SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 87384 / October 22, 2019

Admin. Proc. File No. 3-18882

In the Matter of the Application of

JOHN BOONE KINCAID III

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Jurisdiction to Review Association Action

Associated person of FINRA member firm filed an application for review of FINRA action giving effect to arbitrator's award. *Held*, application for review is dismissed.

APPEARANCES:

Erica J. Harris, AdvisorLaw LLC, for John Boone Kincaid III.

Alan Lawhead and *Jennifer Brooks* for the Financial Industry Regulatory Authority, Inc.

Appeal filed: November 2, 2018
Last brief received: February 22, 2019

John Boone Kincaid III filed a claim in FINRA's arbitration forum seeking to expunge two customer complaints from his Central Registration Depository records. The arbitrator entered an award denying expungement and closing Kincaid's case. Kincaid now seeks our intervention by filing an application for review that asks us to order a new FINRA arbitration proceeding. We dismiss the application for review because we lack jurisdiction over Kincaid's application under Section 19(d) of the Securities Exchange Act of 1934.[1]

[1] *See* 15 U.S.C. § 78s(d).

I. Background

Kincaid has been registered with FINRA as a registered representative of Cetera Advisors, LLC, since July 2007. He was previously a registered representative of Legacy Financial Services, Inc., a now-terminated FINRA member firm, between April 2000 and July 2007. In September 2007 and June 2008, two married couples who were Kincaid's customers made complaints about Kincaid's management of their accounts at Legacy. One complaint alleged that he engaged in an unauthorized transaction and caused other "transfer of account" problems; the other complaint alleged that he was "not forthright in selling" suitable securities.

These complaints were reported in FINRA's Central Registration Depository ("CRD") and BrokerCheck.[2] FINRA's rules permit representatives to seek expungement in its arbitration forum of certain information reported in CRD and BrokerCheck and set forth the procedures arbitrators must follow before issuing an award granting expungement relief.[3]

In January 2018, nearly ten years after the June 2008 complaint, Kincaid filed a statement of claim in FINRA's arbitration forum against Cetera and Legacy requesting expungement of the customer complaints. FINRA's Office of Dispute Resolution ("ODR") accepted the claim for arbitration and took certain procedural steps, such as preparing and sending the parties a list of potential arbitrators and scheduling a prehearing conference.[4] Before the scheduled prehearing

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[2] BrokerCheck is a free online tool, available at http://brokercheck.finra.org, that enables public investors to research the professional backgrounds of current and former FINRA-registered broker-dealers and their representatives, as well as investment adviser firms and their representatives. The information contained in BrokerCheck about broker-dealers and their representatives is derived from FINRA's CRD system, the securities industry's online registration and licensing database.

[3] *See* FINRA Rules 2080, 12805, 13805; *Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure to Establish Procedures for Arbitrators to Follow When Considering Requests for Expungement Relief*, Exchange Act Release No. 58886, 73 Fed. Reg. 66,086, 2008 WL 4808789 (Nov. 6, 2008). We suggest no view here about the outcome in any pending proceedings challenging action by the Director of FINRA's Office of Dispute Resolution denying claims requesting expungement of prior adverse arbitration awards as ineligible for arbitration under FINRA's rules. *See, e.g.*, *Bart Steven Kaplow*, Exchange Act Release No. 85509, 2019 WL 1489709, at *1 (April 4, 2019).

[4] *See, e.g.*, FINRA Rule 13403 (process for generating and sending lists of potential arbitrators); FINRA Rule 13500(a) ("After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel . . . ."). According to ODR's Arbitrator's Guide, its staff "analyze and prepare claims for service; generate and send arbitrator lists to the parties and consolidate them when the parties return them; contact arbitrators to serve on cases; and schedule prehearing conferences and hearings." FINRA, *Arbitrator's Guide* 11 (Mar. 2018 ed.).

conference, Kincaid, Cetera, and Legacy submitted to FINRA a joint stipulation agreeing, among other things, that the firms would "not oppose [Kincaid's] request for expungement."

