

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87509 / November 12, 2019

Admin. Proc. File No. 3-18637

In the Matter of the Application of

GREGORY ACOSTA

For Review of Action Taken by

FINRA

ORDER REQUESTING ADDITIONAL BRIEFING

Gregory Acosta appeals a determination by FINRA that he is subject to a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934. In September 2018 and March 2019, the parties were ordered to file briefs addressing the Commission's jurisdiction over this appeal and related merits issues.¹ Briefing was completed in May 2019.

On November 1, 2019, Acosta requested that the Commission expedite its consideration of his appeal, asserting that the proceeding has been "unreasonably delayed to his prejudice." Acosta sent a similar letter on August 9, 2019, in which he claimed that, because the "appeal is currently stalled," his "due process rights are being adversely affected." With his November 1, 2019 letter, Acosta attached a "draft Writ of Mandamus," which he says he intends to file against the Commission in a court of appeals "if it continues to delay."

As indicated by the two orders already issued in this matter requesting supplemental briefing, Acosta's appeal presents complex jurisdictional questions of first impression, along with significant merits issues, that the Commission is currently considering.² Briefing was completed on May 21, 2019. And although Acosta's "draft Writ of Mandamus" objects that this proceeding has not yet been "assign[ed] to an ALJ or hearing officer," such an assignment would

¹ *Gregory Acosta*, Exchange Act Release No. 84165, 2018 WL 4404615 (Sept. 17, 2018); *Gregory Acosta*, Exchange Act Release No. 85257, 2019 WL 1056550 (Mar. 6, 2019).

² This order should not be construed as expressing any view as to the Commission's ultimate resolution of the procedural and substantive issues raised by Acosta's appeal.

not normally occur in connection with Commission review of self-regulatory organization action.³

Acosta does not provide authority for requiring the Commission to expedite its review under the circumstances presented here.⁴ To the extent he wishes to do so, Acosta may make a supplemental filing addressing whether and to what extent he has been prejudiced by any delay in issuance of a decision in this matter, and any legal entitlement he claims to an expedited decision outside the ordinary course of the Commission's decisional processes. Accordingly, IT IS ORDERED, pursuant to Rule of Practice 421,⁵ that Acosta may file a brief addressing the issues set forth above by November 26, 2019.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

³ Proceedings such as this one are typically “presided over by the Commission.” 17 C.F.R. § 201.110; *see* Exchange Act Section 19(f), 15 U.S.C. § 78s(f) (providing that the Commission’s review may consist solely of the record before the relevant SRO and additional briefing); *see also* *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at *17 n.54 (Jan. 30, 2009) (explaining that “while the Commission has the authority to refer certain SRO matters to an administrative law judge for supplemental evidentiary hearings, such a referral is an extraordinary ancillary procedure, which is reserved for truly exceptional cases”) (cleaned up).

⁴ *See Bart Steven Kaplow*, Exchange Act Release No. 85509, 2019 WL 1489709, at *2 n.10 (April 4, 2019) (rejecting FINRA’s request for “‘expedited consideration’ of the jurisdictional question” because “[t]he Rules of Practice do not provide for expedited consideration of a specific question in an appeal from SRO action”). Although Acosta represents that a related district court action against FINRA has been stayed pending resolution of this appeal, he does not explain why such action would require or justify expedited consideration.

⁵ 17 C.F.R. § 201.421(b).