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

In the Matter of the Application of

James Thomas Young

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-20905

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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June 20, 2023

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FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

James Thomas Young filed an arbitration claim in FINRA's arbitration forum seeking to expunge customer dispute information concerning a final adverse arbitration award from FINRA's Central Registration Depository ("CRD"®) asserting that the underlying customer allegations that led to the arbitration award were false and clearly erroneous. The Director of FINRA's Dispute Resolution Services (the "Director") properly denied Young access to FINRA's arbitration forum because, as the Commission recently ruled, Young's expungement claim constituted an impermissible collateral attack on the prior arbitration award. Accordingly, the Commission should sustain the Director's decision to deny Young access to the forum.

Despite Young's attempt to obfuscate the issue with meritless arguments, this case presents the identical fact pattern and same legal issues as the 17 dismissed applications for review in the *Consolidated Arbitration Applications*. Exchange Act Release No. 97248, 2023 SEC LEXIS 868 (Apr. 4, 2023). In the *Consolidated Arbitration Applications*, the Commission held that FINRA acted in accordance with its rules when it denied the applicants access to the FINRA's arbitration forum to seek expungement of customer dispute information arising from an

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underlying final customer arbitration award where the applicants collaterally attacked the merits of the award. *Id*. at *10-14. The *Consolidated Arbitration Applications* is controlling precedent, and Young's attempt to relitigate the Commission's holding should be rejected.

On appeal, Young ignores inconvenient facts in the record and seeks expungement on grounds he raises for the first time on appeal in a misguided attempt to distinguish his case from the *Consolidated Arbitration Applications*. His arguments are wholly unpersuasive. Additionally, with respect to the arguments Young raises for the first time on appeal, Young failed to exhaust his administrative remedies.

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") and in accordance with the Commission's prior ruling in the *Consolidated Arbitration Applications*. Accordingly, the Commissions should dismiss Young's application for review.

I. FACTUAL BACKGROUND

The relevant facts in this case are indistinguishable from the 17 dismissed applications for review in the *Consolidated Arbitration Applications*. *Id*. at *3-6. Young entered the securities industry in 1991, and he currently is associated with a FINRA member firm. R. at 21-22.[1] In August 1997, Young's customer filed a claim with the NASD Office of Dispute Resolution[2] against Young and his former firm. R. at 1, 41. The customer alleged that Young engaged in excessive and unauthorized trading, breach of fiduciary duty, and suitability violations. R. at 1-2, 41.

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[1] "R. at ___" refers to the page numbers in the certified record filed by FINRA on July 6, 2022.

[2] The NASD Office of Dispute Resolution is now FINRA Dispute Resolution Services ("DRS").

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After a two-day arbitration hearing held in July 1998, an arbitration panel issued an arbitration award in favor of the customer and against Young (the "Prior Arbitration Award"). R. at 1-4. The arbitration panel found Young and his former firm liable and awarded the customer $47,710 in compensatory damages and $15,942 for attorneys' fees. R. at 3. The Prior Arbitration Award explicitly stated that Young was liable and assessed a portion of the damages specifically to him consisting of $23,855 in compensatory damages and $7,971 in attorney fees. *Id*. The underlying award contained no expungement relief as to Young, and he never moved in court to vacate the award.

On May 26, 2022, almost 24 years after the Prior Arbitration Award was issued, Young filed a statement of claim with FINRA Dispute Resolution Services ("DRS") seeking to expunge customer dispute information concerning the Prior Arbitration Award from CRD. R. at 5, 11-12. Young's statement of claim stated that he sought expungement pursuant to FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) because the underlying allegations that led to the award were "false" and "clearly erroneous." R. at 8-12.

The Director of DRS notified Young that this matter "is ineligible for expungement from CRD because an adverse award against [Young] was rendered, and [Young] was held liable for damages to the customer." R. at 13. The letter explained that the Commission "has approved three narrowly crafted grounds in FINRA Rule 2080(b)(1) for recommending expungement in FINRA's arbitration forum" and that "[a] liability finding by a prior arbitrator or arbitration panel precludes a subsequent arbitrator from making one of the required findings" under the rule. R. at 13. The notice further explained: "Therefore, pursuant to FINRA Rule 13203, the Director [of DRS] denies the use of the forum for the expungement request . . . because the subject matter of this dispute is appropriate." R. at 13.

