

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Ronald Moschetta

For Review of Action Taken by FINRA

File No. 3-22456

**FINRA'S MOTION TO DISMISS THE APPLICATION FOR REVIEW
AND TO STAY THE ISSUANCE OF A BRIEFING SCHEDULE**

Michael Garawski
Senior Vice President and
Director – Appellate Group

Andrew Love
Associate General Counsel

Jennifer Brooks
Associate General Counsel

FINRA
1700 K Street, NW
Washington, DC 20006
(202) 728-8083
jennifer.brooks@finra.org
nac.casefilings@finra.org

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**FINRA’S MOTION TO DISMISS THE APPLICATION FOR REVIEW
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I. INTRODUCTION

On February 18, 2025, Ronald Moschetta (“Moschetta”) filed an application requesting that the Securities and Exchange Commission review a more than 11-year-old FINRA disciplinary decision against him. RP 99-101.¹ On October 15, 2013, a FINRA Hearing Panel found that Moschetta failed to respond completely to FINRA’s multiple requests for information and barred him for this misconduct. RP 4, 10-12. Pursuant to SEC Rule of Practice 154, FINRA moves the Commission to dismiss this late-filed application for review.

First, Moschetta never appealed to FINRA’s National Adjudicatory Council (“NAC”), as FINRA rules permitted him to do. Instead, Moschetta waited more than 11 years after the Hearing Panel’s decision became final, before he improperly bypassed the NAC and filed this application directly with the Commission. RP 99-101. The Commission should dismiss this application because Moschetta failed to exhaust his administrative remedies before FINRA.

¹ “RP __” refers to the page numbers in the certified record that FINRA filed with the Commission on March 6, 2025.

Second, the time for Moschetta to attempt an appeal of the Hearing Panel decision passed more than 11 years ago, and he has not shown that extraordinary circumstances exist to excuse his delay. The Securities Exchange Act of 1934 (“Exchange Act”) and Commission rules provide that an aggrieved person applying for review must file such an application within 30 days after FINRA filed its determination with the Commission and the aggrieved person received notice of the determination. Moschetta has not shown the extraordinary circumstances necessary for the Commission to consider this otherwise untimely application for review.

Finally, Moschetta also addressed his application for review to FINRA Dispute Resolution Services (“DRS”) and requested “[e]xpungement under FINRA Rule 2080.” RP 99, 100. DRS denied Moschetta’s attempt to seek expungement in FINRA’s arbitration forum because FINRA does not offer arbitration services for requests to expunge information concerning regulatory actions. RP 15. FINRA rules permit its arbitration forum to hear only customer and industry disputes. Because FINRA does not offer the relevant service, the jurisdictional provision for a prohibition or limitation on access to a service under Section 19(d) of the Exchange Act does not apply. The Commission therefore does not have jurisdiction to consider Moschetta’s expungement request under Section 19(d).

For these reasons, the Commission should dismiss the application.²

² FINRA requests, pursuant to Commission Rule of Practice 161, that the Commission stay the issuance of a briefing schedule in this matter while this motion is pending. *See* 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive arguments that Moschetta’s appeal should be dismissed for failure to exhaust administrative remedies, untimeliness, and lack of jurisdiction before it reaches the underlying substance of his appeal.

II. FACTUAL BACKGROUND

A. Moschetta's Employment Background

From 2001 until 2009, Moschetta was registered with former FINRA member firm Strasbourger Pearson Tulcin Wolff Inc. ("the Firm"). RP 5, 19-20. During part of this time, he was the Firm's Chief Executive Officer and Chairman. RP 5, 30. In July 2009, the Firm was expelled from FINRA membership for failing to pay fines and costs. RP 5.

From September 2009 through September 2010, Moschetta was registered with another FINRA member. RP 5, 19. Moschetta has not been associated with a FINRA member since September 2010.³ RP 19.

B. The 2013 Hearing Panel Decision

In 2010, FINRA began investigating Moschetta following a customer complaint about potential unauthorized transactions. RP 6. FINRA's investigation later expanded into whether Moschetta misused \$3 million of investor funds. *Id.* As part of its investigation into potential misconduct, FINRA sent Moschetta requests for information and documents. RP 6-10. While Moschetta provided testimony and some documents, he failed to respond completely to two information requests. RP 7-10.

