BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C.

In the Matter of the Application Of

Michael Andrew DeMaria

For Review of Action Taken By

FINRA

File No. 3-20199

MR. DEMARIA'S OPENING BRIEF IN SUPPORT OF THE COMMISSION'S JURISDICTION OVER HIS APPLICATION FOR REVIEW

INTRODUCTION

Applicant, Mr. Michael Andrew DeMaria ("DeMaria"), sought Commission review on January 6, 2021 of a determination by Financial Industry Regulatory Authority, Inc. ("FINRA") to deny Mr. DeMaria access to its arbitration forum in its finding that Mr. DeMaria's expungement request was allegedly "ineligible for arbitration" pursuant to FINRA Code of Arbitration Procedure for Industry Disputes ("FINRA Rules") Rule 13203(a). Mr. DeMaria states that FINRA's action was in violation of Section 19(d) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and inconsistent with its own rules, and he should therefore be permitted to submit his claim in FINRA's arbitration forum.

In support of Mr. DeMaria's Application for Review, he submitted his Opening Brief in Support of His Application for Review on March 11, 2021 ("Opening Brief"). FINRA filed its

[1] 15 U.S.C. § 78s(d).

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Amended Brief in Opposition to the Application for Review on April 12, 2021 ("FINRA's Response"), and Mr. DeMaria submitted his Reply to FINRA's Brief on April 26, 2021.

On May 21, 2021, the Commission issued an Order Requesting Additional Briefing ("Briefing Order") on whether it has jurisdiction over Mr. DeMaria's Application for Review. The Commission specifically asked:

- [W]hat is the relevant service under Exchange Act Section 19(d)(1)? For example, is the relevant service: (1) arbitration generally, (2) the arbitration of all types of expungement claims, or (3) the arbitration of requests to expunge regulatory action information?
- Assuming that the relevant service is the arbitration of requests to expunge regulatory action information, does FINRA offer this service? If so, is the service fundamentally important?

See, Briefing Order at 2. The Briefing Order states that Mr. DeMaria's opening brief shall be filed by June 18, 2021, FINRA's response shall be filed by July 2, 2021, and Mr. DeMaria's reply may be filed by July 16, 2021. Mr. DeMaria now timely submits this Opening Brief in Support of the Commission's Jurisdiction Over His Application for Review.

BACKGROUND

FINRA is a not-for-profit Delaware corporation and self-regulatory organization ("SRO") registered with the U.S. Securities and Exchange Commission ("SEC" or "Commission") as a national securities association. FINRA, through its subsidiary, FINRA Regulation, Inc., has established the FINRA Dispute Resolution Services ("ODR"), which carries out the sole function of operating an arbitration and mediation forum to resolve securities industry disputes. The ODR's authority is limited to administration of the forum, not to making regulatory policy decisions.

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FINRA maintains an electronic database called the Central Registration Depository ("CRD") and a public reporting system known as BrokerCheck.[2] This online, publicly marketed reporting system includes the wide-spread publication of certain disclosure events against each associated person of a FINRA member firm. *See*, FINRA Rule 8312. FINRA requires member firms to report all disclosure events that meet specific requirements to FINRA, including final regulatory actions, and publicly discloses these events absent any determination of merit or factual basis. *See*, FINRA Rule 4530. FINRA provides only one viable remedy for the removal of event disclosure information from the CRD and BrokerCheck, which is expungement pursuant in FINRA's arbitration forum.

On August 10, 2020, Mr. DeMaria filed a Petition for Expungement and Injunctive Relief in the Superior Court of California, County of San Francisco, naming FINRA as a defendant and seeking expungement of the two event disclosures at issue, Occurrence Numbers 1710804 and 1781840 ("the Occurrences") from his CRD and BrokerCheck records. On September 23, 2020, FINRA filed a Notice of Hearing on Defendant FINRA's Demurrers to the Complaint; Demurrers; Memorandum of Points and Authorities in Support ("FINRA's Demurrer") alleging that, among other things, Mr. DeMaria failed to exhaust his administrative remedies. *See,* attached **Exhibit 1**. Mr. DeMaria agreed to voluntary dismiss that action, and on October 21, 2020, the Superior Court of California entered an order dismissing the action without prejudice. *See,* attached **Exhibit 2**.

On December 8, 2020, Mr. DeMaria submitted a Statement of Claim to FINRA's ODR requesting a hearing for the expungement of the Occurrences from his CRD and BrokerCheck records. On December 10, 2020, counsel for Mr. DeMaria received notice from FINRA that

[2] 15 U.S.C. 78o-3(i)(1).

FINRA denied Mr. DeMaria access to the FINRA arbitration forum. Mr. DeMaria then timely filed his Application for Review.

ARGUMENT

I. The Commission has jurisdiction over this appeal pursuant to the Exchange Act.

The Exchange Act authorizes the Commission to review an action taken by an SRO that "prohibits or limits any person in respect to access to services offered" by the SRO. 15 U.S.C. § 78s(d). In determining whether the Commission has jurisdiction under the above standard, the Commission asks "whether the SRO prohibited or limited access to a service that the SRO offers and whether that service is fundamentally important." *See*, *Consolidated Arbitration Applications, Exchange Act Release No*. 89495, 2019 WL 6287506 at 3 (August 6, 2020) (the "Consolidated Matter").

a. The relevant service under the Exchange Act that FINRA prohibited or limited Mr. DeMaria's access to is the ability to utilize its arbitration forum to seek equitable relief, which in this case, is expungement of disclosure events published on the CRD and BrokerCheck systems.

FINRA offers to its members and associated persons its dispute resolution arbitration forum "for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any FINRA member, or arising out of the employment or termination of employment of associated person(s) with any member…." *See,* FINRA Rule 10101 (emphasis added); *see also,* FINRA Rule 10301. In fact, FINRA *requires* the submission of claims and controversies arising out of or in connection with the business of any FINRA member or the employment of associated persons with any member that through its arbitration forum. *See,* FINRA Rules IM-10100, IM-13000, 13200, and 12200. The language of these rules makes clear that

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FINRA's arbitration forum allows, and in some cases even *requires*, the submission of "any" claims arising in connection with the employment or termination of an associated members. The FINRA Dispute Resolution Task Force has even stated that its dispute-resolution service is "for all practical purposes, the sole arbitration forum in the United States for resolving disputes between broker-dealers, associated persons, and customers," and that as of 2015, FINRA "handle[d] more than 99 percent of the securities-related arbitrations and mediations in the [United States]").[3]

One type of claim specifically allowed by FINRA rules to be submitted in its arbitration forum is expungement of event disclosures published on the CRD and BrokerCheck systems. It is undisputed that FINRA is generally required to report a variety of disclosure events to the CRD system and release that information on its BrokerCheck website, including final regulatory actions. In light of this requirement, and in acknowledging that the information published on these systems may be inaccurate, misleading, false, erroneous, factually impossible, defamatory in nature, or may provide no investor protection or regulatory value, FINRA offers the service to its associated persons and members the ability to seek expungement of this information from these systems. *See,* FINRA Rule 2080, 12805, 13805, and 8312(g).

FINRA's rules do not limit expungement claims to customer dispute disclosures and allow for expungement of other disclosure events or information, including final regulatory actions. In fact, contrary to FINRA's assertion in its Response, FINRA itself has acknowledged that it offers the service of expungement of disclosure events beyond customer dispute disclosures. *See,* FINRA Dispute Resolution Services Arbitrator's Guide ("FINRA's Guide") at 73-78. For example, in FINRA's Guide, it states that "Securities firms and regulatory authorities may report a variety of

[3] *See,* FINRA Dispute Resolution Task Force, *Final Report and Recommendations of the FINRA Dispute Resolution Task Force* 1 (Dec. 16, 2015), http://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf (emphasis added).

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disclosure events to the CRD system, including civil judicial actions, criminal matters, customer disputes…employment terminations, internal reviews…investigations, financial matters and regulatory actions." FINRA's Guide at 73. Then in the very next sentence, FINRA states that "[b]rokers who seek to expunge disclosure events from their CRD records generally look to remove a customer dispute, employment termination or internal review." *Id.* (emphasis added). The fact that disclosure "events" is pluralized (i.e. not restricted to customer dispute disclosures only) and that FINRA states brokers "generally" seek expungement of customer dispute or employment termination or internal review disclosures, denotes that there are *other* disclosure events that brokers may seek expungement of, such as one of the many disclosure events referenced in the preceding sentence (i.e. regulatory actions). Similarly, FINRA's Guide addresses the fact that where expungement requests do not involve customer dispute information, "arbitrators may recommend expungement of this information from CRD without addressing the standards set forth in Rule 2080 or the procedural requirements under Rule 12805." FINRA's Guide at 78-79. FINRA also acknowledges that it "will expunge the referenced information if the award is confirmed by a court of competent jurisdiction" and that "[i]f the arbitrators recommend expungement of non-customer dispute information and also determine that the information is defamatory in nature, FINRA will expunge the information without a court order." *Id.* (emphasis added); *see also,* NASD[4] Notice to Members 99-09 ("Reg. Notice 99-09") (FINRA acknowledging that it "will continue to expunge information from the CRD system based on expungement directives contained in arbitration awards…where arbitrators have awarded such relief based on the defamatory nature of the information" and that FINRA, in "recognizing arbitrators' broad

[4] FINRA's predecessor is the National Association of Securities Dealers, or the "NASD", which will hereinafter be referred to individually and/or collectively with FINRA as "FINRA".

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authority to grant equitable relief and a party's ability to have an award confirmed in court, also had honored such expungement directives provided they were contained in an arbitrator's award." (emphasis added).

Therefore, FINRA offers to members and associated persons the ability to utilize its arbitration forum for a variety of claims, including expungement of event disclosures on the CRD and BrokerCheck systems.

b. FINRA's arbitration service is fundamentally important.