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On June 22, 2022, Young filed an application for review with the Commission. R. at 16. Thereafter, FINRA's counsel conferred with Young's counsel, who agreed not to oppose FINRA's motion to consolidate this matter with the *Consolidated Arbitration Applications*. *See* FINRA's Unopposed Motion to Consolidate and Postpone Briefing, File No. 3-20905 (July 7, 2022); Young Br.[3] at 3.

On April 4, 2023, the Commission dismissed the 17 applications for review that shared the identical fact pattern and same legal issues as this matter. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *3-6, 10-14, 22. The Commission held that FINRA acted in accordance with its rules when it denied access to its arbitration forum for collateral attacks on the final adverse arbitration awards in the 17 applications. *Id.* at 14. At the time of its opinion, the Commission had not yet ruled on FINRA's pending unopposed motion to consolidate in this matter and two other matters. *Id*. In light of its resolution of the *Consolidated Arbitration Applications*, the Commission denied those motions and issued briefing schedules. *Id*.

II. ARGUMENT

The Commission should dismiss Young's application for review because the grounds on which FINRA based its decision—i.e., that Young's expungement request constituted a collateral attack on a prior adverse arbitration award—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); *accord Consolidated Arbitration Applications*, 2023 SEC

[3] "Young Br. at __" refers to the page numbers in Young's Opening Brief in Support of the Application for Review filed on May 19, 2023.

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LEXIS 868.[4] This matter involves the same fact pattern and legal issues—a prior adverse arbitration award that contained no recommendation for expungement and no appeal from that award—as cases in the *Consolidated Arbitration Applications*. The Commission's opinion in the *Consolidated Arbitration Applications* is controlling precedent, and Young's repeated attempts to re-litigate the same issues are improper and should be rejected.

A. The Specific Grounds for FINRA's Denial of Young's Access to FINRA's Arbitration Forum Exist in Fact

FINRA denied Young access to its arbitration forum on the ground that he sought to expunge information concerning a final adverse arbitration award because Young's request constituted an improper collateral attack on the Prior Arbitration Award and therefore was inappropriate for arbitration in the FINRA's arbitration forum. Young does not dispute that he filed claims with FINRA's arbitration forum seeking to expunge information concerning a final adverse arbitration award from the CRD. Accordingly, the specific grounds on which FINRA denied access to its arbitration forum exist in fact.

B. FINRA Properly Prohibited Young Access to Its Arbitration Forum in Accordance with FINRA Rules and Controlling Commission Precedent

FINRA Rule 2080 governs the expungement of customer dispute information from CRD. FINRA Rule 2080(b)(1) identifies three bases for expungement relevant here:

[4] Section 19(f) requires the Commission to set aside FINRA's action if it imposes an undue burden on competition. 15 U.S.C. § 78s(f). The parties do not argue, and the record does not reflect, that FINRA's action imposes such a burden here.

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(A) the claim, allegation or information is factually impossible or clearly erroneous;

(B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or

(C) the claim, allegation or information is false.

FINRA Rule 2080(b)(1).

In relevant part, FINRA Rule 13203(a) provides that the Director "may decline to permit the use of the FINRA's arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the [relevant FINRA Arbitration] Code, the subject matter of the dispute is inappropriate."[5] FINRA Rule 13203(a). FINRA's applicable arbitration code provision, in turn, provides that, "[u]nless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal." FINRA Rule 13904(b); *see also* FINRA Rule 10330(b) (providing the same for arbitration cases filed before April 16, 2007).

Young's statement of claim requests expungement of information related to a final arbitration award based on FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C). Specifically, Young claims that allegations underlying the Prior Arbitration Award were false and clearly erroneous. R. at 8-12.[6] The Director notified Young that his request "was ineligible

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[5] FINRA Rule 13203(a) also provides that the Director may deny access to the arbitration forum if "accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives." Neither Young nor FINRA assert that Young was denied access in this case based on a health or safety risk.

[6] For example, Young alleges in the statement of claim: "Customer's claim of 'excessive and unauthorized trading[,] breach of fiduciary duty[,] [unsuitability, and account-related] failure to supervise. [Customer a]lleged damages [in the amount of] $288,389.00 [Claimant's] employing firm [was] J.C. Bradford & Co' is clearly erroneous and false and, therefore, meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement." R. at 8. He then details specific allegations in subparagraphs and declares that the allegations are false, clearly erroneous, or both. R. at 8-11.

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for expungement from CRD because an award against [Young] was rendered, and [Young] was held liable for damages to the customer." R. at 13. The Director continued, "[t]herefore, pursuant to FINRA Rule 13203, the Director denies the use of the forum for the expungement request . . . because the subject matter of this dispute is inappropriate." R. at 13.

FINRA acted in accordance with its rules when the Director denied Young access to the arbitration forum because Young's expungement request constituted a collateral attack on a final adverse arbitration award, which the Director properly concluded was not consistent with the intent of the FINRA Arbitration Code. Like the applicants in the 17 dismissed consolidated applications, Young sought to expunge information about a final arbitration award by alleging that the underlying customer allegations that led to the award were false or clearly erroneous under FINRA Rule 2080(b)(1)(A) and (C). As the Commission held, "these are all collateral attacks on the merits of the underlying awards." *Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *12-13. Therefore, "the Director acted within his discretion when he concluded that the proper forum for arbitrating the merits of the underlying customer allegations was during each underlying customer arbitration, not during a subsequent arbitration." *Id*. at 13.

The Director's letter to Young relayed that his matter was ineligible for expungement because an adverse award against Young was rendered, and Young was held liable for damages to the customer. R. at 13. The letter further explained that FINRA Rule 2080 provided "three narrowly crafted grounds in Rule 2080(b)(1)" for expungement, and that "[a] 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)." R. at 13. As the Commission explained, however, a claimant could seek expungement under FINRA 2080(b)(1) for reasons other than a collateral attack on the merits of the underlying arbitration award—e.g., arguing that the data reported about the award in CRD was false or clearly erroneous (e.g., such as the date, outcome,

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or description of the award) or arguing that the award reported in CRD had actually been issued against a different person. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *12. Young's statement of claim, however, does not seek expungement on these or similar grounds. Instead, Young's statement of claim collaterally attacks the merits of the Prior Arbitration Award by asserting that the underlying customer allegations on which the award was based are false or clearly erroneous. The is precisely what the Commission held an applicant like Young cannot do. *See id*. at *12-13. Therefore, the Director properly denied Young access to the arbitration forum pursuant to his authority under Rule 13202 because the dispute was inappropriate for arbitration.[7]

Young acknowledges on appeal that his statement of claim makes numerous allegations regarding the merits of the underlying award, which the Commission held were collateral attacks on a prior arbitration award and therefore inappropriate for FINRA's arbitration forum. Young Br. at 10; *Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *12-13. Faced with the Commission's precedent that is fatal to his claims, Young argues on appeal that he also made other allegations "pursuant to principles of equity," and that these equity arguments render his expungement request permissible under FINRA rules. Young Br. at 10. Young's argument

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[7] Young asserts that FINRA is "usurping the fact-finding role of the arbitrator" by denying forum. Young Br. at 9. To the contrary, FINRA Rule 13203 "facilitate[s] excluding cases from the [FINRA predecessor] arbitration forum that are beyond its mandate, allowing it to focus on the cases that are appropriately in the forum. This, in turn, should promote the efficacy and efficiency of the arbitration forum in processing its claims." *See Order Approving Proposed Rule Change to Amend NASD Arbitration Rules for Customer Disputes and NASD Arbitration Rules for Industry Disputes*, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007) (SR-NASD-2004-011) (approving rules that are now FINRA Rules 12203(a) and 13203(a)). Moreover, the Commission recently rejected a similar argument and found that, to exercise his authority under FINRA Rule 13203, the Director must necessarily engage in some fact-finding to determine the subject matter of the dispute. *See Ryan William Mummert*, Exchange Act Release No. 97680, 2023 SEC LEXIS 1520, at *10-11 (June 9, 2023).

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incorrectly characterizes his statement of claim in an attempt to circumvent the Commission's holding in the *Consolidated Arbitration Appeals*. The Commission should not allow Young to rewrite his statement of claim now.

Young's statement of claim states plainly that he seeks to expunge information about a final arbitration award on the grounds that the underlying customer allegations that led to that award were "false" and "clearly erroneous" under FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C), not based on principles of equity. R. at 8-12.[8] While Young did assert in his statement of claim that the continued publication of certain allegations "does not offer any public protection and has no regulatory value," these assertions are directly preceded by allegations about the merits of the underling award that form the bases of Young's expungement request under Rule 2080(b)(1). Young. Br. at 2, 10; R. at 11. Indeed, Young asserts that the CRD disclosures do not have regulatory value *because* the underlying customer allegations that led to the final arbitration award were false and clearly erroneous under Rule 2080(b)(1)(A) and Rule 2080(b)(1)(C). Thus, the overarching thrust of Young's statement of claim is a collateral attack

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[8] For example, Young's statement of claim states that the "[c]ustomer's claim of 'excessive and unauthorized trading[,] breach of fiduciary duty[,] [unsuitability, and account-related] failure to supervise. [Customer a]lleged damages [in the amount of] $288,389.00 [Claimant's] employing firm [was] J.C. Bradford & Co' is clearly erroneous and false and, therefore, meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement." R. at 8. Young continues that "[t]he allegation of excessive trading, or churning, is false and clearly erroneous, ..." (R. at 8), "[t]he allegation of unauthorized trading is false and clearly erroneous, ..." (R. at 9), "[t]he allegation of breach of fiduciary duty is false and clearly erroneous, ..." (R. at 10), "[t]he allegation of unsuitability is false, ..." (R. at 10), "[t]he allegation of unsuitability is false, ..." (R. at 10), "[t]he allegation of unsuitability is clearly erroneous, ..." (R. at 10), and "[t]he allegation of failure to supervise is clearly erroneous and false, ..." (R. at 11).

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on the merits of the arbitration award.[9] Therefore, the Director properly denied Young access to the arbitration forum because his statement of claim constituted a collateral attack on the merits of the underlying arbitration award. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *12-13.

In support of his last-ditch attempt to recharacterize his statement of claim as asserting a claim in equity, Young is forced to rely on the boilerplate language in his prayer for relief requesting "any and all other relief that the [a]rbitrator deems just and equitable." Young Br. at 2, 10; R. at 12. But the boilerplate language on the final page statement of claim does not transform a request for expungement based on FINRA Rule 2080(b)(1) into one based on equity.[10] Therefore, the Director properly denied Young access to the arbitration forum because

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[9] For example, in Young's statement of claim, he states: "The allegation of unauthorized trading is false and clearly erroneous, because no evidence of unauthorized trading was presented by Customer, nor did Respondent's thorough investigation reveal any evidence in support of said allegation." R. at 9. In the same paragraph, however, he concludes: "The continued publication of said allegation will serve only to mislead the investing public, in direct contradiction to FINRA's purpose of protecting the investing public." R. at 9. In another example, Young states in his statement of claim, "[b]ecause Claimant did not engage in any excessive or unauthorized trading, did not breach any fiduciary duty, made a suitable recommendation, was not responsible for supervision, and performed his duties as a representative in a thorough, ethical, and professional manner, the public disclosure of the patently false allegations herein does not offer any public protection and has no regulatory value." R. at 11. Again, these are collateral attacks on the merits of the arbitration award, not claims for equitable relief. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *12-13.

[10] Young's arguments about the standard of proof in the underlying arbitration versus the expungement hearing is yet another example of a collateral attack, which was rejected by the Commission in the Consolidated Arbitration Applications. Young Br. at 8; *see Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *10. For instance, Young argues that an arbitrator has "discretion to accept of a lower burden of proof [during an arbitration hearing] such that, even if the comparative fault of the customer is greater than the fault attributed to the respondents." Young Br. at 8. Young is confusing differing burdens of proof with the fact that his argument that the underlying customer claims were false and clearly erroneous are collateral attacks, regardless of the applicable burden of proof. The prior arbitration panel found Young liable for misconduct in the underlying arbitration proceeding. And, logically, an expungement

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his statement of claim constituted a collateral attack on the merits of the underlying arbitration award. *See Consolidated Arbitration Applications*, Exchange Act Release No. 97248, 2023 SEC LEXIS 868, at *12-13.

Young also argues that his statement of claim was not an impermissible collateral attack because the Prior Arbitration Award would remain unchanged and available even if his expungement request is granted. Young Br. at 9. The Commission considered and rejected this argument in the *Consolidated Arbitration Applications.* 2023 SEC LEXIS 868, at *13-14. As the Commission held, "by attacking the merits of the underlying customer allegations, the applications are necessarily attacking the merits of the awards that were made based on those allegations." *Id.* It is not necessary that the underlying award be "affected" or "remove[d]" from publication to constitute a collateral attack.[11] Young Br. at 9, 11; *see id.* (holding that a request

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arbitrator cannot find that the underlying information was clearly erroneous or false without undermining the liability findings of the prior arbitration panel. The Commission previously rejected this argument as a collateral attack. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *10 (holding that arguments about the burden of proof in the underlying arbitration proceedings are arguments that the underlying arbitration proceedings were flawed, which the Director could properly conclude would undermine the finality of the prior awards).

[11] On appeal, Young seemingly discounts the importance of maintaining accurate information about prior arbitration awards in CRD. Young Br. at 8. The Commission has stated that the expungement of information from CRD "is an extraordinary remedy that is permitted only in the appropriate narrow circumstances contemplated by FINRA rules." *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081, Prohibited Conditions Relating to Expungement of Customer Dispute Information*, Exchange Act Release No. 72649, 79 Fed. Reg. 43809, 43,812-13 (July 28, 2014) (SR-FINRA-2014-020). Expunging a prior adverse award through a collateral attack does not meet those circumstances, and undermines the integrity of information in CRD. *See Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of FINRA Rule 3110(e) (Responsibility of Member To Investigate Applicants for Registration) in the Consolidated FINRA Rulebook*, Exchange Act Release No. 73966, 80 Fed. Reg. 546, 547 (Jan. 6, 2015)) (SR-FINRA-2014-038) ("Having complete and accurate information in CRD is important to regulators, the industry, and the public.")

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to re-arbitrate claims amounts to a collateral attack on a prior arbitration award even if an applicant does not explicitly request that the prior award be vacated, modified, or corrected); *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 SEC LEXIS 4189, at *18 (Oct. 22, 2019) (same). As the Commission explained, Young "may not transform what would ordinarily constitute an impermissible collateral attack [on an arbitration award] into a proper independent direct action by . . . altering the relief sought.'" *Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *14 (quoting *Corey v. N.Y. Stock Exchange*, 691 F.2d 1205, 1213 (6th Cir. 1982)).

Finally, Young argues that FINRA rules are silent as to whether an expungement claim that is related to a prior award or settlement is eligible for expungement. Young Br. at 8. While it is true that FINRA Rule 13203 does not delineate every example of inappropriate attempts to use FINRA's arbitration forum, the rules require an applicant seeking expungement of customer dispute information to do so by filing a statement of claim in FINRA's arbitration forum. *See* FINRA Rule 2080. And once the statement of claim is filed, the Director has the authority under FINRA Rule 13203 to deny the use of FINRA's arbitration forum if he deems the subject matter inappropriate, as in the case of collateral attacks on final adverse arbitration awards.[12] *See*

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[12] As in the *Consolidated Arbitration Applications*, Young conflates the Commission's discussion in the approval order for FINRA Rule 13203 about the two grounds—that the subject matter is inappropriate or that accepting the claim poses a health and safety risk—for denying use of the arbitration forum. Young Br. at 4. On appeal, Young asserts that the Commission provided the Director authority under FINRA Rule 13203 to "give the Director the flexibility needed in emergency situations " and to "address circumstances that may require immediate resolution, such as security concerns and other unusual but serious situations" and that the authority was meant to be used "in only a very narrow range of unusual circumstances." Young Br. at 4 (quoting *Order Approving Proposed Rule Change to Amend NASD Arbitration Rules for Customer Disputes and NASD Arbitration Rules for Industry Disputes*, Exchange Act Release No. 55158, 72 Fed. Reg. 4574, 4580, 4601-02 (Jan. 31, 2007) (SR-NASD-2004-011) (approving rules that are now FINRA Rules 12203(a) and 13203(a))). The quoted language of the

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Consolidated Arbitration Applications, 2023 SEC LEXIS 868, at *2. The Director properly exercised his authority in this matter in accordance with FINRA Rules.

C. Young Failed to Exhaust Any Argument that He Could Have Sought Expungement Under Grounds Other Than Those Found in FINRA Rule 2080(b)(1)

As discussed above (*see supra* II.B.), Young's statement of claim seeks to expunge from CRD customer dispute information concerning a final adverse arbitration award under FINRA Rules 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) only. On appeal to Commission, Young asserts for the first time that he is entitled to access to FINRA's arbitration forum "pursuant to the principles of equity." Young Br. at 10. Young argues that FINRA Rule 2080(b)(1) does not provide the exclusive grounds for an arbitrator to grant expungement, and that FINRA can grant access to its forum under the general principles of equity. Young Br. at 5. The Commission need not decide this issue because Young failed to raise this argument in his statement of claim before FINRA.

Young sought expungement before FINRA in his statement of claim based only on the grounds in Rule 2080(b)(1). R. at 8-12. In other words, Young did not make a claim for expungement under grounds other than those found in FINRA Rule 2080(b)(1). Therefore, FINRA had no opportunity to decide, in the first instance, whether to permit the use of its arbitration forum as to expungement claims brought on any other grounds. As a result, Young failed to exhaust FINRA's administrative remedies, and the Commission should decline to

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Commission's approval order to which Young cites, however, concerns the second ground of the rule dealing with accepting a matter that would pose a health and safety risk, which ground neither party asserts is applicable here. Accordingly, the quoted language does not somehow limit the Director's authority exercised here under FINRA Rule 13203.

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review the issue. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *15 (finding that the applicants, who sought expungement based only on the grounds in Rule 2080(b)(1) in their statements of claim, failed to exhaust their administrative remedies when they argued on appeal that they were seeking expungement on grounds other than Rule 2080(b)(1))*; see also MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004) (explaining that the Commission's administrative exhaustion requirement "promotes the efficient resolution of . . . disputes" between FINRA and its members and "is in harmony with Congress's delegation of authority to [self-regulatory organizations] to settle, in the first instance, disputes relating to their operations"); *Stephen Robert Williams*, Exchange Act Release No. 89238, 2020 SEC LEXIS 2828, at *8 (July 7, 2020) (describing the Commission's exhaustion requirement). Thus, even if FINRA rules permitted the expungement of customer dispute information on grounds other than the three instances outlined in FINRA 2080(b)(1), that issue is not properly before the Commission because Young failed to raise the issue in the first instance before FINRA.

Ignoring that the Commission previously rejected this same argument in the *Consolidated Arbitration Applications* on failure to exhaust grounds, Young argues he was "not obligated to set forth specific names or titles for their alleged rights of recovery." Young Br. at 7. Instead, Young argues he was only required to file a statement of claim specifying the relevant facts and remedies requested. Young Br. at 7-8. Young's argument ignores that the facts and remedies he described in his statement of claim were based on seeking expungement pursuant to FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) on the grounds that the underlying customer allegations were "clearly erroneous and false." R. at 9. Based on Young's statement of claim, FINRA acted in accordance with its rules when the Director denied Young access to the

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FINRA's arbitration forum because Young's expungement request constituted a collateral attack on the final arbitration award.

D. Young's Collateral Attack on a Prior Adverse Award Is Not Appropriate for FINRA's Arbitration Forum No Matter Which Rules Are Applied

On appeal, Young requests that the Commission remand this matter to FINRA and direct FINRA to employ the rules "that were in place at the time of the filing of his Statement of Claim," rather than rule changes that were recently approved. Young Br. at 13. FINRA did, in fact, apply the rules that were in effect in May 2022 when the Director found Young's claim inappropriate pursuant to FINRA Rule 13203. In any event, Young's request ignores that no matter what rules are applied, Young is not entitled to a remand and the Commission should dismiss his application for review with prejudice. Under both the current and recently approved rules, Young's statement of claim constitutes an impermissible collateral attack on the prior adverse award that is not appropriate for FINRA's arbitration forum. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *10-14; *Order Granting Accelerated Approval of a Proposed Rule Change, to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information*, Exchange Act Release 97294, 88 Fed. Reg. 24282 (Apr. 19, 2023) (SR-FINRA-2022-024).

OS Received 06/20/2023

IV. CONCLUSION

FINRA acted in accordance with its rules and Commission precedent when the Director denied Young access to the FINRA's arbitration forum to collaterally attack a final adverse arbitration award. Young's arguments are a baseless attempt to circumvent established rules and precedent and, accordingly, the Commission should dismiss Young's application for review.

Respectfully submitted,

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June 20, 2023

OS Received 06/20/2023

CERTIFICATE OF SERVICE

I, Megan Rauch, certify that on this 20th day of June 2023, I caused a copy of the foregoing FINRA's Brief in Opposition to Application for Review, Administrative Proceeding File No. 3-19594, to be filed through the SEC's eFAP system on:

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OS Received 06/20/2023

CERTIFICATE OF COMPLIANCE

I, Megan Rauch, 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, Megan Rauch, 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 3,490 words.

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OS Received 06/20/2023