

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 99258 / January 2, 2024

Admin. Proc. File No. 3-20893

In the Matter of the Application of

DAVID W. INGLE

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

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

APPEARANCES:

*Michael Bessette, William Bean, and Frederick Steimling* of HLBS Law for David W. Ingle.

*Jennifer Brooks, Celia L. Passaro, and Michael M. Smith* for FINRA.

Appeal filed: June 8, 2022  
Last brief received: Sept. 26, 2022

David W. Ingle, formerly 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 employment termination information from FINRA’s Central Registration Depository (“CRD”). We remand this proceeding for further action because we are unable to determine the basis for FINRA’s action and therefore cannot determine whether it complies with the requirements of Section 19(f) of the Securities Exchange Act of 1934.<sup>1</sup>

## I. Background

### A. Ingle’s firm terminated his employment, and he entered into a Letter of Acceptance, Waiver and Consent with FINRA.

Ingle has worked in the securities industry for approximately 10 years. As relevant here, he worked as a registered representative for Merrill Lynch, Pierce, Fenner & Smith Inc. from June 2013 until February 2016, when he was terminated.<sup>2</sup> Merrill Lynch reported to FINRA’s CRD that Ingle had been “[d]ischarged” for “[c]onduct including providing an inaccurate proof of funds letter on behalf of a client.”<sup>3</sup>

In April 2018, Ingle and FINRA entered into a Letter of Acceptance, Waiver and Consent (“AWC”).<sup>4</sup> Without admitting or denying the AWC’s findings, Ingle consented to FINRA’s entry of findings that, in June and November 2015, he “created and distributed two proof of funds letters that contained misleading statements” and thereby violated FINRA Rule 2010.<sup>5</sup> Ingle also consented to the imposition of an 18-month suspension from association with any FINRA member firm in any capacity and a \$10,000 fine. Further, Ingle waived certain procedural and appellate rights by entering into the AWC, and he agreed that he understood that, if the AWC was accepted, it would become part of his permanent disciplinary record. He also agreed that he understood that, if the AWC were accepted, he could not “take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis,” although this provision did not affect his “right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.”

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<sup>1</sup> 15 U.S.C. § 78s(f).

<sup>2</sup> Ingle began his employment at Merrill Lynch in February 2009, but did not register with FINRA until June 2013.

<sup>3</sup> *See infra* notes 6–13 and accompanying text (describing FINRA’s CRD).

<sup>4</sup> FINRA Letter of Acceptance, Waiver and Consent, *David W. Ingle*, No. 2016049110501 (Apr. 10, 2018), [https://www.finra.org/sites/default/files/fda\\_documents/2016049110501%20David%20W%20Ingle%20CRD%206194469%20AWC%20s1%20%282019-1563378920569%29.pdf](https://www.finra.org/sites/default/files/fda_documents/2016049110501%20David%20W%20Ingle%20CRD%206194469%20AWC%20s1%20%282019-1563378920569%29.pdf).

<sup>5</sup> *Id.* at 1-2; *see also* FINRA Rule 2010 (requiring the observation of “high standards of commercial honor and just and equitable principles of trade” in the conduct of business).

Ingle's employment termination and his AWC were reported separately in his CRD record. The CRD is a database that contains information about broker-dealers and their representatives,<sup>6</sup> including information concerning employment terminations and regulatory actions.<sup>7</sup> Generally, the information in the CRD is provided by FINRA member firms, associated persons, and regulatory authorities on the uniform registration forms,<sup>8</sup> which member firms are required to file in certain circumstances.<sup>9</sup> The information in the CRD is used by FINRA and other regulators, as well as by firms when making personnel decisions.<sup>10</sup> The CRD cannot be accessed by the general public.<sup>11</sup> However, FINRA provides a free online tool called BrokerCheck, which displays some of the CRD's information, including certain employment termination and regulatory action information, regarding persons who are currently or formerly associated with FINRA member firms.<sup>12</sup> Because BrokerCheck's information is derived from the CRD, information that is expunged from the CRD is not accessible via BrokerCheck.<sup>13</sup>

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<sup>6</sup> 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).

<sup>7</sup> See *Order Approving A Proposed Rule Change Relating to Changes to Forms U4, U5, & FINRA Rule 8312*, Exchange Act Release No. 59916, 74 Fed. Reg. 23,750, 23,755 (May 20, 2009) (explaining that termination information is included in the CRD); *Order Approving Proposed Rule Change Relating to Release of Certain Information Regarding Disciplinary History of Members & Their Associated Persons Via Toll-Free Telephone Listing*, Exchange Act Release No. 30629, 57 Fed. Reg. 18,535, 18,535 n.3 (Apr. 30, 1992) ("The CRD . . . contains information about regulatory and enforcement actions taken against broker-dealers and their registered personnel by [certain] regulatory authorities.").

