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April 12, 2021

**VIA MESSENGER AND FACSIMILE**

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Fax: (202) 772-9324

RE: In the Matter of the Application for Review of Michael Andrew DeMaria, Administrative  
Proceeding No. 3-20199

Dear Ms. Countryman:

Enclosed please find an electronic copy of FINRA's Amended Brief in Opposition to the Application for Review in the above-captioned matter.

The brief has been amended on page five, to remove an erroneous citation to "FINRA Rule 8310" and replace it with a citation to "FINRA Rule 2010."

Please contact me at (202) 728-8207 if you have any questions.

Sincerely,

*Ashley Martin*

Ashley Martin

Enclosures

cc: Erica Harris (via Email)  
HLBS Law  
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**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

In the Matter of the Application of

MICHAEL ANDREW DEMARIA

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-20199

**FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW**

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April 12, 2021

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

In the Matter of the Application of

MICHAEL ANDREW DEMARIA

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-20199

**FINRA’S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW**

This matter concerns Michael Andrew DeMaria’s attempt to commence a proceeding in FINRA’s arbitration forum to expunge from FINRA’s Central Registration Depository (“CRD”<sup>®</sup>) and BrokerCheck<sup>®</sup> disclosures of two disciplinary actions against him—one of which resulted in a two-month suspension, and the other of which resulted in a 22-month suspension and a \$15,000 fine. Under FINRA rules, a claimant may not expunge disclosures of a regulatory or disciplinary action in FINRA’s arbitration forum. The Director of FINRA Dispute Resolution Services (the “Director”) denied DeMaria’s attempt to seek expungement in FINRA’s arbitration forum because the request is not eligible for arbitration.

DeMaria fails to identify any reason why his claims are eligible for access to FINRA’s arbitration forum. Nor can he. FINRA Rule 2080, which governs expungement in FINRA’s arbitration forum, relates only to customer dispute information. This rule is the only mechanism approved by the SEC for expungement in FINRA’s arbitration forum. DeMaria cannot identify

any other FINRA rule that permits or even contemplates expungement of disciplinary actions, like DeMaria’s disciplinary suspensions and fine.

The Commission should dismiss DeMaria’s application for review because the grounds on which FINRA based its decision exist in fact, 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”).

## **I. FACTUAL BACKGROUND**

### **A. DeMaria**

DeMaria entered the securities industry in 2012, when he associated with Northwestern Mutual Investment Services (“Northwestern”). RP 17.<sup>1</sup> DeMaria voluntarily ended his association with Northwestern in October 2013. *Id.* Since that time, DeMaria has not associated with a FINRA member. *Id.* He has been the subject of two FINRA disciplinary actions, which are described further below.

### **B. Expungement of Customer Dispute Information from CRD**

The Exchange Act requires FINRA to collect and maintain registration information about member firms and their associated persons. 15 U.S.C. § 78o-3(i). FINRA maintains this information—which includes disciplinary actions and regulatory, judicial, and arbitration proceedings—in CRD. 15 U.S.C. § 78o-3(i)(5). Regulators use the information in CRD in connection with their licensing and regulatory activities, and firms use it when making hiring decisions. *See Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081, Prohibited Conditions Relating to Expungement of Customer Dispute Information*, 79 Fed. Reg.

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<sup>1</sup> “RP \_\_\_\_” refers to the page numbers in the certified record filed by FINRA on January 19, 2021.

43,809 (July 28, 2014) (hereinafter “*Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*”). Additionally, FINRA releases much of the information in CRD to the investing public through BrokerCheck. *Id.* Regulatory and disciplinary actions are among the information maintained in CRD and publicly released through BrokerCheck. *Id.*

The Commission has recognized that “[t]he completeness of information in the CRD . . . is critical for the protection of investors and effective regulatory oversight,” and that when factual information is expunged from CRD, “both regulators and the investing public are disadvantaged[.]” *Id.* at 43,812-813. Accordingly, the Commission has encouraged FINRA “to assure that expungement in fact is treated as an extraordinary remedy that is permitted only where the information to be expunged has no meaningful investor protection or regulatory value.” *Id.* at 43,813.