On July 5, 2018, a FINRA arbitrator held a prehearing conference at which the parties "accepted" that the arbitrator would serve in that role. The arbitrator then issued an order scheduling a telephonic hearing on October 15, 2018, but noted that "[m]ore than six years has elapsed since" the two complaints Kincaid sought to expunge. He gave Kincaid the opportunity by August 27, 2018—seven weeks before the hearing—to "file a brief attempting to show why the Arbitrator should not dismiss this case under FINRA Rule 13206(a)." That rule provides a six-year time limit on the submission of claims in arbitration.[5] FINRA states that "[t]here is no evidence that Kincaid filed any such brief," and Kincaid does not suggest that he did.

On October 2, 2018, which was more than five weeks after the deadline for filing a brief about whether Kincaid's arbitration claims should be dismissed, the arbitrator issued a written award denying Kincaid's request for expungement based on the "pleadings and other materials filed by the parties." FINRA's Arbitrator's Guide explained that the process for issuing awards is that "FINRA staff provides the panel with an Award Information Sheet" to be completed by the panel, on which basis the staff "will prepare an award" for the panel's review and approval.[6] It provided further that "[a]rbitrators should review carefully the award to ensure that it is accurate, and that all issues have been clearly decided before signing it." And it explained that "[a]ll awards rendered are final and not subject to review or appeal within FINRA."[7] Consistent with the Arbitrator's Guide, Kincaid asserts that after the arbitrator issued the award his counsel spoke with a FINRA case administrator who told him that Kincaid "had no options for relief from FINRA moving forward," "ratified" the award, and "closed Mr. Kincaid's case."

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[5] *See* FINRA Rule 13206(a) ("No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule.").

[6] *Arbitrator's Guide* at 64; *see also* FINRA, *Award Information Sheet* (Oct. 1, 2018), http://www.finra.org/sites/default/files/award-information-sheet.pdf. *See generally* Narielle Robinson, *All in the Details: Award Information Sheet*, THE NEUTRAL CORNER: THE NEWSLETTER FOR FINRA NEUTRALS 5 (2016), https://www.finra.org/sites/default/files/The_Neutral_Corner_Volume_2_2016.pdf (explaining that "[r]endering an award includes: post-hearing deliberations; the chairperson's completion and submission of the Award Information Sheet (AIS) to FINRA; staff preparation of the award with information from the AIS; panel review and execution of the award; and FINRA's service of the award on the parties, which happens simultaneously with case closure.").

[7] *Arbitrator's Guide* at 64.

On October 31, 2018, Kincaid filed an application for review with the Commission. We directed the parties to address whether we have jurisdiction to review Kincaid's application.[8]

II. Analysis

Action by a self-regulatory organization ("SRO") such as FINRA "is not reviewable merely because it adversely affects the applicant."[9] Rather, Exchange Act Section 19(d)(2) governs our jurisdiction to review SRO action.[10] Section 19(d)(2) authorizes us to review such actions only in specific circumstances, including, as relevant here, if that action "prohibits or limits any person in respect to access to services offered by [the SRO]."[11] Kincaid contends that his appeal fits within that provision because FINRA limited his access to one of its services—arbitration—by giving effect to an arbitration award that he claims violated FINRA rules.[12]

But Kincaid has not identified any way in which FINRA limited his access to its arbitration service, nor does he provide any other basis for our jurisdiction to review FINRA's

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[8] *John Boone Kincaid III*, Exchange Act Release No. 84774, 2018 WL 6445201, at *1 (Dec. 10, 2018).

[9] *Sky Capital LLC*, Exchange Act Release No. 55828, 2007 WL 1559228, at *2, 3 (May 30, 2007) (holding that a FINRA examination that has not "resulted to date in any enforcement action" is not "disciplinary action, let alone a final sanction," for purposes of Section 19(d)).

[10] 15 U.S.C. § 78s(d)(2).

