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February 3, 2021

VIA EMAIL

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549-1090

**RE: In the Matter of the Application for Review of Mark Kim Gaskill
Administrative Proceeding No. 3-20205**

Dear Ms. Countryman:

Enclosed please find FINRA's Unopposed Motion to Consolidate and Postpone Briefing in the above-referenced matter.

Sincerely,

/s/Michael M. Smith

Michael M. Smith

Enclosures

cc: Frances Menzer, Esq.
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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of

Mark Kim Gaskill

File No. 3-20205

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

I. INTRODUCTION

On January 13, 2021, Mark Kim Gaskill filed with the Commission an application for review. Gaskill appeals a determination by the Director of FINRA's Office of Dispute Resolution that Gaskill's request to expunge a customer arbitration award from FINRA's Central Registration Depository ("CRD®") is not eligible for arbitration. Gaskill's appeal presents the same fact pattern, and raises the same legal issues, as numerous appeals previously consolidated by the Commission that have been fully briefed. Consequently, FINRA requests that the Commission consolidate Gaskill's appeal with those appeals and postpone briefing in this appeal pending resolution of the consolidated appeals. Counsel for Gaskill does not oppose FINRA's motion.

II. BACKGROUND

A. Gaskill

Gaskill entered the securities industry in 1985 and currently is president of respondent MKG Financial Group, Inc. (“MKG”). RP 27.¹ MKG previously was registered as a broker-dealer and currently is registered with the Commission as an investment adviser firm. RP 27.

B. Procedural Background

In June 2011, Gaskill’s customers filed a claim with the Arbitration Service of Portland against Gaskill and MKG. RP 28. The customers alleged that Gaskill and MKG “did not invest [their] accounts in accordance with [their] stated goals and objectives,” and asserted claims for breach of contract, breach of fiduciary duty, negligence, and negligent misrepresentation. *Id.*

A four-day arbitration hearing was held in October 2012. RP 31. Following the hearing, the arbitrator issued an award (the “Customer Award”) finding the customers were entitled to recover damages of \$24,350 from Gaskill and MKG, plus pre-award interest, and costs of \$3,820. RP 32-33.

On December 18, 2020, Gaskill filed with FINRA’s Office of Dispute Resolution an amended statement of claim. RP 35-37. Gaskill sought expungement of the Customer Award from CRD and BrokerCheck. *See id.* The Director of FINRA’s Office of Dispute Resolution notified Gaskill that his request to expunge the Customer Award “is not eligible for arbitration as it arises from a prior adverse award. Therefore, pursuant to the Industry Code Rule 13203(a), the forum is denied[.]” RP 43. On January 13, 2021, Gaskill filed an application for review with the Commission. RP 47-49.

¹ “RP at __” refers to the page number in the certified record filed on January 27, 2020.

C. Consolidated Arbitration Appeals

The Commission previously consolidated numerous applications for review (the “Consolidated Arbitration Appeals”) presenting the same fact pattern and legal issues as is presented by Gaskill in this appeal. *See Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 SEC LEXIS 3312 (Aug. 6, 2020).² The parties in the Consolidated Arbitration Appeals have fully briefed the merits of those appeals.

III. ARGUMENT

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

Commission Rule of Practice 201(a) provides that the Commission may consolidate “proceedings involving a common question of law or fact . . . for hearing of any or all matters at issue in such proceedings.” 17 C.F.R. § 201.201(a). This appeal shares the same common fact pattern and questions of law as presented in the Consolidated Arbitration Appeals. Like the applicants in those cases, Gaskill filed an arbitration for expungement of a customer dispute in which there had been an adverse arbitration award. After FINRA notified him that adverse arbitration awards are inappropriate for an expungement arbitration, he sought Commission

² The Commission initially consolidated the Consolidated Arbitration Appeals to determine whether it had jurisdiction to review them. After determining that it had jurisdiction, the Commission found that the proceeding should continue to be consolidated for purposes of briefing the merits.

review of that decision. Further, like many of applicants in the Consolidated Arbitration Appeals, Gaskill is represented by counsel associated with the law firm HLBS Law. *See* RP 50.

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

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

Respectfully submitted,

/s/ Michael M. Smith
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February 3, 2021

CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 3rd day of February 2021, I caused a copy of the foregoing FINRA's Unopposed Motion to Consolidate and Postpone Briefing, in the Matter of the Application of Mark Kim Gaskill, Administrative Proceeding File No. 3-20205, to be served by electronic mail on:

Vanessa Countryman, Secretary
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and

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