FINRA
Financial Industry Regulatory Authority

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January 8, 2015

VIA MESSENGER

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: In the Matter of the Application for Review of WD Clearing, LLC, et al.
Administrative Proceeding No. 3-16209

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Reply to WD Clearing's Opposition to FINRA's Motion to Dismiss WD Clearing's Application for Review and to Stay Issuance of Briefing Schedule in the above-captioned matter.

Please contact me at (202) 728-8083 if you have any questions.

Very truly yours,

Jennifer C. Brooks

Enclosures

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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application for Review of

WD Clearing, LLC, et al.

File No. 3-16209

FINRA'S REPLY TO WD CLEARING'S OPPOSITION TO FINRA'S MOTION TO DISMISS WD CLEARING'S APPLICATION FOR REVIEW AND TO STAY ISSUANCE OF BRIEFING SCHEDULE

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I. INTRODUCTION

In its Motion to Dismiss WD Clearing's Application for Review and to Stay Issuance of Briefing Schedule, FINRA argued that WD Clearing's appeal should be dismissed because it concerns FINRA's actions that were not final and were not appealed within FINRA. In addition, FINRA argued that the Commission lacks the statutory jurisdiction under § 19(d) of the Exchange Act to entertain the "appeal" of a third party, that was not the continuing membership applicant, and where there is no FINRA action for the Commission to review. WD Clearing, in its opposition, is unable to articulate a proper jurisdictional basis for the Commission to consider its application and largely rehashes the assertions that it made in its application for review. WD Clearing attempts to force its complaints about FINRA's continuing membership procedure and an unsuccessful business deal with FINRA member, Wilson-Davis, into a § 19(d) application for review. But complaints about a failed business deal do not create jurisdiction where none exists. Wilson-Davis's withdrawal of its continuing membership application ("CMA") from FINRA consideration falls within none of the categories of actions subject to Commission review. And

WD Clearing provides no legal authority for disrupting FINRA's orderly procedures and petitioning the Commission for extraordinary relief.

Moreover, in an effort to bypass the critical fact that FINRA never issued a final decision on Wilson-Davis's CMA, WD Clearing, without support, maintains that FINRA "forced" Wilson-Davis to withdraw and has a "secret agenda" in an effort to "skirt the reporting requirements of Section 19(d)(1) of the Exchange Act." (Opposition at 7, 8, 17.) These baseless assertions are merely an effort to create controversy where none exists. The simple fact remains: because Wilson-Davis's withdrawal of the CMA terminated FINRA's review of its member's request to transfer ownership prior to a final FINRA decision, no statutory basis exists for the Commission to exercise its jurisdiction. The Commission, therefore, should dismiss WD Clearing's application for review.

II. ARGUMENT

A. The Commission Should Dismiss WD Clearing's Appeal Because WD Clearing Failed to Follow FINRA's and the Commission's Procedures

WD Clearing's application for review is not permitted by either FINRA or Commission rules and should be dismissed. WD Clearing argues that FINRA "forced" Wilson-Davis to withdraw the CMA; and thus, the withdrawal was FINRA's final decision and therefore ripe for Commission review. (Opposition at 16.) WD Clearing is incorrect and seeks to sidestep administrative finality and exhaustion. First, FINRA cannot force an applicant to withdraw a CMA and there is no evidence that it did in this case. The September 17, 2014 email communication that WD Clearing relies on from Wilson-Davis's counsel shows only that *Wilson-Davis* understood that the Wells Notice to John Hurry would be an impediment to FINRA's approval of the change in ownership. (RP 2713.) FINRA, however, never denied the

CMA or issued any final decision on the CMA. FINRA's sole response to the September 17 email stated in relevant part, "Thank you for your email. This is to confirm receipt of your request; the CMA is hereby withdrawn." (RP 2713.) By no reading can this be viewed as anything other than FINRA's acknowledgement of Wilson-Davis's withdrawal. The fact that Wilson-Davis chose to withdraw from the CMA review process after learning of the issues associated with FINRA's Wells Notice to Hurry does not create a final action of FINRA that is ripe for a third party like WD Clearing to appeal.[1] WD Clearing concedes as much in its assertion that the withdrawal acted to "eliminate Wilson-Davis' standing to commence an administrative appeal." (Opposition at 7, 17.) If Wilson-Davis as the CMA applicant and FINRA member cannot appeal the withdrawal, of course it stands to reason that WD Clearing, as a third party, is precluded as well.