The service offered by FINRA at issue here – the ability to utilize its arbitration forum to seek equitable relief (i.e. expungement of event disclosures from the CRD and BrokerCheck systems) – is a fundamentally important service. A service offered by an SRO is "fundamentally important" if it is "central to the function of the SRO." *Consolidated Matter* at 5. The Commission has recently determined that "FINRA's service of providing arbitration of expungement claims is 'fundamentally important' and central to its function as an SRO." *Id.* The Commission reasoned that "FINRA's corporate charter states that one of its functions is 'to promote self-discipline among members, and to investigate and adjust grievances between the public and members and between members.'" *Id.* (internal citations omitted). One such category of grievances are claims seeking to remove information on the BrokerCheck and CRD systems that are alleged to be inaccurate, misleading, false, erroneous, factually impossible, defamatory in nature, or that provides no investor protection or regulatory value. FINRA touts that it "operates the largest securities dispute resolution forum in the United States, and has extensive experience in providing a fair, efficient and effective venue to handle a securities-related dispute"[5] and that it ensures "the

[5] *See* FINRA, *FINRA Dispute Resolution Services* (accessed June 15, 2021), https://www.finra.org/arbitration-mediation; *see also,* FINRA, *Five Steps to Protecting Market Integrity* (accessed June 15, 2021), https://www.finra.org/about/what-we-do/five-steps-protecting-

securities industry operates fairly and honestly".[6] Therefore, the ability to seek removal of this information is not only essential to the individual associated persons or members it effects (such as Mr. DeMaria), but it is also essential to the integrity and reliability of the BrokerCheck and CRD systems as a whole, since the publication of information that is inaccurate, misleading, false, erroneous, factually impossible, or defamatory in nature serves no investor protection or regulatory value, which is the purpose the BrokerCheck and CRD systems are intended to promote. FINRA also explicitly "recognizes that accurate and complete reporting on these forms [the CRD and BrokerCheck] is an important aspect of investor protection." *See,* NASD Notice to Members 99-54 ("Reg. Notice 99-54"); *see also,* Reg. Notice 99-09. The ability to seek removal of this information is also consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade…and in general, to protect investors and the public interest."[7]

The Commission has stated that, "[i]n holding itself out to the public, FINRA emphasizes the importance of its arbitration forum to its relationship with its member firms." *Consolidated Matter* at 5-6; *see also,* FINRA, *2017 Annual Report* 37 (June 27, 2018), https://www.finra.org/sites/default/files/ 2017_AFR.pdf (explaining that FINRA "provide[s] arbitration and mediation services to assist in the resolution of monetary and business disputes between and among investors, broker-dealers and individual brokers."). If FINRA is permitted to prohibit or limit Mr. DeMaria (and consequently, *any* associated person or member firm) access

market-integrity (listing five activities that FINRA performs, including "administer[ing] the largest forum specifically designed to resolve securities-related disputes between and among investors, securities firms, and individual brokers").

[6] *See,* FINRA, *BrokerCheck* (accessed June 15, 2021) https://brokercheck.finra.org/.

[7] 15 U.S.C. 78o-3(b)(6).

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to its arbitration forum to air his grievance simply because it makes a unilateral decision that it does not agree with the merits of the allegations, where else would Mr. DeMaria be able to bring his claim? Case in point, when Mr. DeMaria previously sought expungement relief of the Occurrences in the Superior Court of the State of California, FINRA filed its Demurrer alleging, among other things, that Mr. DeMaria failed to exhaust his administrative remedies. *See,* Exhibit 1 at 14. Specifically, FINRA claimed that Mr. DeMaria "made no effort to challenge the inclusion of these matters on his public record through the administrative process available" by "seek[ing] relief from *publication* of those matters first from FINRA itself, then the SEC and finally a United States Circuit Court of Appeals." *Id.* (internal citations omitted). Instead, when Mr. DeMaria withdrew his claim (without prejudice) in California Court and file his request through FINRA, FINRA denied him access to its arbitration forum.

CONCLUSION

Mr. DeMaria is an associated person.[8] He sought expungement of event disclosures in FINRA's arbitration forum pursuant to FINRA rules. Yet FINRA unilaterally decided to deny Mr. DeMaria access to its arbitration forum – a service that it offers other associated persons – in violation of the Exchange Act. This service that FINRA offers (and even requires) of associated persons, like Mr. DeMaria, is a fundamentally important service to the function of FINRA. Therefore, the Commission has jurisdiction over Mr. DeMaria's application for review.

Dated: June 18, 2021

Respectfully submitted,

[8] Although Mr. DeMaria is not currently registered with FINRA, he is classified as an "associated person" for purposes of the FINRA Code of Arbitration and Procedure as he was formerly associated with a member. *See*, FINRA Rule 13100(u).

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CERTIFICATE OF SERVICE

I, James Bellamy, certify that on this 18th day of June 2021, I caused a copy of the foregoing Opening Brief in Support of the Commission's Jurisdiction over the Application for Review of the above listed Applicant, in the matter of the Application for Review of Michael Andrew DeMaria, Administrative Proceeding File No. 3-20199, to be filed through the SEC's eFAP system and served by electronic mail on:

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[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

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EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREW DEMARIA,

Plaintiff,

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,

Defendant.

CASE NO. CPF-20-517191

NOTICE OF HEARING ON DEFENDANT FINRA'S DEMURRERS TO THE COMPLAINT; DEMURRERS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

[*Declaration of Ethan D. Dettmer and Proposed Order filed concurrently herewith*]

Date: October 16
Time: 9:30 a.m.
Dept.: 302

Action Filed: August 10, 2020

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 16, at 9:30 a.m., or as soon thereafter as counsel may be heard in Department 302, 400 McAllister St., San Francisco, CA 94102, Defendant Financial Industry Regulatory Authority, Inc. ("FINRA") will and hereby does demur to Plaintiff's Complaint pursuant to Code of Civil Procedure section 430.10, subdivisions (a) and (e).[1]

Mr. DeMaria's Complaint is subject to demurrer under Code of Civil Procedure section 430.10, subdivisions (a) and (e) based on the face of his Complaint. First, this Court lacks subject matter jurisdiction because Mr. DeMaria failed to exhaust administrative remedies with respect to the challenged reporting. (E.g., *Flowers v. Fin. Indus. Regulatory Auth.* (2017) 16 Cal.App.5th 946, 953-954; *Saffer v. JP Morgan Chase Bank* (2014) 225 Cal.App.4th 1239, 1246; see 15 U.S.C. §§ 78s, 78y.) Second, his requested relief is preempted by federal law as it is a collateral attack on the federal statutory and regulatory scheme regulating securities brokers and FINRA's performance of its regulatory duties mandated by the Securities Exchange Act. (See, e.g., *Flowers v. Fin. Indus. Regulatory Auth.* (2017) 16 Cal.App.5th 946, 955; *Jablon v. Dean Witter Reynolds, Inc.* (9th Cir. 1980) 614 F.2d 677, 681.) Finally, the Complaint must be dismissed because FINRA has absolute immunity, and there is no private right of action against FINRA under the Exchange Act. (*D'Alessio v. New York Stock Exch., Inc.* (2d Cir. 2001) 258 F.3d 93, 105, *cert. denied*, 534 U.S. 1066.)

The Demurrers are based on this Notice, the attached Demurrers and Memorandum of Points and Authorities, the concurrently-filed Declaration of Ethan D. Dettmer, and on the Court's record in this case, and on such oral argument as may be presented at the hearing on the Demurrers.

DATED: September 23, 2020

GIBSON, DUNN & CRUTCHER LLP

By: _____
Ethan D. Dettmer

Attorneys for Defendant
FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.

[1] Counsel met and conferred about both the substance of this demurrer and the date noticed for the argument. Declaration of Ethan D. Dettmer, ¶ 3.

DEMURRERS

FINRA hereby demurs to the Complaint on the following grounds:

1. FINRA demurs to Mr. DeMaria's Complaint, in its entirety, on the ground that he has failed to exhaust available and required administrative remedies. (Code Civ. P. 430.10 (a); *Flowers v. Fin. Indus. Regulatory Auth.* (2017) 16 Cal.App.5th 946, 953-954.)

2. FINRA demurs to Mr. DeMaria's Complaint, in its entirety, on the ground that the pleading fails to state facts sufficient to constitute a cause of action against FINRA. (Code Civ. P. 430.10 (e); *Flowers v. Fin. Indus. Regulatory Auth.*, *supra*, 16 Cal.App.5th at p. 955.)

Demurrer to First Cause of Action for Expungement

3. FINRA demurs to the First Cause of Action on the ground that he has failed to exhaust available and required administrative remedies. (Code Civ. P. 430.10 (a).)

4. FINRA demurs to the First Cause of Action on the ground that the pleading fails to state facts sufficient to constitute a cause of action against FINRA. (Code Civ. P. 430.10 (e).)

Demurrer to Second Cause of Action for Injunctive Relief

5. FINRA demurs to the Second Cause of Action on the ground that he has failed to exhaust available and required administrative remedies. (Code Civ. P. 430.10 (a).)

6. FINRA demurs to the Second Cause of Action on the ground that the pleading fails to state facts sufficient to constitute a cause of action against FINRA. (Code Civ. P. 430.10 (e).)

DATED: September 23, 2020

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: _____
Ethan D. Dettmer

Attorneys for Defendant
FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Michael Andrew DeMaria agreed to a fine and suspension for his violation of FINRA rules, and that this agreement "would become part of [his] permanent disciplinary record," "made available through FINRA's public disclosure program in accordance with FINRA Rule 8313." (Compl. Ex. 3.) Mr. DeMaria made this agreement while represented by counsel, to settle an investigation and regulatory action brought against him by FINRA. In so doing, he waived his right to administrative or judicial review of the dispute. (*Ibid.*) Now, years later, Mr. DeMaria has filed a complaint against FINRA for doing exactly what Mr. DeMaria agreed would be done—reporting his disciplinary record to the public. Indeed, such reporting is required by the Securities Exchange Act of 1934, 15 U.S.C. § 78a, et seq. (Exchange Act) and FINRA's Rule 8313, which was approved by the SEC after public notice and comment.

Mr. DeMaria's complaint is clear about why he seeks relief from the Court: he "has been unable to obtain employment in the financial industry" due to his public disciplinary record. (Compl. ¶ 25.) In other words, he sues FINRA to erase the record he agreed would be publicized.

Mr. DeMaria's request that this Court erase his disciplinary record fails as a matter of law. Indeed, this case is on all fours with *Flowers v. Fin. Indus. Regulatory Auth.*, where the Court of Appeal affirmed another court's order sustaining a demurrer in a case just like this one. (*Flowers v. Fin. Indus. Regulatory Auth.* (2017) 16 Cal.App.5th 946 [*Flowers*].)

First, California law is unambiguous: "[W]here an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act." (*Abelleira v. Dist. Ct. of App.* (1941) 17 Cal.2d 280, 292.) "This is a jurisdictional prerequisite, not a matter of judicial discretion." (*Yamaha Motor Corp. v. Super. Ct.* (1986) 185 Cal.App.3d 1232, 1240.) Indeed, the plaintiff in *Flowers*, like Mr. DeMaria, "filed a complaint against FINRA in which he sought an order requiring that FINRA expunge his disciplinary history from its records." (16 Cal.App.5th at p. 949.) Just like Mr. DeMaria here, Mr. Flowers had not exhausted the administrative remedies required under the Exchange Act. (*Ibid.*) The Court held "that Flowers's complaint is barred by the doctrine of exhaustion of remedies[,]" and explained that, "[w]ith respect to disciplinary actions against participants in the securities industry, we believe the doctrine of exhaustion

of remedies requires that such a determination be made in the first instance in the forums to which Congress has assigned the task of resolving those issues." (*Id.* at p. 952.)

