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

PROCEDURAL BACKGROUND

1. 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 of Mr. Acosta as subject to statutory disqualification.

2. 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. 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.

3. After supplemental briefing, the Court determined that the issue of jurisdiction could not be determine at this time. Accordingly, the Court ordered the matter stayed until the resolution of the SEC proceedings.

4. Mr. Acosta does not dispute the MC-400 Process is as set forth in FINRA's briefs to the court or herein. However, Mr. Acosta continues to assert that *either* the SEC or the Court must have jurisdiction to review FINRA's determination that he is statutorily disqualified. Without an administrative review scheme, FINRA's MC-400 process is inadequate and unconstitutional.

5. As a matter of fairness, Mr. Acosta requests that a decision on jurisdiction be made

by the SEC on an expedited basis so that Mr. Acosta can have his rights herein clarified.

ARGUMENT

The Registration Department's[1] letter must be reviewable here as a "final order." 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 Registration Department Letter has all the indicia of an Order. In it, FINRA declares Mr. Acosta statutorily disqualified and commands Mr. Acosta's associated firm to terminate its association with Mr. Acosta.

The Exchange Act does not indicate whether a directive, like the one issued in the Registration Department letter, falls within the scope of the term "final order." However, it is appropriate to construe a ""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."[2] *In the Matter of the App. Of Nicholas S. Savva and Hunter Scott Fin.*, LLC, Release No. 34072485, Admin. Proceeding File No. 3-15017, 2 014 WL 2887272, at *7 (2014) (holding that a Vermont

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[1] Capitalized terms not defined herein have the meaning ascribed to them in FINRA's brief.

[2] *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.

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).

FINRA maintains that the Registration Department letter is not final, but rather an initial action because Mr. Acosta's firm could have appealed. However, the question is not whether the Registration Department letter is an initial or final action for Mr. Acosta's firm, but whether the action was final as to Mr. Acosta. According to FINRA's own admission, the action is now final as to Mr. Acosta. Mr. Acosta has absolutely no right to appeal his designation as "statutorily disqualified." Moreover, even the MC-400 process does not allow for Mr. Acosta to appeal the decision that he is disqualified. It only allows for a process whereby he can continue to work as a financial advisor while deemed "statutorily disqualified." In other words, regardless of any appeal by a member firm or otherwise, Mr. Acosta will forever be deemed an individual *who committed fraud*. This decision is FINAL. FINRA's disingenuous assertion that Mr. Acosta can find another firm to appeal for him is ludicrous. Mr. Acosta's individual rights to his employment should not be affected by an ambiguous, unnamed member firm's right to appeal. There is something very wrong with an administrative review scheme that grants an individual's appellate right to an unnamed mass of firms, but denied the right to the affected individual.

Further, proceedings such as *Saava* have held that there must be an "opportunity for a hearing," a 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 *as an individual.* 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,[3] 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.

DATED: November 19, 2018

D'AMURA & ZAIDMAN, PLLC

By: _____
RICHARD D'AMURA

[3] Again, 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.

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 November 19th, 2018, I served true copies of the following document(s) described as **REPLY 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

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VIA ELECTRONIC MAIL

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

Executed on November 19, 2018, at Los Angeles, California.

Jeffrey S. Edwards

Jeffrey S. Edwards