Before the

SECURITIES AND EXCHANGE COMMISSION

Word

CONSTANTINE GUS CRISTO,

Petitioner,

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IN THE MATTER OF THE APPLICATION OF
CONSTANTINE GUS CRISTO
FOR REVIEW OF ACTION TAKEN BY FINRA

ADMINISTRATIVE PROCEEDING
FILE NO. 3-18539

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# BRIEF OF CONSTANTINE GUS CRISTO REGARDING COMMISSION'S JURISDICTION OVER APPLICATION FOR REVIEW

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## III. INTRODUCTION

Relying on information published on the **Financial Industry Regulatory Authority** ("FINRA") website, and later, a follow-up confirming telephone call to FINRA headquarters, **Constantine Gus Cristo's** ("Cristo") claim against FINRA member, **Charles Schwab Corporation and its subsidiaries** ("CSC"), was deemed ineligible for FINRA arbitration, but did not "preclude [Cristo] from pursuing the claim in court."[1]

Accordingly, Cristo filed a lawsuit in the U.S. District Court for the Southern District of California, *Constantine Gus Cristo v. Charles Schwab Corporation, et al,* 17cv1843GPC (*"Cristo v. CSC"*). Subsequently, CSC filed a Motion to Compel Arbitration for which a hearing was held. The District Court granted the motion and ordered the parties to proceed to FINRA arbitration.

Cristo, later wrote to FINRA seeking a confirmation of FINRA's earlier affirmation that Cristo's claim was ineligible for FINRA arbitration, such that he could file a motion in the U.S. District Court to resume the case. Contemporaneously, Cristo also filed a complaint with the FINRA Investor Complaint Center.

Based upon the filed complaint (required by FINRA to be filed as a short summary only), FINRA opened, investigated, analyzed, assessed and then closed the investigation into the complaint— without interviewing Cristo. Since receiving notice of the case being closed, Cristo requested FINRA reopen the investigation. FINRA refuses to do so.

Subsequent to FINRA's refusal, Cristo filed an Application for Review by the **Securities and Exchange Commission** ("Commission") in this matter. The Commission has ordered the

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[1] http://www.finra.org/industry/notices/05-10

parties to file briefs limited to the issue of whether the Commission has jurisdiction over this appeal pursuant to *Securities Exchange Act of 1934*, Section 19(d)(2).

## IV. ARGUMENT

### A. GENERAL

FINRA, as successor to the **National Association of Securities Dealers** ("NASD"), is a **self-regulatory organization** ("SRO") of the securities industry. As established, "FINRA is a non-governmental agency, and it has no specific grant of authority— from Congress or [~~another~~] some other font of governmental power— to conduct arbitration proceedings." *Sykes v. Escueta*, 10-3858 SC (ND Cal. 2010). Moreover, "FINRA, is a non-governmental organization that, among other things, regulates brokerage firms and exchange markets and arbitrates claims against FINRA members that arise out of their securities dealings." *Id.* However, Cristo's complaint to FINRA has nothing whatsoever to do with securities dealings.

As a non-profit, SRO, FINRA, which derives its authority from the delegation of functions, established for the Commission by Congress, "[t]o adopt, administer, and enforce rules to prevent fraudulent and manipulative acts and practices,"[2] based upon federal laws, for its membership— not the investing public. FINRA's limited authority, as delegated by the Commission, is encompassed in the six enumerated functions listed in its Restated Certificate of Incorporation. Conspicuously missing from those enumerated purposes is any function, authorizing FINRA to adopt any rule, take any action, or make any decision that applies directly to the investing public.

[2] http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=4589

Cristo is an individual person and citizen of the United States, residing in the State of California.

*Securities Exchange Act* Section 19(d)(2) authorizes the Commission to review (emphasis added):

> "any action with respect to which [FINRA] is required by paragraph (1) of this subsection to file notice[,] shall be subject to review by [the Commission]" "upon application by any person aggrieved thereby, [and] filed within thirty days after the date such notice was filed, and received by such aggrieved person[.]"

Cristo, as the aggrieved person in the instant case, filed his Application for Review with the Commission within thirty days of his first notice from FINRA.

### B. FINRA SHOULD HAVE PROMPTLY FILED NOTICE

15 U.S.C. § 78s(d)(1), by substituting the relevant parties in the instant case for the statute's generic language, provides (emphasis added):

> "If [FINRA] . . . prohibits or limits [Cristo] in respect to access to services offered by [FINRA] or [CSC] thereof, [FINRA] shall promptly file notice thereof with the [Commission] for [FINRA], and the [Commission] for [CSC] or [Cristo]. The notice shall be in such form and contain such information as the [Commission] for [FINRA], by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this chapter."

Cristo formally requested that FINRA determine the ineligibility of Cristo's claim against CSC, by writing to **Mr. Robert W. Cook** ("Cook"), President and CEO of FINRA.[3] Contemporaneously, Cristo filed a complaint summary with the FINRA Investor Complaint Center.[4] In so doing, based upon 15 U.S.C. § 78s(d)(1), FINRA should have promptly filed notice

[3] Cristo letter dated April 12, 2018, to Cook. (Exhibit J.A)
[4] Cristo Complaint summary dated April 13, 2018, faxed to Investor Complaint Center. (Exhibit J.B)

with the Commission as both the complaint and letter qualified as notice to FINRA of a limitation or prohibition of access to services.

### C. FINRA REFUSED TO AFFIRM EARLIER DETERMINATION

In a letter responding to Cristo's letter to Cook, **Mr. Richard W. Berry** ("Berry"), Executive Vice President & Director of Dispute Resolution, avoided addressing Cristo's request directly. Instead, Berry suggested that such a determination will result by reviewing the submissions, pleadings and arguments— or in essence, conducting an arbitration.[5] No subsequent affirmation of FINRA's earlier determination has been received. Thus, FINRA has stated two opposite positions as to the filed complaint— (1) declaring the claim as being ineligible due to the elapsed time being in excess of Rule 12206(a), and (2) refusing to affirm its earlier position and thereby, permitting CSC's Motion to Compel Arbitration to stand. Apparently, no notice of Cristo's complaint, or any record of the subsequent investigation by FINRA was filed with the Commission.

15 U.S.C. § 78s(d)(2), by substituting the relevant parties in the instant case for the statute's generic language, provides (emphasis added):

> "Any action with respect to which [FINRA] is required by paragraph (1) of this subsection to file notice shall be subject to review by the [Commission] for [CSC], participant, applicant, or [Cristo], on [Cristo]'s own motion, or upon application by [Cristo] aggrieved thereby filed [and] within thirty days after the date such notice was filed with the [Commission] and received by [Cristo], or within such longer period as [the Commission] may determine. Application to [the Commission] for review, or the institution of review by [the Commission] on its own motion, shall not operate as a stay of such action unless [the Commission] otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments. [The Commission] shall establish for appropriate cases an

[5] Berry letter to Cristo dated April 19, 2018. (Exhibit J.C)

> expedited procedure for consideration and determination of the question of a stay."

