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November 9, 2020

VIA ELECTRONIC MAIL

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
apfilings@sec.gov

RE: In the Matter of the Application for Review of Timothy Arthur Vanderver, III
Administrative Proceeding No. 3-19019

Dear Ms. Countryman:

Enclosed please find FINRA's Response to the Commission's Order Requesting Additional Written Submissions and Opposition to the Application for Review.

Sincerely,

Michael M. Smith

Enclosure

cc: Owen Harnett, Esq.
Erica J. Harris, Esq.

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

In the Matter of the Application of

TIMOTHY ARTHUR VANDERVER, III

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-19019

FINRA'S RESPONSE TO THE COMMISSION'S ORDER REQUESTING ADDITIONAL WRITTEN SUBMISSIONS AND OPPOSITION TO THE APPLICATION FOR REVIEW

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November 9, 2020

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

In the Matter of the Application of

TIMOTHY ARTHUR VANDERVER, III

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-19019

FINRA'S RESPONSE TO THE COMMISSION'S ORDER REQUESTING ADDITIONAL WRITTEN SUBMISSIONS AND OPPOSITION TO THE APPLICATION FOR REVIEW

I. Introduction

Timothy Arthur Vanderver, III, appeals FINRA's decision declining to accept his statement of claim for arbitration against Stanford Group Company ("Stanford Group"). Vanderver sought expungement from FINRA's Central Registration Depository ("CRD" ®) of disclosures Stanford Group made about customer arbitration claims brought against him.[1]

The Director of FINRA's Office of Dispute Resolution (the "Director") determined that Vanderver's claims were not appropriate for arbitration because Stanford Group and its related entities (collectively, the "Stanford Entities") are the subject of a court-appointed receivership

[1] CRD is the central licensing and registration system used by the U.S. securities industry and its regulators. In general, the information in the CRD system is submitted by registered securities firms, brokers, and regulatory authorities in response to questions on uniform registration forms. FINRA makes certain CRD disclosures publicly available through BrokerCheck. The Commission may take official notice of the information in CRD. *See* Commission Rule of Practice 323; *James Lee Goldberg*, Exchange Act Release No. 66549, 2012 WL 759397, at *1 n.2 (Mar. 9, 2012).

and a broad injunction barring any person from commencing any proceeding, including service of process, against them.[2] Because FINRA could not serve Vanderver's statement of claim on Stanford Group, Vanderver's arbitration could not proceed under FINRA's rules. The Director therefore declined to accept Vanderver's statement of claim. FINRA explained its determination in letters sent to Vanderver in January 2019 and February 2020.

Rather than asking the district court to lift its injunction and allow his claims to proceed, Vanderver filed his application for review. Vanderver seeks an order compelling FINRA to serve his statement of claim on Stanford Group, in violation of the injunction. The Commission should dismiss Vanderver's application because FINRA acted in accordance with its rules and it applied those rules in a manner consistent with the purposes of the Securities Exchange Act of 1934 (the "Exchange Act").

II. Factual and Procedural Background

A. Vanderver Registers with Stanford

Vanderver entered the securities industry in 2003. RP 31. In January 2006, Vanderver registered with Stanford Group. RP 31.[3]

B. Stanford Enters Receivership

In February 2009, the Commission filed a complaint in the U.S. District Court for the Northern District of Texas seeking emergency relief "to halt a massive, ongoing fraud" executed through the Stanford Entities. *See* SEC Complaint ¶ 1-14. The Commission alleged, among other things, that the Stanford Entities orchestrated a multi-billion dollar Ponzi scheme using

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[2] FINRA has since changed the name of the Office of Dispute Resolution to FINRA Dispute Resolution Services.

[3] In March 2009, Vanderver left Stanford Group and registered with Oppenheimer & Co. Inc., where he currently is registered. RP 25.

fraudulent certificates of deposit ("CDs") and other investment products. *Id.* The Commission asked the court to appoint a temporary receiver for the benefit of investors. *Id.*

The court granted the Commission's request and entered an order appointing a receiver for the Stanford Entities. *See SEC v. Stanford Int'l Bank, Ltd.*, No. 3-09CV0298-L, 2009 U.S. Dist. LEXIS 133000 (N.D. Tex. Feb. 16, 2009) (hereafter, the "Receivership Order"). In the Receivership Order, the district court "assume[d] exclusive jurisdiction" over all of the Stanford Entities' assets, tangible and intangible, as well as their books and records. Receivership Order ¶ 1; *see also Official Stanford Inv'rs Comm. v. Antigua & Barbuda*, Civil Action No. 3:13-CV-0760-N, 2015 U.S. Dist. LEXIS 197705, at *21 (N.D. Tex. July 15, 2015) ("Antigua's argument ignores this Court's assumption of exclusive jurisdiction over the Stanford entities."). The Receivership Order restrained and enjoined "creditors and all other persons" from "commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other proceeding against . . . any of the defendants . . . arising from the subject matter of this civil action" without the court's permission. Receivership Order ¶ 7. The Receivership Order was in place at all relevant times and continues in effect.

C. Vanderver Files Arbitration Claims Seeking Expungement

In January 2019, Vanderver filed with FINRA's Office of Dispute Resolution a statement of claim against Stanford Group seeking expungement from CRD of disclosures Stanford Group made relating to two arbitration claims filed by customers. RP 1-4.

First, Vanderver sought expungement of disclosures relating to a claim for arbitration filed by customers John J. and Jeanne D. White (Occurrence No. 1510856). RP 2. In a statement of claim filed in April 2009, the Whites alleged violations of FINRA Rules 2110, 2310, and 2120, "in connection with the marketing and sale of Stanford International Bank

CDs." RP 35-36. The Whites sought compensatory damages of $983,870. RP 35. This dispute currently is listed on Vanderver's CRD record as pending. RP 36. In his statement of claim to expunge this dispute, Vanderver alleged "[u]pon information and belief," that the White's allegations would "be shown to be false, clearly erroneous, or factually impossible based on documentation obtained in the process of investigation and discovery." RP 2.