<sup>8</sup> *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809. 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.

<sup>9</sup> See, e.g., FINRA By-Laws Art. V, Sec. 2; FINRA Rule 1013(a)(2).

<sup>10</sup> *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809.

<sup>11</sup> See *id.*

<sup>12</sup> 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).

<sup>13</sup> See *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809-10.

Associated persons and their firms generally may use FINRA arbitration to seek expungement of employment termination information from the CRD.<sup>14</sup> When a FINRA arbitration award grants expungement relief regarding employment termination information that is not related to a customer dispute, FINRA will expunge that information if the award states that it is “defamatory in nature” or if a court confirms the award.<sup>15</sup> By contrast, regulatory action information cannot be expunged from the CRD via FINRA arbitration.<sup>16</sup>

**B. Ingle filed an arbitration claim to expunge the employment termination information from the CRD.**

In February 2021, Ingle filed a statement of claim against Merrill Lynch in FINRA’s arbitration forum seeking to expunge the employment termination information described above from the CRD. He alleged that he had issued two firm-authorized proof of funds letters while he worked at Merrill Lynch. He further alleged that, without Ingle’s involvement, a client’s nephew had used Ingle’s legitimate letters to create a fraudulent proof-of-funds letter. Ingle therefore alleged that the CRD’s information that Merrill Lynch discharged him because he provided an inaccurate proof of funds letter was defamatory in nature and misleading, and thus he requested expungement on that basis.

FINRA’s Dispute Resolution Services (“DRS”) initially accepted Ingle’s expungement claim for arbitration. In April 2021, Merrill Lynch filed an answer to Ingle’s statement of claim, opposing Ingle’s expungement request. Merrill Lynch argued that Ingle was not entitled to expungement of the employment termination information for several reasons, including because he had entered into an AWC with FINRA regarding the same underlying conduct.<sup>17</sup> Merrill Lynch’s answer also attached Ingle’s AWC as an evidentiary exhibit.

Later in April 2021, DRS appointed an arbitrator and scheduled an initial prehearing conference. The arbitrator submitted an oath and disclosure checklist, which DRS distributed to

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<sup>14</sup> See, e.g., FINRA Dispute Resolution Services, *Arbitrator’s Guide*, at 78-79 (Apr. 2023 ed.) (noting that “a broker might request expungement of the reason for termination” from the CRD during FINRA arbitration). FINRA arbitration may not always be available, however, because, as described below, FINRA rules also provide that the Director of FINRA Dispute Resolution Services may decline to permit the use of the FINRA arbitration forum in certain instances. See FINRA Rules 12203, 13203. In this particular case, as described more fully below, we cannot determine the basis for FINRA’s denial of the use of its arbitration forum.

<sup>15</sup> *Arbitrator’s Guide*, at 78-79.

<sup>16</sup> See *Michael Andrew DeMaria*, Exchange Act Release No. 97511, 2023 WL 3529972, at \*1 (May 16, 2023) (“FINRA does not offer the service of using its arbitration forum to request expungement of regulatory action information.”).

<sup>17</sup> Merrill Lynch argued that the AWC’s findings demonstrated the falsity of Ingle’s factual allegations regarding the proof of funds letters. Merrill Lynch also argued that expungement of the employment termination information could not remedy Ingle’s alleged harm, given that the same information appeared in the CRD to describe the AWC, and the arbitrator could not expunge the AWC information.

the parties. In May 2021, the parties jointly requested that the final hearing be conducted via videoconference, and the arbitrator issued an order granting that motion. In late May 2021, the arbitrator issued another order indicating that the parties had opted out of an initial prehearing conference but had proposed dates for discovery and for the final evidentiary hearing. The arbitrator therefore set discovery deadlines and the date for the final evidentiary hearing, although those dates were later extended. In April 2022, the parties submitted hearing exhibits, and Merrill Lynch's submitted exhibits again included Ingle's AWC.