An associated person who wishes to have information removed from CRD may seek expungement in FINRA’s arbitration forum pursuant to FINRA Rule 2080, but only where the expungement request concerns customer dispute information. FINRA Rule 2080; *see Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,810. Even where an associated person seeks expungement of only customer dispute information, FINRA Rule 2080 identifies only three narrow circumstances that would justify expungement from CRD in FINRA’s arbitration forum.<sup>2</sup> The narrow standards imposed by FINRA Rule 2080 are intended to promote the common interest of public investors, broker-dealers and their associated

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<sup>2</sup> Those three circumstances are: (1) the claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false. FINRA Rule 2080(b)(1).



persons, and regulators in “a CRD system that contains accurate and meaningful information” and maintains the “integrity of the arbitration process.” *NASD Notice to Members 04-16*, 2004 NASD LEXIS 18, \*5-6 (Mar. 2004).

**C. DeMaria’s Two Disciplinary Actions**

In November 2013, a customer filed a complaint against DeMaria with FINRA’s Office of Dispute Resolution.<sup>3</sup> RP 27-29. The customer alleged that DeMaria, while associated with Northwestern, caused funds held at another firm to be transferred to an account at Northwestern without the customer’s knowledge or consent. RP 28. After the customer filed the complaint, FINRA sent DeMaria a request for information but did not receive a response.<sup>4</sup> RP 22-25; Opening Brief (“Opening Br.”), Attachment (“Attach.”) 3 at 1.

**i. DeMaria is Suspended for Failure to Respond to a Request for Information**

DeMaria’s failure to respond prompted FINRA’s first regulatory action against him. On May 30, 2014, FINRA sent DeMaria a notice of its intent to suspend him in all capacities under FINRA Rule 9552 based on his failure to respond to the request for information. RP 23-24. The suspension took effect on June 23, 2014, and FINRA subsequently lifted the suspension on August 27, 2014. RP 23; FINRA Rule 9552(f) (providing that an associated person may file a request to terminate a suspension imposed under FINRA Rule 9552 on grounds of full compliance). FINRA reported the suspension, as well as its subsequent decision to lift the

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<sup>3</sup> FINRA has since changed the name of its Office of Dispute Resolution to FINRA Dispute Resolution Services.

<sup>4</sup> An arbitrator denied the customer’s request for relief on May 30, 2014. RP 28-29.

suspension, in CRD.<sup>5</sup> RP 23-25.

**ii. DeMaria Enters into a Letter of Acceptance, Waiver, and Consent with FINRA**

FINRA's other regulatory action against DeMaria was based on his execution of a June 5, 2015 Letter of Acceptance, Waiver, and Consent ("AWC") pursuant to FINRA Rule 9216. RP 25-26; Opening Br., Attach. 2. DeMaria was aided by counsel when he executed the AWC, in which he consented to the entry of the following findings:

- While DeMaria was associated with Northwestern, he proposed to discuss a financial plan with a customer who had a brokerage account at another member firm. RP 26. DeMaria told the customer that he would need to open an account at Northwestern before they could discuss the financial plan. *Id.*
- The customer stated that he did not wish to transfer any funds into the Northwestern account, and DeMaria assured the customer that there was no need to deposit any funds into the account. *Id.*
- After receiving this assurance, the customer agreed to open a Northwestern account. *Id.* Thereafter, without the customer's knowledge or consent, DeMaria caused approximately \$38,000 in mutual fund assets to be transferred from the customer's account at another firm to the customer's Northwestern account. *Id.*

As a result of this conduct, DeMaria failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010. Opening Br., Attach. 2 at 2.

In the AWC, DeMaria agreed to a 20-month suspension and a \$15,000 fine. RP 27; Opening Br., Attach. 2 at 2. He also agreed to waive certain procedural rights under FINRA's Code of Procedure, such as the rights to have a complaint issued specifying the allegations against him, to defend against the allegations in a disciplinary hearing before a hearing panel and

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<sup>5</sup> The suspension is disclosed in occurrence number 1710804 in CRD. RP 22. The occurrence number is FINRA's internal number used in CRD to identify each disclosure. Occurrence numbers do not appear in the publicly available BrokerCheck report.

have a written decision issued, and to appeal any such decision to FINRA’s National Adjudicatory Council (“NAC”) and the Commission. Opening Br., Attach. 2 at 3. In executing the AWC, DeMaria acknowledged that it would “become part of [his] disciplinary record,” and that the AWC would be “made available through FINRA’s public disclosure program in accordance with FINRA Rule 8313.” Opening Br., Attach. 2 at 4. Both DeMaria and his attorney signed the AWC, as did the Director of FINRA’s Office of Disciplinary Affairs. Opening Br., Attach. 2 at 4-5; FINRA Rule 9216(a)(3) (providing that FINRA’s Office of Disciplinary Affairs may accept an AWC). FINRA reported the terms of DeMaria’s AWC in CRD.<sup>6</sup> RP 25-27.

