

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

In the Matter of the Application of

Richard Thomas Iannacone

File No. 3-20621

and

In the Matter of the Application of

Consolidated Arbitration Applications

File Nos. 3-18616, 3-18617, 3-18877, 3-18879, 3-18883, 3-18910, 3-18919,  
3-18934, 3-18988, 3-19013, 3-19016, 3-19017, 3-19219, 3-19405, 3-19573, 3-19574,  
3-19611, 3-20160, 3-20205, 3-20467, 3-20499

**FINRA'S MOTION TO CONSOLIDATE AND POSTPONE BRIEFING**

**I. INTRODUCTION**

On October 7, 2021, Richard Thomas Iannacone filed an application for review with the Commission. Iannacone seeks review of a determination by the Director of FINRA Dispute Resolution Services that his request to expunge a customer arbitration award from FINRA's Central Registration Depository ("CRD<sup>®</sup>") is not eligible for arbitration. Iannacone's appeal presents the same fact pattern, and same legal issues, as numerous appeals previously consolidated by the Commission that have been fully briefed. Consequently, FINRA requests that the Commission consolidate Iannacone's appeal with those appeals and postpone briefing in

this matter pending resolution of the consolidated appeals. Counsel for Iannacone does not oppose FINRA’s motion.<sup>1</sup>

## II. BACKGROUND

### A. Iannacone

Iannacone entered the securities industry in 1973.<sup>2</sup> Between 1982 and 2008, he associated with A.G. Edwards & Sons, Inc. (“A.G. Edwards & Sons”), a former member firm.<sup>3</sup> RP<sup>4</sup> 45. He is currently registered with another member firm. *Id.*

### B. Procedural Background

In January 1990, one of Iannacone’s customers filed an arbitration claim with NASD Regulation against Iannacone and A.G. Edwards & Sons. RP 1. The customer alleged that Iannacone and the firm misrepresented the risks involved in certain investments they recommended to the customer. *Id.* The customer further alleged that the recommended investments were inappropriate for her investment objectives, which were to “preserve her capital and produce a steady income through secure and safe investments.” *Id.* After conducting a three-day hearing, a NASD arbitration panel entered a July 18, 1991 award

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<sup>1</sup> Iannacone’s counsel and other attorneys associated with the same firm represent the majority of the applicants in the Consolidated Arbitration Applications. Applicants Cuenca and Sullivan have other counsel, who has advised that he does not oppose this motion.

<sup>2</sup> FINRA, “BrokerCheck,” “BrokerCheck Report for Richard Thomas Iannacone,” at 10, *available at*: [https://files.brokercheck.finra.org/individual/individual\\_254526.pdf](https://files.brokercheck.finra.org/individual/individual_254526.pdf) (last visited Oct. 20, 2021).

<sup>3</sup> A.G. Edwards & Sons was acquired in 2007 by Wachovia Securities.

<sup>4</sup> “RP \_\_\_” refers to the page number in the certified record filed on October 21, 2021.

(“Customer Award”) finding the customer was entitled to recover damages of \$16,415.26, to which Iannacone should contribute \$2,499.<sup>5</sup> RP 1-2, 52. *Id.*

On September 27, 2021, Iannacone filed a statement of claim with FINRA Dispute Resolution Services, in which he sought expungement of the Customer Award from CRD and BrokerCheck. RP 19-24. On September 28, 2021, FINRA Dispute Resolution Services notified Iannacone that his request to expunge the Customer Award from CRD “is ineligible for expungement [] because an adverse award [] was rendered,” and Iannacone “was held liable for damages to the customer.” RP 25. The notice further explained that the Commission “has approved three narrowly crafted grounds in FINRA Rule 2080(b)(1) for recommending expungement in FINRA’s arbitration forum” and that “[a] liability finding by a prior arbitrator or arbitration panel precludes a subsequent arbitrator from making one of the required findings” under the rule. *Id.* Accordingly, the Director denied Iannacone the use of FINRA’s arbitration forum. *Id.* (citing FINRA Rules 12203 & 13203). On October 7, 2021, Iannacone filed the present application for review of FINRA’s denial of the arbitration forum.<sup>6</sup> RP 27-29.

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<sup>5</sup> The NASD case number for this matter is “90-00182.” RP 1, 52. This case is referenced in CRD as “Occurrence # 38779.” RP 51.

<sup>6</sup> The only matters at issue are Iannacone’s September 27, 2021 statement of claim and the September 28, 2021 decision by FINRA Dispute Resolution Services to deny use of the forum. RP 27-29. Iannacone previously filed a similar statement of claim against A.G. Edwards & Sons with FINRA Dispute Resolution Services on August 25, 2021. RP 7-12. On the following day, he sought to withdraw the claim pursuant to FINRA Rule 13702(a). RP 13. On August 27, 2021, FINRA Dispute Resolution Services issued a letter denying use of the forum based on its determination that the claim was ineligible, and Iannacone filed an application for review of that denial with the Commission. RP 15. He withdrew that application after FINRA Dispute Resolution Services issued a superseding letter accepting the withdrawal of his August 25, 2021 statement of claim under FINRA Rule 13702(a). RP 17; *Richard Thomas Iannacone*, Exchange Act Release No. 93199, 2021 SEC LEXIS 2944 (Sept. 29, 2021). While these events provide additional background, they are not at issue in the present appeal. RP 27-29; *see Iannacone*, 2021 SEC LEXIS 2944.