**C. After the hearing but before the arbitrator issued an award on Ingle's expungement claim, FINRA denied use of its arbitration forum.**

On May 2, 2022, the arbitrator held an evidentiary hearing regarding Ingle's expungement request, but the record contains no information about what occurred during that hearing. On May 10, 2022, approximately a week after the hearing, but before the arbitrator issued an award, a FINRA Case Administrator sent Ingle a letter from the Director of DRS denying use of the FINRA arbitration forum. The letter stated that the employment termination information was "ineligible for expungement from CRD in FINRA's arbitration forum because [it] arise[s] from the same facts and circumstance related to a regulatory action disclosure" and "[r]egulatory actions are ineligible for expungement." The letter also stated that "expungement in this matter would conflict with the terms agreed to by" Ingle in the AWC, citing his agreement not to deny the AWC's findings and his agreement that the AWC would become part of his permanent disciplinary record. On June 8, 2022, Ingle filed this application for review of FINRA's denial letter with the Commission.<sup>18</sup>

## II. Analysis

Section 19(d) of the Exchange Act 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.<sup>19</sup> Exchange Act Section 19(f), in turn, sets forth the standard for our review. It provides that we review a FINRA action prohibiting or limiting 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.<sup>20</sup> We remand this proceeding to FINRA because we are unable to determine the basis for FINRA's action and therefore cannot determine whether it complies with these requirements.

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<sup>18</sup> In August 2022, Ingle filed an unopposed motion to amend his application for review, which we hereby grant. The amended application for review adds a request in the alternative for any "relief that is appropriate and ordered by the Commission" and a claim that the arbitrator already heard "all of the evidence" regarding Ingle's expungement request.

<sup>19</sup> 15 U.S.C. § 78s(d).

<sup>20</sup> 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.* Ingle does not argue, and the record does not show, that FINRA's action imposes such a burden here.

FINRA Rules 12203(a) and 13203(a) provide that the Director of DRS (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 [relevant FINRA Arbitration] Code, the subject matter of the dispute is inappropriate.”<sup>21</sup> “Only the Director may exercise” this authority.<sup>22</sup> But here, the Director’s letter to Ingle denying him access to the arbitration forum does not address that FINRA sent the letter after DRS had already accepted Ingle’s claim for arbitration—indeed, after the arbitration hearing had already taken place. Thus, the letter does not explain how FINRA’s denial of access to the arbitration forum comported with FINRA Rules 12203(a) and 13203(a), even though FINRA had previously allowed access to the forum by allowing the arbitration hearing to take place.<sup>23</sup>

The denial letter also does not explain FINRA’s conclusion that a claim to expunge non-regulatory action information is an improper subject matter for FINRA arbitration if the information arises from the same circumstances as a regulatory action. Although the denial letter notes that regulatory action information cannot be expunged from the CRD, that alone does not explain why non-regulatory action information arising from these same circumstances cannot be expunged from the CRD. And Ingle is not requesting to expunge the regulatory action information—that is, the information about the AWC—from the CRD. In addition, although the denial letter notes that a provision in the AWC provides that Ingle will not take any action denying or casting doubt on the AWC’s findings, the denial letter does not address the AWC’s further statement that this provision does not affect Ingle’s “right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.”

In remanding, we express no opinion on the underlying merits of FINRA’s decision to deny access to its arbitration forum. Nor do we express an opinion on any other issues raised by the parties in this appeal—such as Ingle’s argument that FINRA waived the ability to deny use of the arbitration forum by not doing so until after the arbitration hearing or FINRA’s argument that a collateral attack on an AWC is an inappropriate subject matter for FINRA arbitration. On

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<sup>21</sup> 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 “Director”). After FINRA denied Ingle’s access to the forum, FINRA added Rules 12203(b)-(c) and 13203(b)-(c), which provide additional grounds for the Director to decline use of the FINRA arbitration forum. In reaching our decision here, we need not, and do not, consider whether these rule changes apply to Ingle’s case.

<sup>22</sup> FINRA Rules 12203(a), 13203(a).

<sup>23</sup> *See Ryan William Mummert*, Exchange Act Release No. 97680, 2023 WL 3931456, at \*3-4 (June 9, 2023) (remanding in part because the denial letter did not mention that the arbitration hearing had already been held or explain how this fact related to FINRA Rules 12203(a) and 13203(a)); *see also* FINRA Rules 12203(a), 13203(a) (allowing FINRA to “decline to permit the use of the FINRA arbitration forum” in certain instances).

remand, the Director may address these and any other arguments that are raised in the first instance.

An appropriate order will issue.<sup>24</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>24</sup> 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  
Release No. 99258 / January 2, 2024

Admin. Proc. File No. 3-20893

In the Matter of the Application of  
DAVID W. INGLE  
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