[11] *Id.* The Exchange Act provides three other jurisdictional bases for Commission review of an SRO action: if the action imposes a final disciplinary sanction on a member of the SRO or an associated person; if it denies membership or participation to the applicant; or if it bars a person from becoming associated with a member. *See id.* Kincaid expressly denies that any of these alternate bases apply here. *See Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 WL 3853760, at *3 n.18 (July 15, 2016) ("We will not exercise jurisdiction on a basis [applicants] disclaim."), *aff'd sub nom. Chicago Bd. Options Exch. v. SEC*, 889 F.3d 837 (7th Cir. 2018); *accord Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 809 n.6 (1986) ("Jurisdiction may not be sustained on a theory that the plaintiff has not advanced.").

[12] Kincaid appears to argue that the arbitrator violated FINRA rules in two ways: (1) by deciding his expungement request on the papers and closing his case without holding the hearing Kincaid requested and the arbitrator scheduled; and (2) by denying his claims on the merits rather than dismissing them without prejudice to renewal in court. In light of our disposition, we express no view on the arbitrator's application of FINRA's rules here.

actions.[13] Rather, as courts have long explained, Kincaid's recourse for challenging an allegedly erroneous arbitration award would be by seeking to vacate, modify, or correct the award in court through the Federal Arbitration Act.

A. FINRA did not limit Kincaid's access to its arbitration service.

FINRA accepted Kincaid's statement of claim and allowed him to access its arbitration forum. Kincaid, through his counsel, actively participated in that service by taking part in the arbitrator's selection, filing stipulations before the arbitrator, and attending the telephonic prehearing conference. When the arbitrator offered Kincaid the opportunity to submit a brief explaining why the expungement request should not be dismissed as untimely, Kincaid's counsel failed to respond by the deadline the arbitrator set. The arbitrator then issued an award denying the request for expungement and closing the proceeding before the scheduled hearing. Although the arbitrator's ruling was adverse to Kincaid, FINRA did not limit Kincaid's access to its arbitration forum but rather provided Kincaid with access to that service.

Kincaid argues that we have jurisdiction because FINRA limited his access to its arbitration service by not ensuring that the arbitrator's decision complied with FINRA's rules before closing his case. But Kincaid has not established that FINRA offers a service whereby it reviews an arbitrator's award to ensure that the process complied with its rules. As discussed above, FINRA has only a ministerial role in preparing and serving the awards that arbitrators render.[14] Indeed, FINRA's rules vest arbitrators with the sole authority to interpret and apply FINRA's arbitration rules—specifying that "[s]uch interpretations are final and binding,"[15] and that an arbitrator's award is "not subject to review or appeal" by FINRA.[16] Kincaid thus faults FINRA for failing to provide access to a service it does not "offer[]."[17]

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[13] We have explained that "[a] denial of access involves a denial or limitation of 'the applicant's ability to utilize one of the fundamentally important services offered by the SRO.'" *Eric David Wanger*, Exchange Act Release No. 79008, 2016 WL 5571629, at *4 (Sept. 30, 2016). We express no opinion here on whether FINRA's arbitration forum is "fundamentally important," because, even if it is, Kincaid has not shown that FINRA prohibited or limited his access to that service. *Id*. Nor do we suggest any view here about the outcome in any pending proceedings in which the question of whether FINRA arbitration is a "fundamentally important service" arises. *See, e.g., Kaplow*, 2019 WL 1489709.

[14] *See supra* notes 6-7 and accompanying text.

[15] FINRA Rule 13413 ("The panel has authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties.").

[16] *See* FINRA Rule 13904(b) ("Unless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal."); *see also Eric M. Diehm*, Exchange Act Release No. 33478, 1994 WL 17049, at *2 (Jan. 14, 1994) (stating that

(*cont'd*…)

B. Kincaid did not pursue the available path to set aside an arbitration award.

FINRA Rule 13904(b) provides that arbitration awards are not reviewable "[u]nless the applicable law directs otherwise." The applicable law provided Kincaid with one path for relief: as courts have long explained, "the exclusive remedy for challenging acts that taint an arbitration award" rendered by a FINRA arbitrator is to move to vacate, modify, or correct the award in court under the Federal Arbitration Act ("FAA").[18] But Kincaid did not pursue this remedy.

