

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 92968 / September 13, 2021

Admin. Proc. File No. 3-19588

In the Matter of the Application of  
  
ALTON THEODORE DAVIS, JR.  
  
For Review of Action Taken by  
  
FINRA

ORDER REQUESTING ADDITIONAL BRIEFING

Alton Theodore Davis, Jr., an associated person of a FINRA member firm, filed an intra-industry claim in FINRA's arbitration forum seeking to expunge from his Central Registration Depository record information about an underlying customer arbitration award entered against him. The underlying adverse arbitration award indicates that he requested and was denied expungement of the information regarding the underlying arbitration from his record during the underlying customer arbitration proceeding. FINRA determined that Davis's subsequent intra-industry expungement request was ineligible for arbitration, and he appealed. Upon consideration of the record and the briefs filed, we believe that additional briefing regarding our jurisdiction over Davis's application for review would "significantly aid the decisional process."<sup>1</sup>

Accordingly, the Commission requests briefing on whether it has jurisdiction over Davis's application for review. In considering this general question, the Commission may benefit from the parties' views on the following issues:

- During the underlying customer arbitration proceeding, did Davis seek expungement of the information about the underlying arbitration from his Central Registration Depository record, and did the arbitration panel deny that request?<sup>2</sup>
- How does the underlying customer arbitration panel's apparent denial of Davis's request for expungement bear on whether Davis accessed FINRA's arbitration

<sup>1</sup> Rule of Practice 421(b), 17 C.F.R. § 201.421(b).

<sup>2</sup> We direct the parties' attention to Rules 154 and 452 of the Rules of Practice governing motions for leave to adduce additional evidence. 17 C.F.R. §§ 201.154, .452.

service, or was prohibited or limited in his access to that service? What is the relevance, if any, of *Dustin Tylor Aiguier* and *John Boone Kincaid III*?<sup>3</sup>

- For the purposes of Exchange Act Section 19(d)(1),<sup>4</sup> is arbitrating an expungement claim during a customer arbitration a “service” and, if so, is it different than the “service” of arbitrating an expungement claim during an intra-industry arbitration? Or is the relevant “service” the same, regardless of whether an expungement claim is made in a customer arbitration or an intra-industry arbitration? In answering these questions, the parties should address the similarities and differences between seeking expungement in customer arbitration and intra-industry arbitration and should consider citing particular FINRA arbitration rules and practices.

Accordingly, it is ORDERED that the parties submit briefs addressing whether the Commission has jurisdiction to consider Davis’s application for review. Davis’s opening brief shall be filed by October 13, 2021. FINRA’s response shall be filed by October 27, 2021. Davis may file a reply by November 10, 2021. Pursuant to Commission Rule of Practice 180(c), Davis’s failure to file an opening brief on this issue may result in dismissal of this review proceeding.<sup>5</sup>

The parties’ attention is directed to the most recent amendments to the Commission’s Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.<sup>6</sup>

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<sup>3</sup> *Dustin Tylor Aiguier*, Exchange Act Release No. 88953, 2020 WL 2743938, at \*2-3 (May 26, 2020) (holding that FINRA’s action denying applicant’s request to reopen an earlier arbitration hearing did not limit his access to FINRA’s arbitration service, and thus there was no jurisdiction under Section 19(d), because applicant had accessed FINRA’s arbitration forum); *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at \*3-5 (Oct. 22, 2019) (concluding that FINRA action giving effect to arbitrator’s award was not a limitation of access to arbitration, and thus there was no jurisdiction under Section 19(d), where the applicant received a ruling from the arbitrator denying the requested relief and sought to challenge the ruling as an erroneous application of FINRA’s rules).

<sup>4</sup> 15 U.S.C. § 78s(d)(1).

<sup>5</sup> 17 C.F.R. § 201.180(c).

<sup>6</sup> *Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations 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.

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

Vanessa A. Countryman  
Secretary