

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91305 / March 11, 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, 3-20160, 3-20205

In the Matter of the Application of

CONSOLIDATED ARBITRATION APPLICATIONS

For Review of Action Taken by

FINRA

ORDER CONSOLIDATING APPEALS

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

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”).²

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 See *Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 WL 4569083 (Aug. 6, 2020).

FINRA has moved to consolidate *Bandy* and *Gaskill* with the *Consolidated Arbitration Applications*, and no applicant objects to FINRA's request.³ Under the circumstances, it seems appropriate to grant this request. Commission Rule of Practice 201(a) provides that we may consolidate proceedings "involving a common question of law or fact."⁴ 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.⁵ 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.⁶

It appears that *Bandy's* and *Gaskill's* applications for review involve the same common questions of law and fact as the *Consolidated Arbitration Applications*. We have also not yet issued the briefing schedule in *Bandy* or *Gaskill*, and merits briefing only concluded recently in the *Consolidated Arbitration Applications*. Thus, it appears that the ultimate disposition of the merits question in the *Consolidated Arbitration Applications* will not be unduly delayed by consolidating *Bandy's* and *Gaskill's* more recent application with the other proceedings.

FINRA also moves to postpone briefing in *Bandy* and *Gaskill* "pending resolution of the consolidated appeals." We construe this motion as a request for an extension of the briefing schedule under Commission Rule of Practice 161.⁷ Because we are consolidating *Bandy* and *Gaskill* with the *Consolidated Arbitration Applications*, where the merits briefing has been completed, we find that this request for an extension is moot.

³ See *Consolidated Arbitration Applications*, Exchange Act Release No. 91083, 2021 WL 467226, at *1 (Feb. 9, 2021) (requesting additional briefing on the issue of consolidation and noting that "[i]f no responsive briefs are filed, the Commission will assume that no party opposes consolidation").

⁴ 17 C.F.R. § 201.201(a).

⁵ 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.

⁶ See *id.* at *3-4.

⁷ Rule of Practice 161, 17 C.F.R. § 201.161.

However, we will give Bandy and Gaskill the opportunity to submit supplemental briefing in the *Consolidated Arbitration Applications*, if either chooses to do so.⁸ 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*. Therefore, as explained in the Order on Jurisdiction, Bandy and Gaskill may either (1) address the merits issues identified in that order by filing a brief or affirmatively joining other briefs, or (2) implicitly rely on the other briefs filed in these consolidated proceedings.

Accordingly, it is ORDERED that Bandy's and Gaskill's applications for review be consolidated with the other proceedings identified in the *Consolidated Arbitration Applications*; and it is further

ORDERED that Bandy and Gaskill, to the extent they decide to file a brief or briefs, shall file their opening brief or briefs by April 12, 2021, FINRA shall file its opposition brief or briefs

⁸ See Commission Rule of Practice 421(b), 17 C.F.R. § 201.421(b) (stating that "an opportunity for supplemental briefing with respect to issues not briefed by the parties shall be given where the Commission believes that such briefing would significantly aid the decisional process"); see also *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).

by May 12, 2021, and Bandy and Gaskill may file their reply brief or briefs by May 26, 2021. No briefs in addition to those specified above may be filed without leave of the Commission.⁹

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

Vanessa A. Countryman
Secretary

⁹ 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. *Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>. Also, the Commission's Rules of Practice were recently amended to include new e-filing requirements, which take effect on April 12, 2021. *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.

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. Wetzal	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
Hugh Carleton Bandy	3-20160
Mark Kim Gaskill	3-20205