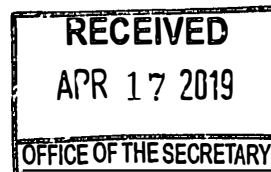


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SECURITIES EXCHANGE COMMISSION	
Denial of FINRA Forum for Expungement Arbitration:	
Applicant: Jonathan Edward Graham  v.	CASE NO. <u>319142</u>
Respondent: Financial Industry Regulatory Authority	
<b>APPLICATION FOR REVIEW</b>	

On February 12, 2019, Jonathan Edward Graham (“Graham”), who resides at [REDACTED], Woodland Hills, CA [REDACTED], submitted a Cease & Desist Letter (“Letter”) to the Financial Industry Regulatory Authority (“FINRA”) Office of Dispute Resolution, requesting relief relating to FINRA’s continued republication of occurrence numbers 1796198, 1688857, 1687573, and 1403263 (the “Occurrences”) on Graham’s CRD record, in violation of the Fair Credit Reporting Act (“FCRA”). The Occurrences for which Graham sought this relief are ineligible for an expungement claim under current FINRA rules. Graham’s Letter to FINRA indicates that FINRA is operating as a consumer reporting agency, pursuant to the definition provided under the FCRA. 15 USCA §1681a(f). As such, FINRA’s continued republication of the Occurrences is in violation of the FCRA under the provisions that regulate the dissemination of bankruptcy matters, civil judgments, IRS tax liens, and other “adverse items of information,” which antedate the publication by a certain number of years. 15 USCA §1681c(a)(1), (a)(2), (a)(3), (a)(5).

Graham took this action because the current FINRA rules do not contain a mechanism to request expungement of bankruptcy matters, civil judgments, or IRS tax liens from a CRD Record.

Graham did not have any other method by which to request this relief outside of direct communication with FINRA pursuant to the Fair Credit Reporting Act.

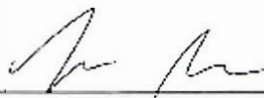
On March 13, 2019, FINRA responded to Graham's Letter, denying any violation of the FCRA and denying Graham the relief he requested. Graham has now exhausted his administrative remedies through FINRA and his access to FINRA arbitration or other forums of relief has been prohibited or limited (see attached).

The Commission has jurisdiction to review this determination by FINRA under §19(d) of the Securities Exchange Act, as the denial of relief by FINRA is a final action that limits or prohibits Graham from utilizing a fundamental service of FINRA. As such, Graham is also entitled to SEC review of this matter pursuant to Commission Rules of Practice Rule 420(a)(iii) and his Application is timely submitted.

Accordingly, Graham respectfully submits this Application for Review to the Commission requesting an Order that FINRA be required to take action regarding Graham's request for relief related to the Occurrences, pursuant to their obligations under the FCRA.

Dated: April 11, 2019

Respectfully submitted,



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Frances Menzer, Esq.  
Of Counsel  
T: (720) 432-0117  
E: [legal.menzer@hlbslaw.com](mailto:legal.menzer@hlbslaw.com)

HLBS Law, LLC  
9737 Wadsworth Pkwy, G-100  
Westminster, CO 80021

# ATTACHMENT A



Suzanne E. Duddy  
Assistant General Counsel  
Telephone (202) 728-8378  
FAX (202) 728-8894  
Suzanne.Duddy@finra.org

March 13, 2019

**Via Federal Express**

Dochtor D. Kennedy, Esq.  
AdvisorLaw, LLC  
9737 Wadsworth Pkwy, Ste. 205  
Westminster, CO 80021

Re: Jonathan Edward Graham, CRD #2766840

Dear Mr. Kennedy:

This letter responds to your February 12, 2019 "Cease and Desist" letter demanding that FINRA remove four disclosures from Jonathan Edward Graham's archived CRD record. None of the identified disclosures appear in BrokerCheck.

As a threshold matter, contrary to your unsupported assertion, FINRA is not and never has been deemed to be a Consumer Reporting Agency (CRA) as that term is defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. ("FCRA"). FINRA's regulatory duties are imposed by Congress under the Securities Exchange Act of 1934 ("Exchange Act") and require FINRA to impose and enforce SEC-approved rules that govern FINRA members. See 15 U.S.C. § 78o-3(b)(2); 15 U.S.C. §§ 78s(g)(1).

As part of its statutory mandate, FINRA has established SEC-approved standards for the uniform licensing and registration of securities professionals pursuant to the Exchange Act. 15 U.S.C. § 78o-3(g)(3). FINRA is required to maintain a system for collecting and retaining registration information regarding its member firms and their registered representatives and does so through CRD. See 15 U.S.C. §78o-3(i)(1)(A); 15 U.S.C. §78o-3(i)(5). Information required to be reported by securities firms and registered representatives on Forms U4 and U5 is maintained by FINRA in CRD. CRD information is not collected for the purpose of furnishing that information to third parties for use in determining eligibility for credit or other FCRA-permissible purposes. The FCRA does not apply to the sharing of information FINRA maintains in CRD.