By virtue of Cristo's formal request to FINRA, seeking an affirmation of FINRA's earlier determination of the ineligibility of Cristo's claim for FINRA arbitration— based upon FINRA Rule 12206(a), FINRA has refused to affirm such determination, and remains mute, as of the filing of this brief. Cristo remains aggrieved by FINRA's inaction.

### D. CRISTO TIMELY-FILED APPLICATION FOR REVIEW

Based upon FINRA's inaction and deliberate silence, Cristo timely-filed an Application for Review to the Commission as provided in 15 U.S.C. § 78s(d)(2). The Commission subsequently wrote to Cristo, deciding "to accept for filing [Cristo's] application for review by the Commission."[6] Jurisdiction is proper for the Commission over this matter.

### E. FINRA HAS TAKEN CONTRADICTORY POSITIONS TO HIDE BIAS TOWARD MEMBERS

Cristo filed a complaint with the FINRA Investor Complaint Center *(See Exhibit J.B)*. Cristo received a response from **Ms. Carol L. Ford** ("Ford"), Principal Investigator,[7] for Cristo's Complaint, stating (emphasis added):

> "This is to advise you that FINRA has completed its review of the matter that you brought to our attention in your correspondence received on April 18, 2018, concerning Charles Schwab & Co., Inc.
>
> Our investigation included an analysis of the information you provided and additional details we collected during the examination process. Based on our assessment of the information, FINRA has closed its investigation of

[6] SEC Letter to Cristo dated June 12, 2018. (Exhibit J.F)
[7] Ford letter dated May 8, 2018, to Cristo. (Exhibit J.D)

> this matter. If new information develops. FINRA may re-open its investigation."

FINRA's letter unambiguously states that it had completed its review of Cristo's complaint after analyzing the Complaint summary[8] submitted by Cristo; analyzing additional details it collected during the examination process; and then, based upon its assessment of the case, chose to close its investigation without having interviewed Cristo regarding the details of the dispute; and finally documented the investigation by assigning an identifying reference number, "FINRA File 20180583018."

Faced with the representations in Ford's letter, Cristo acquiesced to FINRA's position, by replying to Ford's letter,[9] offering to produce the documentary evidence, in order to "reopen the case to determine its eligibility." As of the filing of this brief, FINRA has not provided notice of reopening the investigation.

Subsequent to the Commission's acceptance for filing of Cristo's Application for Review, **Ms. Megan Rauch** ("Rauch"), Associate General Counsel for FINRA, wrote to the Commission,[10] deliberately changing FINRA's position to one of denying the existence of any documents or a record of any investigation of Cristo's complaint.

The Supreme Court in *New Hampshire v. Maine*, 532 U.S. 742 (2001), has held that:

> "Under the judicial estoppel doctrine, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. *Davis v. Wakelee*, 156 U.S. 680, 689. The purpose of the doctrine is to protect the integrity of the

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[8] Step 3: FINRA Instruction: Please provide a brief summary of your complaint. Please limit your description to a few clear sentences within the space available below. *If required, complete details will be gathered later in the complaint process.*

[9] Cristo letter to Ford, dated May 14, 2018. (Exhibit J.E)

[10] Rauch letter to the Commission, dated June 26, 2018. (Exhibit J.G)

> judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment."

Thus, FINRA's abrupt change in its position, regarding the investigation, in addition to resorting to silence when requested to affirm its earlier position on ineligibility, under the doctrine of judicial estoppel, demands intervention and review by the Commission.

### F. FINRA ARBITRATORS ARE NOT AUTHORIZED TO RULE ON CONSTITUTIONAL VIOLATIONS

The Supreme Court in *Raymond J. Lucia, et al, v. Securities & Exchanges Commission*, Supreme Court No. 17-130, has held that:

> "One who makes a timely challenge to the constitutionality of the appointment of an officer who adjudicates his case is entitled to a decision on the merits of the question and whatever relief may be appropriate if a violation indeed occurred." *Ryder v. United States*, 515 U.S. 177, 182.

Cristo has alleged violations of bank secrecy and other U.S. Laws, as well as constitutional violations by CSC in concert with another federal government agency, first, in his lawsuit *Cristo v. CSC*, then again in his Application for Review by the Commission. As it relates to the order by the Court that the parties proceed to FINRA arbitration, and since no Statement of Claim has been filed with FINRA, no arbitrators have been chosen to make up a panel that would review and rule on the dispute. Thus, Cristo has "timely challenged" the constitutionality of any appointment of arbitrators who could adjudicate his case, and is therefore entitled to relief.

The Commission has delegated to FINRA, limited authority that is enumerated in FINRA's Restated Certificate of Incorporation. An authority that has not been delegated to FINRA, is the authority to appoint arbitrators as "Officers of the United States," who would be subject to the Appointments Clause.

Under the Appointments Clause, only the President, Courts of Law, or Heads of Departments can appoint such Officers.

The Supreme Court's decisions in *United States* v. *Germaine*, 99 U. S. 508, and *Buckley* v. *Valeo*, 424 U. S. 1, set out the basic framework for distinguishing between officers and employees. "To qualify as an officer, rather than an employee, an individual must occupy a "continuing" position established by law", *Germaine*, 99 U. S., at 511, and must "exercis[e] significant authority pursuant to the laws of the United States," *Buckley*, 424 U. S., at 126.

FINRA's website offers a page entitled, "Become an Arbitrator Frequently Asked Questions (FAQ)." [11] Question number 11 asks: "Are FINRA arbitrators employed by FINRA?" The answer provided states (emphasis added):

> "No. They are not employed by FINRA; they are independent contractors. FINRA arbitrators are not eligible to receive FINRA employee or unemployment benefits."

Clearly from its stated position, FINRA is outsourcing its arbitrations to independent contractors, who, by agreement of the parties act as judge and jury in a dispute. It is also clear (from its Restated Certificate of Incorporation), that an independent contractor cannot be appointed as an "Officer of the United States" by anyone at FINRA.

