" and adopted the standard used by the Western District of Texas in *Reinking v. Financial Industry Regulatory Authority*, Case No. A-11-CA-813-§ (W.D. Tex. Dec. 1, 2011), which standard is "predicated upon whether or not allegations' continued inclusion on the CRD [have] 'regulatory value.'"

Plaintiffs' claims stemmed from **E*Trade's** sale of **auction rate securities ("ARS")**. After E*Trade successfully moved to strike Plaintiffs' punitive damages claims and dismiss the vast majority of the remaining claims, the parties reached a settlement. As part of the settlement, Plaintiffs agreed not to oppose E*Trade's motion for partial summary judgment on the issue of whether allegations regarding the employee, who had not participated in the ARS sales, were erroneous or false. The court granted E*Trade's motion, finding "undisputed evidence" that the employee did not recommend nor sell ARS to Plaintiffs and holding that the allegations against the employee were "clearly erroneous."

As a recent California appellate ruling held, the court confirmed that FINRA Rule 2080 is merely procedural in nature and does not provide a substantive legal standard for deciding whether expungement is appropriate or required. See also *Lickiss v. FINRA*, 2012 WL 3605785 (Cal. Ct. App. Aug. 23, 2012). Still, the court gave deference to the SEC's approval of Rule 2080's predecessor, NASD Rule 2130, and adopted the "regulatory purpose" standard expressed in the Reinking decision. The court found that there was no regulatory value in maintaining disclosure records based upon false accusations, expressing its concern that inaccurate reportings "against nonculpable individuals would dilute the value of the CRD as a useful source of information."

The Bridge opinion reinforces scarce authority upon which brokers and their counsel may rely when contemplating whether to seek expungement of erroneous or historical CRD disclosure items. Due to the heightened scrutiny of CRD records - by regulators, employers and customers - anyone

considering pursuing expungement is encouraged to seek professional advice while these expungement options remain available.

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