

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91969 / May 21, 2021

Admin. Proc. File No. 3-20199

In the Matter of the Application of

MICHAEL ANDREW DEMARIA

For Review of Action Taken by

FINRA

ORDER REQUESTING ADDITIONAL BRIEFING

On January 6, 2021, Michael Andrew DeMaria filed an application for review of FINRA’s determination that his statement of claim requesting expungement of information from the Central Registration Depository (“CRD”) was not eligible for arbitration. DeMaria’s statement of claim had requested expungement of information related to (1) FINRA’s suspension of DeMaria due to his failure to respond to a request for information and (2) a Letter of Acceptance, Waiver, and Consent entered into by DeMaria and FINRA. Upon consideration of the briefs filed, we believe that additional briefing regarding our jurisdiction over DeMaria’s application for review would “significantly aid the decisional process.”¹

The Commission recently held that it has jurisdiction to consider FINRA actions “denying [applicants] access to FINRA’s arbitration forum to seek expungement of prior adverse arbitration awards arising from customer disputes . . . because FINRA’s action[s] prohibited access to a fundamentally important service that it offers.”² The Commission observed that “FINRA’s rules permit representatives to seek expungement in its arbitration forum of certain

¹ Rule of Practice 421(b), 17 C.F.R. § 201.421(b).

² Exchange Act Release No. 89495, 2020 WL 4569083, at *1 (Aug. 6, 2020); *see also* Exchange Act Section 19(d)(1)-(2), 15 U.S.C. § 78s(d)(1)-(2) (providing the Commission with jurisdiction to review any action by a self-regulatory organization that “prohibits or limits any person in respect to access to services offered by such organization”).

information reported in CRD and BrokerCheck.”³ The Commission cited FINRA Rules 2080, 12805, and 13805, which discuss expungement of customer dispute information from the CRD.

Here, DeMaria has requested access to FINRA’s arbitration forum to seek expungement not of customer dispute information but of regulatory action information. We recognize that the Commission recently stated in the *Consolidated Arbitration Applications* that “FINRA’s service of providing arbitration of expungement claims is ‘fundamentally important’ and central to its function as a[] [self-regulatory organization].”⁴ But the applicants in those cases had requested expungement of customer dispute information only.⁵ The Commission did not consider whether arbitration of requests to expunge other kinds of information is also a fundamentally important service that FINRA offers. And the Commission emphasized that it did “not express any views . . . about whether there could be other circumstances under which we would not have jurisdiction to review an arbitration eligibility determination.”⁶

Accordingly, the Commission requests briefing on whether it has jurisdiction over DeMaria’s application for review. In considering this general question, the Commission may benefit from the parties’ views on the following issues:

- In this case, what is the relevant service under Exchange Act Section 19(d)(1)?⁷ 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?

³ *Consolidated Arbitration Applications*, 2020 WL 4569083, at *1 & n.4.

⁴ *Id.* at *2.

⁵ *See id.* at *1-3.

⁶ *Id.* at *3.

⁷ 15 U.S.C. § 78s(d)(1).

- Assuming that the relevant service is the arbitration of requests to expunge regulatory action information, does FINRA offer this service?⁸ If so, is the service fundamentally important?⁹

Accordingly, it is ORDERED that the parties submit briefs addressing whether the Commission has jurisdiction to consider DeMaria's application for review. DeMaria's opening brief shall be filed by June 18, 2021. FINRA's response shall be filed by July 2, 2021. DeMaria may file a reply by July 16, 2021. Pursuant to Commission Rule of Practice 180(c), DeMaria's failure to file an opening brief on this issue may result in dismissal of this review proceeding.¹⁰

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at apfilings@sec.gov.¹¹ Also, the

⁸ For example, DeMaria's reply brief seems to contend that the availability of this service is implied by FINRA Rule 8312(g) and Notice to Members 99-54. *See* FINRA Rule 8312(g) (providing that "FINRA reserves the right to exclude, on a case-by-case basis, information that contains . . . offensive or potentially defamatory language" from release on BrokerCheck); NASD Notice to Members 99-54, 1999 NASD LEXIS 30, at *4 (July 1999), <https://www.finra.org/sites/default/files/NoticeDocument/p004219.pdf> (providing that FINRA's predecessor was "continuing to expunge information from the CRD system based on expungement directives in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information in the CRD system").

⁹ *See, e.g., Consolidated Arbitration Applications*, 2020 WL 4569083, at *2-3 (explaining that the Commission has jurisdiction to review a prohibition or limitation of access to a service only if the service is fundamentally important).

¹⁰ 17 C.F.R. § 201.180(c).

¹¹ *Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

Commission's Rules of Practice were recently amended to include new e-filing requirements, which took effect on April 12, 2021.¹²

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹² *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations on parties to administrative proceedings such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.