To the extent your letter threatens a lawsuit against FINRA, challenges to the existence and application of FINRA rules, including challenges to the Form U4, are not properly made before any court, but rather must be made pursuant to the specific statutory scheme set forth in the Exchange Act. Rather than allow private suits by litigants, Congress has set forth the exclusive remedy an individual must follow to challenge a FINRA rule. See 15 U.S.C. § 78s(b); see also 15 U.S.C. § 78y; see also *Cook v. NASD Regulation, Inc.*, 31 F.Supp. 2d 1245, 1249 (D. Colo. 1998) ("Plaintiffs' attempt to bring this [equitable] action . . . is little more than an attempt to circumvent or attack collaterally in the district court issues which must be first challenged at the SEC level, with further review available at the Court of Appeals level").

March 13, 2019  
Letter to Dochter D. Kennedy, Esq.  
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Furthermore, the Exchange Act provides that a registered securities association such as FINRA has no liability for the publication of CRD information. See 15 U.S.C. §78o-3(i)(4) (“A registered securities association . . . shall not have any liability to any person for any actions taken or omitted in good faith under this subsection”). In addition to the immunity provision of the Exchange Act relating to CRD information, numerous courts have held that FINRA is also absolutely immune “from suit for conduct falling within the scope of the SRO’s regulatory and general oversight functions.” *D’Alessio v. New York Stock Exchange, Inc.*, 258 F.3d 93, 105 (2d Cir. 2001) (SRO is “immune from liability for claims arising out of the discharge of its duties under the Exchange Act”), *cert. denied*, 534 U.S. 1066 (2001); see also *Standard Inv. Chartered, Inc. v. NASD*, 637 F.3d 112, 116 (2d Cir. 2011), *cert. denied*, 565 U.S. 1173 (2012); *DL Capital Group LLC v. NASDAQ Stock Market, Inc.*, 409 F.3d 93, 97 (2d Cir. 2005) (SRO has immunity when engaged in conduct consistent with the powers delegated to it pursuant to the Exchange Act and the regulations and rules promulgated thereunder); *In re Series 7 Broker Qualification Exam Scoring Lit.*, 548 F.3d 110, 114 (D.C. Cir. 2008). Maintaining securities registration information and enforcing compliance by securities firms and associated persons with FINRA rules – including rules related to the Form U4 - falls squarely within FINRA’s regulatory duties. See 15 U.S.C. §78o-3(i). This is the precise conduct to which SRO immunity is intended to apply.

Three of the four archived disclosures relate to Question 14M on the Form U4 pertaining to unsatisfied judgments and liens. Under FINRA By-Laws, firms are required to report such matters no later than 30 days after learning of the facts or circumstances giving rise to the event (i.e., the filing of the judgment or lien). See FINRA By-Laws Article V, Sec. 2; see also Form U4 and Form U5 Interpretive Questions and Answers, available on [www.finra.org](http://www.finra.org). The remaining disclosure is archived in CRD pursuant to Question 14K on the Form U4 pertaining to Mr. Graham’s bankruptcy. The only way to obtain expungement of these archived disclosures from CRD is for Mr. Graham to obtain orders of expungement of the two California state court judgments, the federal IRS tax lien, and the personal bankruptcy from the relevant agencies or courts themselves. An individual is not otherwise entitled to have information that is properly reported, and is being properly maintained, permanently removed from CRD.

For the reasons set forth above, FINRA cannot expunge the CRD information in response to your “Cease and Desist” letter. Although FINRA would not be a necessary party to any proceeding seeking expungement from the originating agency or court, I would request that you provide me with any pleadings or filings made on behalf of Mr. Graham relating to this matter in which FINRA is named as a party.

Sincerely,

  
Suzanne Duddy

**CERTIFICATE OF SERVICE**

I, Olivia Peterson, on April 11, 2019, served the original and three copies of this Application for Review of Jonathan Edward Graham on:

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, DC 20549-1090  
Fax: 202-772-9324

**[X] (BY FAX)** I caused the documents to be sent to the persons at the fax number listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**[X] (BY MAIL)** I caused the documents to be sent by US Certified Mail to the persons listed above. I did not receive notice or indication from the US Postal Service that the delivery would be unsuccessful.

**[X] (STATE)** I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

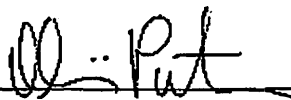
On this date, I also caused the original and three copies of this Application for Review of Jonathan Edward Graham on:

Alan Lawhead  
Vice President and Director – Appellate Group  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
Email: [nac.casefilings@finra.org](mailto:nac.casefilings@finra.org)

**[X] (BY EMAIL)** I caused the documents to be sent to the persons at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**[X] (BY MAIL)** I caused the documents to be sent by US Certified Mail to the persons listed above. I did not receive notice or indication from the US Postal Service that the delivery would be unsuccessful.

**[X] (STATE)** I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Olivia Peterson", written over a horizontal line.

Olivia Peterson  
Scheduling Coordinator  
9737 Wadsworth Parkway, Suite G-100  
Westminster, CO 80021