

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 97634 / June 1, 2023

Admin. Proc. File No. 3-19594

In the Matter of the Application of

CURTIS RICHARD EDMARK

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Associated person of FINRA member firm appealed FINRA action prohibiting access to its arbitration forum to seek expungement of customer dispute information from the Central Registration Depository. *Held*, this proceeding is remanded to FINRA.

APPEARANCES:

Michael Bessette, William Bean, Frederick Steimling, Harris Freedman, Owen Harnett, and Erica J. Harris of HLBS Law for Curtis Richard Edmark.

Alan Lawhead, Andrew Love, and Megan Rauch for FINRA.

Appeal filed: Nov. 1, 2019
Last brief received: Nov. 23, 2020

Curtis Richard Edmark, an associated person of a FINRA member firm, seeks review of a FINRA action that prohibited his access to its arbitration forum to seek expungement of customer dispute information from FINRA's Central Registration Depository ("CRD"). We remand this proceeding for further action because we cannot determine on the record before us whether FINRA's action was in accordance with its rules.

I. Background

Edmark has been registered with FINRA intermittently since 1986. As relevant here, on February 1, 2005, when he was not registered, a customer made a complaint that Edmark did not "disclose all features of a fixed annuity contract." The customer later made a regulatory complaint on May 5, 2005. On January 12, 2009, Edmark entered into a stipulation and consent with the Wisconsin Office of the Commissioner of Insurance, which ordered restitution of \$5,000.

The customer complaint and the later regulatory action were reported in FINRA's CRD. The CRD is a computerized database that contains information about broker-dealers and their representatives, including customer dispute information.¹ Generally, the information in the CRD is provided by FINRA member firms, associated persons, and regulatory authorities on the uniform registration forms,² which member firms are required to file in certain circumstances.³ The information in the CRD is used by FINRA and other regulators, as well as by firms when making personnel decisions.⁴

The CRD cannot be accessed by the general public.⁵ However, FINRA provides a free online tool called BrokerCheck, which displays some of the CRD's information, including customer dispute information, regarding persons who are currently or formerly associated with

¹ See *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081, Prohibited Conditions Relating to Expungement of Customer Dispute Information*, Exchange Act Release No. 72649, 79 Fed. Reg. 43,809, 43,809 (July 28, 2014).

² *Id.* These forms are Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form). *Id.* at 43,809 & n.6.

³ See, e.g., FINRA By-Laws Art. V, Sec. 2; FINRA Rule 1013(a)(2).

⁴ *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809.

⁵ See *id.*

FINRA member firms.⁶ Because BrokerCheck’s information is derived from the CRD, information that is expunged from the CRD is not accessible via BrokerCheck.⁷

Associated persons and their firms generally may use FINRA arbitration to seek to expunge customer dispute information from the CRD.⁸ FINRA arbitrators must follow certain procedures and apply certain standards when expunging customer dispute information.⁹ Even when an arbitrator recommends expungement relief, however, the information is not expunged from the CRD unless a court confirms the award, and generally FINRA must be named as an additional party in the court confirmation action.¹⁰

⁶ See, e.g., *id.* at 43,809-10 (describing BrokerCheck and its relationship to the CRD); FINRA Rule 8312 (describing the information released on BrokerCheck). BrokerCheck is available at <http://brokercheck.finra.org>. In addition to displaying information about persons who are currently or formerly associated with FINRA member firms, BrokerCheck also allows people to research investment adviser firms and their representatives. *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *1 n.2 (Oct. 22, 2019).

⁷ See *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809-10.

⁸ See FINRA Rule 2080. FINRA arbitration may not always be available, however, because FINRA rules also provide that the Director of FINRA Dispute Resolution Services “may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the [relevant FINRA Arbitration] Code, the subject matter of the dispute is inappropriate.” FINRA Rules 12203(a), 13203(a); see also FINRA Rules 12100(h), 13100(h) (defining the applicable FINRA Arbitration “Code”); FINRA Rules 12100(m), 13100(m) (defining the FINRA “Director”); *Consolidated Arbitration Applications*, Exchange Act Release No. 97248, 2023 WL 2805323, at *4-5 (Apr. 4, 2023) (upholding FINRA’s application of Rules 12203(a) and 13203(a) to deny use of the arbitration forum for particular expungement claims). In this particular case, as described more fully below, we lack a sufficient basis to determine whether FINRA complied with these rules when denying use of the arbitration forum. We note that we recently approved a proposal by FINRA to amend Rules 12203(a), 13203(a), and various rules related to the expungement of customer dispute information from the CRD. *Order Granting Accelerated Approval of a Proposed Rule Change to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information*, Exchange Act Release No. 97294, 88 Fed. Reg. 24,282, 24,283-95 (Apr. 19, 2023). But we do not consider the amended rules, which are not yet in effect. *Notice of Filing of a Proposed Rule Change to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information*, Exchange Act Release No. 95455, 87 Fed. Reg. 50,170, 50,188 (Aug. 15, 2022) (“If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice following Commission approval.”).