In the instant case, where a panel of arbitrators would be confronted with violations of an investor's constitutional rights, the proceedings are devoid of any due process or regulatory review protections normally associated when regulators are present. Moreover, the "pre-dispute arbitration clause," in both applications in the instant case, in addition to being intentionally printed in a font size so small as to be undecipherable by most people over 50, contain no language that Cristo agrees to surrender his constitutional rights or civil liberties. As such, once CSC violated

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[11] https://www.finra.org/arbitration-and-mediation/become-arbitrator-frequently-asked-questions-faq

his constitutional rights by providing personal financial records, not included in an IRS summons, FINRA arbitration became inappropriate due to the fact that arbitrators are not Officers of the United States.

Constitutional questions in a dispute between Cristo and CSC, create a clear conflict of interest for the Commission by permitting FINRA to conduct an arbitration, related to unconstitutional conduct by federal agents of the IRS, a sister government agency— acting under color of federal law. Once empaneled, the arbitrators act essentially as judge and jury, who, when faced with a constitutional violation in a private proceeding, may simply ignore it— thereby causing irreparable harm to the Commission's mandated beneficiaries— not to mention its own credibility and reputation.

FINRA's website invites individuals to become arbitrators by suggesting, "Add a New Dimension to Your Career."[12] The web page states (emphasis added):

> "As a FINRA arbitrator, you have the opportunity to develop skills, give back and supplement your income. No previous arbitration, securities or legal experience is required to apply— just five years of paid work experience and two years of college-level credits."

Only the Commission itself, can pursue alleged violators of U.S. Laws or the U.S. Constitution— by filing a civil suit in a federal district court or by instituting a civil administration action. *See* 15 U.S.C. §§ 78u, 78u-2, 78u-3, 78v; *see also Id.* §§ 77h-1, 77t(b), 80b-9.

15 U.S.C. § 78d-1(b) provides:

> "The Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission by rule shall prescribe."

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[12] http://www.finra.org/arbitration-and-mediation/become-finra-arbitrator

Thus, jurisdiction is proper for the Commission over this matter.

### G. FINRA AMENDED RULE 12206(C) IN ORDER TO INSULATE MEMBERS FROM JUDICIAL REVIEW

Cristo first discovered in June 2016, that CSC had (a) violated his constitutional rights and (b) violated bank secrecy and other U.S. Laws, back in August 2006, in its response to an IRS administrative summons to produce all books, records, papers and other data of Cristo, for the 2002 tax year. In addition to the 2002 tax year documents referenced in the summons, CSC unlawfully produced all confidential, financial information for the 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2003, 2004, 2005, and 2006 tax years.

After following the direction from FINRA's website to first seek to resolve the matter with CSC directly, CSC either refused to discuss the matter or claimed that all documents from that era had been destroyed. Cristo returned to the FINRA website and was confronted by the following statements:[13]

> **What Cases are Eligible**
> **Arbitration**
>
> Arbitration cases are eligible to be heard in FINRA's forum if the following criteria are met:
>
> - For disputes with investors:
>   - The cases involve an investor and an individual or entity registered with FINRA, such as cases between investors and brokers, between investors and brokerage firms, and between investors and brokers and brokerage firms; and
>   - The claim is filed within 6 years from the time the events giving rise to the dispute occurred.

[13] http://www.finra.org/arbitration-and-mediation/what-cases-are-eligible

Conspicuously missing from the website's eligibility statement is any language that discloses to the investor, that, if the investor's claim is ineligible due to the elapsed time since the event giving rise to his claim, and the investor files a lawsuit in district court as FINRA recommends, that a FINRA member may file a motion to compel arbitration, which will thereby force a district court to order the parties to proceed to arbitration, and automatically trigger the nullification of the 6-year rule. In essence, FINRA has amended its rule to provide an airtight loophole, for a member organization that chooses to violate U.S. Laws, to insulate itself from both judicial review and public scrutiny.

15 U.S.C. § 78s(c), by substituting the relevant parties in the instant case, for the statute's generic language, provides (emphasis added):

> "The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of [FINRA] as the Commission deems necessary or appropriate to insure the fair administration of [FINRA], to conform its rules to requirements of this chapter and the rules and regulations thereunder applicable to [FINRA], or otherwise in furtherance of the purposes of this chapter. . ."

There are three looming questions relative to FINRA Rule 12206(c) that demand review by the Commission.

(1) If there is a 6-year time limit on submitting claims to be eligible for FINRA arbitration, on what basis or doctrine, under any circumstance, could FINRA amend the rule, without exception, to eliminate the unambiguous time-limit?

(2) Why would the 6-year time limit disappear, only if a member organization, at its sole option, files a motion to compel arbitration?

(3) Why would FINRA refuse to affirm a claim's ineligibility outside of conducting an arbitration, when it already declared it was ineligible?

At the sole option of a FINRA member or associated person, FINRA Rule 12206(c) unilaterally, nullifies Rule 12206(a). In the instant case, CSC filed a motion to compel arbitration and thereby triggered Rule 12206(c)— an action that undermines the primary mission of the Commission as established by Congress in 1934.

More disturbing, is the fact that FINRA Rule 12206(c) as amended in 2005, serves to protect CSC and to prevent Cristo from preserving his constitutional rights. Nowhere in CSC's "pre-dispute arbitration clause," does it mention that Cristo agrees to give up his constitutional rights and due process.

When Cristo called FINRA, mentioning the circumstances surrounding the 12 years that had passed since CSC violated his constitutional rights, the FINRA agent affirmed the 6-year rule. However, the agent did not feel it was necessary to also disclose that once in the Court's venue, at the sole option of the member organization, the claim could be ordered back to a private arbitration venue. In the instant case, Cristo relied on FINRA's direction to file his claims in District Court. Once in the Court's venue, however, Rule 12206(c) left the Court with no discretion to rule on the ineligibility of the claim for arbitration.

In its order, the District Court went to great length to expose the obvious bias of the Rule and to explain the Court's limitations by virtue of the **Federal Arbitration Act** ("FAA"), (emphasis added):

> "When considering a party's request to compel arbitration, the court is limited to determining (1) whether a valid arbitration agreement exists, and if so (2) whether the arbitration agreement encompasses the dispute at issue. *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008). If these conditions are satisfied, the court is without discretion to deny the motion and must compel arbitration. 9 U.S.C. § 4; *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) ("By its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that the district courts shall direct the parties to proceed to arbitration.").

The FAA provides the Court with no discretion whatsoever, to determine the ineligibility of Cristo's claim. More importantly, the nullification of the 6-year time limitation is only available to one party in the dispute— FINRA's member, CSC. The net effect is CSC's avoidance of any judicial review and public scrutiny.

The unfair bias surfaced in the instant case, when Cristo mistakenly included CSC in his Certificate of Service for the Application for Review.

Upon receipt of Cristo's Application for Review, CSC, through its counsel, wrote to Cristo stating (emphasis added):

> "Respectfully, I direct your attention to FINRA Rule 12206(c), which states that the six-year time limit on the submission of claims shall not apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. This case has been directed to arbitration by Judge Gonzalo Curiel' s Order granting Schwab's motion to compel arbitration. Therefore, Rule 12206(c) applies, and the six-year eligibility rule will not limit the submission of your claim to arbitration."[14]

CSC's smug notice to Cristo, confidently ignores the unambiguous Rule 12206(a), because it knows, thanks to FINRA amending the rule, that by filing a motion to compel arbitration, the 6-year rule will magically disappear once invoked. While the rule is a published FINRA rule, it is devoid of any fairness to the Commission's primary beneficiary— the aggrieved investor.

Had the Court been able to use its discretion to determine the ineligibility of Cristo's claims, then fairness could have been preserved. With no discretion however, Rule 12206(c), is fatally biased, toward FINRA's member, and thereby devolves into a sham rule meant to protect FINRA member organizations from judicial review. As a consequence, the aggrieved investor is irreparably damaged.

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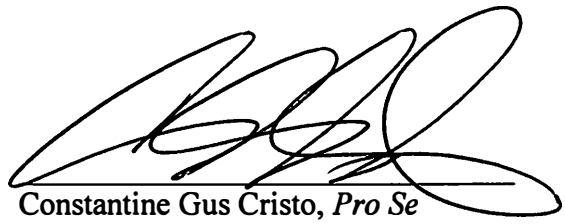
[14] CSC letter to Cristo dated June 19, 2018 (Exhibit J.H)

FINRA, by its action to amend its own published rule to favor its members, has disqualified itself as an objective arbiter in this matter. In order for the Commission to avoid becoming a willing participant in a rule that contradicts its primary mission, 15 U.S.C. § 78s(c) empowers it to amend FINRA Rules, as it deems necessary or appropriate to insure the fair administration of FINRA. Thus, jurisdiction pursuant to Section 19(d)(2) is proper for the Commission over this matter.

## V. CONCLUSION

Based upon Arguments A through G above, the Commission properly has jurisdiction over this appeal pursuant to Securities Exchange Act Section 19(d)(2).

Dated: August 15, 2018



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## VI. CERTIFICATE OF SERVICE

I hereby certify that Constantine Gus Cristo's BRIEF OF CONSTANTINE GUS CRISTO REGARDING COMMISSION'S JURISDICTION OVER APPLICATION FOR REVIEW has been sent to the following parties entitled to notice as follows:

Securities and Exchange Commission,
Office of the Secretary
100 F Street N.E.
Washington D.C. 20549 U.S.A.

FINRA
Office of the General Counsel
1735 K Street, NW
Washington DC 20006 U.S.A.

This 15th day of August, 2018.

Constantine Gus Cristo, *Pro Se*
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Fax: 760.751.0700
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## VII. CERTIFICATE OF COMPLIANCE

I, Constantine Gus Cristo, pursuant to the Commission Rules of Practice, that the foregoing Brief complies with Rules 150, 151, and 152. I further certify that this brief complies with the length limitation set forth in SEC Rule of Practice 450. I have relied on the word count feature of Microsoft Word for Mac (version 16.15) in verifying that this brief contains approximately 3,900 words, exclusive of tables of contents, authorities and exhibits.

Dated: August 15, 2018

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## VIII. EXHIBIT LIST

CONSTANTINE G. CRISTO
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Valley Center, CA 92082 U.S.A.

# EXHIBIT J.A

April 12, 2018

Mr. Robert W. Cook,
*President & CEO*
FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
1735 K Street NW
Washington, DC 20006 U.S.A.

Dear Mr. Cook,

My conscience compels me at this moment, to write to you as the chief executive of the government authority charged with regulation of firms and practitioners in the securities industry. The FINRA website boasts FINRA's examination of all firms for compliance with FINRA, MSRB and SEC rules, and federal securities laws. I strongly believe you need to be aware how my case may impact the nature and future of that authority.

In September 2017, I had filed suit in federal district court against Charles Schwab Corporation and its subsidiaries (*Constantine G. Cristo v. Charles Schwab Corporation, et al*; Case No. 17-cv-1843-GPC-MDD) arising from unlawful acts, deceptive practices, and its fraudulent, unethical and otherwise improper conduct. In January, Schwab filed a Motion to Compel Arbitration with FINRA and Stay Proceedings. Subsequently, I filed an opposition memorandum and declaration w/exhibits, which was argued at a hearing on April 6. The result was a court order granting Schwab's motion.

Notwithstanding FINRA's advertised mission, I find myself as a former investor, forced to act as a *pro se* litigant, due to my financial insolvency at least partially resulting from Schwab's actions. In my research to draft my opposition to Schwab's motion, I was stunned that the laws and regulations surrounding the FAA (U.S.C, Title 9), by design, appear to overwhelmingly favor the very organizations you are charged with protecting us from. So strong were the limitations placed on the District Court, that it had to reduce to a footnote, my contention that my claims "are ineligible for arbitration because six or more years have passed from the events giving rise to the claim" (my primary argument for opposition to the motion). Moreover, the Court stated "an issue concerning eligibility is one for the arbitrator, as this Court is limited in determining whether an arbitration clause exists, and the scope of the arbitration provision."

I believe FINRA should be aware, that one of its member organizations, a company that is also one of the largest financial institutions in the U.S., argued in federal district court that it need not comply with FINRA arbitration rules. In fact, prior to filing the motion, in a telephone conversation, I had alerted opposing counsel that arbitration in this case was inappropriate according to FINRA Rule 12206 (a) & (b), because the action giving rise to my claims in federal court occurred more than twelve years ago. Shortly after Schwab's motion was filed, I did call FINRA and confirmed that the only recourse in my case was to pursue the claim in court.

As a former investor, I believed, and still do hope, that FINRA is there to protect investors—as opposed to its colossal misbehaving member organizations. I am now forced to file a Statement

of Claim with FINRA. While FINRA Rule 12206 is unambiguous regarding its six-year eligibility rule, it now falls to the arbitration panel's discretion to decide the claim's eligibility. In the event that the panel somehow decides the FINRA arbitration should go forward, it would seem to paint the FINRA Code of Arbitration Procedure more as a ruse to mask its true constituency, than a limitation on members' predatory practices.

Also in my research, I did marvel at Schwab's continual payment of fines, that permit it to deny wrongdoing, but "promising never to do— what they didn't do already, again," as merely the cost of doing business. Even their pinnacle settlement of the SEC lawsuit shows that the largest settlement in history is quite acceptable when the profit of unlawful conduct is many times greater.

Given FINRA's mandated authority to govern its members, I would ask for your involvement on my behalf, in correcting this wrong. I will be happy to provide you with the pleadings related to the motion to compel (either electronically or hardcopy). These pleadings will show evidence that the action giving rise to the claim occurred in 2006, how I only discovered the unlawful act in 2016, and sufficient justification for you to write a letter of ineligibility of the claim based upon FINRA Rule 12206 and the evidence accompanying those pleadings.

I look forward with anticipation to your response.

Sincerely,

Constantine G. Cristo
Direct: 1.760.638.1772
Email: cgcristo@protognosis.org

Cc: Ms. Marcia E. Asquith, EVP- Board & External Relations
Ms. Susan F. Axelrod, EVP- Regulatory Operations
Mr. Richard W. Berry, EVP & Director of Dispute Resolution
Mr. Steven J. Randich, EVP and CIO
Mr. Robert L.D. Colby, Chief Legal Officer
Mr. Michael Rufino, EVP- Head of Member Regulation—Sales Practice
Mr. Gregory J. Dean, Jr., SVP- Office of Government Affairs
Ms. Susan Schroeder, EVP & Head of Enforcement
Mr. Carlo V. di Florio, Chief Risk Officer & Head of Strategy
Mr. Thomas M. Selman, EVP- Regulatory Policy & Legal Compliance Officer
Ms. Gerri Walsh, President FINRA Foundation & SVP- Investor Education
Mr. Cameron Funkhouser, EVP- Office of Fraud Protection & Market Intelligence
Mr. Bill Wollman, EVP- Member Regulation—Risk Oversight & Operational Regulation (ROOR)
Mr. Thomas Gira, EVP- Market Regulation & Transparency Services

Mr. Jay Clayton, Chairman- SEC Commissioners
Ms. Stephanie Avakian, Director- Division of Enforcement
Mr. Peter Driscoll, Director- Office of Compliance Inspections & Examinations
Mr. Rick A. Fleming, Director- Office of Investor Advocate
Mr. Carl W. Hoecker, Director- Office of Inspector General
Mr. Kenneth Johnson, Director- Office of Chief Operating Officer
Mr. John Nester, Director- Office of Public Affairs
Mr. Steven Peikin, Director- Division of Enforcement
Mr. Robert Stebbins, Director- Office of General Counsel

CONSTANTINE G. CRISTO
P.O. Box 2645
Valley Center, CA 92082 U.S.A.

# EXHIBIT J.B

April 13, 2018

FINRA Investor Complaint Center
9509 Key West Avenue
Rockville, MD 20850 U.S.A.

*Via. Fax 866.397.3290*

Dear FINRA Investor Complaint Center:

I would have utilized the online form, but it is not sufficiently specific to my issues. Additionally, quickness after more than a decade is not a priority. I have not submitted a duplicate complaint online. I will attempt to follow the format of your FINRA Investor Complaint Form as much as possible.

| | |
|---|---|
| Brokerage Firm Name: | Charles Schwab & Co., Inc. |
| Salesperson of Firm Representative: | N/A |
| Address- Office of business: | Branch offices in Phoenix AZ and San Diego CA. |
| Name: | Constantine G. Cristo |
| Mailing Address | POB [redacted]<br>Valley Center, CA [redacted] U.S.A. |
| Telephone: | [redacted].1772p |
| Fax: | 1.760.751.0700p |
| Email: | cgcristo@protognosis.orgp |
| Recent Active Military | No |
| Age Range: | 65 - 84 |

This is not about an investment!

COMPLAINT SUMMARY: *This Complaint involves an Individual Retirement Account (IRA).*

In March 1995, I retained the firm of Cloud, Neff & Associates, Inc. (my then wife's investment advisor) to provide me with retirement and investment advice. As a small firm, Cloud/Neff, like most other small firms, did not have the infrastructure to provide its own IRA account. Cloud/Neff utilized an IRA account provided by Charles Schwab & Co., Inc. The Schwab IRA Application was deceptive in order to hide the true contractual relationship between Cloud/Neff and Schwab.

With an uncontested divorce looming, thereby ending the use of the joint checking account, I visited a Schwab branch office in Phoenix AZ to open an bank account. I was told about a Schwab One account that would facilitate trading securities as well and depositing and writing checks as with a bank account. The account was opened in 1997.

In 2005, I was accused of participating in an off-shore tax shelter scheme to defraud the U.S. Government. As a consequence, my 2002 tax returns were audited. In July 2006, the IRS issued an administrative summons to Schwab to deliver all financial records for the 2002 tax year. Instead of providing the records covered in the summons, Schwab submitted my entire personal financial history between 1995 and June 2006 to the IRS. The additional data was entered and utilized by the IRS to carry on a multi-year hunt, searching for hidden assets and off-shore bank accounts. Schwab violated the RFPA and other U.S. Laws in so doing.

In 2016, I discovered the violation which could only have occurred as a result of incompetence or collusion with over-zealous federal agents.

Firm Contact: In March 2016, I wrote to Walter W. Bettinger II, President and CEO- no response.

In September 2016, I wrote to Charles R. Schwab, Chairman of the Board- received call from Nicholas King (Client Advocacy Team) claiming all records from that period had been destroyed. King requested copy of summons. I sent it to him. King responded saying account was a brokerage account and thereby not subject to bank privacy laws. I called FINRA, who completely contradicted King's statement. King refused to state their position in writing.

In June 2017, I wrote to Charles R. Schwab again. This time received callback from another nameless Client advocate. Repeated records were all destroyed, and that they would not respond in writing.

In November 2017, I wrote to David R. Garfield, EVP & General counsel, stating I had filed a lawsuit, but had not yet served it, again seeking to resolve the matter.- Response from Joseph L. Siders, Director- Legal, demanding dismissal of suit and submitting to binding arbitration.

Regulatory Contact: SEC: Yes FINRA: Yes

Arbitration: Schwab filed Motion to Compel Arbitration. Hearing held April 6, granting Schwab's Motion.

Legal Action: In September 2017, filed lawsuit in U.S. District Court, Southern District of California. (Case No. 17-cv-1843-GPC-MDD).

Case is stayed pending result from FINRA Arbitration.

