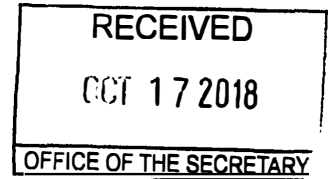


**UNITED STATES OF AMERICA**  
**before the**  
**SECURITIES AND EXCHANGE COMMISSION**



*In the Matter of the Application of*  
GREGORY ACOSTA, CRD #816526.  
  
For Review of Action Taken by FINRA,

Admin. Proc. File No. 3-18637

BRIEF IN SUPPORT OF JURISDICTION  
PURSUANT TO SECTION 19(d)(2) OF  
THE SECURITIES EXCHANGE ACT OF  
1934

**PROCEDURAL BACKGROUND**

1. On July 13, 2018, FINRA sent Kestra Investment Services, LLC (Gregory Acosta's ("Mr. Acosta") former member firm) ("Kestra") a letter regarding Mr. Acosta. See Letter, Exhibit A. Therein, FINRA asserted that it:

determined that Gregory Acosta, a person associated with your firm, is subject to a disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.

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If the firm declines to pursue the Membership Continuation process, it should immediately terminate its association with [Mr. Acosta]. . . .

(the "July 13, 2018 Letter")

2. Kestra declined to pursue the Membership Continuation process, and in accordance with FINRA's directive, terminated Mr. Acosta on July 16, 2018.

3. Mr. Acosta attempted to dispute FINRA's statutory disqualification determination with FINRA's Regulatory Review staff and with FINRA Chief Legal Officer. The only substantive response has been from FINRA's Regulatory Review staff, which stood by its position that Mr. Acosta was subject to statutory disqualification.

4. On September 17, 2018, Mr. Acosta filed an application with the Securities and Exchange Commission ("SEC") for the purpose of preserving any rights he may have to a review of FINRA's determination that he was subject to statutory disqualification.

5. To the extent such determination was deemed (a) a final disciplinary sanction, (b) a denial or conditioning of membership or participation, (c) a prohibition or limitation in respect to access to services offered by that SRO or a member thereof, (d) or a bar from association as to which notice is required to be filed with the Commissions pursuant to 19(d)(1) of the Exchange Act, 16 U.S.C. 78s(d)(1), Mr. Acosta sought review herein.

6. On August 24, 2018, Mr. Acosta filed a Motion for Preliminary Injunctive and Declaratory relief in the federal court, Central District of California (the “Court”) (the “Motion”). The Motion sought relief from FINRA’s designation that he is subject to statutory disqualification.

7. On September 24, 2018, FINRA filed its Opposition to Acosta’s Motion and a Motion to Dismiss pursuant to 12(b)(1) and (6) asserting that the Court does not have subject matter jurisdiction over the dispute.

8. In FINRA’s briefing to the Court, it maintains that (a) the Court has no subject matter jurisdiction over Mr. Acosta’s claims, and (b) the proper avenue for appeal lies with the member firm through the Membership Continuation process.

9. To the extent that FINRA is correct in its position taken in Court, and without waiving any rights, Mr. Acosta asserts that if the Court does not have jurisdiction, FINRA’s determination that he is statutorily disqualified must be reviewable here as a “final order.” FINRA’s decision must be deemed “final” if it is correct in its position taken in Court because Mr. Acosta would then have no avenue of appeal. In every sense of the word, FINRA’s decision would then be final.

### **ARGUMENT**

An “order” is defined as “[a] command, direction, or instruction;” or “[a] written direction or command delivered by a court or judge.” *Black’s Law Dictionary* (7th ed.1999); *see also U.S.*