On September 5, 2012, FINRA's Department of Enforcement filed a complaint against Moschetta. RP 5 n.1. The complaint alleged that Moschetta failed to respond completely to FINRA's requests for information, in violation of FINRA Rules 8210 and 2010. RP 5.

³ In addition to the 2013 Hearing Panel decision barring him, Moschetta has been the subject of other FINRA proceedings that resulted in his suspension indefinitely from FINRA membership. On September 15, 2014, and March 30, 2015, FINRA suspended Moschetta pursuant to FINRA By-Laws and FINRA Rule 9554 for his failure to comply with an arbitration award or settlement or to respond "satisfactorily" to a FINRA request to provide information concerning the status of his compliance. RP 69-73.

After a hearing, during which Moschetta participated, a FINRA Hearing Panel concluded that Moschetta violated FINRA Rules 8210 and 2010 by failing to provide complete responses to FINRA’s multiple requests for documents.⁴ RP 10-11. For his misconduct, the Hearing Panel barred Moschetta from associating with any member firm in any capacity. RP 11-12. The Hearing Panel issued its decision on October 15, 2013. RP 1, 3, 4.

Also on October 15, 2013, the Hearing Officer issued a Notice of Hearing Panel Decision (“Notice”) that accompanied the decision. RP 1-3. The Notice informed Moschetta that “[t]his Decision will become the final decision of [FINRA] unless either a party appeals the Decision to the National Adjudicatory Council (‘NAC’), or the NAC calls the Decision for review.” RP 1. The Notice further informed Moschetta that, to appeal the decision, he must file a notice of appeal “within 25 days of service of this Decision.” RP 1. The Notice also stated that the NAC may call the decision for review within 45 days after service of the decision. RP 3. The Hearing Officer noted that both the decision and Notice were sent to Moschetta by overnight mail and email. RP 3, 13.

Moschetta never filed an appeal with the NAC nor did the NAC call the case for review. By operation of FINRA’s rules, the Hearing Panel’s decision became FINRA’s final disciplinary action on December 2, 2013 (45 days after service and no call for review), and Moschetta’s bar became effective on that date. *See* FINRA Rules 9268(e), 9311(a), 9312(a); RP 67-69.

⁴ “FINRA Rule 8210 is the principal means by which FINRA obtains information from its member firms and their associated persons for the purpose of an investigation, complaint, examination, or proceeding.” *Wilfredo Felix*, Exchange Act Release No. 101733, 2024 SEC LEXIS 3309, at *7-8 (Nov. 25, 2024). Rule 8210 is “‘unequivocal’ in its requirement that no member or person shall fail to provide information or testimony in response to a FINRA request under” the rule. *Id.* at *8. Because Moschetta violated Rule 8210, the Hearing Panel also found that he violated FINRA Rule 2010. *See id.* (observing that the violation of another Commission or FINRA rule constitutes a violation of FINRA Rule 2010).

Over 11 years later, on February 18, 2025, Moschetta filed this application for review. RP 99-101. Moschetta requests “a review of the permanent bar imposed on my record in 2013 by FINRA.” RP 99.

C. Moschetta’s Request for Expungement and DRS’ Denial of Forum

Moschetta also addressed his application for review to DRS. RP 99. Specifically, and in addition to Moschetta’s direct challenge of the 2013 Hearing Panel decision, Moschetta sought to set aside the bar through “[e]xpungement under FINRA Rule 2080.” RP 99, 100. He sought expungement of the regulatory action information based on his assertion that “[t]he allegations were factually incorrect and unsupported by prior audits,” and “[t]here is no evidence of misconduct or investor harm.” RP 100.

The Director of DRS (“Director”) reviewed Moschetta’s expungement request and denied it on February 27, 2025. RP 15. The Director determined that Moschetta’s claim was not eligible for arbitration because FINRA rules do not contemplate expungement of regulatory action information. RP 15; *see* RP 67-69.