Second, Vanderver sought expungement of disclosures relating to a claim for arbitration filed by Robin Cruz (Occurrence No. 1605563). RP 3. In a statement of claim filed in March 2012, Cruz's attorney alleged "that an unsuitable investment was misrepresented" to Cruz. RP 43. This dispute currently is listed in Vanderver's CRD report as "Closed/No Action." RP 44. In his statement of claim to expunge this dispute, Vanderver alleged, "[u]pon information and belief," that Cruz's allegations would "be shown to be false, clearly erroneous, or factually impossible based on documentation obtained in the process of investigation and discovery." RP 3.

D. FINRA Notifies Vanderver That His Claims Are Ineligible for Arbitration

Shortly after Vanderver filed his statement of claim, FINRA determined that his claims were not appropriate for arbitration due to the Receivership Order. In a letter to Vanderver's attorney, FINRA wrote it was declining Vanderver's claims "pursuant to Customer Code Rule 12203(a) or Industry Code Rule 13203(a)." RP 7.

E. Vanderver Appeals FINRA's Determination That His Claims Are Ineligible for Arbitration

In February 2019, Vanderver filed an application for review of FINRA's decision. RP 9-12. Shortly after Vanderver filed his application, the Commission stayed briefing in his appeal. *See Bart Steven Kaplow*, Exchange Act Release No. 85509, 2019 SEC LEXIS 731 (Apr. 4, 2019). The Commission lifted the stay in January 2020. *See Consol. Arbitration Applications*

For Review of Action Taken by FINRA, Exchange Act Release No. 88032, 2020 SEC LEXIS 2889 (Jan. 24, 2020).

F. FINRA Sends a Letter to Vanderver Further Explaining Its Determination

In February 2020, FINRA sent a second letter to Vanderver providing additional information about its determination that his claims were not appropriate for arbitration. *See* FINRA's Motion to Introduce Additional Evidence, Attachment A, hereto. FINRA explained that it did not accept Vanderver's statement of claim because it was enjoined from serving a Claim Notification Letter on Stanford Group, as required under FINRA's Code of Arbitration. *Id.* On February 25, 2020, FINRA moved to introduce this letter into the record in this proceeding. *Id.* That motion is pending.

G. The Commission Requests Additional Briefing

In August 2020, after the Commission determined it had jurisdiction to consider Vanderver's appeal, it issued an order requesting written submissions from the parties. *See Timothy Arthur Vanderver*, III, Exchange Act Release No. 89611, 2020 SEC LEXIS 3728 (Aug. 19, 2020). The Commission asked the parties to address 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." Did FINRA issue Vanderver 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 Vanderver's claim was ineligible for arbitration, and was that prohibition of access consistent with FINRA's rules?

- Can the Commission discharge its review function based on the record otherwise before it, or should it instead remand for FINRA to issue Vanderver a supporting statement as provided for by Section 15A(h)(2) if one was not already provided to Vanderver?

Id. at *2.

III. Argument

The Commission should dismiss Vanderver's application for review because the grounds on which FINRA based its decision exist in fact, FINRA's decision was in accordance with its rules, and FINRA applied those rules in a manner consistent with the purposes of the Exchange Act. *See* 15 U.S.C. § 78s(f).

A. FINRA's Determination That Vanderver's Claims Are Ineligible for Arbitration Was Consistent with FINRA's Rules

FINRA's Code of Arbitration contains the rules for proceeding in an arbitration for expungement. Those rules provide that, to initiate the proceeding, the claimant must file with the Director a statement of claim specifying the relevant facts and remedies requested. FINRA Rule 13302(a). The Director must then serve a "Claim Notification Letter" on the respondent. FINRA Rule 13302(c). The Claim Notification Letter effectively provides service of process notifying the respondent of the commencement of an arbitration case. *See Lawrence v. Raymond James Fin. Servs.*, 18 Civ. 6590 (LGS), 2019 U.S. Dist. LEXIS 2337 (S.D.N.Y. Jan. 4, 2019) (finding that FINRA arbitrators did not ignore or refuse to apply the governing legal principle that service of process is necessary to give notice of an arbitration where the arbitrators found that the respondent was properly served under FINRA Code of Arbitration Rules 13300, 13301, and 13302.) After receiving the Claim Notification Letter, the respondent must file an answer. FINRA Rule 13303(c). The arbitrator must then hold a hearing regarding the appropriateness of expungement. *See* FINRA Rule 13805.

In this case, the Director declined to accept Vanderver's statement of claim because FINRA is enjoined from serving a Claim Notification Letter on Stanford Group. The Receivership Order enjoins all persons from commencing litigation against Stanford Group. This broadly "include[es] the issuance or employment of process, of any judicial, administrative,

or other proceeding" arising from the subject matter of the *Stanford* litigation "against . . . any of the defendants," including Stanford Group. Receivership Order ¶ 7(a). Vanderver's claims against Stanford Group arise from the subject matter of the *Stanford* litigation—the Stanford Entities' fraudulent sale of CDs and other investment products—and the Claim Notification Letter constitutes service of process. The Director therefore determined that serving a Claim Notification Letter on Stanford Group would violate the Receivership Order. For that reason, the Director declined to accept Vanderver's statement of claim for arbitration. *See* Exhibit 1 to FINRA's Motion to Introduce Additional Evidence, Attachment A.