(…*cont'd*)
NASD (FINRA's predecessor) "d[id] not have the power to review its own arbitration awards"); *cf. John G. Pearce*, Exchange Act Release No. 37217, 1996 WL 254675, at *2 (May 14, 1996) (rejecting applicant's attack on "the fairness of the underlying arbitration proceeding" because permitting "a party dissatisfied with an arbitral award to attack it collaterally for legal flaws" "would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote").

[17] 15 U.S.C. § 78s(d)(1); *see also Wanger*, 2016 WL 5571629, at *4 (finding that applicant failed to establish the existence of jurisdiction where he "d[id] not identify any services to which he ha[d] been denied access by virtue of" the challenged action).

[18] *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 908 (6th Cir. 2000) (finding tort and contract claims to be "impermissible collateral attack[s]" on an award entered in an NASD arbitration); *see also* 9 U.S.C. § 9 (requiring a court to confirm an award "unless [it] is vacated, modified, or corrected as prescribed in sections 10 and 11"); *id.* §§ 10(a), (b) (specifying the grounds on which "the United States court in and for the district wherein the award was made" "may" vacate an arbitration award and, under certain circumstances, "direct a rehearing by the arbitrators"); *id*. § 11 (specifying the grounds for modifying or correcting an award).

Instead, Kincaid now attempts to sidestep the FAA—and the high standard for prevailing on a motion to vacate[19]—by seeking our review of the arbitration decision. He does so by claiming that the FAA's requirements do not apply here because "his appeal to the Commission is not based on the arbitrator's findings, but rather on FINRA's refusal to follow and enforce its own rules" by giving effect to an award that he says violates those rules. And because courts lack the authority to order FINRA to enforce its rules, he argues, a challenge to the award "would have failed entirely in a court proceeding." Kincaid does not explain why that necessarily would be the result in court if he filed a motion to vacate or why the FAA would not apply. In any case, the alleged importance or necessity of our review does not confer jurisdiction where we have determined Congress has not authorized it: we will not review a FINRA action simply because an applicant claims "extraordinary circumstances" or "compelling reasons."[20]

Kincaid argues in his reply brief that a motion to vacate would be unnecessary had the arbitrator correctly applied FINRA's arbitration rules governing expungement relief because the arbitrator would have simply dismissed his claim without prejudice—and thereby "not preclude [him] from seeking expungement in other jurisdictions." We take no position on whether the arbitrator correctly applied those rules or Kincaid's interpretation of them.[21] But there is no merit to Kincaid's suggestion that because he "would not have to" move to vacate an award correctly applying those rules, he should not be required to challenge an award erroneously applying those rules through a motion to vacate. We similarly reject Kincaid's argument that we should accept his petition because a court would not "take [his] case prior to him exhausting all administrative remedies." As explained above, the FAA governs any relief to which he would be entitled and there are no administrative remedies to exhaust.

C. Kincaid's remaining arguments do not establish our jurisdiction.

Kincaid also urges us to exercise jurisdiction based on our SRO oversight role and several statutory authorities under which he claims we may require FINRA to "enforce its own

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[19] *See, e.g.*, *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 932 (10th Cir. 2001) (explaining that the FAA's "highly deferential standard" of review of arbitration awards "has been described as 'among the narrowest known to law'"); *Barnes v. Logan*, 122 F.3d 820, 821–22 (9th Cir. 1997) (stating that judicial review of an arbitrator's decision "'is both limited and highly deferential'" and that "an award must be confirmed if the arbitrators even arguably construed or applied the contract and acted within the scope of their authority") (quoting *Sheet Metal Workers' Int'l Ass'n v. Madison Indus., Inc.*, 84 F.3d 1186, 1190 (9th Cir.1996)).