⁹ FINRA Rules 12805, 13805.

¹⁰ FINRA Rule 2080(a)-(b).

Here, on September 17, 2019, Edmark filed a statement of claim in FINRA’s arbitration forum seeking to expunge customer dispute information from the CRD. Specifically, Edmark sought to expunge information about the customer complaint made on February 1, 2005. Edmark claimed that this complaint was “clearly erroneous, factually impossible, and false, and, therefore, meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement.”

In an October 4, 2019 letter, FINRA denied Edmark the use of its arbitration forum for his expungement claim. FINRA’s letter, which was from a FINRA senior case specialist, stated:

FINRA has determined that the claims you have alleged in your statement of claim are not eligible for arbitration. Therefore, pursuant to the Customer Code Rule 12203(a) or Industry Code Rule 13203(a), we decline to accept your claim.

On November 1, 2019, Edmark filed an application for review of this denial letter with the Commission.

II. Analysis

Section 19(d) of the Securities Exchange Act of 1934 authorizes the Commission to review actions taken by a self-regulatory organization, such as FINRA, where those actions prohibit or limit an individual’s access to services offered by the SRO.¹¹ Section 19(f), in turn, sets forth the standard for our review. It provides that we review a FINRA action prohibiting a person’s access to its services to determine whether (1) the specific grounds on which FINRA based the action exist in fact; (2) the action was in accordance with FINRA’s rules; and (3) FINRA’s rules are, and were applied in a manner, consistent with the Exchange Act’s purposes.¹² On the present record, we are unable to determine whether FINRA’s action was in accordance with its rules, so we remand the proceeding to FINRA.

FINRA Rules 12203(a) and 13203(a) provide that the Director of FINRA Dispute Resolution Services (the “Director”) “may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the

¹¹ 15 U.S.C. § 78s(d).

¹² 15 U.S.C. § 78s(f). Section 19(f) also requires us to set aside FINRA’s action if we find that the action imposes an undue burden on competition. *Id.* Edmark does not argue, and the record does not show, that FINRA’s action imposes such a burden here.

[relevant FINRA Arbitration] Code, the subject matter of the dispute is inappropriate.”¹³ “Only the Director may exercise” this authority.¹⁴

The denial letter does not indicate whether the Director made the determination to deny Edmark access to the arbitration forum, as required by FINRA Rules 12203(a) and 13203(a). As noted, the October 4, 2019 letter, issued by a FINRA senior case specialist, stated only that “FINRA” had determined that Edmark’s claims were “not eligible for arbitration.” The letter did not mention the Director at all. We therefore lack a sufficient basis to determine whether FINRA complied with its rule that only the Director may exercise the authority under FINRA Rules

¹³ FINRA Rules 12203(a), 13203(a); *see also* FINRA Rules 12100(h), 13100(h) (defining the applicable FINRA Arbitration “Code”); FINRA Rules 12100(m), 13100(m) (defining the FINRA “Director”). FINRA Dispute Resolution Services used to be called the FINRA Office of Dispute Resolution. *See Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reflect Name Changes to Two FINRA Departments*, Exchange Act Release No. 90344, 85 Fed. Reg. 71,695, 71,695 (Nov. 10, 2020).

¹⁴ FINRA Rules 12203(a), 13203(a).

12203(a) and 13203(a) to deny access to the arbitration forum.¹⁵ Thus, we remand this proceeding to FINRA for further action that is appropriate and consistent with this opinion.¹⁶

An appropriate order will issue.¹⁷

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

¹⁵ *Consolidated Arbitration Applications*, Exchange Act Release No. 97248, 2023 WL 2805323, at *3-4 (Apr. 4, 2023). After filing the certified record in this matter, FINRA moved to adduce a second letter that it issued to Edmark on November 25, 2019, “to further explain FINRA’s decision” to deny Edmark the use of its arbitration forum. This letter was issued by a FINRA associate director and stated that the customer dispute information that Edmark sought to expunge was ineligible for expungement because it “arise[s] from the same circumstances” as a regulatory complaint and restitution order. Given that we are remanding this case to FINRA, we deny FINRA’s motion to adduce as moot. Admitting the second letter would make no difference in our disposition of this case because, like the October 4, 2019 letter, the November 25, 2019 letter does not refer to the Director or otherwise provide a basis for us to determine whether the Director made the decision to deny Edmark’s use of FINRA’s arbitration forum.

¹⁶ *See Consolidated Arbitration Applications*, 2023 WL 2805323, at *4 (remanding six proceedings because the relevant records did not contain a sufficient basis to determine whether the Director had denied use of FINRA’s arbitration forum). In light of this disposition, we express no opinion on the underlying merits of FINRA’s decision to deny access to its arbitration forum or any other issues raised by the parties.

¹⁷ We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
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In the Matter of the Application of
CURTIS RICHARD EDMARK
For Review of Action Taken by
FINRA

ORDER REMANDING PROCEEDING TO REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that this proceeding is remanded to FINRA for any appropriate action consistent with such opinion.

By the Commission.

Vanessa A. Countryman
Secretary