Nonetheless, WD Clearing sought Commission review of Wilson-Davis's withdrawal, irrespective of the FINRA rules that govern the membership process and preclude such action.[2]

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[1] Moreover, the record illustrates the contentious relationship between Wilson-Davis and WD Clearing. In an August 22, 2014 letter to FINRA membership staff, Wilson-Davis described a lawsuit that WD Clearing filed against Wilson-Davis for breach of contract when Wilson-Davis refused to transfer ownership of the firm to WD Clearing in light of the interim restrictions in place during the CMA review process. (RP 2696.) Wilson-Davis stated that "in the opinion of the Firm, [WD Clearing's] efforts to force the Firm into a significant violation of FINRA rules, and expose the Firm to severe sanctions, indicates they lack a fiduciary commitment to the Firm and its customers." (RP 2696-97.) This August 22 letter reveals Wilson-Davis's concerns about the transfer of ownership going forward.

[2] WD Clearing trumpets the Commission's November 20, 2014, acknowledgment of the application for review, as recognizing "that FINRA was playing the role of Wilson-Davis' puppet master." (Opposition at 16.) WD Clearing conveniently ignores the Commission's actual statement that acceptance of the filing did not "constitute a Commission determination as to the proper statutory basis" for the application or "a prejudgment . . . pertaining to the Commission's jurisdiction to consider this matter." (RP 2829-30.)

As WD Clearing necessarily acknowledges, only Wilson-Davis as the FINRA member firm and CMA applicant can appeal an adverse decision made by FINRA's membership staff. (Opposition at 18); *see* NASD Rules 1017(a), (j). Under these rules, a FINRA member can appeal the denial of a CMA to the NAC and, after FINRA issues a final decision, to the Commission. *See* NASD Rules 1015(a), (j)(3). The Commission has explained that FINRA's actions generally may not be appealed to the Commission until they have been reviewed by the NAC. *Sky Capital, LLC*, Exchange Act Release No. 55828, 2007 SEC LEXIS 1179, at *16 (May 30, 2007). In this case, Wilson-Davis, as the CMA applicant and the only party who properly could seek appellate review after FINRA issues a decision, has not completed the FINRA process that is currently available. There is no provision for the Commission's review of WD Clearing's grievances as a party to a failed business transaction with Wilson-Davis.[3]

The remedies sought in WD Clearing's application for review—Commission review of the withdrawn CMA and ordering FINRA to admit WD Clearing as a FINRA member—would also preclude FINRA from fully developing a record and completing its review, including rendering a NAC decision and making a series of conclusions that could readily be reviewed by the Commission on appeal. Accordingly, the withdrawn CMA is not a FINRA final action or

[3] WD Clearing's assertion that FINRA "forced" Wilson-Davis to withdraw its CMA in order to avoid Exchange Act reporting requirements is groundless. (Opposition at 7, 8, 17.) Had FINRA's membership staff denied the CMA, Wilson-Davis could have appealed the denial to the NAC. *See* NASD Rules 1015(a), 1017(j). A final NAC decision constitutes final FINRA action for purposes of the Exchange Act. *See* NASD Rules 1015(j)(3). An initial denial by FINRA membership staff, however, is not a final action that FINRA must report under § 19(d). *See* Exchange Act Rule 19d-1(e), 17 C.F.R. § 240.19d-1(e). WD Clearing's assignment to FINRA of ulterior motives is without basis.

ripe for review.[4] *See Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 812 (2003) (finding issue not "fit for review" because "further factual development would significantly advance our ability to deal with the legal issues presented") (internal quotation marks omitted); *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 733 (1998) (noting that an issue is not ripe for review if "intervention would inappropriately interfere with further administrative action" and "would benefit from further factual development of the issues presented"); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990) (observing that prior to review "the scope of the controversy [should be] reduced to more manageable proportions, and its factual components fleshed out").

By attempting to appeal a withdrawn CMA to the Commission, WD Clearing bypasses FINRA's established and effective membership procedures and could set a terrible precedent that third parties may seek Commission review whenever a business deal with a FINRA member goes awry. The central purpose of the exhaustion doctrine is "the avoidance of premature interruption of the administrative process." *McKart v. United States*, 395 U.S. 185, 193 (1969); *see also Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 79 (1st Cir. 1997) ("Insisting on exhaustion forces parties to take administrative proceedings seriously, allows administrative agencies an opportunity to correct their own errors, and potentially avoids the need for judicial involvement altogether."); *Ezratty v. Puerto Rico*, 648 F.2d 770, 774 (1st Cir. 1981) (stating that "the doctrine serves interests of accuracy, efficiency, agency autonomy and judicial economy"). Allowing the administrative process to run its course "allows the administrative agency to utilize