Ihave written to Mr. Robert W. Cook, President and CEO of FINRA, seeking hisl involvement on my behalf, in that this claim is ineligible for arbitration by FINRAI as it violates FINRA Rule 12206(a). The filing of the lawsuit was consistent withl Rule 12206(b).I

Sincerely,

Constantine G. Cristo

*Direct* *1.760.638.1772*
*Email* *cgcristo@prolognosis.org*

TRANSMISSION VERIFICATION REPORT

TIME : 04/13/2018 08:16
NAME :
FAX :
TEL :
SER. # : U62702J3J137957

| | |
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| DATE,TIME | 04/13 08:14 |
| FAX NO./NAME | 18663973290 |
| DURATION | 00:01:04 |
| PAGE(S) | 02 |
| RESULT | OK |
| MODE | FINE |

CONSTANTINE G. CRISTO
P.O. Box 2645
Valley Center, CA 92082 U.S.A.

April 13, 2018

FINRA Investor Complaint Center
9509 Key West Avenue
Rockville, MD 20850 U.S.A.

*Via: Fax 866.397.3290*

Dear FINRA Investor Complaint Center:

I would have utilized the online form, but it is not sufficiently specific to my issues. Additionally, quickness after more than a decade is not a priority. I have not submitted a duplicate complaint online. I will attempt to follow the format of your FINRA Investor Complaint Form as much as possible.

| | |
|---|---|
| Brokerage Firm Name: | Charles Schwab & Co., Inc. |
| Salesperson of Firm Representative: | N/A |
| Address- Office of business: | Branch offices in Phoenix AZ and San Diego CA. |
| Name: | Constantine G. Cristo |
| Mailing Address: | POB [redacted]<br>Valley Center, CA [redacted] U.S.A. |
| Telephone: | [redacted].1772 |
| Fax: | 1.760.751.0700 |
| Email: | cgcristo@protognosis.org |
| Recent Active Military | No |
| Age Range: | 65 - 84 |

Financial Industry Regulatory Authority

Richard W. Berry
Executive Vice President
Director of the Office of Dispute Resolution

# EXHIBIT J.C

April 19, 2018

Constantine G. Cristo
P.O. Box [redacted]
Valley Center, CA [redacted]

Re: Letter Dated April 12, 2018

Dear Mr. Cristo:

Thank you for your letter dated April 12, 2018 in which you expressed concerns with FINRA's six-year eligibility rule, and a federal district court's decision to compel arbitration of your matter. Please note that we do not have any independent authority to invalidate a court order. Further, the United States Supreme Court held in *Howsam v. Dean Ritter* that questions of arbitrability under FINRA's six-year eligibility rule should be decided by FINRA arbitrators rather than courts. Under FINRA's Code of Arbitration Procedure ("Code") Rule 12409, FINRA arbitrators are empowered to interpret and determine the applicability of all Code provisions. While we cannot opine on an arbitration panel's interpretation of the six-year rule or its application in your case, we can provide the following guidance from our arbitrator training materials:

> *The panel determines whether a claim meets the six-year eligibility requirement by reviewing the submissions, pleadings and arguments of the parties. When appropriate, the panel may give the parties a reasonable opportunity to conduct discovery. As with any discovery request, arbitrators have discretion to grant, deny or modify the request. If the arbitrators have additional questions about the eligibility of the claim, they should ask the parties to brief the issue. The arbitrators may find that there is a continuing occurrence or event giving rise to the dispute. For example, although a customer purchased stock 10 years ago, there are allegations of ongoing fraud starting with the purchase, but continuing to a date within six years of the date the claim was filed.*

While I understand your frustration with the court's decision, I would like to bring your attention to the many features that distinguish FINRA from other private arbitration forums and promote investor protection and market integrity. FINRA's program charges significantly lower arbitration fees; we give investors the choice of selecting an all-public panel; we use an investor-friendly discovery guide; and our Motion to Dismiss Rule ensures that investors in arbitration



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New York, NY
10006-1404

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richard.berry@finra.org

have a full opportunity to argue their case by limiting motions made prior to the investor resting his or her case. Please also note that we offer deferrals or waivers of arbitration fees for parties who demonstrate financial hardship.

If you have any questions about the arbitration process, or would like resources for pro-se investors, please feel free to contact Laura McNamire in the Los Angeles regional office at: (213) 613-2678 or at Laura.McNamire@finra.org.

Very truly yours,

Richard W. Berry

FINRA

Financial Industry Regulatory Authority

May 8, 2018

EXHIBIT J.D

Constantine G Cristo
POB 2645
Valley Center CA 92082

**RE: FINRA File 20180583018**
**Charles Schwab & Co., Inc.**

Dear Mr. Cristo:

This is to advise you that FINRA has completed its review of the matter that you brought to our attention in your correspondence received on April 18, 2018, concerning Charles Schwab & Co., Inc.

Our investigation included an analysis of the information you provided and additional details we collected during the examination process. Based on our assessment of the information, FINRA has closed its investigation of this matter. If new information develops, FINRA may re-open its investigation.

It is our view that a determination by FINRA not to take action against a FINRA member or a member's associated person has no evidentiary weight in any mediation, arbitration, or judicial proceeding that you have filed or may file. Further, it is inconsistent with just and equitable principles of trade for a FINRA member or a member's associated person to attempt to introduce such a determination into evidence in any of these forums.

If you feel you are entitled to monetary relief, you may wish to initiate an individual action, such as mediation or arbitration. Please be advised that FINRA provides a forum for resolving individual disputes through its Dispute Resolution Division. Information about our mediation and arbitration programs is available at www.finra.org or communicating directly with the following:

FINRA Dispute Resolution
One Liberty Plaza
165 Broadway - 27th Floor
New York NY 10006
Telephone: (212) 858-4200

Thank you for bringing this matter to our attention.

Sincerely,

Carol L. Ford

Carol L. Ford
Principal Investigator
FINRA Investor Complaint Center

CONSTANTINE G. CRISTO
P.O. Box 2645
Valley Center, CA 92082 U.S.A.

May 14, 2018

Ms. Carol L. Ford,
*Principal Investigator*
FINRA INVESTOR COMPLAINT CENTER
15200 Omega Drive
Suite 210
Rockville, MD 20850 U.S.A.

# EXHIBIT J.E

*Ref:* *FINRA File 20180583018*
*Charles Schwab & Co., Inc.*

Dear Ms. Ford,

Thank you for your letter dated May 8, 2018, regarding my April 12, 2018 letter to Mr. Cook.

While I am grateful that FINRA's response is coming from its Principal Investigator, I must confess confusion over your explanation of the review FINRA has performed, as well as, being stunned by FINRA's decision to have already closed its investigation in this matter.

You indicated that FINRA's "investigation included an analysis of the information you provided and additional details we collected during the examination process." I have reread my letter to Mr. Cook and cannot find any pertinent information— other than ineligibility of the claim according to FINRA Rule 12206. I did not provide any information or evidence that would have been useful in such an investigation. Yet, your response is devoid of any mention of ineligibility or, for that matter, FINRA Rule 12206.