The Director's decision is consistent with FINRA's rules. FINRA Rule 13203(a) authorizes the Director to "decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate[.]" Rather than providing a list of each subject matter that is inappropriate, the rule allows the Director to address new or novel arbitration claims that are inappropriate. Indeed, in its order approving the rule, the Commission considered the advantages of having the Director act as a gatekeeper to the forum and concluded that Rule 13203 "allow[ed] [the forum] to focus on the cases that are appropriately in the forum," which "in turn, should promote the efficacy and efficiency of the arbitration." *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007).

Vanderver's claims against Stanford Group are inappropriate for arbitration because they cannot proceed in accordance with FINRA's Code of Arbitration. The rules require the Director to serve a Claim Notification Letter on Stanford Group, but the Director cannot do that due to the Receivership Order. *Cf. Rishmague v. Winter*, Civil Action No. 3:11-CV-2024-N, 2014 U.S.

Dist. LEXIS 187902, at *14-15 (N.D. Tex. Sept. 9, 2014) (granting movants' request to lift the injunction so they could serve the Stanford Entities in another proceeding). As a result, absent court relief, Vanderver's arbitration cannot proceed as required by the Code of Arbitration.

Although the Director currently is enjoined from serving a Claim Notification Letter on Stanford Group, Vanderver can ask the district court to lift the injunction on his claims. The Receivership Order provides that litigants can proceed against the Stanford Entities if the district court, "consistent with general equitable principles, and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted in another forum or jurisdiction[.]" Receivership Order ¶ 7. This "escape valve . . . is necessary so that litigants are not denied a day in court during a lengthy stay." *SEC v. Wing*, 599 F.3d 1189, 1196 (10th Cir 2010).[4]

There is no evidence in the record that Vanderver has sought relief from the district court's injunction. Instead, Vanderver asks the Commission to order FINRA to disregard the

[4] Numerous others have asked the district court to allow their claims to proceed, notwithstanding the injunction. In one case, for example, investors who had purchased Stanford CDs filed statements of claim against their Stanford financial advisors. *SEC v. Stanford Int'l Bank Ltd.*, 424 F. App'x 338, 340 (5th Cir. 2011). FINRA declined to accept the statements of claim due to the Receivership Order. *Id.* ("FINRA refunded [the investors'] filing fees and stated that the arbitrations could not proceed absent leave of court in the receivership suit."). The investors asked the district court to lift its injunction and allow their claims to go forward. *Id.* After the district court denied their motion, the investors appealed. *Id.* The Fifth Circuit affirmed the district court's ruling. The Fifth Circuit rejected the investors' argument that the district court's ruling violated their due process rights, noting that, because "[i]t is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions," "it follows that it has the power to enjoin arbitration, which is after all a private contract right between two parties rather than a constitutionally guaranteed right like access to the courts." *Id.* at 340-41. The court also held that the district court did not abuse its discretion in refusing to allow the investors claims to proceed at that time because the investors' "desire for immediate arbitration—although understandable—was outweighed by the importance of maintaining control over the receivership estate[.]" *Id.* at 341.

Receivership Order, and risk being held in contempt, by serving a Claim Notification Letter on Stanford Group. *See Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 552 (6th Cir. 2006) (holding in contempt plaintiffs who knowingly violated a receivership court's injunction because "[i]ntentional interference with a receivership in contravention of a district court's blanket stay is punishable by contempt."). The Commission should reject Vanderver's request.

Without citing authority, Vanderver argues that his claims against Stanford Group are not enjoined because Stanford Group "was named as a nominal party only with no allegations of wrongdoing made against them or any request for damages." Vanderver Brief at 7. This argument has no merit. The Receivership Order enjoins "*any* judicial, administrative, or other proceeding" against the Stanford Entities arising from the subject matter of the litigation. Receivership Order ¶ 9 (emphasis added). There are no exceptions. Only the district court can decide whether Vanderver's claims should be allowed to proceed despite the injunction. *See Liberte Capital*, 462 F.3d at 551-52 ("To the extent that a party has a colorable claim against . . . the entities in receivership, due process demands that the claimant be heard, but the district court exercises significant control over the time and manner of such proceedings.").

Vanderver also complains that, by refusing to violate the district court's injunction, FINRA improperly has created a "blanket rule" against expungement that will "have a chilling and disproportionately prejudicial effect on advisors who have to live with meritless disclosures on their record." Vanderver Brief at 8. Contrary to Vanderver's assertion, FINRA's compliance with the district court's injunction is required by law and does not constitute improper rulemaking. *See GTE Sylvania v. Consumers Union of United States*, 445 U.S. 375, 386 (1980) ("[P]ersons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the

order."). The Director validly exercised his authority under Rule 13203(a) by declining to accept Vanderver's statement of claim because FINRA is enjoined from serving a Claim Notification Letter on Stanford Group. Nothing prevents Vanderver from asking the district court to lift its injunction. Indeed, the fairness of continuing the injunction against Vanderver's claims is one of the enumerated factors the district court would have to consider on such a motion. *Stanford Int'l Bank Ltd.*, 424 F. App'x at 341 ("The first factor essentially balances the interests in preserving the receivership estate with the interests of the Appellants.").

The Director's determination that Vanderver's expungement request was inappropriate for the arbitration forum because of the Receivership Order was entirely consistent with FINRA's rules.

B. FINRA Issued Vanderver a Statement Setting Forth the Specific Grounds for Its Determination

Under Exchange Act Section 15A(h)(2), in any proceeding in which FINRA limits access to services, it must provide notice of the specific grounds for doing so. 15 U.S.C. § 78o-3(h)(2). This requirement ensures that the applicant is not impaired in its ability to challenge FINRA's determination before the Commission, and allows the Commission to discharge its review function. *See Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 SEC LEXIS 1068, at *14 (Mar. 31, 2017).