**D. DeMaria Seeks to Set Aside the AWC**

Aided by counsel, DeMaria sent a November 4, 2019 letter to FINRA’s Registration and Disclosure Department concerning the disclosures of his AWC and the suspension under FINRA Rule 9552.<sup>7</sup> Opening Br., Attach. 3. DeMaria’s letter stated that he “was not fully advised by counsel” concerning his decision to execute the AWC and claimed that the AWC resulted from an “abuse of authority and the enforcement process.” Opening Br., Attach. 3 at 1. He requested “an amicable agreement on his claims.”<sup>8</sup> *Id.*

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<sup>6</sup> The terms of the AWC are reported in occurrence number 1781840 in CRD. RP 25.

<sup>7</sup> FINRA’s Registration and Disclosure Department accepts correspondence related to the CRD. *See* FINRA, “Registration, Exams, & CE,” “Classic CRD,” “FAQ,” “General,” <https://www.finra.org/registration-exams-ce/classic-crd/faq/general> (last visited April 6, 2021).

<sup>8</sup> Although DeMaria’s letter discussed his suspension under FINRA Rule 9552, the letter did not clearly indicate whether DeMaria sought to challenge the disclosure of that suspension. *See* Opening Br, Attach. 3 at 1.

After further correspondence with DeMaria's attorney, FINRA's Office of General Counsel ("FINRA OGC") sent DeMaria a February 3, 2020 letter.<sup>9</sup> Opening Br., Attach. 4. The letter stated that the AWC is enforceable, and that FINRA saw "no reason it should be set aside." *Id.*

**E. DeMaria Files a Statement of Claim with FINRA Dispute Resolution Services**

After FINRA OGC denied DeMaria's request to set aside his AWC, DeMaria filed a December 8, 2020 statement of claim with FINRA Dispute Resolution Services seeking to expunge the disclosures about his suspension for failure to respond to a request for information (i.e., occurrence number 1710804) and the AWC (i.e., occurrence number 1781840). RP 1-3. In his statement of claim, DeMaria contended that expungement was appropriate under FINRA Rule 8312 because both occurrences were defamatory.<sup>10</sup> RP 3-4. He did not address whether the occurrences were clearly erroneous, factually impossible, or false, under the standards set forth by FINRA Rule 2080. RP 1-3. The respondent in DeMaria's statement of claim was his former firm, Northwestern. RP 1.

On December 10, 2020, FINRA Dispute Resolution Services sent written notice to DeMaria that FINRA determined that his claim was not eligible for arbitration (the "December 10, 2020 letter"). RP 5. As a result, the letter advised, FINRA declined to accept the claim pursuant to FINRA Rules 12203(a) or Rule 13203(a). *Id.* On January 6, 2021, DeMaria filed the

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<sup>9</sup> FINRA's February 3, 2020 letter refers to DeMaria's earlier correspondence with another FINRA employee, but that correspondence is not included in the attachments to DeMaria's brief or the record. Opening Br., Attach. 4.

<sup>10</sup> FINRA Rule 8312 addresses the information FINRA will release to the public through BrokerCheck. Subsection (g) of that rule states that "FINRA reserves the right to exclude" the disclosure of information that contains defamatory language. FINRA Rule 8312(g). The rule does not address expungement or arbitration.

present application with the Commission to review the Director’s determination that his claim was not eligible for arbitration. RP 7-8.

## **II. ARGUMENT**

The Commission should dismiss DeMaria’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 Properly Prohibited DeMaria Access to Its Arbitration Forum**

