

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91083 / February 9, 2021

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

In the Matter of the Application of
Consolidated Arbitration Applications
For Review of Action Taken by
FINRA

ORDER REQUESTING ADDITIONAL BRIEFING

Hugh Carleton Bandy and Mark Kim Gaskill, an associated person and a formerly associated person of FINRA member firms, each filed a claim in FINRA's arbitration forum seeking to expunge from their Central Registration Depository records information about prior arbitration awards entered against them. After FINRA denied their expungement requests as ineligible for arbitration, Bandy and Gaskill each filed an application for review with the Commission.¹ FINRA now moves to consolidate *Bandy* and *Gaskill* with the *Consolidated Arbitration Applications*, and neither Bandy nor Gaskill objects to FINRA's request.

Commission Rule of Practice 201(a) provides that we may consolidate proceedings "involving a common question of law or fact."² In addition to appearing to raise similar factual and legal questions, Bandy, Gaskill, and a majority of the applicants in the *Consolidated*

¹ See Application for Review, *Mark Kim Gaskill*, Administrative Proceeding File No. 3-20205 (Jan. 13, 2021), <https://www.sec.gov/litigation/apdocuments/3-20205-2021-01-13-application-for-review-and-notice-of-appearance-for-applicant-gaskill.pdf>; Application for Review, *Hugh Carleton Bandy*, Administrative Proceeding File No. 3-20160 (Dec. 4, 2020), <https://www.sec.gov/litigation/apdocuments/3-20160-2020-12-04-application-for-review.pdf>.

² 17 C.F.R. § 201.201(a); see, e.g., *Consolidated Arbitration Applications*, Exchange Act Release No. 89617, 2020 WL 4819305, at *1 (Aug. 19, 2020) (consolidating additional case into *Consolidated Arbitration Applications* and providing applicant the opportunity to (1) file a brief or affirmatively join other briefs or (2) implicitly rely on the other briefs filed in the consolidated proceedings).

Arbitration Applications are represented by counsel from the same law firm.³ We have also not yet issued the briefing schedule in *Bandy* or *Gaskill*, and merits briefing only concluded recently in the *Consolidated Arbitration Applications*. We therefore believe that supplemental briefing on the issue of whether to consolidate these proceedings “would significantly aid the decisional process.”⁴

Accordingly, it is ORDERED that any applicant in the *Consolidated Arbitration Applications* that opposes consolidation of this matter with *Bandy* or *Gaskill* shall file a brief responding to this order by February 17, 2021. If no responsive briefs are filed, the Commission will assume that no party opposes consolidation. Any party may file a reply to any responsive brief(s) by February 22, 2021. As the unnecessary duplication of identical arguments in multiple briefs is unlikely to promote adjudicatory efficiency, we encourage the parties to consider filing joint or consolidated briefs. Any brief should address only the issue of consolidation.

The parties’ attention is called to 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.⁵ Also, the Commission’s Rules of Practice were recently amended to include new e-filing requirements, which take effect on April 12, 2021.⁶

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

Vanessa A. Countryman
Secretary

³ See *Consolidated Arbitration Applications*, 2020 WL 4819305, at *2 (listing all currently consolidated cases in Exhibit A).

⁴ Rule of Practice 421(b), 17 C.F.R. § 201.421(b).

⁵ *Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

⁶ *Amendments to the Commission’s Rules of Practice*, 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020); see also *Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations on parties to administrative proceedings such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission’s Rules of Practice*, 85 Fed. Reg. at 86,465–81.