III. ARGUMENT

Pursuant to well-established precedent, the Commission should dismiss Moschetta’s application for review. First, Moschetta did not properly exhaust his administrative remedies before FINRA by first appealing the 2013 Hearing Panel decision to the NAC. Second, Moschetta’s application for review is untimely. Moschetta has not shown that extraordinary circumstances exist to warrant extending the long-past appeal deadline. And finally, relief that Moschetta seeks from the Commission, expungement of a regulatory action, is not available to him because FINRA does not offer that service; therefore, the Commission lacks a statutory basis to exercise jurisdiction.

A. Moschetta Failed to Exhaust His Administrative Remedies

It is undisputed that Moschetta had notice of the Hearing Panel's 2013 decision against him. Once the Hearing Officer issued the decision against Moschetta, FINRA rules afforded Moschetta only one administrative remedy. Pursuant to FINRA Rule 9311(a), Moschetta could have filed "a written notice of appeal [to the NAC] within 25 days after service" of the decision. Moschetta elected not to appeal to the NAC. Instead, he ignored FINRA procedural rules, bypassed the NAC, waited more than 11 years, and then appealed the Hearing Panel's decision straight to the Commission.

The Commission has made clear that it "will not review the action of a self-regulatory organization ('SRO') like FINRA if the applicant failed to exhaust the SRO's administrative remedies." *Shlomo Sharbat*, Exchange Act Release No. 93757, 2021 SEC LEXIS 3647, at *8 (Dec. 13, 2021); *see also Edward J. Jakubik*, Exchange Act Release No. 61541, 2010 SEC LEXIS 1014, at *13 (Feb. 18, 2010) (stating the Commission does "not consider an application for review if the applicant failed to follow [FINRA] procedures" and dismissing application for review of a default decision barring the applicant).

In dismissing the appeal of a different respondent who, like Moschetta, failed to exhaust his administrative remedies, the Commission stressed the importance of the administrative-exhaustion requirement. *Sharbat*, 2021 SEC LEXIS 3647, at *8. Administrative exhaustion "promotes the efficient resolution of disciplinary disputes between SROs and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations." *Id.* (quoting *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004)). That requirement "promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more

effectively conduct their review.” *Id.* If Moschetta was “free to bring [his] SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised.” *See id.*

Moreover, FINRA rules do not permit an aggrieved respondent like Moschetta to appeal directly to the Commission from a Hearing Panel decision that has become FINRA’s “final disciplinary action” only because of the respondent’s failure to appeal it to the NAC. *Jakubik*, 2010 SEC LEXIS 1014, at *13. To permit an aggrieved respondent to use such a basis to bypass the NAC “would fly in the face of the long-standing Commission precedent” that requires the exhaustion of administrative remedies. *Florence Sarah Pollard*, Exchange Act Release No. 55978, 2007 SEC LEXIS 1430 at *6 (June 28, 2007).

In sum, Moschetta failed to exhaust his administrative remedies and the Commission should dismiss this appeal. In doing so, the Commission should refrain from addressing any of the merits-based arguments that Moschetta advances. *See Sharbat*, 2021 SEC LEXIS 3647, at *16-17 (declining to reach respondent’s arguments related to Hearing Officer’s decision because respondent “failed to exhaust his administrative remedies before FINRA and his appeal is untimely”); *see also Jakubik*, 2010 SEC LEXIS 1014, at *16-17 (rejecting applicant’s challenges to the decision in the underlying proceeding when dismissing the application for review for failure to exhaust administrative remedies); *Lance E. Van Alstyne*, 53 S.E.C. 1093, 1100 n.20 (1998) (“Because we lack jurisdiction to review Van Alstyne’s application for review, we do not consider the merits of the allegations concerning rule violations.”).

B. Moschetta's Application for Review Is Untimely

Even if Moschetta had exhausted his administrative remedies, the Commission should nonetheless dismiss this appeal on the separate ground that it is untimely.

