UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89613 / August 19, 2020

Admin. Proc. File No. 3-19594

In the Matter of the Application of

CURTIS RICHARD EDMARK

For Review of Action Taken by

FINRA

ORDER SCHEDULING BRIEFS

Curtis Richard Edmark filed an application for review of FINRA action denying his request to use FINRA's arbitration forum to determine whether to expunge from his Central Registration Depository records information about a customer dispute. Edmark filed a claim against Centaurus Financial, Inc. seeking to expunge information about a written customer complaint received from a customer that resulted in a restitution payment to the customer. FINRA determined that the claim was ineligible for arbitration but did not explain why.

After Edmark appealed this action to the Commission, FINRA sent Edmark a letter providing for the first time grounds for FINRA's conclusion that the expungement request was ineligible for arbitration. According to FINRA's letter, as a result of the customer complaint that Edmark now seeks to expunge, Wisconsin securities regulators initiated regulatory action against him resulting in a restitution order and a monetary sanction. According to FINRA, because "[t]he regulatory complaint and resulting restitution . . . arise from the same circumstances giving rise to the customer complaint sought to be expunged," and "regulatory actions are ineligible for expungement, we are unable to accept the claim for arbitration." FINRA then moved to adduce the letter as additional evidence. Edmark has neither opposed FINRA's motion nor objected to the absence in the record of an explained basis for FINRA's decision.

As the Commission has jurisdiction over this appeal, the parties should address the merits.[1] In addition to any other issues the parties find relevant to the Commission's review under Section 19(f) of the Securities Exchange Act of 1934,[2] the Commission would benefit from briefing on the following issues:

- Exchange Act Section 15A(h)(2) provides that any determination to prohibit or limit a person's access to services shall be supported by a statement setting forth the specific grounds on which the . . . prohibition or limitation is based."[3] Did FINRA issue Edmark a supporting "statement setting forth the specific grounds" for its determination as provided for by Section 15A(h)(2)?

- What were FINRA's grounds for determining that Edmark's claim was ineligible for arbitration, and was that prohibition of access consistent with FINRA's rules?

- Should the Commission grant FINRA's motion to adduce its letter to Edmark? Why did FINRA not send Edmark the letter before his appeal, and how does that bear, if at all, on whether FINRA has established reasonable grounds for its failure to adduce the letter previously?[4] What is the relevance, if any, of case law governing judicial review of an administrative agency's post hoc explanation concerning its reasoning at the time of its decision?[5]

- If the Commission were to deny FINRA's motion to adduce, could the Commission discharge its review function based on the record otherwise before it, or would it instead have to remand to FINRA for issuance of a new letter to be made part of the record?[6]

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1 *See Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 WL 4569083 (Aug. 6, 2020) (holding that the FINRA action Edmark challenges here—denying a request to use FINRA's arbitration forum on the ground that an expungement claim is ineligible for arbitration—is a prohibition of access to SRO services for which the Commission has jurisdiction under Exchange Act Section 19(d)(2)). This order expresses no view on the merits of Edmark's appeal.

2 15 U.S.C. § 78s(f).

3 15 U.S.C. § 78o-3(h)(2).

4 *See* 17 C.F.R. § 201.452 (Commission may adduce new evidence if moving party shows, among other things, "reasonable grounds for failure to adduce such evidence previously").

5 *See, e.g.*, *Rhea Lana, Inc. v. United States*, 925 F.3d 521, 524-25 (D.C. Cir. 2019); *Olivares v. Transportation Sec. Admin.*, 819 F.3d 454, 463-64 (D.C. Cir. 2016).

6 *See, e.g.*, *ABN AMRO Clearing Chicago LLC*, Exchange Act Release No. 83849, 2018 WL 3869452, at *9 n.76 (Aug. 15, 2018); *Eagle Supply Grp., Inc.*, Exchange Act Release No. 39800, 1998 WL 133847, at *4 (Mar. 25, 1998).

Accordingly, it is ORDERED that Edmark may file a brief, not to exceed 14,000 words, addressing the issues set forth above by September 18, 2020. FINRA may file a response brief, not to exceed 14,000 words, by October 19, 2020. Edmark may file a reply brief, not to exceed 7,000 words, by November 2, 2020. No briefs in addition to those specified above may be filed without leave of the Commission.[7]

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

Vanessa A. Countryman
Secretary

[7] Attention is called to Rules of Practice 150-153, 17 C.F.R. § 201.150-153, with respect to form and service, as well as 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. *See Pending Administrative Proceedings*, Exchange Act Release No. 88415, https://www.sec.gov/litigation/opinions/2020/33-10767.pdf.