Second, if this Court were to grant Mr. DeMaria his requested relief, it would conflict with Congress's and the SEC's determination of how securities professionals should be regulated, and how their discipline should be disclosed. (FINRA R. 8312; 15 U.S.C. § 78o-3(i)(5).) Thus, such relief is preempted by federal law. (See *Credit Suisse First Boston v. Grunwald* (9th Cir. 2005) 400 F.3d 1119, 1132; *Flowers*, *supra*, 16 Cal.App.5th at p. 955 [noting that a state court order requiring expungement of FINRA disciplinary records "would plainly put FINRA in a situation where it was subject to the conflicting duties [directed by the SEC] and in turn require application of conflict preemption"].)

Third, FINRA is immune from civil suits for actions it takes pursuant to its responsibilities under federal law, whether such suits are for monetary damages or in equity. (See, e.g., *Jablon v. Dean Witter & Co.* (9th Cir. 1980) 614 F.2d 677, 681; *In re Olick* (E.D. Pa. Apr. 4, 2000, No. 99-CV-5128) 2000 WL 354191, at p. *4 [a party "may not maintain a private cause of action against the NASD under the Exchange Act, or at common law, for regulatory actions taken by the NASD"].)

This Court should deny Mr. DeMaria's request and dismiss his Complaint just as every other court has done when FINRA opposed the expungement request. (See *Flowers*, *supra*, 16 Cal.App.5th at p. 956; *Buscetto v. FINRA* (D.N.J. May 9, 2012) No. 11-6308, 2012 WL 1623874, at p. *3 [dismissing plaintiff's action to expunge disciplinary disclosures and noting that FINRA must "permanently publish . . . disciplinary action[s]"] [*Buscetto*].)

II. PROCEDURAL BACKGROUND

Several years after he settled his disciplinary case with FINRA and agreed to waive his right to contest the validity of that settlement or to seek judicial review of it, Mr. DeMaria asks this Court to exempt him from its terms, and from the statutes and regulations governing securities professionals. In his "Petition for Expungement," Mr. DeMaria seeks: (1) expungement of his disciplinary record; and (2) a duplicative request for injunctive relief to permanently enjoin FINRA from "continuing to publish" his disciplinary history on his "BrokerCheck and CRD records." (Complaint ¶¶ 28-38.)

On August 10, 2020, Mr. DeMaria filed his Complaint in this Court. The Complaint was served on FINRA on August 25, 2020.

III. FACTUAL BACKGROUND

A. FINRA regulates the securities industry as required by federal law.

FINRA is a private, not-for-profit Delaware corporation and self-regulatory organization ("SRO") registered with the SEC as a national securities association pursuant to the Maloney Act of 1938, 15 U.S.C. § 78o-3, et seq. amending the Exchange Act. FINRA is the nation's only registered securities association, as well as the nation's largest SRO. As an SRO, FINRA is part of the Exchange Act's comprehensive plan for regulating the securities markets. (See 15 U.S.C. §§ 78q, 78s; see also *PennMont Sec. v. Frucher* (3d Cir. 2009) 586 F.3d 242, 245-246, *cert. denied*, 130 S. Ct. 1698; *Desiderio v. NASD* (2d Cir. 1999) 191 F.3d 198, 201, *cert. denied*, 531 U.S. 1069.) The Exchange Act provides for extensive SEC oversight of SROs such as FINRA. (See 15 U.S.C. § 78s; *First Jersey Secs., Inc. v. Bergen* (3d Cir. 1979) 605 F.2d 690, 693, *cert. denied*, 444 U.S. 1074 [*First Jersey Secs.*].) Under the Exchange Act, the SEC must approve all FINRA rules, policies, practices, and interpretations before they are implemented, including the FINRA rules at issue here. (See 15 U.S.C. § 78s(b).)

Thus, FINRA rules are "part of the apparatus of federal securities regulation." (*Kurz v. Fid. Mgmt. & Research Co*. (7th Cir. 2009) 556 F.3d 639, 641.)

B. FINRA regulates industry participants pursuant to its congressionally mandated and SEC-approved disciplinary process.

FINRA "has regulatory power, delegated from Congress through the SEC in the [Exchange Act] over broker-dealer firms" and their registered representatives. (*Charles Schwab & Co*., *Inc. v. FINRA* (N.D.Cal. 2012) 861 F.Supp.2d 1063, 1065 [*Schwab*].) Part of FINRA's regulatory power is "the power to sanction members for noncompliance with securities laws and FINRA Rules." (*Ibid.*; *First Jersey Secs.*, *supra*, 605 F.2d at p. 693; see also 15 U.S.C. §§ 78o-3(h), 78o-3(b)(7); *D.L. Cromwell Inv., Inc. v. NASD Regulation, Inc.* (2d Cir. 2002) 279 F.3d 155, 157, *cert. denied*, 537 U.S. 1028.)

The FINRA Code of Procedure, approved by the SEC (see http://finra.complinet.com/), governs FINRA disciplinary proceedings. And the Exchange Act provides for "a comprehensive administrative review procedure applicable to decisions rendered by self-regulatory organizations."

(*PennMont Sec. v. Frucher* (3d Cir. 2009) 586 F.3d 242, 245) This review process is the exclusive method for challenging FINRA's disciplinary proceedings. (See *First Jersey Secs.*, *supra*, 605 F.2d at p. 695; *Merrill Lynch, Pierce, Fenner & Smith v. NASD* (5th Cir. 1980) 616 F.2d 1363, 1368-1371; *Krull v. SEC.* (9th Cir. 2001) 248 F.3d 907, 910-911 [describing the review process].)

This review process involves multiple tiers. First, a FINRA Hearing Panel conducts a hearing "to determine whether a member . . . should be disciplined." (15 U.S.C. § 78o-3(h)(1); FINRA Rs. 9213, 9231(b).) That determination may be appealed to FINRA's National Adjudicatory Council ("NAC"). (FINRA R. 9311.) FINRA's Board may review the NAC's decision, and the Board can affirm, modify or reverse the NAC's decision and any sanction imposed. (See FINRA Rs. 9349, 9351.) The aggrieved party may seek review with the SEC, which reviews FINRA's disciplinary orders *de novo*. (15 U.S.C. § 78s(d); see *Swirsky v. Nat'l Ass'n of Sec. Dealers* (1st Cir. 1997) 124 F.3d 59, 61 [*Swirsky*]; *Krull v. S.E.C.* (9th Cir. 2001) 248 F.3d 907, 911 [*Krull*].) Under 15 U.S.C. Section 78s(e), "[t]he SEC can affirm or modify any sanction, or remand to [FINRA] for further proceedings." (*Swirsky*, *supra*, 124 F.3d at p. 62; see *Krull*, *supra*, 248 F.3d at p. 911.) Only then is the SEC's order subject to judicial review, and federal law mandates that such review must occur in a federal court of appeals. (15 U.S.C. § 78y(a); see *Mister Discount Stockbrokers, Inc. v. SEC* (7th Cir. 1985) 768 F.2d 875, 876; *Krull*, *supra*, 248 F.3d at p. 911.)

C. Part of FINRA's regulatory responsibility is recording and reporting brokers' disciplinary history pursuant to federal law.

Congress, in the Exchange Act, required FINRA to maintain information about member firms, and their current and former registered representatives. (15 U.S.C. § 78o-3(i)(1)(A).) FINRA does so on a computer database called Central Registration Depository ("CRD"). (See *In re Olick* (E.D. Pa. Apr. 4, 2000, No. 99-CV-5128) 2000 WL 354191, at *1.) CRD contains registration information as well as information concerning regulatory and enforcement actions taken against securities industry personnel. Congress also requires FINRA to make certain disclosures on CRD available to the public on FINRA's BrokerCheck program. (See 15 U.S.C. § 78o-3(i)(1)(B)(i).) "FINRA has a statutory obligation to make information available to the public and, . . . the [SEC] believes that FINRA should continuously strive to improve BrokerCheck because it is a valuable tool for the public in deciding

whether to work with an industry member." (*Order Approving a Proposed Rule Change Relating to Availability of Information Pursuant to FINRA Rule 8312*, SEC Rel. No. 34-61002, 74 Fed.Reg. 61193, *61196 (Nov. 23, 2009) [Dettmer Decl., Ex. A].)

The Exchange Act requires FINRA to publish "disciplinary actions, regulatory . . . proceedings, and other information required by . . . exchange or association rule, and the source and status of such information." (15 U.S.C. § 78o-3(i)(5).) FINRA Rule 8312, entitled "FINRA BrokerCheck Disclosure," implements this statute and requires FINRA to permanently publish "final regulatory actions" for all current and former registered representatives. "'BrokerCheck allows the public to obtain certain limited information regarding formerly associated persons, *regardless of the time elapsed since they were associated with a member, if they were the subject of any final regulatory action*.'" (*Flowers*, *supra*, 16 Cal.App.5th at p. 950, quoting 75 Fed.Reg. 41254 (July 15, 2010), italics added by the *Flowers* Court.) The SEC reasoned that disclosures made under Rule 8312 are "relevant to investors and members of the public who wish to educate themselves with respect to the professional history of a formerly associated person." (75 Fed.Reg. at p. 41257.) Similarly, FINRA Rule 8313, entitled "Release of Disciplinary Complaints, Decisions and Other Information" requires FINRA to "release to the public a copy of . . . any disciplinary complaint or disciplinary decision," as well as "information with respect to any suspension, cancellation, expulsion, or bar that constitutes final FINRA action." FINRA Rule 8313 goes on to define "disciplinary decision" to include "Letters of Acceptance, Waiver and Consent" ("AWC")—exactly what is at issue here.

The *Flowers* Court noted the SEC's finding that "former brokers, 'although no longer in the securities industry in a registered capacity, may work in other investment-related industries, such as financial planning, or may seek to attain other positions of trust with potential investors.'" (*Flowers*, *supra*, 16 Cal.App.5th at p. 950, quoting 75 Fed.Reg. at p. 41257.) The Court observed that, "on one hand, the SEC found that '[d]isclosure of such person's record while he was in the securities industry via BrokerCheck should help members of the public decide whether to rely on his advice or expertise or do business with him'; on the other hand, it also found that the absence of this information 'could lead a person making an inquiry about a formerly associated person to conclude that the formerly associated person had a clean record.'" (*Id*. at p. 950.)

Because BrokerCheck and CRD are the official records of sanctions and disciplinary decisions imposed against brokers and former brokers, if Mr. DeMaria's records were expunged, a potential future employer would not know that FINRA had (1) imposed a fine, (2) suspended Mr. DeMaria from the industry and (3) entered into an AWC regarding his conduct. Indeed, Mr. DeMaria admits in his complaint that this was exactly his goal in bringing this case, noting that he "has been unable to obtain employment in the financial industry since October 2013" because of the "public disclosure on [his] CRD and BrokerCheck report." (Compl. ¶¶ 24-25.)

D. Mr. DeMaria entered into a settlement agreement with FINRA accepting discipline, public disclosure of his disciplinary record, and a waiver of administrative review.