[20] *Allen Douglas Sec., Inc.*, Exchange Act Release No. 50513, 2004 WL 2297414, at *2 n.14 (Oct. 12, 2004) (explaining that the Commission has refused to consider the importance or significance of SRO action to an aggrieved party "as a basis for review where the appeal did not satisfy the jurisdictional requirements set forth in Section 19(d)").

[21] *See supra* note 12.

rules." First, Kincaid appears to invoke our statutory authority under Exchange Act Section 19(f). That section directs us to review whether in taking certain actions FINRA acted in accordance with its rule and whether those rules are, and were applied in a manner, consistent with the Exchange Act.[22] But a petition for review must first satisfy the jurisdictional requirements in Section 19(d) before the Commission can review the action under Section 19(f).[23] Only if those requirements are met can the Commission then apply the applicable substantive standard to determine if the relief specified in those provisions should be provided.[24]

Next, Kincaid invokes two additional sections of the Exchange Act governing our SRO oversight authority: (1) the general regulatory framework under Section 15A for national securities associations such as FINRA;[25] and (2) our discretionary authority under Section 21 to investigate and bring civil enforcement actions for certain violations of the securities laws, including actions to "command compliance" with SRO rules.[26] But Kincaid does not explain how these provisions apply here let alone establish jurisdiction under Section 19(d). We have not taken action against FINRA under them with respect to his claims, nor must we.[27] And even

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[22] *See* 15 U.S.C. § 78s(f) (setting forth the Commission's standard of review for SRO actions).

[23] *See id.* § 78s(d).

[24] *See id.* § 78s(f); *Keith Patrick Sequeira*, Exchange Act Release No. 81786, 2017 WL 4335070, at *3-4 (Sept. 29, 2017) (discussing Section 19(f)); *Sky Capital*, 2007 WL 1559228, at *3 n.10 ("Section 19(f) does not establish a basis for Commission jurisdiction."); *see also id.* ("'[U]nless an appeal meets the threshold requirement for jurisdiction under Section 19(d), the standard of review under Section 19(f) is not an issue.'") (quoting *Larry A. Saylor*, Securities Exchange Act Release No. 51949, 2005 WL 1560275, at *2 n.3 (June 30, 2005)).

[25] 15 U.S.C. § 78o-3.

[26] *See id.* § 78u(a), (d); *see also id.* § 78u(f) (stating that "the Commission shall not bring any action . . . against any person . . . to command compliance with . . . the rules of a self-regulatory organization" except in limited specified circumstances).

[27] *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (stating that an agency's decision "not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion"); *Dolphin & Bradbury, Inc.*, Exchange Act Release No. 54143, 2006 WL 1976000, at *12 (July 13, 2006) (explaining that "[a] refusal to prosecute is a 'classic illustration of a decision committed to agency discretion,' and agency decisions about the best use of staff time are a matter of prosecutorial judgment" (quoting *Chi. Bd. of Trade v. SEC*, 883 F.2d 525 (7th Cir. 1989))), *petition denied*, 512 F.3d 634 (D.C. Cir. 2008); *see also* 17 C.F.R. § 202.5(b) (reflecting the Commission's "discretion" to file suit, institute administrative proceedings, or take other action).

if we did, the result would not be to confer jurisdiction over his claims but rather the institution of a new court or administrative proceeding to which Kincaid would not be a party.[28]

Nor can Kincaid establish jurisdiction by re-framing his arguments in terms of FINRA's failure to "enforce its rules." As courts have long held, parties cannot re-frame their argument to make an otherwise impermissible collateral attack on an arbitration award.[29] Kincaid's application for review challenges FINRA's refusal to reopen his case so that he can "resubmit his request for expungement in a new proceeding with FINRA Dispute Resolution . . . ." We would have to set aside the award in order to provide Kincaid with the relief he seeks. This collateral challenge to the award "is entirely incompatible with the expedited process envisioned in the FAA."[30] And while the FAA "may be overridden by a contrary congressional command,"[31] Kincaid identifies no basis for concluding that Congress provided such a command here.