#### **i. FINRA Rules Permit Expungement Only of Customer Dispute Information, not Disciplinary Actions**

FINRA Rule 2080 specifies the use of FINRA’s arbitration forum to expunge disclosures of only customer dispute information—not regulatory or disciplinary actions. *See* FINRA Rule 2080; *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,810 (stating that “[b]rokers who wish to have *customer dispute information* removed from the CRD” may seek expungement under FINRA Rule 2080) (emphasis added); *Loftus v. FINRA*, No. 20-cv-7290 (SHS), 2021 U.S. Dist. LEXIS 18823, at \*11 (S.D.N.Y. Feb. 1, 2021) (“[FINRA] Rule 2080 only allows the expungement, under narrow circumstances, of customer-initiated complaints, not FINRA-initiated enforcement actions”).<sup>11</sup> It is undisputed that the occurrences DeMaria seeks to have expunged from CRD are not customer disputes, but FINRA’s regulatory actions against him—that is, the suspension based on DeMaria’s failure to respond to a request for information, and the fine and suspension DeMaria agreed to in the AWC. RP 1-3. FINRA

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<sup>11</sup> *See also Buscetto v. FINRA*, No. 11-6308 (JAP), 2012 U.S. Dist. LEXIS 65116, at \*11 (May 9, 2012) (explaining that FINRA Rule 2080 “is not and never has been applied to expunge final FINRA disciplinary actions and records”).

Rule 2080 does not permit expungement of these disclosures. As a result, DeMaria cannot properly seek expungement of information concerning those actions in FINRA's arbitration forum. *See* FINRA Rule 2080; *Loftus*, 2021 U.S. Dist. LEXIS 18823, at \*11.

Indeed, FINRA is required to retain and report information concerning regulatory and disciplinary actions against its members and associated persons. 15 U.S.C. § 78o-3(i); *see also* FINRA Rule 8312(c)(1)(A); *Buscetto*, 2012 U.S. Dist. LEXIS 65116, at \*8 (observing that “FINRA has a duty under the Exchange Act to report ‘registration information’ about current and former securities representatives, which includes information relating to [an associated person’s] disciplinary record”). If FINRA were to expunge such information, it would violate its duties under the Exchange Act and its own rules, which were approved by the Commission. *See Loftus*, 2021 U.S. Dist. LEXIS 18823, at \*11; 15 U.S.C. § 78s(b)(1).

**ii. DeMaria’s Arbitration Claim is Inconsistent with the Forum’s Purpose**

The Director properly exercised his authority under FINRA Rule 13203 to deny DeMaria access to FINRA's arbitration forum. Claimants may not seek expungement of disclosures of regulatory or disciplinary actions in FINRA's arbitration forum, and DeMaria's attempt to use the forum to expunge such information is inconsistent with “the purposes of FINRA and the intent of the Code” of Arbitration Procedure. *See* FINRA Rules 12203(a), 13203(a); *see also* FINRA Rule 2080; *Loftus*, 2021 U.S. Dist. LEXIS 18823, at \*8-9 (explaining that FINRA's arbitration forum “exists to facilitate the resolution of private securities disputes, not FINRA disciplinary actions”). Because DeMaria's expungement claim was beyond the mandate of the arbitration forum, the Director properly denied his request for access to the forum.

Contrary to DeMaria's assertion, the Director did not “overstep” his authority under FINRA Rule 13203. Opening Br. at 8. The rule authorizes the Director to deny the arbitration

forum when “the subject matter of the dispute is inappropriate.” FINRA Rule 13203(a). The Commission expressly considered the advantage of having the Director act as a gatekeeper to the forum and concluded that FINRA Rule 13203 “allow[s] [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 forum.”<sup>12</sup> *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto*, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007) (hereinafter “*Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*”). As discussed herein, the subject matter of DeMaria’s arbitration request is inappropriate because his claims are patently ineligible for expungement under FINRA Rule 2080, which is limited to the expungement of customer dispute information in narrow circumstances.

The Director’s determination also served the public interest. FINRA Rule 2080’s scope is intentionally narrow, as it is designed to ensure that public investors, regulators, broker-

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<sup>12</sup> DeMaria contends that the Director’s authority under FINRA Rules 12203 and 13203 is limited to “emergency situations.” Opening Br. at 7. He is incorrect, as the plain language of these rules permits the Director to decline access to the forum where “the subject matter of the dispute is inappropriate.” FINRA Rules 12203 and 13203.