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[4] As noted in FINRA's Motion to Dismiss, Wilson-Davis, as the FINRA member, may submit another application to FINRA in order to restart the CMA review process. *See* NASD Rule 1017(f). Likewise, WD Clearing, as a nonmember could submit a new member application to become a FINRA member pursuant to NASD Rule 1013.

its discretion, apply its expertise, correct its own errors, and handle its business expeditiously." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. NASD*, 616 F.2d 1363, 1370 (5th Cir. 1980); *see also McCarthy v. Madigan*, 503 U.S. 140, 145 (1992) ("The exhaustion doctrine also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes . . . ."). It also "promot[es] judicial economy by reducing duplication" in reviewing these matters. *Cutler v. Hayes*, 818 F.2d 879, 891 (D.C. Cir. 1987). And, importantly, it prevents the flouting of established administrative processes. *See Andrade v. Lauer*, 729 F.2d 1475, 1484 (D.C. Cir. 1984). It is particularly useful in situations like this one where the questions presented plainly call for "agency expertise or the exercise of agency discretion." *Touche Ross & Co. v. SEC*, 609 F.2d 570, 577 (2d Cir. 1979).

WD Clearing further contends that it complied with the Commission's Rules of Practice. (Opposition at 19.) But because FINRA made no final determination on the CMA before Wilson-Davis withdrew, WD Clearing's application for review is not authorized by any provision in the Commission's Rules of Practice. Rule 420 of the Commission's Rules of Practice only permits an application for review *after* a determination of a self-regulatory organization is made "with respect to any final disciplinary sanction; denial or conditioning of membership or participation; prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or bar from association as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. § 78s(d)(1)." WD Clearing agrees that because Rule 420(a) repeats the four bases of jurisdiction from § 19(d), it does not establish any broader jurisdiction than the statute. (Opposition at 19); *see Allen Douglas Sec., Inc.*, 57 S.E.C. 950, 955 (2004); *Morgan Stanley & Co.*, 53 S.E.C. 379, 382, 384 (1997) (explaining that § 19(d) authorizes Commission review

when FINRA takes action denying or restricting membership or impacting a member firm's access to services offered by FINRA). The Commission should reject WD Clearing's attempt to force a failed business deal with Wilson-Davis into a § 19(d) application for review. *See, e.g.*, *Allen Douglas*, 57 S.E.C. at 955 n.14, 962 (rejecting appeal for lack of jurisdiction under § 19(d) despite applicant's claims of "extraordinary circumstances" or "compelling reasons"). Consequently, the application for review is not permitted under the Commission's Rules of Practice.

The Commission should thus reject WD Clearing's attempt to circumvent FINRA and Commission rules by short-circuiting the membership process under FINRA rules. *See, e.g.*, *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004) (exhaustion of SRO remedies "is a sensible way of preventing circumvention of [the] congressional scheme").

B. The Commission Should Dismiss WD Clearing's Application for Review for Lack of Jurisdiction Under § 19(d) of the Exchange Act

An independent reason to dismiss this application for review is that § 19(d) of the Exchange Act provides no jurisdictional basis for the Commission's review of Wilson-Davis's withdrawal of its CMA from FINRA consideration. And, naturally, if the Commission lacks jurisdiction under § 19(d), it must dismiss WD Clearing's application for review. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 962-63 (2000); *see also Lance E. Van Alstyne*, 53 S.E.C. 1093, 1097 (1998) (dismissing application for review and stating that the Commission "lack[s] authority under Section 19(d) to review that action, because the NAC's order does not fall within the actions enumerated under Section 19(d)(1)"). WD Clearing, nevertheless, asserts that the withdrawn CMA falls within three classes of actions by FINRA: a denial of access to FINRA

services, a denial of participation, and a bar from membership.[5] (Opposition at 10-16.) Neither the facts of this matter nor the Commission's ample precedent support WD Clearing's tortured application of § 19(d).[6]

1. FINRA Did Not Prohibit or Limit WD Clearing's Access to Services Offered by FINRA

WD Clearing first contends that FINRA "treated unfairly" and "prohibited and limited" WD Clearing "from having access to services offered by FINRA" by imposing the interim restrictions on Wilson-Davis during the pendency of the CMA review process. (Opposition at 10, 11, 13.) Contrary to WD Clearing's assertion, this provision of § 19(d) does not authorize the Commission to review Wilson-Davis's withdrawal. The Commission has interpreted "access to services" to mean a denial of the member's "ability to utilize one of the fundamentally important services offered by the SRO," such as access to market making services provided by the Chicago Stock Exchange, access to telephone link-ups between the trading floor and non-member customers, the listing of securities, the provision of market quotation data, and the termination by an SRO of member status. *See Morgan Stanley*, 53 S.E.C. at 385; *William J. Higgins*, 48 S.E.C. 713, 718-19 (1987); *Biorelease Corp.*, 52 S.E.C. 219, 222-23 (1995); *Tower Trading, L.P.*, 56 S.E.C. 270, 280-82 (2003); *Bloomberg, L.P.*, Exchange Act Release No. 49076, 2004 SEC LEXIS 79, at *9-10 (Jan. 14, 2004); *MFS Sec. Corp.*, 56 S.E.C. 380, 388 n.15

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[5] WD Clearing does not contend that that the withdrawn CMA constitutes a final disciplinary sanction under § 19(d). (Opposition at 10.)