Since I was not contacted by you or your team, I can only presume you derived any "additional details" collected during the examination process, from your member organization(s). If that was the case, it would mean FINRA made a decision solely by interviewing your members' account of the issue. If there is something else you failed to mention that took place in order for FINRA to close its investigation, I would be appreciate hearing what that might be. Moreover, since I was seeking a decision solely on the issue of eligibility according to FINRA Rule 12206, that is the only element missing from your response. For your convenience, I repeat the essence of my letter in writing to Mr. Cook (emphasis added):

> " . . . arbitration in this case was inappropriate according to FINRA Rule 12206 (a) & (b), because the action giving rise to my claims in federal court occurred more than twelve years ago."

As it relates to FINRA's assessment of "additional details," the reference at the top of your letter indicates: "FINRA File 20180583018 | Charles Schwab & Co., Inc." I can only conclude you had no access to the court filings because you have referenced only one of the five defendants in the case I identified in my letter to Mr. Cook:

> "(*Constantine G. Cristo v. Charles Schwab Corporation, et al*;
> Case No. 17-cv-1843-GPC-MDD)"

I would add that defendants' counsel attempted to limit the case to the defendant you identified in your reference and opening sentence. Thus, I can only conclude defendants' counsel is the source of the additional details from which FINRA closed the case.

I presume your disclosure regarding FINRA's determination "not to take action against a FINRA member or a member's associated person has no evidentiary weight in any mediation, arbitration or judicial proceeding" is legal-speak cover for closing the file. Since it has nothing to do with my letter to Mr. Cook, or my purposes, I accept it for what it is.

I filed a lawsuit, based upon FINRA Rule 12206 because the claim was clearly ineligible for arbitration by FINRA. My action was verified by a call to FINRA during which, FINRA instructed that I should seek justice through the court. The defendants filed a motion to compel arbitration and the U.S. District Court, stated in its order: "By its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that the district courts shall direct the parties to proceed to arbitration."

My letter to Mr. Cook was to intervene on my behalf to foster a ruling on the unambiguous Rule 12206, such that I could resume the case in U.S. District Court. However, your letter makes absolutely no mention of (a) Rule 12206 or (b) the ineligibility of the claim to be pursued through FINRA arbitration.

I should mention that Mr. Richard W. Berry, EVP & Director of Dispute Resolution, also responded to my letter to Mr. Cook, in his letter dated April 19, 2018. I was equally disappointed in Mr. Berry's response in that his letter suggested I was requesting FINRA invalidate the Court Order. His letter goes on to suggest:

> "The panel determines whether a claim meets the six-year eligibility requirement by reviewing the submissions, pleadings and arguments of the parties."

Mr. Berry's statement apparently is taken from FINRA's arbitrator training materials. I responded to Mr. Berry's letter in my letter dated April 30, 2018, correcting his erroneous conclusion that I was seeking for FINRA to invalidate a Court Order. I also pointed out the absurdity of proceeding through an arbitration case in order to determine if it was eligible for arbitration in the first place. While that may be an affordable option for the defendants, is not possible for me, as it would likely take another year for me to construct a comprehensive *Statement of Claim*, followed by submissions, pleadings and arguments, typical of arbitrations, plus all of the effort and expense in paying a panel of arbitrators to determine, after the fact, that the claim was not eligible for FINRA arbitration.

I requested of Mr. Berry, to determine the eligibility of my claims according to FINRA Rule 12206, in advance of the commencement of any arbitration case. Since you have also responded as the Principal Investigator in my case, I request the same from you. The point being that if it takes a panel the entire arbitration process in order to determine if it was ineligible to begin with, FINRA is incapable of being a qualified watchdog of the industry it oversees. I shouldn't have to remind FINRA that its mission is to protect the American public from its membership— not the other way around.

I seek only one thing at this point— to determine FINRA's position on the eligibility of my claim as it relates to FINRA Rule 12206. If FINRA determines it is ineligible, I would appreciate a certified document stating as much, such that I can motion the District Court

to resume the case. If it determines that the case is eligible for arbitration, then I would expect an explanation would be provided as to how FINRA came to its conclusion. At that point, I could decide on how to proceed.

I appreciate your final comments regarding the forums FINRA provides for resolving individual disputes. While the FINRA Dispute Resolution Division may be a viable option for resolution, it makes no sense whatsoever, initiating an arbitration case until I first determine that it is eligible in spite of FINRA Rule 12206.

The question of ineligibility is not complex. In 2006, the defendants in my case, according to documented evidence, breached a number of U.S. Laws in providing confidential personal financial information outside of an IRS administrative summons. No subsequent breach occurred since 2006, because no subsequent IRS summons was issued after 2006. Therefore, the action resulting in my claims took place more than twice the limiting FINRA six-year rule. I can provide you with the documentary evidence of the breach, if that will allow you to reopen the case to determine its eligibility.

I look forward with anticipation to your response.

Sincerely,

Constantine G. Cristo
Direct: 1.760.638.1772
Email: cgcristo@protognosis.org

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE SECRETARY

EXHIBIT J.F

Business Fax No.
(703)813-9793n

June 12, 2018

Administrative Proceeding
File No. 3-18539

Constantine Gus Cristo
P.O. Box [redacted]
Valley Center, CA [redacted]

Dear Mr. Cristo:

This will acknowledge receipt on June 8, 2018 of an application seeking review by the Commission of action taken by FINRA, regarding FINRA File No. 20180583018, dated May 8, 2018.

I have determined at this time to accept for filing your application for review by the Commission. This does not, however, constitute a Commission determination as to the proper statutory basis for your application, or a prejudgment on the part of the Commission of any issues that may be raised by the parties pertaining to the Commission's jurisdiction to consider this matter or the scope of the relevant statutory provisions.

The Commission's review proceeding will be conducted in accordance with its Rules of Practice, 17 CFR 201.100, et seq., which are available online at: https://www.sec.gov/about/rules-of-practice-2016.pdf.

Within 14 days after its receipt of your application, FINRA is required to file a certified copy of the record in your proceeding, along with an index to the record. You will receive a copy of the index to the record for your use in preparation of your brief(s) to the Commission.

Within 21 days of the Commission's receipt of the certified record, we will issue a briefing schedule order, setting forth the deadlines for submission by you and FINRA of your briefs. In submitting your briefs, please note that:

-- Rule 150 requires that all papers be served upon counsel for FINRA;

-- Rule 151 requires the filing of a certificate of service on counsel for FINRA with all papers;

-- Rule 152 requires that parties file an original and three copies of all papers; and

-- Rule 450 limits the length of briefs and requires that briefs provide specific references to the certified record.