Mr. DeMaria entered the securities industry in January 2012 with Northwestern Mutual Investment Services, LLC ("Northwestern Mutual"). (Compl. Ex. 3.) In early September 2013, Mr. DeMaria discussed a financial plan with an acquaintance, Brian Ricks. (*Ibid.*) Based on DeMaria's assurances that Ricks could open an account at Northwestern Mutual without depositing any funds, Ricks opened an account and completed account opening documents. (*Ibid.*) In late September 2013, without Ricks' knowledge or consent, DeMaria caused the transfer of approximately $38,000 in mutual fund assets into the new Northwestern Mutual account. (*Ibid.*) In response to this conduct, Mr. Ricks filed an arbitration claim against Mr. DeMaria and Northwestern Mutual through FINRA arbitration on November 19, 2013. (Compl. ¶ 14.) On May 29, 2014, the FINRA arbitrator dismissed Mr. Ricks' claims against Mr. DeMaria, but also denied Mr. DeMaria's request for expungement of the CRD disclosure of the arbitration itself. (*Id.*, Ex. 1, p. 1.) Plaintiff nowhere acknowledges this latter fact in his Complaint.

Around this same time, FINRA sent an inquiry to Mr. DeMaria regarding this arbitration, but he failed to respond within the 30-day deadline required by statute. (Compl. ¶¶ 17-19.) On May 30, 2014, FINRA sent Mr. DeMaria a notice letter of its intent to suspend him for failure to respond to their inquiry months prior. (*Id.* ¶ 20.) DeMaria was then suspended on June 23, 2014, reflected as a regulatory disclosure on his BrokerCheck and CRD record as a suspension for failure to respond to FINRA's request for information. (*Ibid.*)

Instead of contesting the allegations FINRA inquired about related to the arbitration with Mr. Ricks, as was his right, on June 2, 2015, Mr. DeMaria settled this dispute by agreeing to a Letter of

Acceptance, Waiver, and Consent ("AWC"). (*Id.* ¶ 22, Ex. 3.) In this AWC, Mr. DeMaria accepted and consented to the entry of findings by FINRA that "DeMaria failed to adhere to high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010" due to his alleged misconduct regarding Mr. Ricks' account. (Compl. Ex. 3.) Moreover, Mr. DeMaria consented to the imposition of sanctions, namely, a 20-month suspension from association with a FINRA member, and a $15,000 fine. (*Ibid.*) Mr. DeMaria also waived the right to defend against these allegations in a disciplinary hearing before a panel or to appeal any such panel's decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals. (*Ibid.*) Crucially, Mr. DeMaria accepted that this AWC would "become part of [his] permanent disciplinary records" that would "be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313." FINRA accepted Mr. DeMaria's offer on these terms, and settled the matter. The settlement is a final disciplinary decision under Rule 8313 that is required to be published. Finally, perhaps recognizing his "fail[ure] to adhere to high standards of commercial honor," Mr. DeMaria chose to draft and sign a voluntary "Corrective Action Statement," explaining that he "voluntarily resigned from Northwestern Mutual," "refrained from any direct contact with clients," and had "taken steps to ensure that all future dealings . . . [are] conducted in writing" "in order to prevent any such incidents in the future." (*Ibid.*)

After this proceeding, in accordance with federal law as outlined above, FINRA published this AWC and the incidents referred to therein as part of his public disciplinary record as required.

E. Mr. DeMaria petitioned the Court for expungement of FINRA records without exhausting administrative remedies.

Mr. DeMaria did not proceed through FINRA's disciplinary process to challenge the items contained in his record. Indeed, as described above, he waived his right to do so. Thus, he has not sought review of the settled allegations in a disciplinary hearing before a panel, review by the SEC, or judicial review by the court of appeals. Further, he has made no effort to challenge inclusion of these matters on his public record through the administrative process available. (*See*, *Flowers*, *supra*, 16 Cal.App.5th at p. 952 [Noting "Flowers's ability to seek relief from *publication* of those matters first from FINRA itself, then the SEC and finally a United States Circuit Court of Appeals."].) Instead,

years later, Mr. DeMaria asks this Court to exempt him from the terms of the settlement and from the statutes and regulations governing securities professionals.

IV. LEGAL STANDARD

A demurrer must be granted if the complaint is legally insufficient as a matter of law, or if the Court lacks subject matter jurisdiction over the case. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 21-22; Code Civ. Proc., §§ 430.10, 430.30.) A "party against whom a complaint . . . has been filed may object, by demurrer . . . on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading . . . (e) The pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10.) For purposes of the demurrer, the moving party takes as true all material facts properly pleaded, but not contentions, deductions or conclusions of law. (*Aubry v. Tri-City Hosp. Dist*. (1992) 2 Cal.4th 962, 966-967; see also *Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

A demurrer should be sustained without leave to amend where the only issues are legal and the court decides against the plaintiff as a matter of law. (*Lawrence v. Bank of Am*. (1985) 163 Cal.App.3d 431, 436 ["Leave to amend should be denied where the facts are not in dispute and the nature of the claim is clear, but no liability exists under substantive law"].) This Court must enforce federal law at issue in the case. (See *DIRECTV*, *Inc. v. Imburgia* (2015) 136 S.Ct. 463, 468 [noting the Constitution's requirement that "the Judges in every State shall be bound by the Laws of the United States"]; *McLaughlin v. Walnut Props.*, *Inc.* (2004) 119 Cal.App.4th 293, 297 [stating that where a federal statute is at issue, the state court "must apply and interpret federal law"].)

V. ARGUMENT

A. This Court has no jurisdiction because Mr. DeMaria failed to exhaust administrative remedies that are mandatory under federal law.

Mr. DeMaria knowingly agreed to waive his right to "defend against the allegations in a disciplinary hearing . . . [and] [t]o appeal any such decision to the . . . [SEC] and a U.S. Court of Appeals." (Compl. Ex. 3; see 15 U.S.C. §§ 78o-3(h)(1), 78s(d), 78y(a); FINRA Rs. 9213, 9231, 9311, 9349, 9351.) The law is clear that, having foregone his right to challenge the disciplinary decision in the mandated administrative process, he cannot do so now in the Superior Court. (*Flowers*, *supra*, 16 Cal.App.5th at p. 952.) As the *Flowers* Court held, "[w]ith respect to disciplinary actions against

participants in the securities industry, we believe the doctrine of exhaustion of remedies requires that such a determination be made in the first instance in the forums to which Congress has assigned the task of resolving those issues." (*Ibid*.)

"[W]here an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act." (*Flowers*, *supra*, 16 Cal.App.5th at p. 953, quoting *Abelleira v. Dist. Ct. of App.* (1941) 17 Cal.2d 280, 292.) "[A]n aggrieved party is not required to file a grievance or protest if he does not wish to do so, but if he does wish to seek relief, he must first pursue an available administrative remedy before he may resort to the judicial process." (*Id.* at p. 953, quoting *Yamaha Motor Corp. v. Super. Ct.* (1986) 185 Cal.App.3d 1232, 1240.) The exhaustion requirement "'is a jurisdictional prerequisite, not a matter of judicial discretion.'" (*Ibid.*) Courts thus sustain demurrers where the plaintiff failed to exhaust administrative remedies. (*Saffer v. JP Morgan Chase Bank* (2014) 225 Cal.App.4th 1239, 1262 [determining that when "exhaustion requirements are set forth by federal statute, they are mandatory," and that exhaustion "creat[es] a mandatory precondition to litigation, . . . depriv[es] courts of subject matter jurisdiction if the claims procedures are not first followed, [and] . . . in the absence of subject matter jurisdiction, a trial court has no power to hear or determine [the] case"] [internal citations omitted]; see *Shuer v. County of San Diego* (2004) 117 Cal.App.4th 476, 482.)

Furthermore, "[t]he doctrine of exhaustion of remedies is not solely a creature of our state law, but has been repeatedly recognized by federal courts in their disposition of closely related securities case involving discipline imposed by SROs." (*Flowers*, *supra*, 16 Cal.App.5th at p. 953, citing *Barbara v. NYSE* (2d Cir. 1996) 99 F.3d 49, 56-57; see *Scottsdale Cap. Adv. Corp. v. FINRA* (4th Cir. 2016) 844 F.3d 414, 424; *Santos-Buch v. FINRA* (2d Cir. 2015) 591 F.Appx. 32, 33, affg. *Santos-Buch v. FINRA* (S.D.N.Y. 2014) 32 F.Supp.3d 475.) "[C]ourts have held without exception that [FINRA's] comprehensive review process renders exhaustion jurisdictional." (*Schwab*, *supra*, 861 F.Supp.2d at pp. 1069-1070 [citing cases].)

Here, not only did Mr. DeMaria fail to exhaust available administrative remedies, he actually agreed to waive his right to "defend against the allegations in a disciplinary hearing . . . [and] [t]o appeal any such decision to the . . . [SEC] and a U.S. Court of Appeals." (Compl. Ex. 3; see 15 U.S.C.

§§ 78o-3(h)(1), 78s(d), 78y(a); FINRA Rs. 9213, 9231(b), 9311, 9349, 9351.) Instead, Mr. DeMaria agreed to a "suspension in association with any FINRA member in all capacities for 20 months; and a fine in the amount of $15,000" and that the agreement would "become part of [his] permanent disciplinary record" "made available through FINRA's public disclosure program." (Compl. Ex. 3.)

Permitting individuals like Mr. DeMaria to use the courts to circumvent these administrative remedies would result in an inconsistent patchwork of individualized regulation of securities brokers where rules in one state could be different from rules in the next state. This is precisely what Congress sought to avoid in the Exchange Act's administrative process. (See 15 U.S.C. § 78y.) Moreover, "[f]or administrative procedure to operate effectively, it is essential that courts refrain from interfering with the process unnecessarily." (*First Jersey Secs.*, *supra*, 605 F.2d at p. 696; see also *Merrill Lynch, Pierce, Fenner & Smith v. NASD* (5th Cir. 1980) 616 F.2d 1363, 1368 [holding that the district court erred in intruding upon the "complex self-regulatory scheme set down by Congress" for broker regulation].) And "Congress believed that this process would achieve several benefits, including 'the expertise and intimate familiarity with complex securities operations which members of the industry can bring to bear on regulatory problems, and the informality and flexibility of self-regulatory procedures.'" (*Schwab*, *supra*, 861 F.Supp.2d at pp. 1069-1070 [quoting S. Doc No. 93-13, 93rd Cong., 1st Sess. 149 (1973)].) Thus, courts routinely dismiss cases where a plaintiff challenges disciplinary findings or decisions without first exhausting administrative remedies. (See, e.g., *Flowers*, *supra*, 16 Cal.App.5th at p. 952; *Schwab*, *supra*, 861 F.Supp.2d at pp. 1069-1070; *Alton v. NASD* (N.D.Cal. July 26, 1994) No. C-94-0618 MHP, 1994 WL 443460, at pp. *2-3, *5; *Roach v. Woltmann* (C.D.Cal. 1994) 879 F.Supp. 1039; *Swirsky*, *supra*, 124 F.3d at p. 59; *Cleantech Innovations, Inc. v. NASDAQ Stock Mkt., LLC* (S.D.N.Y. Jan. 31, 2012) No. 11 Civ. 9358(KBF), 2012 WL 345902.)

"Congress has provided for administrative review by the SEC of FINRA's enforcement of its rules and resort to the circuit court of appeals. Thus, if [Mr. DeMaria] was unable to obtain relief from the publication of his history from FINRA itself, he could have asked for relief from the SEC and in turn a federal circuit court." (*Flowers*, *supra*, 16 Cal.App.5th at p. 954 [internal citation omitted].) Because Mr. DeMaria failed—and indeed waived his right—to do these things, no court has jurisdiction over this dispute, so the demurrer should be sustained.

B. Federal law preempts any state cause of action that conflicts with FINRA's regulatory duties under federal law and FINRA rules.

To the extent Mr. DeMaria claims that a state "expungement" cause of action overrides FINRA rules mandating permanent disclosure of brokers' disciplinary records and disciplinary decisions, he is wrong as a matter of law. FINRA rules, approved by the SEC after notice and comment, "are expressions of federal legislative power and have the force and effect of a federal regulation." (See *Schwab*, *supra*, 861 F.Supp.2d at p. 1065.) State law or causes of action that conflict with those rules are preempted. (*Jevne v. Super. Ct.* (2005) 35 Cal.4th 935, 949; *Credit Suisse First Boston v. Grunwald* (9th Cir. 2005) 400 F.3d 1119, 1132.) Thus, state courts may not use their equitable powers to contradict FINRA's SEC-approved rules, or frustrate their purpose, by changing the result of FINRA's regulatory process. (*Flowers*, *supra*, 16 Cal.App.5th at p. 955.) Allowing Mr. DeMaria to pursue expungement before this Court would do just that, and therefore this action is preempted as a matter of law.

1. FINRA rules require permanent disclosure of brokers' disciplinary decisions, and Mr. DeMaria agreed to this regulatory mandate.

Mr. DeMaria asks this Court to ignore the Exchange Act and the SEC's determination that final disciplinary actions must be made permanently available on a registered representative's securities registration record. The SEC's directive is in line with the Exchange Act and FINRA rules, which make these disclosures permanent. (FINRA R. 8313 [requiring FINRA to publish "disciplinary decisions[s]" such as the AWC signed by Mr. DeMaria]; 15 U.S.C. § 78o-3(i)(5) [requiring FINRA to publish information including "disciplinary actions, regulatory . . . proceedings, and other information required by . . . exchange or association rule, and the source and status of such information"].) Indeed, "FINRA is ***required*** to continue to maintain and make public the information [Mr. DeMaria] now seeks to have expunged." (*Buscetto*, *supra*, 2012 WL 1623874, at p. *3 [emphasis added].) Moreover, "'BrokerCheck allows the public to obtain certain limited information regarding formerly associated persons, *regardless of the time elapsed since they were associated with a member, if they were the subject of any final regulatory action*.'" (*Flowers*, *supra*, 16 Cal.App.5th at p. 950, quoting 75 Fed.Reg. 41254, italics added by the *Flowers* Court.)

Additionally, the disclosure at issue is not only part of Mr. DeMaria's permanent record, but also part of the discipline imposed on him, and to which he agreed (and agreed not to challenge). The SEC relies on permanent disclosure to discourage improper conduct. (*Flowers*, *supra*, 16 Cal.App.5th at p. 955; cf. *Grove v. State Bar of Cal.* (1965) 63 Cal.2d 312, 316 [finding a public reprimand of attorney misconduct constitutes discipline].) In other words, the *disclosure* of these regulatory issues is not only federally mandated, but is part of the discipline itself.

Mr. DeMaria agreed that he understood as a part of his sanction, which included a suspension and fine, that the agreement would "become part of [his] permanent disciplinary record" "made available through FINRA's public disclosure program." (Compl. Ex. 3.) (see also *Buscetto*, *supra*, 2012 WL 1623874, at p. *3 [dismissing a complaint for expungement where Plaintiff expressly acknowledged "the[] continuing obligations and the consequences of entering into a settlement"].)

2. Neither federal law nor FINRA rules allow expungement of regulatory findings, which are critical to the public.

These disciplinary decisions cannot be expunged without "'pos[ing] an obstacle to the accomplishment of Congress's objectives'" as expressed by the SEC. (*Flowers*, *supra*, 16 Cal.App.5th at pp. 954-955, quoting *Whistler Invs. v. Depos. Trust & Clearing Corp. v. Depository Trust and Clearing Corp.* (9th Cir. 2008) 539 F.3d 1159, 1164.) The "Exchange Act itself requires that, as an SRO, FINRA maintain information in [the CRD] database about . . . their broker representatives." (*Flowers*, *supra*, 16 Cal.App.5th at p. 950, citing 15 U.S.C. § 78o-3(i)(1)(A); *Santos-Buch v. FINRA* (S.D.N.Y. 2014) 32 F.Supp.3d 475, 479.) As described above, the SEC has directed that regulatory actions and disciplinary decisions against former brokers must be permanently disclosed in BrokerCheck. (*Flowers*, *supra*, 16 Cal.App.5th at p. 950, quoting 75 Fed.Reg. at p. 41254.) These purposes are clear, and they cannot be reconciled with expungement of these records by a state court. Indeed, as the *Flowers* Court held, the SEC determined that "the public has an interest in having access to the disciplinary records of individuals providing investment advice" because "the absence of this information 'could lead a person making an inquiry about a formerly associated person to conclude that the formerly associated person had a clean record.'" (*Id.*, quoting 75 Fed.Reg. at p. 41257.)

Mr. DeMaria cannot circumvent the rules mandating permanent publication of his disciplinary record and decision, including his fine, suspension, and AWC. (See generally *Id.*; *Buscetto*, *supra*, 2012 WL 1623874 [dismissing complaint for expungement of FINRA disciplinary decision from record of former registered representative]; *Dobbins v. NASD* (N.D.Ohio Aug. 22, 2007) No. 5:06CV2968, 2007 WL 2407081, at p. *3 [dismissing complaint against NASD where broker failed to establish a legal claim for expungement of his CRD record as a matter of law].)

C. FINRA has absolute immunity as a regulator, and no private right of action exists against FINRA under the Exchange Act.

FINRA is absolutely immune "from suit for conduct falling within the scope of the SRO's regulatory and general oversight functions." (*D'Alessio v. New York Stock Exchange, Inc.* (2001) 258 F.3d 93, 104 [holding that an SRO is "immune from liability for claims arising out of the discharge of its duties under the Exchange Act"]; *Lucido v. Mueller* (E.D.Mich. Sept. 29, 2009) 2009 WL 3190368, p. *7, affd. (6th Cir. 2011) 2011 WL 3677937 [granting FINRA's motion to dismiss, in part, on FINRA's immunity from suit and the absence of a private right of action for claims seeking to expunge registered representative's criminal record from FINRA's CRD database]; see also *Standard Inv. Chartered, Inc. v. NASD* (2d Cir. 2011) 637 F.3d 112, 116; *DL Capital Grp. LLC v. NASDAQ Stock Mkt., Inc.* (2d Cir. 2005) 409 F.3d 93, 97; *Scher v. NASD* (S.D.N.Y. 2005) 386 F.Supp.2d 402, 406, affd. (2d Cir. 2007) 2007 WL 631687; *American Benefits Grp., Inc.* (S.D.N.Y. Aug. 10, 1999) 1999 WL 605246, at pp. *1, *9; *In re Series 7 Broker Qualification Exam Scoring Litig.* (D.C.Cir. 2008) 548 F.3d 110, 114; *P'ship Exch. Sec. Co. v. NASD* (9th Cir. 1999) 169 F.3d 606, 608; *Sparta Surgical Corp. v. NASD* (9th Cir. 1998) 159 F.3d 1209, 1215.)

The conduct of which Mr. DeMaria complains, that FINRA continues to maintain and report the existence of a final disciplinary decision by FINRA against Mr. DeMaria, falls squarely within FINRA's regulatory duties. (See 15 U.S.C. § 78o-3(i).) Mr. DeMaria's "claims relate to FINRA's actions of conducting a disciplinary investigation against him and subsequently making that investigation public on BrokerCheck; these actions fall squarely within FINRA's regulatory duties. As such, the claims against FINRA are barred by FINRA's absolute regulatory immunity." (*Tuberville v. FINRA* (M.D.Fl. 2016) 2016 WL 501982, at p. *4.)

And neither the Exchange Act, nor any other provision of the federal securities laws, provides for a cause of action against an SRO like FINRA for acts or omissions in connection with its duties as a securities regulator. To the contrary, courts routinely hold that no private right of action exists against an SRO like FINRA for its regulatory acts. (See, e.g., *Desiderio v. NASD* (2d Cir. 1999) 191 F.3d 198, 208, *cert. denied*, 531 U.S. 1069; *MM&S Fin., Inc. v. NASD* (8th Cir. 2004) 364 F.3d 908, 911-912; *Spicer v. Chicago Bd. of Options Exch., Inc.* (7th Cir. 1992) 977 F.2d 255, 260; *Matyuf v. NASD Dispute Resolution, Inc.* (W.D.Pa. Oct. 4, 2004) 2004 WL 2915304, at p. *3; *In re Olick* (E.D. Pa. Apr. 4, 2000, No. 99-CV-5128) 2000 WL 354191, at p. *4 [a party "may not maintain a private cause of action against the NASD under the Exchange Act, or at common law, for regulatory actions taken by the NASD"].) Mr. DeMaria's request for equitable relief from FINRA's regulatory acts—maintaining and reporting his disciplinary record—cannot be the basis for a lawsuit.

And this conclusion makes sense. As noted above, the lack of a private right of action in court against FINRA is a logical corollary of Congress's exclusive administrative forum for those aggrieved by SRO regulatory acts. Complainants such as Mr. DeMaria, when they have not waived them, have a remedy for their grievances: first the FINRA administrative forum, then the SEC, and then a federal court of appeals. But complainants like Mr. DeMaria do not have the right to have their grievances adjudicated in court in the first instance, or ever in the Superior Court.

VI. CONCLUSION

This suit is an impermissible, after-the-fact effort to overturn FINRA discipline outside of the prescribed administrative process. Thus, this demurrer should be sustained without leave to amend.

Respectfully submitted,

DATED: September 23, 2020

Gibson, Dunn & Crutcher LLP

By: 
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREW DEMARIA,

Plaintiff,

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,

Defendant.