In its order approving FINRA Rules 12203 and 13203, the Commission approved the expansion of the Director’s discretionary authority under FINRA Rules 12203 and 13203 to give the Director additional flexibility to deny the forum in emergency situations. The existing arbitration rule, however, already provided that the Director could decline access to the arbitration forum where the subject matter of the claim is inappropriate, and that language was retained in the present rules. *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*, 72 Fed. Reg. at 4602. DeMaria misreads the rule’s text and conveniently ignores the disjunctive “or” in the plain language of the rule, which permits denial of the forum in circumstances like this one where the subject matter is inappropriate. See FINRA Rules 12203, 13203.

dealers, and associated persons may continue to access “accurate and meaningful information” in the CRD system. *See NASD Notice to Members 04-16*, 2004 NASD LEXIS 18, at \*5-6.<sup>13</sup> Permitting access to the arbitration forum for claims that are inappropriate for expungement would undermine this purpose, as it would create the possibility that accurate and meaningful information may be expunged—and, consequently, no longer be available to investors, regulators, and employers. *See id.*; *see also Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,812 (“The completeness of information in the CRD . . . is critical for the protection of investors and effective regulatory oversight.”). Moreover, permitting access to the arbitration forum for ineligible claims diverts the forum’s resources from eligible claims. *See Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*, 72 Fed. Reg. at 4602. Because DeMaria’s claim is ineligible for expungement in FINRA’s arbitration forum, the Director served the public interest by excluding it from the forum.

**B. DeMaria’s Arguments to the Contrary Lack Merit**

DeMaria’s brief makes several arguments that FINRA improperly denied him access to the arbitration forum. The Commission should reject these arguments because they lack merit, and because FINRA complied with its rules and obligations under the Exchange Act.

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<sup>13</sup> *See also Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1, Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2, Thereto, Relating to Proposed NASD Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System*, 68 FR 74,667, \*74,672 (Dec. 24, 2003) (explaining that former NASD Rule 2130 (the predecessor to FINRA Rule 2080) “strikes the appropriate balance between permitting members and associated persons to remove information from the CRD system that holds no regulatory value, while at the same time preserving information on the CRD system that is valuable to investors and regulators”).



In this case, FINRA complied with its obligations under the Exchange Act.<sup>14</sup> DeMaria received an adequate opportunity to be heard, as he was permitted to file a four-page statement of claim presenting his request for access to FINRA’s arbitration forum to argue why the regulatory disclosures should be expunged from his CRD record. RP 1-4. FINRA also provided DeMaria with a “statement setting forth the specific grounds” for the denial of his request for access to the arbitration forum. 15 U.S.C. § 78o-3(h)(2). The December 10, 2020 letter advised DeMaria that his claim is ineligible for arbitration and cited the appropriate FINRA arbitration rules (FINRA Rules 12203(a) and 13203(a)). RP 5. The letter also gave DeMaria a direct telephone number and email address for a senior case specialist in Dispute Resolution Services, which he could have used to contact the office with any questions concerning the denial.<sup>15</sup> *Id.*

DeMaria argues that the December 10, 2020 letter was insufficient because it did not explain how his request “presented an emergency situation” that necessitated denial, why his claim was “ineligible” for arbitration under FINRA Rules 12203 and 13203, or what rule rendered his claim “inappropriate.” Opening Br. at 8. DeMaria’s argument strains credibility. As previously explained, FINRA Rules 12203 and 13203 permit the Director to deny access to the forum in emergency situations or in situations where the Director determines that the subject matter of the dispute is inappropriate given the purposes of FINRA and intent of its rules. The

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<sup>14</sup> Exchange Act Section 15A(h)(2) provides that where a national securities association denies access to a service it offers, it is required to keep a record and to provide notice, an opportunity to be heard, and a “statement setting forth the specific grounds” on which the denial is based. 15 U.S.C. § 78o-3(h)(2).

<sup>15</sup> Contrary to DeMaria’s arguments, FINRA Rules 12203 and 13203 do not require that the Director himself communicate his decision to deny the forum. Opening Br. at 7. By referencing FINRA Rules 12203(a) and 13203(a), it is axiomatic that the Director exercised his authority under the rules, regardless of whether he personally signed the letter communicating his decision or whether the letter explicitly referenced that “the Director,” as opposed to “FINRA,” made the decision. RP 5.

letter specifically advised DeMaria that the Director denied his request because the claims alleged in his statement of claim—i.e., claims to expunge disclosures about his suspension and the AWC—are not eligible for arbitration under FINRA Rules 12203 and 13203. RP 5. The December 10, 2020 letter therefore was sufficient to explain the ground for the denial of the forum and permit 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), *aff'd*, 2021 U.S. App. LEXIS 5724 (D.C. Cir. Feb. 26, 2021). Even if DeMaria had questions about the denial, the letter expressly invited him to contact a senior case specialist with FINRA Dispute Resolution Services, providing both a direct telephone number and email address. RP 5. DeMaria did not do so, causing his claims about insufficient notice to ring hollow.<sup>16</sup>