Failure to adhere to these requirements may result in the rejection of a brief. Failure to timely cure defects in a brief or failure to file a required brief may result in the dismissal of your application.

Sincerely,

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

cc: Alan Lawhead, Esq., VP and Director – Appellate Group
FINRA

UNITED STATES
RITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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OFFICIAL BUSINESS

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MAILED FROM ZIP CODE

Constantine Gus Cristo
P.O. Box [redacted]
Valley Center, CA [redacted]

3- 18539

6/16

7/1

CERTIFIED

NO. 80441182

MAIL

RETURN RECEIPT REQUESTED

92082-25045

FINRA

Financial Industry Regulatory Authority

**Megan Rauch**
Associate General Counsel

Direct: (202) 728-8863
Fax: (202) 728-8264

EXHIBIT J.G

June 26, 2018

**VIA MESSENGER**

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

**RE: In the Matter of the Application for Review of Constantine Gus Cristo, Administrative Proceeding No. 3-18539**

Dear Mr. Fields:

FINRA does not believe it has any documents or a record, subject to Section 19(d) of the Securities Exchange Act of 1934 and upon which the action complained of by the Applicant was taken, to certify and file with the Commission. Accordingly, FINRA is unable to file a certified copy of the record in the above-referenced proceeding.

Sincerely,

Megan Rauch

cc: Constantine Gus Cristo
P.O. Box [redacted]
Valley Center, CA [redacted]

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STEPHEN YOUNG
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TERRY ROSS
JOHN D. GIFFIN
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NEAL SCOTT ROBB
BEN SUTER
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LISA M. BERTAIN
MICHELE R. UNDERWOOD
ELIZABETH P. BEAZLEY
JODI S. COHEN
JULIE L. TAYLOR‡
STACEY MYERS GARRETT
JON W. ZINKE*
ELIZABETH H. LINDH
DAVID D. PIPER‡
SANDOR X. MAYUGA
ESTHER E. CHO
CHRISTOPHER A. STECHER‡
MELANIE L. RONEN‡
AUDETTE PAUL MORALES
BENTLEY P. STANSBURY III‡
STEFAN PEROVICH
MOLLY J. HENRY†
AILAN LIU
MICHAEL T. WEST
RYAN S. LEAN
KRISTY H. SAMBOR
ELYSE W. WHITEHEAD
ERIN WEESNER-McKINLEY
IAN ROSS
SAMANTHA W. MAHONEY‡
HILLARY A. DARNELL
JOSHUA NORTON
FRANCESCA M. LANPHER
VALERIE I. HOLDER†
IGOR V. STADNIK†
SIMON M. LEVY
BRYCE CULLINANE
ASHLEY E. IMPELLITTERI
ALEXANDER J. BUKAC
CHERYL S. CHANG
KATHERINE L. HANDY
CASSIDY A. WALLACE
ANDREW B. MASON
JAMES L. KRITENBRINK
SAMANTHA D. PARRISH
NATALIE M. LAGUNAS

OF COUNSEL
ROBERT H. LOGAN
SCOTT T. PRATT
RICHARD A. APPELBAUM+
REAR ADMIRAL, U.S.C.G. (RET.)
ELIZABETH A. KENDRICK
WILLIAM McC. MONTGOMERY
YALE H. METZGER*

* ADMITTED IN ALASKA
† ADMITTED IN WASHINGTON
‡ ADMITTED IN WASHINGTON & CALIFORNIA
§ ADMITTED IN ALASKA & CALIFORNIA
+ ADMITTED IN DISTRICT OF COLUMBIA & FLORIDA
* REGISTERED FOREIGN LAWYER WITH THE LAW SOCIETY OF HONG KONG & ADMITTED IN NEW YORK

ALL OTHERS ADMITTED IN CALIFORNIA

June 19, 2018

***Via E-Mail – cgcristo@protognosis.org***

Mr. Constantine Gus Cristo
P.O. Box [redacted]
Valley Center, CA [redacted]

EXHIBIT J.H

Re: *Constantine Gus Cristo v. The Charles Schwab Corporation, et al.*
USDC Case No.: 17-cv-1843-GPC-MDD
FINRA Investigation File: 20180583018
Our File No.: 4563-916

Dear Mr. Cristo:

As you know, this office represents the defendants in this case, Charles Schwab Corporation Schwab Holdings, Inc.; Charles Schwab & Co., Inc.; Charles Schwab Bank; Charles Schwab Investment Management, Inc. (collectively, "Schwab"). On June 8, 2018, we received your Application for Review, Brief In Support of Application for Review and Motion for Oral Argument submitted to the Securities and Exchange Commission.

The exhibits attached to your "Brief in Support of Application for Review" show that you have corresponded several times with FINRA and the SEC regarding this matter. You did not copy Schwab on any of that correspondence. If you communicate with regulators regarding this matter in the future, I would appreciate it if you would please copy Schwab's counsel on all communications at the time they are sent. Thank you for your cooperation with this request.

Schwab also wishes to address your concern about the application of FINRA Rule 12206(a) (the six-year eligibility rule) to this case. In your letter to Richard W. Berry dated April 30, 2018, you stated that, "[i]t makes no logical sense whatsoever, to devote the time, energy and expense to an arbitration case, only to find out after the fact, that the case was ineligible from the beginning." Respectfully, I direct your attention to FINRA Rule 12206(c), which states that the six-year time limit on the submission of claims shall not apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. This case has been directed to arbitration by Judge Gonzalo Curiel's Order granting Schwab's motion to compel arbitration. Therefore, Rule 12206(c) applies, and the six-year eligibility rule will not limit the submission of your claim to arbitration. (Please note that



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(206) 622-3790
FACSIMILE: (206) 343-9529

HONG KONG OFFICE
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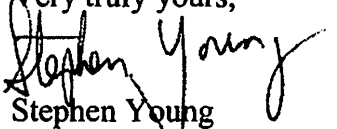
299 QUEEN'S ROAD CENTRAL
HONGKONG
(852) 2854-1718
FACSIMILE: (852) 2541-6189

*Constantine Gus Cristo v. The Charles Schwab Corporation, et al.*
USDC Case No.: 17-cv-1843-GPC-MDD
FINRA Investigation File: 20180583018
Our File No.: 4563-916

Rule 12206(c) does not apply to and should not be confused with statutes of limitation defenses, which Schwab would assert in response to your claim.)

Thank you for your anticipated cooperation.

Very truly yours,



Stephen Young
*steve.young@kyl.com*

SY:sck (KYL4846-0397-9881.6)