CASE NO. CPF-20-517191

[PROPOSED] ORDER SUSTAINING FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S DEMURRERS

[*Notice of Demurrers, Demurrers, Memorandum of Points and Authorities in Support of Demurrers, and Declaration of Ethan D. Dettmer filed concurrently herewith*]

Date: October 16, 2020
Time: 9:30 a.m.
Dept.: 302

Action Filed: August 10, 2020

The Court has considered the Demurrers filed by Defendant Financial Industry Regulatory Authority, Inc. ("FINRA"); the Memorandum of Points and Authorities in support of the same; the Supporting Declaration of Ethan D. Dettmer; the opposition and reply papers; the oral argument of counsel; all other matters of which judicial notice may be taken; and the other files and records in this matter. The Court rules as follows:

The Demurrers are sustained without leave to amend. Mr. DeMaria's Complaint is subject to demurrer under California Code of Civil Procedure section 430.10, subdivisions (a) and (e) based on the face of his Complaint. First, this Court lacks subject matter jurisdiction because Mr. DeMaria failed to exhaust administrative remedies with respect to the challenged reporting. (E.g., *Flowers v. Fin. Indus. Regulatory Auth.* (2017) 16 Cal.App.5th 946, 954; *Saffer v. JP Morgan Chase Bank* (2014) 225 Cal.App.4th 1239, 1246; see 15 U.S.C. §§ 78s, 78y.) Second, his requested relief is preempted by federal law as it is a collateral attack on the federal statutory and regulatory scheme regulating securities brokers and FINRA's performance of its regulatory duties mandated by the Securities Exchange Act. (See, e.g., *Flowers v. Fin. Indus. Regulatory Auth.* (2017) 16 Cal.App.5th 946, 955; *Jablon v. Dean Witter Reynolds, Inc.* (9th Cir. 1980) 614 F.2d 677, 681.) Finally, the Complaint must be dismissed because FINRA has absolute immunity, and there is no private right of action against FINRA under the Exchange Act. (*D'Alessio v. New York Stock Exch., Inc.* (2d Cir. 2001) 258 F.3d 93, 105, *cert. denied*, 534 U.S. 1066.)

For the foregoing reasons, the Demurrer is sustained without leave to amend.

It is SO ORDERED.

DATED: _____ _____

Judge of the Superior Court

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Attorneys for FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREW DEMARIA,

Plaintiff,

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,

Defendant.

CASE NO. CPF-20-517191

DECLARATION OF ETHAN D. DETTMER IN SUPPORT OF FINANCIAL INDUSTRY REGULATORY AUTHORITY INC.'S DEMURRERS TO THE COMPLAINT

[*Notice of Demurrers, Demurrers, Memorandum of Points and Authorities in Support of Demurrers, and Proposed Order filed concurrently herewith*]

Date: October 16, 2020
Time: 9:30 a.m.
Dept.: 302

I, Ethan D. Dettmer, declare and state as follows:

1. I am an attorney duly licensed to practice law before the Court of the State of California. I am a Partner with the law firm of Gibson, Dunn & Crutcher LLP and am one of the attorneys representing Defendant Financial Industry Regulatory Authority, Inc. ("FINRA") in the above-entitled action. I make this declaration in support of Defendant FINRA's Demurrers to Plaintiff's Complaint. I have personal knowledge of the matters stated herein and, if called to do so, I could and would competently testify about them.

2. Mr. DeMaria filed this action in the Superior Court of San Francisco on August 10, 2020, and FINRA was served on or about August 25, 2020.

3. On September 18, I met and conferred telephonically with counsel for Mr. DeMaria, as required by Code of Civil Procedure § 430.41. The parties were unable to reach an agreement resolving the objections raised in FINRA's demurrer. However, the parties did agree to the date on which this demurrer is noticed for hearing.

4. Attached hereto as **Exhibit A** is a true and correct copy of the Order Approving a Proposed Rule Change Relating to Availability of Information Pursuant to FINRA Rule 8312, SEC Rel. No. 34-61002, 74 Fed.Reg. 61193, *61196 (Nov. 23, 2009).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 23rd day of September, 2020, in San Anselmo, California.

Ethan Dettmer

EXHIBIT A

become the industry standard for determining settlement value.[7]

ISE therefore proposes to amend its rules to allow the closing settlement value for the Brazilian real to be determined based on the PTAX rate. Doing so will reflect the current industry standard with respect to this product and will align trading in it with other regulated and exchange-listed products in the U.S. The PTAX rate is the same as that used by the Bolsa de Mercadorias & Futuros to cash settle its U.S. dollar futures contract as well as that used by the Chicago Mercantile Exchange to cash settle its Brazilian real futures contract.

In the event the PTAX rate is not available, the Exchange shall calculate the closing settlement value for options on the Brazilian real using the WM/Reuters Intraday Spot price corresponding to 12:00 p.m. New York time, which is what the Exchange currently uses to calculate the closing settlement values for all the FX options that are currently listed on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's [9] requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to use the PTAX, an industry-recognized source, to determine the closing settlement value for options on the Brazilian real which the Exchange expects shortly to list for trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [10] of the Act and Rule 19b–4(f)(6) [11] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–97 and should be submitted on or before December 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27999 Filed 11–20–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61002; File No. SR–FINRA–2009–050]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to Availability of Information Pursuant to FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

November 13, 2009.

I. Introduction

On July 24, 2009, the Financial Industry Regulatory Authority, Inc.

[7] Additional information on the PTAX is available on BACEN's Web site at *http://www.bcb.gov.br/sddsi/taxacambio_i.htm*.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

(''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make available in BrokerCheck information about former associated persons of a FINRA member who were the subject of a final regulatory action as defined in Form U4 that has been reported to the Central Registration Depository (''CRD®'' or ''CRD System''). The proposal was published for comment in the **Federal Register** on August 7, 2009.[3] The Commission received fifty-two comments on the proposal.[4] FINRA responded to the comments on October 15, 2009.[5] This order approves the proposed rule change.

II. Description of the Proposal

Pursuant to FINRA Rule 8312, BrokerCheck allows the public to obtain information regarding current and former members, as well as associated persons and persons who were associated with a member within the preceding two years. Formerly registered persons, although no longer in the securities industry in a registered capacity, may, however, work in other investment-related industries or attain positions of trust. FINRA thus proposed to expand the information available via BrokerCheck to certain information with respect to persons who were associated with a member but who have not been associated with a member in the preceding two years (''formerly associated persons''), if those persons were the subject of any final regulatory action, as defined in Form U4, that has been reported to CRD via a uniform registration form.[6]

''Final regulatory action'' includes any final action of the Commission, Commodity Futures Trading Commission, a Federal banking agency, the National Credit Union Administration, another Federal regulatory agency, a State regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization, including actions that have been appealed.[7] FINRA staff will review the information on Forms U4 and U5 (including predecessor questions), as well as information filed on Form U6, to determine whether a formerly associated person is subject to a final regulatory action and should be included in BrokerCheck pursuant to the proposed rule.[8]

For such formerly associated persons,[9] FINRA will disclose: (i) Information concerning any final regulatory action; (ii) administrative information, such as employment and registration history as reported on a registration form; (iii) the most recently submitted comment, if any, provided by the person, if the comment is relevant and in accordance with the procedures established by FINRA; and (iv) dates and names of qualification examinations passed by the formerly associated person, if available.[10]

The proposed rule change would not expand access to other information that is included in the CRD System, such as customer complaints, bankruptcies, liens, criminal events or arbitration claims. In addition, a final regulatory action would not include any action limited to the revocation or suspension of an individual's authorization to act as an attorney, accountant or Federal contractor (Form U4, Question 14F).

If FINRA receives a request regarding a formerly associated person for which it has data in a different format, FINRA's staff will manually prepare the BrokerCheck report, convert the report to an electronic format, and make the report available through BrokerCheck. Once the information has been converted to the Web CRD format it will be available in Web CRD from that point forward.[11]

III. Summary of Comments and FINRA's Response

The Commission received fifty-two comment letters on the proposed rule change.[12] Most comments focus on two issues. First, commenters address the provision of FINRA Rule 8312 that provides for the release of certain information regarding an individual who is a current or former member or current associated person of a member of FINRA, or a person who has been an associated person of a member of FINRA within the past two preceding years. FINRA is not making a substantive change to this provision.[13] Second, commenters take issue with the limited nature of the information to be disclosed regarding formerly associated persons.

A. General Two-Year BrokerCheck Disclosure Period

Most information available through BrokerCheck is only available with respect to current or former members, or associated persons of members, or persons who were associated persons of FINRA members within the preceding two years.[14] Forty commenters argue that, for investor protection purposes, this two-year time frame should be increased so that information remains available to the public via BrokerCheck for a longer period of time—anywhere from five years to forever.[15] Twelve commenters[16] advised a six-year disclosure period, which corresponds to the time limit in FINRA's rule for the submission of arbitration claims involving public customers (''eligibility

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60462 (August 7, 2009), 74 FR 41470 (August 17, 2009 ''Notice'').

[4] *See* Exhibit A for a list of comment letters.

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, FINRA, dated October 15, 2009 (''Response Letter'').

[6] *See* proposed FINRA Rule 8312(c).

[7] *See* Form U4 questions 14C, 14D, and 14E, as well as Question 7D of Form U5. *See also* Section 3(a)(39) of the Act.

[8] Under the proposed rule change, FINRA may disclose a final action that is reported by a regulator on a Form U6 even if that action has not been reported by an individual on a Form U4 because, for example, the individual was not registered at the time the final regulatory action was reported.

[9] Certain information about some formerly associated persons who have not been associated with a member since January 1, 1999, may not be available through BrokerCheck. As discussed more fully in the Notice, two conditions apply to a small percentage of individuals who were no longer registered at the time Web CRD was established in 1999. First, not all of these individuals' records are available in the Web CRD format; instead, their records exist in the Legacy CRD format. Second, for a very small percentage of individuals, certain administrative information is unavailable in either the Web or Legacy CRD format.

[10] *See* proposed FINRA Rule 8312(c).

[11] FINRA stated that if it identifies or becomes aware of potentially inappropriate information, including customer names, confidential account information or possibly offensive or potentially defamatory language in a BrokerCheck report, FINRA would balance the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or potential defamation claims. Based on this balancing, FINRA may determine to redact language from BrokerCheck reports on a case-by-case basis. *See* the Notice, citing, *e.g.,* Securities Exchange Act Release No. 42402 (February 7, 2000), 65 FR 7582 (February 15, 2000) (Order Approving SR–NASD–99–45).

[12] *See supra,* note 4.

[13] Current FINRA Rule 8312(a); proposed to be re-numbered to FINRA Rule 8312(b).

[14] *Id.* FINRA stated that some commenters incorrectly mentioned that information regarding an individual is ''purged'' from BrokerCheck once that individual ceases to be registered with FINRA for a period of two years. *See,* e.g., comment letters from Lipner, Van Kampen, Sigler, Speyer, and Claxton. FINRA stated that the information is retained in the CRD system even though it is not displayed through BrokerCheck and would be available for display through BrokerCheck should the individual reregister with FINRA or otherwise become covered by BrokerCheck. *See* Response Letter at 2.

