

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 98102 / August 10, 2023

Admin. Proc. File No. 3-20317

In the Matter of the Application of

SANDEEP VARMA

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Associated person of FINRA member firm filed application for review of FINRA’s denial of his request to expunge information about a Letter of Acceptance, Waiver, and Consent from FINRA’s Central Registration Depository. *Held*, application for review is dismissed.

APPEARANCES:

Owen Harnett of HLBS Law, LLC, Westminster, CO, for Sandeep Varma.

Gary Dernelle for FINRA.

Appeal filed: May 14, 2021
Last brief received: June 7, 2021

Sandeep Varma, who is associated with a FINRA member firm, appeals from FINRA’s denial of his request to expunge information about a Letter of Acceptance, Waiver, and Consent (“AWC”) from FINRA’s Central Registration Depository (“CRD”). We dismiss the application for review because we lack authority over Varma’s appeal under Exchange Act Section 19(d).¹

I. Background

Varma entered into the AWC with FINRA on December 20, 2017. In doing so, he consented to the entry of findings that he violated FINRA Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2010 in presentations to customers about a “complex estate planning strategy” involving the use of a charitable remainder trust.² Among other things, the AWC found that Varma, in 2013 and 2014, gave four seminars to approximately 70 investors, in which he promoted an investment strategy to avoid the payment of capital gains taxes on the sale of appreciated assets. The AWC found Varma’s presentation to be “oversimplified and misleading.”

In entering the AWC, Varma also “specifically and voluntarily” waived various rights to which he would otherwise have been entitled under FINRA’s Code of Procedure, including the right to have a complaint issued specifying the allegations against him and to defend himself against those allegations in a disciplinary hearing. He further waived the right to appeal the AWC to FINRA, to the Commission, or to the courts.³ Finally, Varma agreed that the AWC would become part of his permanent disciplinary record, would be made available through FINRA’s public disclosure program, and could be the subject of a public announcement by FINRA. Varma signed the AWC on December 20, 2017, and FINRA’s National Adjudicatory Council Review Subcommittee accepted the AWC on January 18, 2018, making it “final” on that date pursuant to FINRA Rule 9216(a)(4).

More than three years later, on January 29, 2021, Varma filed a “notice of appeal” with FINRA’s National Adjudicatory Council, requesting that the NAC conduct a “hearing” regarding the AWC. Among other things, Varma argued that he was “not seek[ing] to overturn the AWC,”

¹ 15 U.S.C. § 78s(d).

² FINRA Rule 2210(d)(1)(A) requires that member communications with the public, among other things, be “fair and balanced” and “provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.” FINRA Rule 2210(d)(1)(B) further prohibits making any “false, exaggerated, unwarranted, promissory or misleading statement or claim” or publishing, circulating, or distributing a communication that the “member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.” FINRA Rule 2010 requires adherence to “high standards of commercial honor and just and equitable principles of trade.”

³ He also consented to a ten-business-day suspension from association in all capacities and a \$15,000 fine.

but, rather, to remove references to it from FINRA’s CRD and BrokerCheck.⁴ In Varma’s view, publication of information about the AWC does not “serv[e] the public interest, and serves only to perpetually harm” him. A review subcommittee of the NAC dismissed Varma’s appeal, finding, in part, that the “NAC has no authority under FINRA rules to expunge an AWC from CRD.” This appeal followed.

II. Analysis

In his application for review, Varma asks the Commission to review FINRA’s decision not to expunge information about his AWC from the CRD and BrokerCheck. Exchange Act Section 19(d) authorizes us to review an action taken by a self-regulatory organization (“SRO”) only in specific circumstances.⁵ One such circumstance is if FINRA prohibits or limits access to services offered by the SRO.⁶ But Varma has not established, nor has he even claimed, that FINRA provides a service through which one can expunge information about an AWC from the

⁴ The Exchange Act requires FINRA to maintain a system for collecting and retaining registration information concerning its members and their associated persons. 15 U.S.C. § 78o-3(i)(1)(A). FINRA does so through its CRD, which serves as the online registration and licensing database for the securities industry. *See Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 WL 3820988, at *1 (July 7, 2020) (citing *Eric David Wanger*, Exchange Act Release No. 79008, 2016 WL 5571629, at *1 & n.1 (Sept. 30, 2016)). Although investors do not have access to CRD, certain information in that system is available through BrokerCheck, a free online tool that FINRA offers to the general public. *Wanger*, 2016 WL 5571629, at *1 & n.1; *see also* 15 U.S.C. § 78o-3(i)(1)(B)-(C) (requiring FINRA to make some registration information available to the public).

⁵ 15 U.S.C. § 78s(d)(1)-(2).

⁶ *Id.* The Exchange Act provides three other bases for our review of an SRO action: if the action imposes a final disciplinary sanction on a member of the SRO or an associated person; if it denies membership or participation to the applicant; or if it bars a person from becoming associated with a member. *See id.* Varma does not argue that any of these alternate bases apply here, so we do not address them. *See Graham*, 2020 WL 3820988, at *3 & n.13 (not reaching “alternate bases for Commission review” where applicant did not contend that those bases applied).