Under Section 19(d)(2) of the Exchange Act, a person aggrieved by a FINRA action reviewable by the Commission may file an appeal “within 30 days” after the date the notice of the action “was filed with [the Commission] and received by such aggrieved person, or within such longer period as [the Commission] may determine.” 15 U.S.C. § 78s(d)(2). SEC Rule of Practice 420 is the “exclusive remedy” for seeking an extension of the 30-day appeal period. 17 C.F.R. § 201.420(b). That rule provides that the Commission “will not extend this 30-day period, absent a showing of extraordinary circumstances.” *Id.*; see *Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 SEC LEXIS 1153, at *7 & n.9 (May 20, 2008).

Here, Moschetta filed his appeal with the Commission on February 18, 2025, more than 11 years after FINRA properly served the Hearing Panel decision and Notice of that decision in accordance with FINRA rules in October 2013. RP 1, 13, 99-101; see FINRA Rule 9268. In his application for review, Moschetta acknowledges that FINRA barred him in 2013, resulting from a disciplinary proceeding in which he participated, and he does not dispute that he received a copy of the Hearing Panel decision or Notice of the decision. RP 99-100. Because Moschetta did not appeal the decision to the NAC within 25 days of service, and the NAC did not call the case for review within 45 days, the Hearing Panel decision became FINRA's final disciplinary action on December 2, 2013. RP 69; see *supra* Part II.B. Accordingly, the deadline for Moschetta to file an appeal with the Commission was in January 2014. See 17 C.F.R. § 201.420(b). Moschetta did not file his application for review until more than 11 years later. RP 99. Accordingly, his application is untimely.

In addition, Moschetta’s application for review provides no explanation for his lateness, much less a showing of “extraordinary circumstances.” The Commission has construed the “extraordinary circumstances exception to the 30-day filing deadline . . . narrowly . . . and applied [it] only in limited circumstances, because strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.” *Nancy Kimball Mellon*, Exchange Act Release No. 97623, 2023 SEC LEXIS 1440, at *5-6, 7 (May 31, 2023) (dismissing an untimely application for review); *see also PennMont Sec.*, Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at *18-19 (Apr. 23, 2010) (explaining “an extraordinary circumstance” under Rule of Practice 420(b) may be shown when “the reason for the failure timely to file was beyond the control of the applicant” but applicant nonetheless “remains under an obligation to proceed promptly in pursuing appellate recourse”). Moschetta’s application meets none of these requirements.⁵

The Commission has routinely rejected applications for review when the applicants did not act promptly to pursue their appeals. *See, e.g., Sandeep Varma*, Exchange Act Release No. 98102, 2023 SEC LEXIS 2001, at *7 (Aug. 10, 2023) (dismissing application for review that was untimely filed three years late); *McBarron Cap. LLC*, Exchange Act Release No. 81785, 2017 SEC LEXIS 3112, at *5-7 (Sept. 29, 2017) (dismissing an application for review as untimely when it was filed almost one month late and the applicant provided no explanation for its lateness); *Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 SEC LEXIS 1403, at *18-20 (May 9, 2017) (dismissing an untimely application for review when applicant never sought an extension of the time to file and provided no explanation for his late filing); *Rogelio*

⁵ To the extent that Moschetta suggests that his status as a pro se respondent somehow contributed to his failure to timely file an appeal (RP 100), Moschetta nonetheless did not proceed promptly in his pursuit of an appeal by waiting more than 11 years and did not exhaust his administrative remedies by first appealing timely to the NAC.

Guevara, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, at *8 (June 22, 2016) (dismissing an untimely application for review when applicant claimed not to have received timely notice from FINRA because he failed to update his CRD address); *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 SEC LEXIS 464, at *17 (Feb. 8, 2016) (dismissing an untimely application for review when applicant never sought an extension).

Thus, the Commission should dismiss Moschetta's application for review because it is untimely, and he failed to demonstrate that extraordinary circumstances exist to justify permitting the late appeal. *See Mellon*, 2023 SEC LEXIS 1440, at *8 (refusing to accept application for review filed more than two months after final FINRA action); *Sharbat*, 2021 SEC LEXIS 3647, at *12, 15 (refusing to accept application for review filed more than seven years after final FINRA action); *Jakubik*, 2010 SEC LEXIS 1014, at *15-17 (refusing to accept an application for review filed five years after the final NASD action); *Van Alstyne*, 53 S.E.C. at 1099 (refusing to accept an application for review filed five months after notice of NASD decision).