[15] *See* comment letters from Lipner, Van Kampen, Sigler, Pounds, Steiner, Neuman, Bleecher, Estell, Layne, PIABA, Schultz 1, Shewan, Port, Graham, Speyer, AARP, Griffin, Sherman, Cornell, Evans/Edmiston, St. John's, Rosenfield, Ilgenfritz, Buchwalter, Miller, Rosca, Guiliano, Greco, Sonn, Haigney, Sutherland, Davis, Mougey, Claxton, DeVita, Ledbetter, Gladden, McCauley, Malarney, and Willcutts.

[16] *See* comment letters from Pounds, Steiner, Estell, PIABA, Schultz 1, Graham, Rosenfield, Ilgenfritz, Miller, Greco, Sonn, and Haigney.

rule'').[17] FINRA believes that these comments are outside the scope of the rule proposal, since it is not proposing to change the two-year disclosure period currently set forth in Rule 8312; rather, the proposed rule change expands BrokerCheck only with respect to formerly associated persons who are subject to a final regulatory action.[18]

Nevertheless, FINRA notes that the two-year disclosure period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to FINRA's jurisdiction.[19] FINRA states that when the two-year time frame was proposed, FINRA believed that the two-year time frame struck the appropriate balance between an investor's interest in being easily able to obtain information about a former registered person and a person's desire for privacy once he has left the securities industry,[20] and it continues to believe that is the proper balance today.[21]

Finally, FINRA disagrees with the commenters who represent investors in securities litigation or other matters who suggest a six-year disclosure period, which FINRA believes is in order to make it easier to conduct research on former registered persons.[22] FINRA states that the BrokerCheck system was established principally to help members of the public determine whether to conduct or continue to conduct business with a FINRA member or any of the member's associated persons and not for the purpose suggested by these commenters.[23] FINRA believes that the commenters' attempt to link the time limitation on the submission of claims provided for under the eligibility rule and the time frame for BrokerCheck disclosure is misplaced, since the time limitation under the eligibility rule is determined by the date of the occurrence or event giving rise to the claim and has no relationship whatsoever to the termination of an individual's registration with FINRA.[24] Therefore, in FINRA's opinion, the commenters' suggested change is outside the scope of the rule proposal and also would not necessarily address the commenters' concerns.[25]

B. Expanding Access to Disclosure Information, Other Than Final Regulatory Actions, Pertaining to Individuals Not Registered With FINRA for More Than Two Years

Eighteen commenters express concern that FINRA's proposal may be too limiting in that it only expands BrokerCheck with respect to those formerly associated persons who are the subject of a final regulatory action, and for those persons, only with respect to certain information.[26] Many of these commenters suggest that BrokerCheck should include additional information, such as arbitration claims, criminal proceedings, and bankruptcies and liens, contending that these other categories are just as valuable to investors as final regulatory actions.[27] FINRA believes that these comments are outside the scope of the rule proposal because they pertain to categories of disclosure that are not the subject of the current rule proposal.[28]

Notwithstanding that, FINRA states these other categories of information are more relevant when the individual is registered or was recently registered (*i.e.,* within two years) and reiterates that it believes the proposal strikes a balance between personal privacy and investor protection concerns.[29] FINRA justifies one distinction by noting that while final regulatory actions are subject to procedures that allow an opportunity for the person to present arguments to a fact-finder about the allegations before the final disposition of the matter,[30] arbitration claims may not be subject to procedures that allow an opportunity for the person to present arguments to a fact-finder about the allegations before final disposition. Further, FINRA notes, a firm may choose to settle an arbitration claim regardless of whether the person wishes to contest the claim (*e.g.,* for business reasons). With respect to criminal charges and convictions, FINRA states that these claims that are reported subsequently may have a different disposition, which may significantly change the meaning of the matter as originally reported (for example, such charges or convictions may have been dismissed or expunged). Finally, FINRA does not think that reportable financial matters have the same degree of materiality as final regulatory actions such that they warrant disclosure on a permanent basis.

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comment letters, and the Response Letter, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[31] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that making information available through BrokerCheck about formerly associated persons who were the subject of a final regulatory action will help members of the public to protect themselves from unscrupulous people and thus the proposed rule change should help prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. One commenter suggests the disclosure of this additional information may serve

[17] *See* FINRA Rule 12206.

[18] *See* Response Letter at 3. FINRA clarifies that four commenters (Lipner, Neuman, AARP, and Malarney) erroneously state that the proposal will limit the time frame during which information on former registered persons will be available through BrokerCheck.

[19] *See* Response Letter at 3, citing Securities Exchange Act Release No. 42240 (December 16, 1999), 64 FR 72125 (December 23, 1999) (Notice of Filing SR–NASD–99–45).

[20] *Id.* FINRA also notes that the Commission received no comments when FINRA proposed establishing the two-year disclosure period for BrokerCheck.

[21] *See* Response Letter at 3.

[22] *See* Response Letter at 4, citing *e.g.,* comment letters from PIABA, Rosca, Greco, Sonn, and Haigney.

[23] *See* Response Letter at 4.

[24] *Id.*

[25] *Id.*

[26] *See* comment letters from Caruso, Bleecher, PIABA, Schultz 1, Feldman, Sherman, Lewins, Cornell, Bakhtiari, Evans/Edmiston, St. John's, Rosenfield, NASAA, Guiliano, Sonn, Meyer, Haigney, and Amato. Two commenters stated that FINRA's proposed rule change would apply only to those formerly associated persons who are the subject of a final regulatory action and who work in other investment-related industries or positions of trust. *See* comment letters from Schultz 1 and Sonn. FINRA clarified that the proposal will, in fact, apply to all former registered persons who are the subject of a final regulatory action regardless of their current occupation, if any. *See* Response Letter at 4.

[27] *See, e.g.,* comment letters from PIABA, Schultz 1, Cornell, Evans/Edmiston, St. John's, and Rosenfield.

[28] *See* Response Letter at 4.

[29] *See* Response Letter at 5.

[30] The formerly associated person has the opportunity to submit a comment for publication in BrokerCheck in response to information provided through BrokerCheck if the comment is in the form and in accordance with the procedures established by FINRA and relates to the information provided through BrokerCheck.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78*o*–3(b)(6).

as a deterrent to fraudulent activity.[33] The Commission believes that the information FINRA proposes to disclose is relevant to investors and members of the public who wish to educate themselves with respect to the professional history of a formerly associated person. It is possible that a formerly associated person could become a financial planner or work in another related field where his securities record would help members of the public decide if they should accept his financial advice or rely on his advice or expertise. One commenter suggested a formerly associated person could serve as a non-public arbitrator.[34] Clearly, in any of these circumstances, the formerly associated person's BrokerCheck information would be relevant in determining whether to do business with him, or, in the case of a claimant, in deciding whether to challenge a potential arbitrator.

The Commission agrees that the concerns raised by commenters who believe that the time frame for general disclosure should be increased are outside the scope of this proposal. However, the categories of information that should be disclosed for formerly associated persons is within the scope of the instant proposal and the commenters make a number of legitimate arguments with respect to the usefulness of the additional information they seek to have disclosed. The Commission understands that certain commenters, as well as other members of the public, may utilize information in BrokerCheck in considering whether to bring action against a formerly associated person for potentially actionable deeds [35] and believes that this is a legitimate use for BrokerCheck. The Commission recognizes that the public's ability to access information, whether to inquire about a registered person or to obtain information in connection with an alleged wrongdoing of a formerly associated person may serve to protect investors, the integrity of the marketplace, and the public interest. The Commission urges the public to utilize all sources of information, particularly the databases of the State regulators, as well as legal search engines and records searches, in conducting a thorough search of any associated person's activities.

The Commission notes that FINRA stated it would continue to evaluate all aspects of the BrokerCheck program to determine whether future circumstances should lead to greater disclosure through BrokerCheck.[36] FINRA has a statutory obligation to make information available to the public and,[37] as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck because it is a valuable tool for the public in deciding whether to work with an industry member.[38] The changes proposed in this filing will enhance BrokerCheck by including more information that should prove useful to the general public.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–FINRA–2009–050), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Florence E. Harmon,

Deputy Secretary.

Exhibit A—List of Comment Letters Received for FINRA–2009–050

1. Daniel W. Roberts, President/CEO, Roberts & Ryan Investments Inc., dated August 21, 2009 (''Roberts'').
2. Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, CUNY, dated August 27, 2009 (''Lipner'').
3. Al Van Kampen, Attorney at Law, dated August 31, 2009 (''Van Kampen'').
4. James A. Sigler, Esq., dated August 31, 2009 (''Sigler'').
5. Herb Pounds, dated August 31, 2009 (''Pounds'').
6. Leonard Steiner, Lawyer, dated August 31, 2009 (''Steiner'').
7. David P. Neuman, Stoltmann Law Offices, PC, dated August 31, 2009 (''Neuman'').
8. Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated September 1, 2009 (''Caruso'').
9. Rob Bleecher, Attorney, dated September 1, 2009 (''Bleecher'').
10. Barry D. Estell, Esq., dated September 1, 2009 (''Estell'').
11. Richard M. Layne, Esq., Law Office of Richard M. Layne, dated September 1, 2009 (''Layne'').
12. Brian N. Smiley, President, Public Investors Arbitration Bar Association, dated September 4, 2009 (''PIABA'').
13. Laurence S. Schultz, Driggers, Schultz & Herbst, P.C., dated September 4, 2009 (''Schultz 1'').
14. Scott R. Shewan, Pape Shewan LLP, dated September 4, 2009 (''Shewan'').
15. Robert C. Port, Esq., dated September 4, 2009 (''Port'').
16. Jan Graham, Graham Law Offices, dated September 4, 2009 (''Graham'').
17. Jeffrey A. Feldman, dated September 7, 2009 (''Feldman'').
18. Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, dated September 7, 2009 (''Speyer'').
19. Tim Canning, Law Offices of Timothy A. Canning, dated September 8, 2009 (''Canning'').
20. David Certner, Legislative Counsel and Legislative Policy Director, AARP, dated September 8, 2009 (''AARP'').
21. Keith L. Griffin, Griffin Law Firm, LLC, dated September 8, 2009 (''Griffin'').
22. Steven M. Sherman, Sherman Business Law, received September 8, 2009 (''Sherman'').
23. Richard A. Lewins, Esq., dated September 8, 2009 (''Lewins'').
24. William A. Jacobson, Esq., Associate Clinical Professor of Law, Director, Cornell Securities Law Clinic, dated September 8, 2009 (''Cornell'').
25. Ryan K. Bakhtiari, Aidikoff, Uhl and Bakhtiari, dated September 8, 2009 (''Bakhtiari'').
26. Jonathan W. Evans and Michael S. Edmiston, dated September 8, 2009 (''Evans/Edmiston'').
27. Christine Lazaro, Supervising Attorney, Lisa A. Catalano, Director, Peter J. Harrington, Legal Intern, Securities Arbitration Clinic, St. John's University School of Law, dated September 8, 2009 (''St. John's'').
28. William S. Shepherd, Managing Partner, Shepherd Smith Edwards Kantas, LLP, dated September 8, 2009 (''Shepherd'').
29. Howard Rosenfield, Law Offices of Howard Rosenfield, received September 8, 2009 (''Rosenfield'').
30. Rex Staples, General Counsel, North American Securities Administrators Association, dated September 8, 2009 (''NASAA'').
31. Scott C. Ilgenfritz, Johnson, Pope, Bokor, Ruppel & Burns, LLP, dated September 8, 2009 (''Ilgenfritz'').
32. Steve A. Buchwalter, Esq., dated September 8, 2009 (''Buchwalter'').
33. John Miller, Attorney, Swanson Midgley, LLC, dated September 9, 2009 (''Miller'').
34. Alin L. Rosca, Attorney at Law, John S. Chapman & Associates, LLC, received September 9, 2009 (''Rosca'').
35. Nicholas J. Guiliano, The Guiliano Law Firm, received September 9, 2009 (''Guiliano'').
36. W. Scott Greco, Greco Greco, P.C., dated September 9, 2009 (''Greco'').

[33] *See* Cornell letter.

[34] *See* Estell letter.

[35] *See supra,* note 22.

[36] *See* Response Letter at 5.

[37] *See* Section 15A(i) of the Act.

[38] *See, e.g.,* Securities Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

37. Jeffrey Sonn, Esq., Sonn & Erez, PLC, dated September 9, 2009 (''Sonn'').
38. Stephen P. Meyer, Esq., Meyer, Ford & Glasser, dated September 10, 2009 (''Meyer'').
39. Dayton P. Haigney, III, Attorney at Law, dated September 10, 2009 (''Haigney'').
40. John E. Sutherland, Brickley, Sears & Sorett, P.A., dated September 11, 2009 (''Sutherland'').
41. Theodore M. Davis, Esq., dated September 11, 2009 (''Davis'').
42. Peter J. Mougey, Esq., dated September 14, 2009 (''Mougey'').
43. Roger F. Claxton, Law Office of Roger F. Claxton, dated September 15, 2009 (''Claxton'').
44. Richard D. DeVita, Esq., dated September 15, 2009 (''DeVita'').
45. Dale Ledbetter, Ledbetter & Associates, P.A., dated September 16, 2009 (''Ledbetter'').
46. William J. Gladden, JD, CFP, dated September 16, 2009 (''Gladden'').
47. Steven M. McCauley, Esq., dated September 16, 2009 (''McCauley'').
48. Michael W. Malarney, Esq., The Pearl Law Firm, P.A., dated September 17, 2009 (''Malarney'').
49. Ronald M. Amato, Esq., Shaheen, Novoselsky, Staat, Filipowski Eccleston, PC, dated September 18, 2009 (''Amato'').
50. Thomas P. Willcutts, Willcutts Law Group, LLC, dated September 21, 2009 (''Willcutts'').
51. Scot D. Bernstein, Law Offices of Scot D. Bernstein, dated September 24, 2009 (''Bernstein'').
52. Laurence S. Schultz, Driggers, Schultz & Herbst, P.C., dated September 30, 2009 (''Schultz 2'').

[FR Doc. E9–27997 Filed 11–20–09; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60980; File No. SR–NASDAQ–2009–098]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Options Market

November 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the Nasdaq Market Center. This proposed rule change, which is effective upon filing, will become operative on November 2, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is modifying NASDAQ Rule 7050, the fee schedule for NOM, regarding orders with an account type of ''Customer.'' Specifically, Nasdaq is establishing a fee of $0.35 per executed contract for Customer orders in Penny Pilot options, as opposed to the fee of $0.20 that has applied to such orders since July 2009. Nasdaq notes that this fee remains lower than the fees that other options exchanges apply to such customer orders.

Nasdaq believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all similarly situated members and customers. As with all fees, Nasdaq may adjust these proposed fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. Consistent with past practice, the proposed change identifies a class of person subject to transaction execution fees based on the role of that class in bringing order flow to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78f.
[4] 15 U.S.C. 78f(b)(4).
[5] 15 U.S.C. 78s(b)(3)(a)(ii).
[6] 17 CFR 240.19b–4(f)(2).

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Attorneys for FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREW DEMARIA,

Plaintiff,

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,

Defendant.

CASE NO. CPF-20-517191

NOTICE OF PAYMENT OF COURT REPORTER FEE FOR FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S DEMURRERS TO THE COMPLAINT

Date: October 16, 2020
Time: 9:30 a.m.
Dept.: 302

Action Filed: August 10, 2020

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Financial Industry Regulatory Authority, Inc. hereby submits this Notice of Payment of Court Reporter fee in the amount of $30 for the above-entitled action.

DATED: September 23, 2020

GIBSON, DUNN & CRUTCHER LLP

By: _____
Ethan D. Dettmer

Attorneys for Defendant
FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.

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Attorneys for FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREW DEMARIA, Plaintiff, v. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., Defendant.	CASE NO. CPF-20-517191 **PROOF OF SERVICE** Action Filed: August 10, 2020 Trial Date: None set

I, Warren Loegering, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, California 94105, in said County and State. On the date indicated below, I served the following document(s):

NOTICE OF HEARING ON DEFENDANT FINRA'S DEMURRERS TO THE COMPLAINT; DEMURRERS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DECLARATION OF ETHAN D. DETTMER IN SUPPORT OF FINANCIAL INDUSTRY REGULATORY AUTHORITY INC.'S DEMURRERS TO THE COMPLAINT

[PROPOSED] ORDER SUSTAINING FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S DEMURRERS

NOTICE OF PAYMENT OF COURT REPORTER FEE FOR FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S DEMURRERS TO THE COMPLAINT

on the parties stated below, by the following means of service:

Antoinette Picon Hewitt
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Attorneys for Plaintiff

☑ **BY ELECTRONIC FILING AND SERVICE:** I caused said document(s) to be electronically filed and served by a court appointed E-filing vendor, **First Legal**, on the interested parties at the following email listed above. C.C.P. Section 1010.6(a)(1), (3), (4), (b)(1), (2), (5); CRC 2.253; Local Rule 2.11.

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 23, 2020, at Eden, Utah.

Warren Loegering

EXHIBIT 2

ANTOINETTE PICON HEWITT (SBN 181099)
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Attorneys for Petitioner, MICHAEL ANDREW DEMARIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREW DEMARIA,

Petitioner,

vs.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

Respondent.

Case No. CPF-20-517191

NOTICE OF ORDER ON STIPULATION OF PARTIES FOR DISMISSAL WITHOUT PREJUDICE

Petition filed: 8/10/2020

PLEASE TAKE NOTICE THAT on October 16, 2020 the Court signed the Order to the Stipulation of Parties for Dismissal Without Prejudice.

IT IS HEREBY ORDERED based on the Stipulation for Dismissal Without Prejudice executed by the parties in this matter:

(1) The Petition be dismissed, without prejudice, in its entirety;

(2) Petitioner and FINRA, each bear their own costs of suit; and

(3) The form and content of the proposed Order attached hereto regarding the foregoing

is acceptable to Petitioner and FINRA

A true and correct copy of the Order signed by the Judge, dated October 16, 2020, is attached hereto as **Exhibit A.**

Dated: October 21, 2020

KUTAK ROCK LLP

By: _____

Antoinette P. Hewitt
Attorney for Petitioner
MICHAEL ANDREW DEMARIA

EXHIBIT A

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Attorneys for Petitioner, MICHAEL ANDREW DEMARIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREW DEMARIA, Petitioner, vs. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. Respondent.	Case No. CPF-20-517191 Dept.: 302 **STIPULATION OF PARTIES FOR DISMISSAL WITHOUT PREJUDICE; ~~(PROPOSED)~~ ORDER** Action filed: 8/10/2020

Petitioner, MICHAEL ANDREW DEMARIA ("Petitioner"), on the one hand, and Respondent, Financial Industry Regulatory Authority, Inc. ("Respondent" or "FINRA"), on the other hand, through their respective attorneys have reached a settlement of matter whereby Petitioner has agreed to dismiss, without prejudice, the entire action in exchange of a mutual agreement that both Petitioner and Respondent FINRA will bear their own attorneys' fees and costs.

WHEREAS, Petitioner is willing to dismiss, without prejudice, the Petition in this action

in its entirety;

WHEREAS, Petitioner and Respondent FINRA, have each agreed to each bear their own attorneys' fees and costs of suit.

IT IS HEREBY STIPULATED AND AGREED by and between Petitioner, on the one hand, and FINRA, on the other hand, by and through their respective counsel herein that:

(1) The Petition be dismissed, without prejudice, in its entirety;

(2) Petitioner and FINRA, each bear their own costs of suit; and

(3) The form and content of the proposed Order attached hereto regarding the foregoing is acceptable to Petitioner and FINRA

SO STIPULATED

Dated: October 9, 2020

GIBSON, DUNN & CRUTCHER LLP

By: *Submitted with Authorization*
Ethan D. Dettmer
Warren S. Loegering
Attorney for Respondent
FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.

Dated: October 9, 2020

KUTAK ROCK LLP

By: _____
Antoinette P. Hewitt
Attorney for Petitioner
MICHAEL ANDREW DEMARIA

ORDER

Having read the Stipulation for Dismissal Without Prejudice executed by the parties in this matter the Court orders as follows:

(1) The Petition be dismissed, without prejudice, in its entirety;

(2) Petitioner and FINRA, each bear their own costs of suit; and

(3) The form and content of the proposed Order attached hereto regarding the foregoing is acceptable to Petitioner and FINRA

IT IS SO ORDERED.

DATED: 10/16/20

Judge of the San Francisco County Superior Court

RICHARD ULMER

PROOF OF SERVICE

DeMaria v Financial Industry Regulatory, Inc.
San Francisco Superior Court Case No. CPF-20-517191

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614-8595.

On **October 21, 2020**, I served on all interested parties as identified on the below service list the following document(s) described as:

NOTICE OF ORDER ON STIPULATION OF PARTIES FOR DISMISSAL WITHOUT PREJUDICE

[x] **(BY ELECTRONIC MAIL)** The above document was served electronically on the parties appearing on the service list associated with this case. A copy of the electronic mail transmission[s] will be maintained with the proof of service document.

SERVICE LIST

ETHAN D. DETTMER WARREN S. LOEGERING GIBSON, DUNN & CRUTCHER LLP 555 Mission Street, Suite 3000 San Francisco, California 94105-2933	Attorneys for FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. Telephone: 415.393.8200 Facsimile: 415.393.8306 EDettmer@gibsondunn.com WLoegering@gibsondunn.com

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **October 21, 2020**, at Irvine, California

Margo Reyes

Margo Reyes