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[28] *See Russell A. Simpson*, Exchange Act Release No. 40690, 1998 WL 801399, at *4 n.12 (Nov. 19, 1998) ("Simpson also urges us to institute proceedings against the NASD and/or NASDR based on what he terms their failure to enforce the NASD's rules. Our decision whether to institute such proceedings is a separate matter from our disposition of this review proceeding [for lack of jurisdiction]."); *Sky Capital*, 2007 WL 1559228, at *4 n.26 (noting that our decision whether to exercise our "absolute" prosecutorial discretion to investigate FINRA under various statutory authority "is separate from our disposition" dismissing the case for lack of jurisdiction); *cf. Citadel Sec.*, 2016 WL 3853760, at *4 (finding that the Commission's discretionary authority to bring an administrative proceeding against an SRO under Exchange Act Section 19(h)(1), even if exercised, would not confer jurisdiction over a petition for an administrative remedy).

[29] *See, e.g., Gulf Petro Trading Co. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 750 (5th Cir. 2008) (finding that, "[t]hough cloaked in a variety of federal and state law claims, [plaintiff's] complaint amounts to no more than a collateral attack on the [arbitration] Award" because plaintiff's "true objective in this suit [wa]s to rectify the harm it suffered in receiving the unfavorable Award"); *Decker*, 205 F.3d at 910 (finding plaintiff's claim that Merrill Lynch failed to comply with NASD's arbitration rules and procedures to be an improper collateral attack on an arbitration award under the FAA by noting that, despite how plaintiff framed her claims, "[h]er ultimate objective in this damages suit is to rectify the alleged harm she suffered by receiving a smaller arbitration award than she would have received in the absence of the [alleged rules violations]"); *Flexible Mfg. Sys. Pty. Ltd. v. Super Prods. Corp.*, 86 F.3d 96, 100 (7th Cir. 1996) ("Thinly veiled attempts to obtain appellate review of an arbitrator's decision . . . are not permitted under the FAA.") (quotation omitted); *Corey v. New York Stock Exch.*, 691 F.2d 1205, 1213 (6th Cir. 1982) (holding that, under the FAA, a plaintiff "may not transform what would ordinarily constitute an impermissible collateral attack [on an arbitration award] into a proper independent direct action by changing defendants and altering the relief sought").

[30] *Citizen Potawatomi Nation v. Oklahoma*, 881 F.3d 1226, 1237 (10th Cir. 2018) (stating that where a statute does not address arbitration or "purport[] to alter the FAA" the "mere provision of a federal forum" for certain claims does not permit review of arbitration awards).

The FAA's narrow and exclusive grounds for vacatur provide additional evidence that Congress has not granted us jurisdiction over Kincaid's claim. We have previously found that we lack statutory jurisdiction under Section 19(d) to consider an application for review that "seeks relief that is incongruous with, and exceeds our remedial authority to address, a claim of improper limitation or prohibition of access to services."[32] So too here. Exchange Act Section 19(f) directs us to "set aside" improper prohibitions or limitations of access to services and to "grant" the applicant access to the service.[33] But as we have explained, the only path for setting aside Kincaid's adverse award—and granting him access to his requested "rehearing by the arbitrator[]"—is through vacatur of the initial award in court.[34]

We therefore dismiss the application for review. An appropriate order will issue.[35]

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman
Secretary

(…*cont'd*)

[31] Shearson/Am. Express Inc. v. McMahon, 482 U.S. 220, 226 (1987).

[32] *Citadel Sec.*, 2016 WL 3853760, at *3 (citing this as a reason for concluding that we lacked jurisdiction over a purported limitation or prohibition of access).

[33] 15 U.S.C. § 78s(f).

[34] 9 U.S.C. § 10(a), (b); *see supra* note 18.

[35] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 87384 / October 22, 2019

Admin. Proc. File No. 3-18882

In the Matter of the Application of

JOHN BOONE KINCAID III

For Review of Action Taken by

FINRA

ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by John Boone Kincaid III is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary