

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

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In the Matter of the Application of  
  
NORMAN THORN ROBERTSON  
  
For Review of Action Taken by  
  
FINRA  
  
File No. 3-21982

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**MR. ROBERTSON’S MOTION TO ADDUCE ADDITIONAL EVIDENCE**

**I. INTRODUCTION**

Applicant, Norman Thorn Robertson (“Mr. Robertson”), respectfully moves the Commission for leave to adduce additional evidence pursuant to SEC Rule of Practice 452. Through his Application for Review, Mr. Robertson seeks for the Commission to review FINRA’s decision to deny Mr. Robertson access to its arbitration forum to seek expungement of a regulatory disclosure. Mr. Robertson now requests to introduce as additional evidence in this case the Amended Statement of Claim (the “Amended SOC” attached as **Exhibit 1**), the FINRA Arbitration Award (the “Award” attached as **Exhibit 2**) from FINRA Case No. 20-02721, the court order granting expungement of the customer dispute disclosure (the “Court Order” attached as **Exhibit 3**), the letter from the Credentialing, Registration, Education, and Disclosure (“CRED”) department confirming expungement of the customer dispute disclosure (“CRED Letter” attached as **Exhibit 4**), examples of FINRA arbitration awards showing U5 termination disclosure expungements (the “U5 Awards” attached as **Exhibit 5**), and an instance of FINRA approving

expungement of a criminal disclosure from their Central Registration Depository (“CRD”) system (the “Criminal Expungement” attached as **Exhibit 6**) (collectively, the “Additional Evidence”). The Additional Evidence is material and necessary to complete the factual and procedural record related to Mr. Robertson’s Application for Review, as well as to supplement his arguments in his Brief. The Commission should permit the introduction of the Additional Evidence to the record of this case because it is highly material and there were reasonable grounds for failing to adduce this evidence previously. Mr. Robertson’ counsel has conferred with FINRA’s counsel, and FINRA has stated that it opposes this motion.

## **II. FACTUAL BACKGROUND**

On July 7, 1999, the NASD reported a regulatory disclosure to Mr. Robertson’s CRD and BrokerCheck records (together, “Registration Records”). The underlying facts related to the regulatory disclosure involved a complaint filed by a former customer of Mr. Robertson. The original customer complaint was reported as a customer dispute disclosure on Mr. Robertson’s Registration Records. Mr. Robertson sought expungement of this customer dispute disclosure in FINRA’s Arbitration Forum in FINRA Case No. 20-02721, and was awarded expungement. After being award expungement of the underlying customer dispute disclosure, Mr. Robertson submitted a Statement of Claim to the FINRA Office of Dispute Resolution requesting expungement of the regulatory disclosure (“the Occurrence”) from his CRD record<sup>1</sup>. On July 1, 2024, Mr. Robertson received notice (the “Forum Denial Notice”) from the Director of FINRA (“Director”) that FINRA denied Mr. Robertson access to its forum. The Forum Denial Notice stated that, “this matter is ineligible for expungement because Occurrence Number 144491 involves the same conduct that is the basis of a final regulatory action taken by a securities

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<sup>1</sup> This matter was assigned FINRA Case No. 24-01429.

regulator or self-regulatory organization.” *Id.* FINRA denied forum pursuant to FINRA Rules 12203 or 13203. *Id.*

On July 31, FINRA filed the Certified Record in this matter. Each of the Additional Evidence documents were excluded by FINRA from the Certified Record. On October 7, 2024, Mr. Robertson filed his Brief In Support of Application for Review ("Brief in Support"). As part of his argument in the Brief in Support, Mr. Robertson cited to the underlying customer dispute expungement matter, to FINRA's expungement process in general, and to the fact that FINRA allows expungements in matters beyond customer dispute disclosures. Mr. Robertson now seeks to adduce additional evidence to include in the record evidence of these issues that are critical to his argument.

### **III. ARGUMENT**

Pursuant to SEC Rule of Practice 452, the Commission may grant this Motion if Mr. Robertson shows that the evidence is material and there were reasonable grounds for failure to adduce such evidence previously. 17 CFR § 201.452. The Additional Evidence is material and there are reasonable grounds for not adducing the evidence previously. Thus, it should be admitted into evidence.

The Amended SOC (Exhibit 1) is material because it is the pleading that initiated Mr. Robertson's request for expungement of the customer dispute disclosure – the disclosure that had identical facts and that formed the basis for the regulatory disclosure that Mr. Robertson now seeks expungement of in this matter. Similarly, the Award (Exhibit 2), the Court Order (Exhibit 3), and the CRED Letter (Exhibit 4) each clarify the procedural history critical to this case along with the fact that a neutral arbitrator heard the merits of the underlying customer dispute disclosure and found that the allegations were clearly erroneous and/or factually impossible, awarded

expungement, FINRA was named as a party to the confirmation of the Award, and FINRA ultimately expunged that disclosure. The Additional Evidence therefore provides material background information and procedural history as well as evidence that FINRA previously allowed expungement of a disclosure regarding the very same conduct that it now denies Mr. Robertson access to its forum for, and supports the arguments made by Mr. Robertson in his Brief in Support.

The U5 Awards (Exhibit 5) and the Criminal Expungement (Exhibit 6) are material to address the Commission's and FINRA's anticipated concerns or arguments with respect to the relief sought in this case, and the authority in support thereof. In *DeMaria*,<sup>2</sup> the Commission stated that, because expungement of regulatory disclosures is not explicitly allowed by any FINRA Rule, unlike customer dispute expungements which are covered by FINRA Rule 2080, therefore regulatory disclosure expungement is not a service offered by FINRA. The U5 Awards and the Criminal Expungement are evidence that address this argument. Neither termination disclosure or criminal disclosure expungements are explicitly allowed under FINRA Rules, but this evidence shows that FINRA has nonetheless allowed expungements of these types of disclosures. As such, the U5 Awards and Criminal Expungement are material in that they support Mr. Robertson's argument that regulatory disclosure expungement is, or at least should be, allowed.

There were reasonable grounds not to adduce the Additional Evidence previously because this is the first opportunity where it was relevant to do so, and because the Additional Evidence was not included in the initial Certified Record as prepared by FINRA. Mr. Robertson has no control over what FINRA includes in the Certified Record.

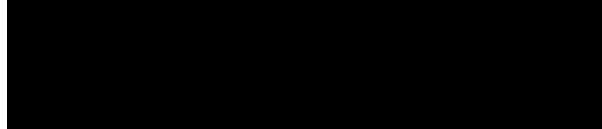
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<sup>2</sup> *Opinion of the Commission*, In the Matter of Michael Andrew DeMaria, Release No. 97511, at \*5-6 (May 16, 2023).

The Additional Evidence is material and there were reasonable grounds for not previously introducing the evidence. Mr. Robertson filed this Motion to Adduce promptly. Therefore, the Commission should grant Mr. Robertson's Motion.

Dated: October 9, 2024

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

I, Austin Davis, certify that on October 9, 2024, I caused a copy of the foregoing Opening Brief of the above listed Applicant, in the matter of the Application for Review of Norman Thorn Robertson, Administrative Proceeding File No. 3-21982, to be filed through the SEC's eFAP system and served by electronic mail on:

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**[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.

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