In this case, FINRA complied with its obligations under the Exchange Act. FINRA issued two letters to Vanderver explaining its decision declining to accept his statement of claim. In its first letter, FINRA stated that Vanderver's claims against Stanford Group were not eligible for arbitration pursuant to FINRA rules granting the Director discretion to decline to permit the use of FINRA's arbitration forum if he determines that the subject matter of the dispute is inappropriate. RP 7. In its second letter, FINRA provided additional information about the

Director's decision. In that letter, FINRA explained that Vanderver's claims were not appropriate for arbitration, as set forth in the first letter, because the Director was enjoined from serving a Claim Notification Letter on Stanford Group. *See* Exhibit 1 to FINRA's Motion to Introduce Additional Evidence, Attachment A. Together, the first and second letters provide a statement setting forth the specific grounds for FINRA's decision.

Vanderver erroneously argues that the Commission cannot consider FINRA's second letter. According to Vanderver, the second letter "came too late," because he "had already called upon the Commission to review FINRA's action." Vanderver Brief at 10. Vanderver cites no authority holding that, once an application for review has been filed with the Commission, FINRA cannot provide additional information explaining the reasoning behind its challenged action. Indeed, such a rule would make little sense. In the analogous context of a judicial proceeding to review an agency's action, an agency may provide additional information explaining its decision, even after litigation has begun. *Bolden v. Blue Cross & Blue Shield Ass'n.*, 669 F. Supp. 1096, 1102 (D.D.C. 1986), *aff'd*, 848 F.2d 201 (D.C. Cir. 1988) ("But where the bare administrative record does not fully disclose the factors the agency considered, it is proper to require the agency to provide a more adequate explanation of its reasons, even though litigation has commenced."). In this case, FINRA initially did not believe its determination about Vanderver's statement of claim triggered its obligations under Exchange Act Section 15A(h)(2). Once Vanderver (and several others) filed an application for review challenging FINRA's determination, FINRA properly provided additional information about its determination. *See Rhea Lana, Inc. v. United States Dep't of Labor*, 925 F.3d 521, 525 (D.C. Cir. 2019) ("[W]hen an agency believes it had no obligation to explain its actions contemporaneously, it is common for the entire record, or a good part of it, to be actually created

for the sole purpose of judicial review."). FINRA did so to enable the parties to address more fully FINRA's determination and to assist the Commission should it decide that it has jurisdiction under the Exchange Act to review that determination. The Commission should consider FINRA's second letter to Vanderver because it provides information necessary to understanding FINRA's reason for declining to accept Vanderver's statement of claim.

Vanderver's complaints about FINRA's delay in issuing the second letter have no merit because there is no indication that Vanderver was unfairly prejudiced by it. Vanderver already was aware of the receivership when he filed his statement of claim for expungement in 2019. *See* RP 1. The second letter was issued to Vanderver in February 2020, seven months before Vanderver's opening brief was due. And Vanderver's brief makes clear that Vanderver fully understands the specific grounds for FINRA's decision. *See* Vanderver Brief at 4-5.

Vanderver also argues the Commission should not consider FINRA's second letter because, he claims, in the second letter FINRA "altered its reasoning from its initial denial letter[.]" Vanderver Brief at 6. There is no evidence to support this assertion. The first letter cites FINRA Rule 13203, which grants the Director discretion to deny FINRA's arbitration forum if he determines that the subject matter of the dispute is inappropriate. The second letter explained why Vanderver's claim was inappropriate for arbitration (i.e., because Stanford Group was subject to the Receivership Order). *See Airport Impact Relief, Inc. v. Wykle*, 192 F.3d 197, 209 (1st Cir. 1999) ("So long as the new material is explanatory of the decisionmakers' action at the time it occurred (which we are convinced that it is) and does not contain post-hoc rationalizations for the agency's decision (which we are convinced that it does not), the new material may be considered."). FINRA's second letter to Vanderver is entirely consistent with its first letter and the Commission should consider it.

Last, Vanderver erroneously asserts that FINRA failed to comply with Rule 13203(a) because, he contends, a Senior Case Specialist made the decision to decline his statement of claim, not the Director. Vanderver Brief at 5. Vanderver's assertion is based solely on the fact that the Senior Case Specialist wrote FINRA's initial letter declining to accept his claims for arbitration. Vanderver Brief at 5. That a FINRA staff member completed the administrative task of preparing and sending notice of the Director's decision is not evidence that the staff member exercised the Director's discretion under Rule 13203(a). Although the rule requires the Director to make the decision, it does not require the Director to personally communicate that decision to the claimant. In this case, the Senior Case Specialist merely conveyed the Director's decision to Vanderver.

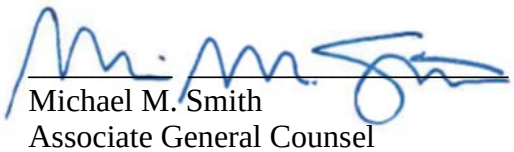
C. The Record Is Sufficient for the Commission to Discharge Its Review Function

If the Commission grants FINRA's motion to introduce additional evidence, as it should, the record will be sufficient for the Commission to discharge its review function. Together, the first and second letters set forth the grounds for FINRA's decision and make the Commission's review possible. Remanding this matter back to FINRA to issue another supporting statement would serve no purpose because FINRA simply would provide another letter stating it cannot accept Vanderver's statement of claim due to the Receivership Order's broad injunction prohibiting FINRA from serving it on Stanford Group. *See Tourus Records, Inc.* v. DEA, 259 F.3d 731, 739 (D.C. Cir. 2001) ("Indeed, a remand to correct the initial notice would serve no purpose, as the agency could and no doubt would simply retransmit its internal memoranda to petitioner.").

IV. Conclusion

The Director properly exercised his discretion by denying FINRA's arbitration forum to Vanderver because the Receivership Order enjoins the Director from serving a Claim Notification Letter on Stanford Group, and therefore the arbitration cannot proceed in accordance with FINRA rules. The Director's decision was consistent with FINRA's rules, and Vanderver had notice of the specific reasons underlying the Director's denial as required by the Exchange Act. Accordingly, the Commission should dismiss Vanderver's application for review.

Respectfully submitted,



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Certificate of Service

I, Michael M. Smith, certify that on this 9th day of November, 2020, I caused a copy of FINRA's Response to the Commission's Order Requesting Additional Written Submissions and Opposition to the Application for Review, in the matter of *Timothy Arthur Vanderver, III*, Administrative Proceeding No. 3-19019, to be served via electronic mail on:

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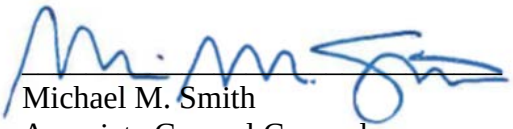

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ATTACHMENT A

Financial Industry Regulatory Authority

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February 25, 2020

BY MESSENGER

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

RE: In the Matter of the Application for Review of Timothy Vanderver III, Administrative Proceeding No. 3-19019

Dear Ms. Countryman:

Enclosed please find FINRA's Motion to Introduce Additional Evidence in the above referenced matter.

Sincerely,

Michael M. Smith

Enclosures

cc: Michelle Atlas, Esq.

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application for Review of

Timothy Arthur Vanderver III

File No. 3-19019

FINRA'S MOTION TO INTRODUCE ADDITIONAL EVIDENCE

Alan Lawhead
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Director – Appellate Group

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February 25, 2020

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application for Review of

Timothy Arthur Vanderver III

File No. 3-19019

FINRA'S MOTION TO INTRODUCE ADDITIONAL EVIDENCE

FINRA moves to introduce additional evidence explaining why it denied its arbitration forum to Timothy Vanderver III for the purpose of expunging customer dispute disclosures. This additional evidence shows that FINRA did not accept Vanderver's statement of claim for arbitration because the respondent, Stanford Group Company ("Stanford"), is the subject of a federal court order restraining and enjoining all persons from commencing "any judicial, administrative, or other proceeding" against the firm. That order enjoins FINRA from serving Vanderver's statement of claim on Stanford, and FINRA therefore was unable to accept the claim for arbitration. The Commission should permit FINRA to introduce this evidence because it is material and there were reasonable grounds for failing to introduce it previously.

I. PROCEDURAL AND FACTUAL BACKGROUND

On January 19, 2019, Vanderver filed with FINRA's Office of Dispute Resolution ("Dispute Resolution") a statement of claim against Stanford in which he sought an arbitrator's order expunging the Central Registration Depository ("CRD") description of two customer

disputes. RP 1-4.[1] Vanderver alleges that the CRD information is "false, clearly erroneous, or factually impossible[.]" RP 2-3.

On January 30, 2019, Dispute Resolution notified Vanderver that it had determined his claims were not eligible for arbitration and that FINRA had declined to accept his statement of claim. RP 7.

On February 25, 2019, Vanderver filed an Application for Review seeking the Commission's review of FINRA's decision not to accept his claim. RP 9-10.

On March 14, 2019, FINRA filed a motion to stay further proceedings on Vanderver's application pending the Commission's ruling on jurisdictional issues in *Bart Steven Kaplow*, Admin. Proc. No. 3-18877. RP 17-20.

On April 4, 2019, the Commission issued an order staying proceedings on Vanderver's application and consolidating it with *Kaplow* for the purpose of determining the Commission's jurisdiction.[2]

On January 24, 2020, the Commission issued an order severing Vanderver's application from *Kaplow*.[3]

On February 20, 2020, Dispute Resolution sent Vanderver a letter (the "February 20 Letter") explaining the basis for its determination that Vanderver's claim was not eligible for arbitration.

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1 "RP ___" refers to the page numbers in the certified record filed by FINRA on March 19, 2019.

2 Order Consolidating Proceedings and Postponing Further Briefing, Exchange Act Release No. 85509 (Apr. 4, 2019).

3 Order Severing Proceedings, Exchange Act Release No. 88032 (Jan. 24, 2020).

FINRA seeks to include a copy of the February 20 Letter in the record in this matter. A copy of the February 20 Letter is attached hereto as Exhibit 1.

II. ARGUMENT

Under Commission Rule of Practice 452, the Commission may permit a party to introduce new evidence if the moving party shows that (a) "such evidence is material," and (b) "there was reasonable grounds for failure to adduce such evidence previously." 17 C.F.R. 201.452. The February 20 Letter meets these criteria and should be admitted.

The February 20 Letter is material because it provides additional information about FINRA's decision not to accept Vanderver's statement of claim, which is the action the Commission has been asked to review. As stated in the letter, FINRA determined that, as a result of the Commission's lawsuit against Stanford, the firm was in receivership, and that it could not serve Vanderver's claim on Stanford due to a court order enjoining all persons from commencing "any judicial, administrative, or other proceeding" against the firm.[4] FINRA therefore determined it was unable to accept Vanderver's claim for arbitration. This information is material because it addresses why FINRA did not accept Vanderver's claim.

FINRA had reasonable grounds for not introducing this evidence previously. This evidence was not included in the record filed with the Commission because it is not Dispute Resolution's practice to provide publicly available information, such as the court's order, when denying forum. Under the circumstances of this case, however, FINRA has now provided this publicly available information to Vanderver. FINRA acted reasonably in doing so and the evidence should be admitted.

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[4] A copy of the court's order is attached to the February 20 Letter.

III. CONCLUSION

Because the February 20 Letter is material, and FINRA has reasonable grounds for not previously introducing it, the Commission should grant FINRA's Motion to Introduce Additional Evidence.

Respectfully submitted,

Michael M. Smith
Assistant General Counsel
FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
(202) 728-8177

February 25, 2020

Exhibit 1

Financial Industry Regulatory Authority

Karinya Verghese
Associate Regional Director
West Region

February 20, 2020

Michelle M. Atlas, Esq.
Dochtor Kennedy, Esq.
AdvisorLaw LLC
9737 Wadsworth Parkway, Suite 205
Westminster, CO 80021

Re: Timothy Arthur Vanderver III v. Stanford Group Company, No. 19-00341

Dear Counsel:

I am writing to explain FINRA's decision to deny the use of its arbitration forum for the above claim, which you filed on Timothy Arthur Vanderver's behalf on January 29, 2019. The claim named Stanford Group Company ("Stanford") as the only respondent and requested the expungement of Occurrence Numbers 1510856 and 1605563 from Mr. Vanderver's Central Registration Depository ("CRD") record.

FINRA Rule 13805 requires an arbitrator to hold a recorded hearing before recommending expungement. Before an arbitrator can schedule a hearing, FINRA Rule 13300(c) requires the Director of Dispute Resolution to serve a Claim Notification Letter on the respondent. After the respondent receives a claim, it must register on the DR Party Portal and answer the claim.

In accordance with our regular procedures, FINRA staff reviewed Stanford's CRD records for an address to serve the claim. CRD indicates that Stanford is in receivership. FINRA staff confirmed that, on February 16, 2009, the United States District Court for the Northern District of Texas entered an order in *Securities and Exchange Commission v. Stanford Int'l Bank, Ltd., et al.,* Case No.: 3-09CV0298-N (N.D. Tex.), appointing a receiver for all the assets and records of Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, R. Allen Stanford, James M. Davis and Laura Pendergest-Holt and all entities they own or control (collectively, the "defendants"). The order, as amended March 12, 2009, restrains and enjoins, without prior approval of the court, creditors and all other persons from "commenc[ing] or continu[ing], including the issuance or employment of process, of any judicial, administrative, or other proceeding against the Receiver, any of the defendants, the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate[.]" See Amended Order Appointing Receiver (copy enclosed). FINRA, therefore, is restrained and enjoined from serving your client's statement of claim on Stanford.

300 South Grand Avenue
Suite 1700
Los Angeles, CA
90071-3135

t 213 229 2351
f 301 527 4878
karinya.verghese@finra.org
www.finra.org

Given FINRA's inability to serve your client's statement of claim on Stanford, as required by FINRA Rule 13300(c), we were unable to accept the claim for arbitration.

Please contact me if you have any questions or require additional information.

Sincerely,

Karinya Verghese
Associate Regional Director
West Region

Enclosure

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAR 12 2009
CLERK, U.S. DISTRICT COURT
By
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT 0F TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., ET AL. Defendants.	§	Case No.: 3-09CV0298-N

AMENDED ORDER APPOINTING RECEIVER

This matter came before me, the undersigned United States District Judge, on the motion of Plaintiff Securities and Exchange Commission ("Commission") for the appointment of a Receiver for Defendants Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, Robert Allen Stanford, James M. Davis, Laura Pendergest-Holt, Stanford Financial Group, and The Stanford Financial Group Bldg Inc. ("Defendants"). It appears that this Amended Order Appointing Receiver (the "Order") is both necessary and appropriate in order to prevent waste and dissipation of the assets of Defendants to the detriment of the investors.

IT IS THEREFORE ORDERED that:

1. This Court assumes exclusive jurisdiction and takes possession of the assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the Defendants and all entities they own or control ("Receivership Assets"), and the books and

records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers telephones, personal digital devices and other informational resources of or in possession of the Defendants, or issued by Defendants and in possession of any agent or employee of the Defendants ("Receivership Records").

2. Ralph S. Janvey of Dallas, Texas, is hereby appointed Receiver for the Receivership Assets and Receivership Records (collectively, "Receivership Estate"), with the full power of an equity receiver under common law as well as such powers as are enumerated herein as of the date of this Order. The Receiver shall not be required to post a bond unless directed by the Court but is hereby ordered to well and faithfully perform the duties of his office: to timely account for all monies, securities, and other properties which may come into his hands; and to abide by and perform all duties set forth in this Order. Except for an act of willful malfeasance or gross negligence, the Receiver shall not be liable for any loss or damage incurred by the Receivership Estate, or any of Defendants, the Defendants' clients or associates, or their subsidiaries or affiliates, their officers, directors, agents, and employees, or by any of Defendants' creditors or equity holders because of any' act performed or not performed by him or his agents or assigns in connection with the discharge of his duties and responsibilities hereunder.

3. The duties of the Receiver shall be specifically limited to matters relating to the Receivership Estate and unsettled claims thereof remaining in the possession of the Receiver as of the date of this Order. Nothing in this Order shall be construed to require further investigation of Receivership Estate assets heretofore liquidated and/or distributed or claims of the Receivership Estate settled prior to issuance of this Order. However, this paragraph shall not be

construed to limit the powers of the Receiver in any regard with respect to transactions that may have occurred prior to the date of this Order.

4. Until the expiration date of this Order or further Order of this Court, Receiver is authorized to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate.