*S.E.C. v. Vittor*, 323 F.3d 930, 934-935 (2003) (“Although the SEC order does not expressly command Vittor to pay the monetary sanctions, the order sustained the NASD's disciplinary action against Vittor and *effectively* commanded him to pay the restitution, fines, and costs. Thus, the SEC's order sustaining the NASD's disciplinary sanctions against Vittor was an “order” within the meaning of section 21(e)(1).”) (emphasis added). The July 13, 2018 Letter has all the indicia of an Order. In it, FINRA declares Mr. Acosta statutorily disqualified and commands Kestra to terminate its association with Mr. Acosta. The Exchange Act does not indicate whether a directive, like the one issued to Kestra, falls within the scope of the term “final order.” Notwithstanding the ambiguity, and assuming FINRA’s position that the Federal court does not have jurisdiction over FINRA’s designation of Mr. Acosta as subject to statutory disqualification, it is appropriate to construe ““final order” to mean “a written directive or declaratory statement issued by an appropriate federal or state agency ... pursuant to applicable statutory authority and procedures [] that constitutes a final disposition or action by that federal or state agency.”<sup>1</sup> *In the Matter of the App. Of Nicholas S. Savva and Hunter Scott Fin., LLC*, Release No. 34072485, Admin. Proceeding File No. 3-15017, 2014 WL 2887272, at \*7 (2014) (holding that a Vermont Order was a “final order” under Exchange Act Section 15(b)(4)(H) because (1) it was a written directive issued by the Vermont Department that constituted a final disposition of the securities law violations alleged against Savva, and (2) the Vermont provisions provided notice and an opportunity for a hearing, which Savva waived when he consented to the imposition of administrative sanctions).

Proceedings such as *Saava* have held that there must be an “opportunity for a hearing,” a

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See “Explanation of Terms” applicable to FINRA Forms U4, U5 and U6, *available at* <http://www.finra.org/web/groups/industry/@ip/@comp/@@regis/documents/appsupportdocs/p116979.pdf>.

notion that is based on fundamental fairness. Here, Mr. Acosta was not afforded a hearing nor does he have an avenue to obtain a hearing. This coupled with FINRA's contention that the court lacks jurisdiction, the actions taken by FINRA are very much final. *Id.* ("For purposes of disqualification, it would not be in the public interest to restrict the definition of "final order" to orders entered only after a fully litigated hearing."). FINRA has taken the position that there is no federal court jurisdiction, and simultaneously asserts that Mr. Acosta may not appeal through the process set forth for administrative review. Both of these positions cannot be correct. It is a fundamental tenet of constitutional law that Mr. Acosta must have access to meaningful judicial review. *See Hill v. SEC*, No. 15-12831, No. 15-13738, 825 F.3d 1236, 1241 (11th Cir. 2016) ("The Eleventh Circuit found that the respondents in an SEC administrative proceeding had access to meaningful judicial review because they could appeal the final decision to a federal court of appeals."). FINRA must be estopped from asserting that Mr. Acosta has no administrative review *and* no court access. To the extent that FINRA is correct that there is no jurisdiction in Court, there must be jurisdiction within the administrative scheme. In every case where the SEC or Court has found that there is no jurisdiction, it is because there existed a statutory remedy. To argue that there is no administrative remedy for Mr. Acosta,<sup>2</sup> nor a right to appeal in Court, is violative of basic constitutional principles. Moreover, to hold otherwise would be to have the public lose faith in the fairness of FINRA and SEC proceedings.

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<sup>2</sup> To assert that the remedy lies with Mr. Acosta's firm is disingenuous. This is not a real remedy, as it places review outside of Mr. Acosta's reach. The right to be heard must belong to the individual, or it is rendered null.

DATED: October 16, 2018

D'AMURA & Z Aidman, PLLC



By: \_\_\_\_\_  
RICHARD D'AMURA

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 750 N. San Vicente Boulevard, Suite 800, West Hollywood, California, 90069.

On October 16, 2018, I served true copies of the following document(s) described as **BRIEF IN SUPPORT OF JURISDICTION PURSUANT TO SECTION 19(d)(2) OF THE SECURITIES EXCHANGE ACT OF 1934** on the interested parties in this action as follows:

**SERVICE LIST**

Michael M. Smith, Esq.  
Assistant General Counsel  
FINRA Office of General Counsel  
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Counsel for FINRA

**VIA E-MAIL & UPS CARRIER**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 16, 2018, at Los Angeles, California.

  
\_\_\_\_\_  
Jeffrey S. Edwards