CRD and BrokerCheck.⁷ And we have long held that challenges to information maintained by FINRA in the CRD or BrokerCheck do not provide a basis for our review under Section 19(d).⁸

Varma nevertheless claims that we have authority to review his appeal under Section 19(d) because, now that FINRA has denied his expungement request, the Commission “can review the matter at hand.” Unless the Commission considers his appeal, Varma argues, FINRA will be denying him access to “the fundamental right to appeal.”⁹ But as we have repeatedly explained, Congress has limited the types of matters we may review under Section 19(d), and the scope of that authority is not contingent on whether other avenues for relief may be available.¹⁰

Varma further argues that, even if Section 19(d) does not authorize Commission review, “[e]quity requires review of this matter.” Specifically, Varma claims that FINRA improperly entered into the AWC when it “had no reason to believe that . . . a violation occurred.” Continued publication of the AWC’s findings, Varma further contends, has “significantly weakened his ability to work in the financial industry,” infringed “his privacy rights,” and injured his professional reputation. But not only did Varma agree when entering the AWC that it

⁷ See, e.g., *Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 WL 2338414, at *4 (June 3, 2019) (finding that the Commission lacked authority to review an application under Section 19(d) where applicant did not establish that FINRA offered a service that applicant claimed was being prohibited or limited); *John Boone Kincaid*, Exchange Act Release No. 87384, 2019 WL 5445514, at *3 (Oct. 22, 2019) (finding that the Commission cannot exercise review in part because the applicant had “not established” that FINRA offered the service he was seeking to access).

⁸ See, e.g., *Wanger*, 2016 WL 5571629, at *5 (finding that application for review that challenged a disclosure on BrokerCheck did not meet any of the bases for review under Section 19(d)); see also *Blair Edwards Olsen*, Exchange Act Release No. 93216, 2021 WL 4500130, at *6 (Sept. 30, 2021) (finding that the Commission lacked statutory authority “to consider the accuracy of Olsen’s BrokerCheck report”).

⁹ To the extent that Varma suggests that FINRA *should* allow one to expunge information about an AWC, we also lack authority under Exchange Act Section 19(d) to review FINRA’s failure to offer this service. See 15 U.S.C. § 78s(d)(1)-(2) (providing the Commission with authority to review an SRO’s prohibition or limitation of “access to services *offered by*” the SRO (emphasis added)); *Graham*, 2020 WL 3820988, at *3 (holding that “the fact that FINRA does not offer” the applicant’s requested service “does not provide us with” authority to review FINRA’s action). We also note that Varma does not claim that he attempted to utilize, and was denied, use of the FINRA Rule 8312(e) process for disputing the accuracy of BrokerCheck information.

¹⁰ See, e.g., *Graham*, 2020 WL 3820988, at *4 (holding that “[t]he lack of a mechanism for the relief he seeks does not confer jurisdiction.”); *Kincaid*, 2019 WL 5445514, at *4 (stating that the “alleged importance or necessity of our review does not confer jurisdiction where we have determined Congress has not authorized it”).

would be made available through FINRA’s public disclosure program, he agreed not to appeal the AWC or to “take any action . . . denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis,”¹¹ and the circumstances he identifies do not (and cannot) confer review authority on us that the Exchange Act does not provide. As we have also long held, Exchange Act Section 19(d) does not authorize us to review SRO action because an applicant claims “extraordinary circumstances” or “compelling reasons.”¹² Nor is an SRO action reviewable “merely because it adversely affects the applicant.”¹³

Though he repeatedly and consistently disclaims any challenge to the underlying AWC, Varma raises numerous collateral challenges to the AWC’s legitimacy, and he asserts that those alleged deficiencies warrant remand of this matter to FINRA so that it can consider his expungement claim “on the merits.” But such collateral attacks do not create authority under Section 19(d) for us to review an action.¹⁴ Because we lack authority to review FINRA’s action, we do not consider such merits claims here.¹⁵

To the extent that Varma’s collateral challenges seek to do more than expunge information about the AWC—and ultimately attempt to set aside the AWC itself—Varma

¹¹ See *infra* notes 16–18 and accompanying text.

¹² *Allen Douglas Sec., Inc.*, Exchange Act Release No. 50513, 2004 WL 2297414, at *2 n.14 (Oct. 12, 2004).

¹³ *Wanger*, 2016 WL 5571629 at *5 (quoting *Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 WL 3853760, at *5 (July 15, 2016), *aff’d sub nom.*, *Chicago Bd. Options Exch. v. SEC*, 889 F.3d 837 (7th Cir. 2018)); see also *Graham*, 2020 WL 3820988, at *4 (same).

¹⁴ See, e.g., *Cristo*, 2019 WL 2338414, at *4 (finding no authority to review purported denial of access to services, noting that “arguments regarding the merits . . . do not create [authority to review FINRA action] under Exchange Act Section 19(d)”; *Orbixa Techs., Inc.*, Exchange Act Release No. 70893, 2013 WL 6044106, at *5 n.20 (Nov. 15, 2013) (recognizing that, because the Commission lacked authority to review SRO’s action under Section 19(d), it lacked the ability to review applicant’s contention that SRO violated Exchange Act rules); cf. *Kincaid*, 2019 WL 5445514, at *5 (finding that we lacked authority to review a FINRA action under Section 19(d) despite applicant’s claim that FINRA failed to “enforce its rules,” because “parties cannot re-frame their argument to make an otherwise impermissible collateral attack”).

¹⁵ See, e.g., *Thomas Christophe Prentice*, Exchange Act Release No. 96769, 2023 WL 1255084, at *4 (Jan. 30, 2023) (declining to consider merits arguments where the Commission lacked authority to review action under Section 19(d)); *Kincaid*, 2019 WL 5445514, at *5 (explaining that a petition for review must “first satisfy” the requirements in Section 19(d) “before the Commission can review the action under Section 19(f)” (citing 15 U.S.C. § 78s(d), (f))).

waived his right to do so in the AWC. And we have held such waivers to be binding.¹⁶ Varma suggests that his waiver was not effective because he was not “properly represented” when he entered into the AWC (and allegedly executed it without appreciating the effect it “would have on his career”), he provides no support for this claim. To the contrary, Varma specified when entering into the AWC that he had “read and underst[oo]d” the AWC’s provisions; could “ask questions about it”; had “agreed to its provisions voluntarily”; and “specifically and voluntarily” waived, among other things, his right to appeal.¹⁷ Varma, like other settling parties, thus “relinquishe[d] any possibility of a more favorable outcome” in order to “achieve the certainty of avoiding a potentially worse outcome.”¹⁸ And Varma’s suggestion that he had ineffective assistance of counsel is not a basis for disturbing such a settlement.¹⁹

Moreover, any attempt to challenge Varma’s underlying AWC would be untimely.²⁰ Exchange Act Section 19(d)(2) requires that appeals from actions of self-regulatory organizations be filed “within thirty days after the date such notice was filed with the appropriate regulatory agency and received by [the] aggrieved person, or within such longer period as [the Commission] may determine.”²¹ Varma concedes that he filed this appeal approximately three years after entering into the AWC, but argues that he made a “best faith effort” to comply with Section 19(d)’s time limit by filing this appeal within thirty days of the NAC subcommittee’s decision. But one cannot “restart the clock” by simply filing an appeal with FINRA, nor does

¹⁶ See *Bruce Zipper*, Exchange Act Release No. 81788, 2017 WL 4335072, at *3 (Sept. 29, 2017) (dismissing applicant’s attempt to set aside an AWC where he had waived his right to appellate review) (citing *McCall v. U.S. Post Office*, 839 F.2d 664, 666–67 (Fed. Cir. 1988) (concluding that a federal agency may enforce an appellate waiver in an agreement forbearing disciplinary action)).

¹⁷ Cf. *Zipper*, 2017 WL 4335072, at *3 (rejecting Zipper’s contention that he had misunderstood his AWC); Restatement (Second) of the Law of Contracts § 157 cmt. b (“Generally, one who assents to a writing is presumed to know its contents and cannot escape being bound by its terms merely by contending that he did not read them; his assent is deemed to cover unknown as well as known terms.”).

¹⁸ *Richard D. Feldmann*, Exchange Act Release No. 77803, 2016 WL 2643450, at *2 (May 10, 2016).

¹⁹ See, e.g., *Brett Thomas Graham*, Exchange Act Release No. 84106, 2018 WL 4348490, at *7 (Sept. 12, 2018) (explaining that ineffective assistance of counsel does not provide a basis for a collateral attack on a settlement); see also *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 802 (7th Cir. 2000) (holding that “ineffective assistance of counsel . . . is not a basis for collateral attack on a civil [judgment]”).

²⁰ Cf. *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 WL 489353, at *4 (Feb. 8, 2016) (dismissing application for review as untimely as well as for the “independent” reason that the applicant failed to exhaust administrative remedies before FINRA).

²¹ 15 U.S.C. § 78s(d)(2).

filing such an appeal represent an “extraordinary circumstance” warranting an extension of the deadline under Commission Rule of Practice 420(b).²²

An appropriate order will issue.²³

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

²² 17 C.F.R. § 201.420(b) (providing that the 30-day deadline will not be extended “absent a showing of extraordinary circumstances”).

²³ FINRA moved to stay the briefing schedule, which we deny as moot. We have also considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98102 / August 10, 2023

Admin. Proc. File No. 3-20317

In the Matter of the Application of

SANDEEP VARMA

For Review of Action Taken by FINRA

ORDER DISMISSING APPEAL OF ACTION TAKEN BY REGISTERED SECURITIES
ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the appeal filed by Sandeep Varma be, and it hereby is, dismissed.

By the Commission.

Vanessa A. Countryman
Secretary