5. As of the date of entry of this Order, the Receiver is specifically directed and authorized to perform the following acts and duties:

(a) Maintain full control of the Receivership Estate with the power to retain or remove, as the Receiver deems necessary or advisable, any officer, director, independent contractor, employee or agent of the Receivership Estate;

(b) Collect, marshal, and take custody, control, and possession of all the funds, accounts, mail, and other assets of, or in the possession or under the control of, the Receivership Estate, or assets traceable to assets owned or controlled by the Receivership Estate, wherever situated, the income and profit therefrom and all sums of money now or hereafter due or owing to the Receivership Estate with full power to collect, receive, and take possession of without limitation, all goods, chattel, rights, credits, monies, effects, lands, leases, books and records, work papers, records of account, including computer maintained information, contracts, financial records, monies on hand in banks and other financial initiations, and other papers and documents of other individuals, partnerships, or corporations whose interests are now held by or under the direction, possession, custody, or control of the Receivership Estate;

(c) Institute such actions or proceedings to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate. All such actions shall be filed in this Court;

(d) Obtain, by presentation of this Order, documents, books, records, accounts, deposits, testimony, or other information within the custody or control of any person or entity sufficient to identify accounts, properties, liabilities, causes of action, or employees of the Receivership Estate. The attendance of a person or entity for examination and/or production of documents may be compelled in a manner provided in Rule 45, Fed. R. Civ. P., or as provided under the laws of any foreign country where such documents, books, records, accounts, deposits, or testimony maybe located;

(e) Without breaching the peace and, if necessary, with the assistance of local peace officers or United States marshals to enter and secure any premises, wherever located or situated, in order to take possession, custody, or control of, or to identify the location or existence of Receivership Estate assets or records;

(f) Make such ordinary and necessary payments, distributions, and disbursements as the Receiver deems advisable or proper for the marshaling, maintenance, or preservation of the Receivership Estate. Receiver is further authorized to contract and negotiate with any claimants against the Receivership Estate (including, without limitation, creditors) for the purpose of compromising or settling any claim. To this purpose, in those instances in which Receivership Estate assets serve as collateral to secured creditors, the Receiver has the authority to surrender such assets to secured creditors, conditional upon the waiver of any deficiency of collateral;

(g) Perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate;

(h) Enter into such agreements in connection with the administration of the Receivership Estate, including, but not limited to, the employment of such managers, agents, custodians, consultants, investigators, attorneys, and accountants as Receiver judges necessary to perform the duties set forth in this Order and to compensate them from the Receivership Assets;

(i) Institute, prosecute, compromise, adjust, intervene in, or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve the value of the Receivership Estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order and likewise to defend, compromise, or adjust or otherwise dispose of any or all actions or proceedings instituted against the Receivership Estate that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

(j) Preserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants;

(k) Promptly provide the Commission and other governmental agencies with all information and documentation they may seek in connection with its regulatory or investigatory activities;

(l) Prepare and submit periodic reports to this Court and to the parties as directed by this Court;

(m) File with this Court requests for approval of reasonable fees to be paid to the Receiver and any person or entity retained by him and interim and final accountings for any reasonable expenses incurred and paid pursuant to order of this Court;

6. The Receiver shall have the sole and exclusive power and authority to manage and direct the business and financial affairs of the Defendants, including without limitation, the sole and exclusive power and authority to petition for relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), for any or all of the Defendants. Solely with respect to the authorization to file and execution of a petition for relief under the Bankruptcy Code; without limiting any powers of the Receiver under applicable law and this Order; and irrespective of provisions in any Defendants' corporate organizing documents, by-laws, partnership agreements, or the like, the Receiver shall be deemed to succeed to the position of and possess the authority of any party with power to authorize and execute the filing of a petition for relief under the Bankruptcy Code, including without limitation corporate directors, general and limited partners, and members of limited liability companies. ~~With respect to any non-individual Defendants on whose behalf the Receiver authorizes and executes a petition for relief under chapter 11 of the Bankruptcy Code, the Receiver shall be deemed a debtor in possession for such Defendant, with all the rights and powers of a debtor in possession under the Bankruptcy Code. The turnover provisions of 11 U.S.C. § 543 shall not apply to the Receiver in his capacity as debtor in possession. With respect to any Defendants on whose behalf the Receiver authorizes and executes a petition for relief under chapter 11 of the Bankruptcy Code, the Receiver shall be authorized, pursuant to 11 U.S.C. § 1505, to act in a foreign country on behalf of an estate created under section 541 of the Bankruptcy Code, and may act in any way permitted by the applicable foreign law~~.

DCL

7. Before taking action under paragraph 6 of this Order, the Receiver must provide the Commission and the Defendants with at least two business days' written notice (unless shortened or lengthened by court order) that the Receiver is contemplating action under the Bankruptcy Code; provided that the Receiver may apply for an order under seal or a hearing *in camera*, as circumstances require. To facilitate an efficient coordination in one district of all bankruptcies of the Defendants, the Northern District of Texas shall be the Receiver's principal place of business for making decisions in respect of operating and disposing of each of the Defendants and their respective assets.

8. Upon the request of the Receiver, the United States Marshal's Office is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody, or control of, or identify the location of, any Receivership Estate assets or records.

9. Creditors and all other persons are hereby restrained and enjoined from the following actions, except in this Court, unless this Court, consistent with general equitable principals and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted in another forum or jurisdiction:

(a) The commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other proceeding against the Receiver, any of the defendants, the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action; or

(b) The enforcement, against the Receiver, or any of the defendants, of any judgment that would attach to or encumber the Receivership Estate that was obtained before the commencement of this proceeding.

10. Creditors and all other persons are hereby restrained and enjoined, without prior approval of the Court, from:

(a) Any act to obtain possession of the Receivership Estate assets;

(b) Any act to create, perfect, or enforce any lien against the property of the Receiver, or the Receivership Estate;

(c) Any act to collect, assess, or recover a claim against the Receiver or that would attach to or encumber the Receivership Estate;

(d) The set off of any debt owed by the Receivership Estate or secured by the Receivership Estate assets based on any claim against the Receiver or the Receivership Estate; or

(e) The filing of any case, complaint, petition, or motion under the Bankruptcy Code (including, without limitation, the filing of an involuntary bankruptcy petition under chapter 7 or chapter 11 of the Bankruptcy Code, or a petition for recognition of foreign proceeding under chapter 15 of the Bankruptcy Code).