C. The Commission Does Not Have Jurisdiction to Review the Expungement Request

The Commission should dismiss Moschetta's application for review concerning his request for expungement of FINRA's 2013 disciplinary decision because the Commission lacks a statutory basis to exercise jurisdiction. The Commission's authority to review FINRA actions is governed by Section 19(d) of the Exchange Act, which grants the Commission authority to review only four classes of actions by an SRO. 15 U.S.C. § 78s(d); *Allen Douglas Sec., Inc.*, 57 S.E.C. 950, 954-55 (2004). Specifically, Section 19(d) authorizes Commission review of an SRO action only if that action: (1) imposes any final disciplinary sanction on any member (or person associated with a member) of the SRO or participant therein; (2) denies membership or

participation to any applicant; (3) prohibits or limits any person in respect to access to services offered by such organization or member thereof; or (4) bars any person from becoming associated with a member. 15 U.S.C. § 78s(d)(1)-(2).

Moschetta's request to expunge a regulatory action that barred him does not fall within one of Section 19(d)'s four jurisdictional grounds.⁶ FINRA's determination that Moschetta's claim is not eligible for arbitration did not impose a disciplinary sanction on Moschetta, deny him membership or participation, or bar him from associating with a member. Moreover, the eligibility determination did not prohibit or limit Moschetta in accessing a service offered by FINRA. Here, the relevant service that Moschetta requested is arbitration for a claim seeking expungement of regulatory action information. RP 99-100. FINRA does not offer such a service and, as a result, the jurisdictional provision for a prohibition or limitation on access to a service does not apply. *Michael Andrew DeMaria*, Exchange Act Release No. 97511, 2023 SEC LEXIS 1271, at *7 (May 16, 2023); *see Varma*, 2023 SEC LEXIS 2001, at *4 ("[W]e have long held that challenges to information maintained by FINRA in the CRD or BrokerCheck do not provide a basis for our review under Section 19(d)."); *Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 SEC LEXIS 2670, at *8 (July 7, 2020) (explaining that Section 19(d) "does not authorize review where the SRO has not prohibited or limited the applicant's access to a service that it offers, or where the applicant seeks review of a purported denial of access to services that the SRO does not offer"). Because none of the four possible statutory bases for jurisdiction apply to Moschetta's request for expungement, the Commission must deny Moschetta's request for relief. *See Allen Douglas Sec.*, 57 S.E.C. at 954-55.

⁶ While the Commission would have jurisdiction under Section 19(d) to review FINRA's disciplinary decision and resulting bar had Moschetta exhausted his administrative remedies available under FINRA rules, and then had appealed to the Commission timely, he did neither here. *See supra* Parts III.A & .B.

FINRA rules authorize the arbitration forum to hear only customer and industry disputes. *See* FINRA Rules 12200, 12201, 13200, 13201(a), 13202 (providing for arbitration of certain customer and industry disputes); FINRA Rule 2080 (providing a mechanism to expunge, under narrow circumstances, customer dispute information from CRD). While Moschetta asks for expungement pursuant to FINRA Rule 2080, Moschetta's claim qualifies as neither a customer nor an industry dispute because it pertains to a FINRA regulatory action. RP 4-13, 67-69, 99-100. The arbitration forum is not authorized to consider other matters, such as the resolution of claims related to regulatory actions. *See* FINRA Rules 12101(a), 13101(a) (providing that FINRA's Codes of Arbitration Procedure for Customer and Industry Disputes apply only to disputes eligible for arbitration under FINRA's rules).

