

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 89617 / August 19, 2020

Admin. Proc. File Nos. 3-18616, 3-18617, 3-18877, 3-18879, 3-18883, 3-18894, 3-18910,  
3-18919, 3-18934, 3-18988, 3-19013, 3-19016, 3-19017, 3-19019, 3-19219, 3-19228, 3-19405,  
3-19573, 3-19574, 3-19588, 3-19611

In the Matter of the  Consolidated Arbitration Applications  For Review of Action Taken by FINRA
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ORDER CONSOLIDATING APPEALS

Gregory Lee Luken, an associated person of a FINRA member firm, filed a claim in FINRA’s arbitration forum seeking to expunge from his Central Registration Depository records information about a prior arbitration award entered in favor of his customers. After FINRA denied his expungement requests as ineligible for arbitration, Luken sought Commission review.

Other applications for review presenting the same fact pattern have been consolidated previously (the “*Consolidated Arbitration Applications*”), and the Commission has issued an order finding that it has jurisdiction to consider the applications for review under Section 19(d) of the Securities Exchange Act of 1934 (“Order on Jurisdiction”).<sup>1</sup>

FINRA has moved to consolidate Luken’s appeal with the *Consolidated Arbitration Applications*, and Luken has not objected to FINRA’s request. Under the circumstances, it appears appropriate to grant this request.<sup>2</sup> Commission Rule of Practice 201(a) provides that we

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<sup>1</sup> See *Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 WL 4569083 (Aug. 6, 2020).

<sup>2</sup> FINRA also sought to postpone further briefing pending a decision on the jurisdictional question in the *Consolidated Arbitration Applications*. Because the Commission has issued that decision, and there is jurisdiction to review Luken’s application for review for the same reasons as stated in the Order on Jurisdiction, FINRA’s request to postpone briefing is now moot.

may order consolidation of proceedings “involving a common question of law or fact.”<sup>3</sup> The other proceedings at issue in the *Consolidated Arbitration Applications* were consolidated because they presented the common question of whether Exchange Act Section 19(d) authorizes the Commission to review the FINRA Dispute Resolution Director’s determination that an expungement claim is not eligible for arbitration under FINRA’s rules. We also concluded that the *Consolidated Arbitration Applications* shared a common fact pattern regarding the FINRA action at issue.<sup>4</sup> After finding that Section 19(d) confers jurisdiction on the Commission to consider these applications for review, the Order on Jurisdiction also determined that it was appropriate for the cases to remain consolidated for purposes of considering the merits under Exchange Act Section 19(f), because they raise common questions of law and fact.<sup>5</sup>

It appears that Luken’s application for review involves the same common questions of law and fact, and that the ultimate disposition of the merits question in the *Consolidated Arbitration Applications* will not be unduly delayed by consolidating Luken’s more recent application with the other proceedings. We direct the parties’ attention to the Order on Jurisdiction regarding the contents of and procedures for filing briefs on the merits. In that order, the Commission identified certain issues on the merits and asked the parties to address those issues in addition to any other matters they find relevant. The order also encouraged the parties to consider filing joint or consolidated briefs. We reiterate that the Commission will decide the merits of these cases based on all submissions filed in the *Consolidated Arbitration Applications*. Accordingly, as explained in the Order on Jurisdiction, Luken may file a brief addressing the merits issues identified in that order by (1) filing a brief or affirmatively joining other briefs, or (2) implicitly relying on the other briefs filed in these consolidated proceedings.

Accordingly, it is ORDERED that Luken’s application for review be consolidated with the other proceedings identified in the *Consolidated Arbitration Applications*; and it is further

ORDERED that FINRA’s request to postpone briefing is denied as moot; and it is further

ORDERED that Luken, to the extent he decides to file a separate brief, shall file his opening brief by September 18, 2020, FINRA shall file its opposition brief by October 19, 2020,

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<sup>3</sup> 17 C.F.R. § 201.201(a).

<sup>4</sup> See *Consolidated Arbitration Applications*, 2020 WL 4569083, at \*1 n. 1 (citing the orders in which we consolidated the proceedings). Exhibit A identifies all proceedings making up the Consolidated Arbitration Applications as of the date of this order.

<sup>5</sup> See *id.* at \*3-4.

and Luken may file a reply brief by November 2, 2020. No briefs in addition to those specified above may be filed without leave of the Commission.<sup>6</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>6</sup> Attention is called to Rules of Practice 150-153, 17 C.F.R. § 201.150-153, with respect to form and service, as well as the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at [apfilings@sec.gov](mailto:apfilings@sec.gov). See *Pending Administrative Proceedings*, Exchange Act Release No. 88415, <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

## Exhibit A

<u>Applicant</u>	<u>Administrative Proceeding File Number</u>
Tim Sullivan	3-18616
William Burk Rosenthal	3-18617
Bart Steven Kaplow	3-18877
Daryl Andrew Cole	3-18879
Frank Augustine Cuenca	3-18883
Curt Charles Jackson	3-18910
Brock Mosely	3-18919
Ronald R. Wetzel	3-18934
Peter Ashley Ramsay	3-18988
Donald Anthony Wojnowski	3-19013
Mark Vernon Rottler	3-19016
Carl G. Gordinier	3-19017
Jordan Whitney Waring	3-19219
Kent Pearce	3-19228
Vincent Harl Rossi	3-19405
Michael Patrick Murphy	3-19573
Scott Shulman	3-19574
Alton Theodore Davis, Jr.	3-19588
Gregory Lee Luken	3-19611