11. Creditors and all other persons are hereby restrained and enjoined from seeking relief from the injunction contained in paragraph 10(e) of this Order for a period of 180 days from the date of entry of this Order.

12. Defendants, their respective officers, agents, and employees and all persons in active concert or participation with them who receive notice of this Order by personal service or otherwise, including, but not limited to, any financial institution, broker-dealer, investment adviser, private equity fund or investment banking fun), and each of them, are hereby ordered, restrained, and enjoined from, directly or indirectly, making any payment or expenditure of any Receivership Estate assets that are owned by Defendants or in the actual or constructive

possession of any entity directly or indirectly owned or controlled or under common control with the Receivership Estate, or effecting any sale, gift, hypothecation, assignment, transfer, conveyance, encumbrance, disbursement, dissipation, or concealment of such assets. A copy of this Order may be served on any bank, savings and loan, broker-dealer, or any other financial or depository institution to restrain and enjoin any such institution from disbursing any of the Receivership Estate assets. Upon presentment of this Order, all persons, including financial institutions, shall provide account balance information, transaction histories, all account records and any other Receivership Records to the Receiver or his agents, in the same manner as they would be provided were the Receiver the signatory on the account.

13. Defendants, and their respective agents, officers, and employees and all persons in active concert or participation with them are hereby enjoined from doing any act or thing whatsoever to interfere with the Receiver's taking control, possession, or management of the Receivership Estate or to in any way interfere with the Receiver or to harass or interfere with the duties of the Receiver or to interfere in any manner with the. exclusive jurisdiction of this Court over the Receivership Estate, including the filing or prosecuting any actions or proceedings which involve the Receiver or which affect the Receivership Assets or Receivership Records, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with the permission of this Court. Any actions so authorized to determine disputes relating to Receivership Assets and Receivership Records shall be filed in this Court.

14. Defendants, their respective officers, agents, and employees and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including any financial institution, broker-dealer, investment adviser, private equity fund or investment banking firm, and each of them shall:

(a) To the extent they have possession, custody, or control of same, provide immediate access to and control and possession of the Receivership Estate assets and records, including securities, monies, and property of any kind, real and personal, including all keys, passwords, entry codes, and all monies deposited in any bank deposited to the credit of the Defendants, wherever situated, and the original of all books, records, documents, accounts, computer printouts, disks, and the like of Defendants to Receiver or his duly authorized agents;

(b) Cooperate with the Receiver and his duly authorized agents by promptly and honestly responding to all requests for information regarding Receivership Assets and Records and by promptly acknowledging to third parties the Receiver's authority to act on behalf of the Receivership Estate and by providing such authorizations, signatures, releases, attestations, and access as the Receiver or his duly authorized agents may reasonably request;

(c) Provide the Commission with a prompt, full accounting of all Receivership Estate assets and documents outside the territory of the United States which are held either: (1) by them, (2) for their benefit, or (3) under their control;

(d) Transfer to the territory of the United States all Receivership Estate assets and records in foreign countries held either: (1) by them, (2) for their benefit, or (3) under their control; and

(e) Hold and retain all such repatriated Receivership Estate assets and documents and prevent any transfer, disposition, or dissipation whatsoever of any such assets or documents, until such time as they may be transferred into the possession of the Receiver.

15. Any financial institution, broker-dealer, investment adviser; private equity fund or investment banking firm or person that holds, controls, or maintains accounts or assets of or on behalf of any Defendant, or has held, controlled, or maintained any account or asset of or on behalf of any defendant or relief defendant since January 1, 1990, shall:

(a) Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, gift, or other disposal of any of the assets, funds, or other property held by or on behalf of any defendant or relief defendant in any account maintained in the name of or for the benefit of any defendant or relief defendant in whole or in part except:

(i) as directed by further order of this Court, or

(ii) as directed in writing by the Receiver or his agents;

(b) Deny access to any safe deposit boxes that are subject to access by any Defendant; and

(c) The Commission and Receiver may obtain, by presentation of this Order, documents, books, records, accounts, deposits, or other information within the custody or control of any person or entity sufficient to identify accounts, properties, liabilities, causes of action, or employees of the Receivership Estate. The attendance of a person or entity for examination and/or production of documents may be compelled in a manner provided in Rule 45, Fed. R. Civ. P, or as provided under the laws of any foreign country where such documents, books, records, accounts, deposits, or testimony may be located;

16. The Defendants, their officers, agents, and employees and all persons in active concert or participation with them and other persons who have notice of this Order by personal service or otherwise, are hereby restrained and enjoined from destroying, mutilating, concealing,

altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, disks or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state, or local business or personal income or property tax returns, and other documents or records of any kind that relate in any way to the Receivership Estate or are relevant to this action.

17. The Receiver is hereby authorized to make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to the Defendants, or any company or entity under the direction and control of the Defendants, to himself. Further, the Receiver is hereby authorized to open and inspect all such mail to determine the location or identity of assets or the existence and amount of claims.

18. Nothing in this Order shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Defendants, their agents, officers, or employees.

So Ordered and signed, this 12 day of March 2009.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 25th day of February 2020, I caused a copy of FINRA's Motion to Introduce Additional Evidence, in the matter of *Application for Review of Timothy Arthur Vanderver III*, Administrative Proceeding No. 3-19019, to be served by messenger on:

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

and via FedEx and electronic mail on:

Michelle Atlas
AdvisorLaw, LLC
9737 Wadsworth Pkwy, Suite 205
Westminster, Co 80021
matlas@advisorlawyer.com

Different methods of service were used because courier service could not be provided to the applicant's counsel.

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Washington, DC 20006
(202) 728-8177