[6] Even assuming that the Commission has jurisdiction over this matter under § 19(d), which it does not, the Commission has stated that it reviews SRO denials of requests to modify SRO membership agreements, such as a transfer of ownership request, as denials of access to services under the Exchange Act. *See Sky Capital*, 2007 SEC LEXIS 1179, at *13 n.16. Thus, the denial of participation and bar from membership grounds are inapplicable here.

(2003).[7] Here, the only service that FINRA was arguably providing—the process of reviewing Wilson-Davis's CMA—was provided. *Compare Scattered Corp.*, 52 S.E.C. 812, 812-15 (1996) (reviewing an exchange's refusal to process a request for registration as a market-maker in certain issues). FINRA's imposition of the interim restrictions during the CMA review fulfilled FINRA's responsibility to prospectively evaluate whether Wilson-Davis could comply with the required standards set forth in NASD Rule 1014(a), including whether persons who would become associated or affiliated with the firm, such as Hurry, would comply with the securities laws. (RP 2159-60.) Imposing the interim restrictions was an exercise of FINRA's authority under its rules and does not fall within the definition of "access to services." *Cf. Allen Douglas*, 57 S.E.C. at 960-61 (explaining that Commission lacked jurisdiction to review NASD's disapproval of member firm's subordinated loan agreement); *Morgan Stanley*, 53 S.E.C. at 382-83 (holding that denial of request for exemption from MSRB Rule G-37 was not a "disciplinary sanction" but rather an exercise of NASD's discretionary authority.) WD Clearing seeks review of FINRA's exercise of its discretionary authority. The Commission should dismiss this application for review because it does not seek review of a FINRA action that denied "access to services" within the meaning of § 19(d).[8]

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[7] WD Clearing's effort to summarily dismiss these cases misses the mark. (Opposition at 14 n.37.) WD Clearing asserts that nothing is more "fundamentally important" than its right to "participate in the ownership of a FINRA-member firm." (*Id.*) The Commission has made clear, however, that the "services" at issue under this prong of § 19(d) are those that are a core function of the SRO, not merely those that are important to an applicant. *Morgan Stanley*, 53 S.E.C. at 385. WD Clearing's participation in ownership of a FINRA member is not central to the functioning of FINRA.

[8] WD Clearing repeatedly contends that the interim restrictions imposed were contrary to FINRA rules. (Opposition at 5, 6, 9, 11-14.) As FINRA previously explained in its Motion to Dismiss, however, NASD Rule 1017(c)(1) expressly provides that FINRA may place interim restrictions on the member based on the standards set forth in NASD Rule 1014, pending

[Footnote cont'd on next page]

FINRA also did nothing to "prohibit[ ]" or "limit[ ]" WD Clearing within the meaning of § 19(d) of the Exchange Act, which the Commission has interpreted to require an SRO action. *See Biorelease Corp.*, 52 S.E.C. at 221-22 (finding SRO's action of delisting applicant's securities a prohibition or limitation on access to services). WD Clearing has not been denied access to any services offered by FINRA because it has never applied for membership. FINRA also took no action to prohibit or limit Wilson-Davis's activities as a FINRA member. Instead, as previously explained, Wilson-Davis terminated the proposed transfer of ownership transaction to WD Clearing when the firm withdrew the CMA. Moreover, the interim restrictions remained in place only during the pendency of the CMA process. *See* NASD Rule 1017(c) ("An existing restriction shall remain in effect during the pendency of the proceeding."). That WD Clearing chafes under the interim restrictions that are no longer in effect does not create an appealable event. As the Commission has held, an action "is not reviewable merely because it adversely affects the applicant." *Joseph Dillon*, 54 S.E.C. at 964.

WD Clearing's application for review does not qualify as a denial or limitation on "access to services."