DeMaria also contends that FINRA’s actions somehow were improper because he did not receive an opportunity to “contest [the] determination or offer additional information [] as to how his claim was not inappropriate.” Opening Br. at 8. DeMaria ignores that he was permitted to file a lengthy statement of claim, the very purpose of which is to explain why expungement should be permitted in FINRA’s arbitration forum. DeMaria also does not explain how any additional information he would have provided would change the fact that he sought to expunge disclosures of regulatory actions in FINRA’s arbitration forum, which is not permitted under FINRA rules.

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<sup>16</sup> DeMaria was not impaired in his ability to challenge FINRA’s determination before the Commission, and FINRA’s letter permits the Commission to discharge its review function. *See Springsteen-Abbott*, 2017 SEC LEXIS 1068, at \*14. But even if the letter were somehow insufficient (which it is not), remanding this matter back to FINRA to issue another supporting statement for its decision would serve no purpose because FINRA simply would provide another letter stating it cannot accept DeMaria’s statement of claim. *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.”).

The Commission also should reject DeMaria's argument that "he has no other adequate remedy" for raising his concerns with the disclosure of the AWC. Opening Br. at 8-9. Prior to entering into the AWC, DeMaria could have availed himself of a number of remedies: to have a complaint issued specifying the allegations against him, defend against those allegations in a disciplinary hearing and have a written decision issued, and to appeal any such decision to the NAC and the Commission. *See* Opening Br., Attach. 2 at 3; FINRA Rules 9211, 9221, 9231, 9268, 9311, 9370. He chose to forego these options when he signed the AWC. Moreover, FINRA OGC reviewed DeMaria's AWC in February 2020 at his request, and declined to set it aside. *See* Opening Br., Attachs. 3 & 4. While DeMaria may not agree with OGC's conclusion, he cannot now claim that FINRA refused to consider his concerns. *See id.*

In addition, DeMaria cannot use his regret about signing the AWC or his dissatisfaction with his former attorney as a means to improperly gain access to FINRA's arbitration forum. When DeMaria signed the AWC, he expressly acknowledged that it would "become part of [his] disciplinary record" and would be "made available through FINRA's public disclosure program in accordance with FINRA Rule 8313." Opening Br., Attach. 2 at 4. His assertions that the AWC resulted from an abuse of authority or ineffective assistance of counsel are nothing more than impermissible collateral attacks on a final, negotiated agreement. Opening Br. at 8-9; *see Bruce Zipper*, Exchange Act Release No. 84334, 2018 SEC LEXIS 2709, at \*29 n.45 (Oct. 1, 2018), *citing Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) ("It is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have previously been made against him.").

At bottom, DeMaria's brief fails to identify a reason why his claims are eligible for FINRA's arbitration forum. Rather, his assertions of deficiencies in FINRA's denial letter are

baseless and designed to distract from the fact that he wishes to access FINRA's arbitration forum to collaterally attack the AWC he signed and the suspension FINRA imposed. *See* Opening Br. at 4, 8-9 & Attach. 3 at 1. FINRA rules do not permit DeMaria to expunge regulatory information, which offers meaningful investor protection and regulatory value, in FINRA's arbitration forum. The Commission should reject DeMaria's attempt to access the forum for this improper purpose. *See* FINRA Rule 2080; *Loftus*, 2021 U.S. Dist. LEXIS 18823, at \*11.

### III. CONCLUSION

The Director properly exercised his discretion by denying DeMaria access to FINRA's arbitration forum. The Director's decision was consistent with FINRA's rules, and DeMaria had notice of the specific reasons underlying the Director's denial as required by the Exchange Act. Accordingly, the Commission should dismiss DeMaria's application for review.

Respectfully submitted,

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April 12, 2021

## CERTIFICATE OF COMPLIANCE

I, Ashley Martin, certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

I, Ashley Martin, further certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition not to exceed 14,000 words. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,445 words.

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**CERTIFICATE OF SERVICE**

I, Ashley Martin, certify that on this 12th day of April 2021, I caused a copy of the foregoing FINRA's Amended Brief in Opposition to Application for Review, Administrative Proceeding File No. 3-20199, to be filed through the SEC's eFAP system and served by electronic mail on:

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