

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

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In the Matter of the Application of  
Jason Harry Kurchner  
For Review of Action Taken By  
FINRA  
File No. \_\_\_\_\_

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**APPLICATION FOR REVIEW**

On June 25, 2021, Mr. Jason Harry Kurchner (“Kurchner”), who resides in Gansevoort, NY, submitted a Statement of Claim to the Financial Industry Regulatory Authority (“FINRA”) Office of Dispute Resolution requesting a hearing for the expungement of one disclosure, Occurrence Number 694221 (“the Occurrence”) from his Central Registration Depository (“CRD”) record. On August 2, 2021, counsel for Mr. Kurchner received notice from a senior case specialist with FINRA that the FINRA Office of Dispute Resolution denied Mr. Kurchner access to the FINRA forum for an arbitration proceeding on the expungement of the Occurrence.

The notice stated that, “This matter is ineligible for expungement from CRD because an adverse award against Claimant was rendered, and Claimant was held liable for damages to the customer.” The senior case specialist further stated that the liability finding by a prior arbitrator or arbitration panel precludes a subsequent arbitrator from making one of the required findings under FINRA Rule 2080(b)(1). The senior case specialist stated in the notice that pursuant to Customer Code Rule 12203(a) or Industry Code Rule 13203(a), FINRA declined to accept the claims. Industry Code Rule 13203(a) does not provide

for forum denial in this situation, nor did FINRA provide an accurate reasoning for its denial. The Rule states:

- (a) The Director may 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, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director may exercise the authority under this Rule.

Industry Code Rule 13203(a) is excessively vague, and allows for an egregious amount of discretion on the part of the Director of Dispute Resolution. It offers no true guidance on what is not eligible for FINRA forum and allows for many inconsistencies in its application.

The Commission has jurisdiction to review this case. As FINRA prohibited Mr. Kurchner's access to a fundamentally important service that it offers. *See, Consolidated Arbitration Applications, Exchange Act Release No. 89495, 2019 WL 6287506 (August 6, 2020)*. Furthermore, Counsel for Kurchner has represented other Associated Persons in FINRA arbitration for expungement of disclosures arising from prior adverse Awards and has succeeded on the merits in at least one case. Moreover, there is no codified rule barring the arbitration for expungement of disclosures arising from a prior adverse Award. Based on Kurchner's obligations to abide by FINRA Rules, he is bound to FINRA arbitration for disputes between himself and a Member Firm. The Director has abused their discretion by denying forum in such an inconsistent and arbitrary manner.

Kurchner submits this Application for Review to the Commission requesting that he be permitted to bring his case in the forum that he is both entitled to and bound to by the FINRA Industry Code Rules. Whether the Occurrence is eligible for expungement should be subsequently determined by the Panel that is assigned in arbitration, in accordance with FINRA Industry Code Rules 2080 and 13805.

Dated: August 20, 2021

Respectfully submitted,

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

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