Indeed, FINRA's arbitration forum not only lacks authorization to consider requests for expungement of regulatory action information, but doing so would violate FINRA's statutory obligation to collect and retain such information. *See DeMaria*, 2023 SEC LEXIS 1271, at *9 & n.31 (citing John Nachmann, *Limitations on the Types of Disclosure Events That May Be Expunged from the Central Registration Depository Through Arbitration*, The Neutral Corner, Vol. 4, at 8-9 (2013), <https://www.finra.org/sites/default/files/Publication/p410646.pdf> (specifying that regulatory information is "ineligible for expungement from the CRD system through arbitration")). FINRA is required to collect and retain information concerning regulatory and disciplinary actions against its members and associated persons. 15 U.S.C. § 78o-3(i); *see* FINRA Rule 8312(b)(2)(A), (c)(1)(A); *Buscetto v. FINRA*, No. 11-cv-6308 (JAP), 2012 U.S. Dist. LEXIS 65116, at *8 (D.N.J. May 9, 2012) (observing that "FINRA has a duty under the Exchange Act" to retain "'registration information' about current and former securities representatives, which includes information relating to [an associated person's] disciplinary

record”). If FINRA were to offer its arbitration service to expunge such information, it would potentially violate its duties under the Exchange Act. *See Loftus v. FINRA*, No. 20-cv-7290 (SHS), 2021 U.S. Dist. LEXIS 18823, at *11 (S.D.N.Y. Feb. 1, 2021); *Buscetto*, 2012 U.S. Dist. LEXIS 65116, at *8.

In essence, Moschetta seeks to collaterally challenge FINRA’s 2013 disciplinary action by framing the challenge as an expungement claim. The Commission should follow its precedent addressing jurisdiction, as well as improper collateral attacks, and reject Moschetta’s attempt to reframe his improper collateral challenge as a viable arbitration claim. *See DeMaria*, 2023 SEC LEXIS 1271, at *11. Because Moschetta’s expungement claim targets a regulatory action—and FINRA’s arbitration forum does not consider such claims—the Commission should dismiss the application for lack of jurisdiction. *See Varma*, 2023 SEC LEXIS 2001, at *4 n.10; *DeMaria*, 2023 SEC LEXIS 1271, at *11; *see also John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 SEC LEXIS 4189, at *9-10, 20 (Oct. 22, 2019) (dismissing the application for review when the applicant could not establish that FINRA prohibited or limited his access to a service it offers).

IV. CONCLUSION

Moschetta’s application for review should be dismissed because he chose not to exhaust FINRA’s administrative remedies available to him and his appeal is untimely. In addition, because FINRA does not offer the service Moschetta seeks, the Commission should dismiss his application for review for lack of jurisdiction.

While the Commission resolves the preliminary issues raised by this motion, it should stay the issuance of a briefing schedule.

Respectfully submitted,

/s/ Jennifer Brooks

Jennifer Brooks
Associate General Counsel
FINRA
1700 K Street, NW
Washington, DC 20006
(202) 728-8083
jennifer.brooks@finra.org
nac.casefilings@finra.org

Dated: March 25, 2025

CERTIFICATE OF COMPLIANCE

I, Jennifer Brooks, certify that:

- (1) FINRA's Motion to Dismiss the Application for Review and to Stay the Issuance of a Briefing Schedule complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information; and
- (2) FINRA's Motion to Dismiss the Application for Review and to Stay the Issuance of a Briefing Schedule complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 3,858 words.

/s/ Jennifer Brooks
Jennifer Brooks
Associate General Counsel
FINRA – Office of General Counsel
1700 K Street, NW
Washington, DC 20006
(202) 728-8083
jennifer.brooks@finra.org
nac.casefilings@finra.org


Dated: March 25, 2025

CERTIFICATE OF SERVICE

I, Jennifer Brooks, certify that on this 25th day of March 2025, I caused a copy of the foregoing Motion to Dismiss the Application for Review and to Stay the Issuance of a Briefing Schedule in the matter of Application for Review of Ronald Moschetta, Administrative Proceeding No. 3-22456 to be served via eFAP on:

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

and by email on:

Ronald Moschetta


/s/ Jennifer Brooks
Jennifer Brooks
Associate General Counsel
FINRA
1700 K Street, NW
Washington, DC 20006
(202) 728-8083
jennifer.brooks@finra.org
nac.casefilings@finra.org