C. Consolidated Arbitration Appeals

The Commission previously consolidated numerous applications for review (the “Consolidated Arbitration Appeals”) presenting the same fact pattern and legal issues presented by Iannacone in this appeal. *See Consol. Arb. Applications*, Exchange Act Release No. 89495, 2020 SEC LEXIS 3312 (Aug. 6, 2020).<sup>7</sup> The parties in the Consolidated Arbitration Appeals have fully briefed the merits of those appeals.

**III. ARGUMENT**

Iannacone’s appeal presents the same fact pattern, and raises the same legal issues, as the Consolidated Arbitration Appeals. The parties have already fully briefed the issues in the Consolidated Arbitration Appeals, and Iannacone’s counsel has indicated that he does not oppose consolidation of his appeal with the Consolidated Arbitration Appeals and postponing briefing in this matter. Accordingly, for the reasons set forth herein, the Commission should consolidate this matter with the Consolidated Arbitration Appeals and postpone briefing.

Commission Rule of Practice 201(a) provides that the Commission may consolidate “proceedings involving a common question of law or fact . . . for hearing of any or all matters at issue in such proceedings.” 17 C.F.R. § 201.201(a). Consolidation is appropriate under the rule because this appeal shares a common fact pattern and questions of law as presented in the Consolidated Arbitration Appeals. Like the applicants in those cases, Iannacone filed an arbitration for expungement of a customer dispute in which there had been an adverse arbitration

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<sup>7</sup> The Commission initially consolidated the Consolidated Arbitration Appeals to determine whether it had jurisdiction to review them. After determining that it had jurisdiction, the Commission found that the proceeding should continue to be consolidated for purposes of briefing the merits. *Consol. Arb. Applications*, 2020 SEC LEXIS 3312, at \*6-8.

award. After FINRA notified him that adverse arbitration awards are inappropriate for an expungement arbitration, he sought Commission review of that decision. Further, like many of applicants in the Consolidated Arbitration Appeals, Iannacone is represented by counsel associated with the law firm HLBS Law. *See* RP 30.

Commission Rule of Practice 161(a) authorizes the Commission to order postponement for “good cause shown.” 17 C.F.R. § 201.161(a). Rule of Practice 161(b) sets forth the factors the Commission must consider in determining whether to grant a postponement, including: (1) the length of the proceeding to date; (2) the number of previous postponements granted; (3) the stage of the proceedings at the time of the request for postponement; and (4) any other such matters as justice may require. 17 C.F.R. § 201.161(b).

These factors favor postponement here. Iannacone’s appeal was filed two weeks ago, and there have been no previous postponements. Moreover, consolidating this appeal with the Consolidated Arbitration Appeals would promote administrative efficiency and avoid the need for the parties to file briefs which repeat the same arguments. Accordingly, the Commission should grant FINRA’s unopposed motion to consolidate Iannacone’s appeal with the Consolidated Arbitration Appeals and postpone briefing.

Respectfully submitted,

*/s/ Ashley Martin*  
Ashley Martin  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8207  
ashley.martin@finra.org  
nac.casefilings@finra.org

October 21, 2021

**CERTIFICATE OF SERVICE**

I, Ashley Martin, certify that on this 21st day of October 2021, I caused a copy of the foregoing Unopposed Motion to Consolidate and Postpone Briefing, in the Matter of the Application of Richard Thomas Iannacone, Administrative Proceeding File No. 3-20621, to be filed through the SEC's eFAP system on:

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

and served by electronic mail on:

Owen Harnett, Esq.  
HLBS Law  
9737 Wadsworth Parkway, Suite G-100  
Westminster, CO 80021  
legal.harnett@hlbslaw.com  
owen.harnett@hlbslaw.com

Counsel for Iannacone, Rosenthal, Kaplow, Cole, Jackson, Mosely, Wetzel, Ramsay, Wojnowski, Rottler, Gordinier, Waring, Pearce, Rossi, Murphy, Shuman, Davis, Luken, Bandy, Gaskill, Kurchner, and Hanlon

Frank Sommers  
227 Princeton Ave.  
Mill Valley, CA 94941  
ffs@sommerslawpc.com  
Counsel for Sullivan and Cuenca

/s/ Ashley Martin  
Ashley Martin  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8207  
ashley.martin@finra.org  
nac.casefilings@finra.org

## CERTIFICATE OF COMPLIANCE

I, Ashley Martin, certify that this motion complies with the Commission's Rules of Practice because it omits or redacts any sensitive personal information described in Rule of Practice 151(e).

I, Ashley Martin, further certify that this motion complies with the Commission's Rules of Practice because it does not exceed 7,000 words. I have relied on the word count feature of Microsoft Word in verifying that this motion contains 1,275 words.

*/s/ Ashley Martin* \_\_\_\_\_

Ashley Martin  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8207  
ashley.martin@finra.org  
nac.casefilings@finra.org