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FINRA's final decision on the CMA. FINRA explained, "[a] firm may effect the change before the final, written decision is issued, but the FINRA MAP Group may impose interim restrictions that would remain in effect until the application is decided," including an interim restriction that prohibits a deal from closing prior to FINRA approval. *Continuing Membership Guide*, http://www.finra.org/Industry/Compliance/Registration/MemberApplicationProgram/CMGuide/P009723; *NASD Notice to Members 00-73*, 2000 NASD LEXIS 82, at *28 (Oct. 2000); (RP 2167). The February 25, 2014 letter, setting forth the interim restrictions, identified specific concerns pursuant to NASD Rule 1014 that necessitated the restrictions. (RP 2159-60.) FINRA acted appropriately and pursuant to its membership rules in imposing interim restrictions that precluded the transaction from closing prior to FINRA's final approval.

2. FINRA Did Not Deny Participation or Bar Any Person from Becoming Associated with a Member

The remaining two bases for appellate review that WD Clearing identifies, denial of participation and a bar from FINRA association, are equally inapplicable to this proceeding. (Opposition at 14-16.) With respect to the denial of participation prong, WD Clearing continues to blame FINRA for Wilson-Davis's withdrawal of the CMA in its efforts to dodge the requirement that there must be an actual FINRA decision denying an application for membership or restricting a FINRA member's business activities. (Opposition at 14-15); *Morgan Stanley*, 53 S.E.C. at 382; *see also Domestic Sec., Inc.*, 52 S.E.C. 934 (1996) (finding jurisdiction where SRO denied requested modification of restrictive agreement to increase number of securities in which applicant could make markets); *First Potomac Inv. Servs., Inc.*, 50 S.E.C. 848 (1992) (finding jurisdiction where SRO denied requested modification of restriction agreement to permit the trading of uncovered put options under certain conditions). Irrespective of its serial attempts to blame FINRA, and the evidence of the hostilities that had developed between Wilson-Davis and WD Clearing prior to the withdrawal, the fact remains that FINRA's acknowledgment of Wilson-Davis's withdrawal was not a denial of FINRA membership or participation. In fact, Wilson-Davis continues to be a member of FINRA, notwithstanding the withdrawn CMA. (RP 2827, 2846-47.) FINRA did not prohibit Wilson-Davis from operating as a broker-dealer. Nor did FINRA limit Wilson-Davis's FINRA membership status or prohibit it from continuing as a FINRA member.

WD Clearing also quibbles with FINRA's discussion of the Commission's decision in *Beatrice J. Feins* as relevant authority on the point that the Commission lacks jurisdiction to address WD Clearing's grievances. (Opposition at 15 n.45.) Once again, WD Clearing misses the mark; nothing about this case supports WD Clearing's arguments. In *Feins*, the Commission

dismissed an appeal by an American Stock Exchange Member for lack of jurisdiction where the exchange refused to allow the member to transfer his exchange membership to his grandmother. 51 S.E.C. 918, 921 (1993). The grandmother had satisfied all the express requirements for exchange membership, including applying for the transfer of ownership. *Id.* at 919. Because the exchange treated the transfer of an existing membership as an application for new membership, the Commission found that the decision to deny the transfer to the grandmother constituted a denial of SRO membership. *Id.* at 920. After the exchange issued a written decision, denying the grandmother's request to approve the transaction, both the grandmother and the member appealed to the Commission. *Id.* at 920. In dismissing the member's appeal, the Commission determined that the member was not denied membership, or denied, prohibited, or limited in his access or participation in any exchange service. *Id.* at 921. Instead, the member "retained his membership and all the privileges thereto, including his ability to transfer and lease the membership." *Id.* With respect to the grandmother, the Commission considered her appeal because she applied for and was denied SRO membership, unlike WD Clearing who neither applied for nor was denied FINRA membership. *Id.* at 920. Just as the Commission found no jurisdiction for the exchange member's appeal in *Feins*, WD Clearing's attempt to purchase Wilson-Davis does not qualify as a denial of participation.

WD Clearing's contention that the interim restrictions in place during the CMA review process "effectively barred" WD Clearing's representatives from association with a FINRA member misconstrues the bar from becoming associated basis for review under § 19(d). (Opposition at 16.) This jurisdictional prong is triggered when FINRA imposes a bar on an individual from being associated with any FINRA firm. *See Sky Capital*, 2007 SEC LEXIS 1179, at *12-13. Here, FINRA did not bar an individual from associating with any FINRA firm.

The Commission's jurisdiction is also triggered under this provision of § 19(d) if FINRA's action has the direct effect of barring an individual. *See Lawrence Gage*, Exchange Act Release No. 54600, 2006 SEC LEXIS 2327, at *20 (Oct. 13, 2006) ("We have held previously that SRO action having the effect of 'barring' an individual from association with the SRO's members—whether the individual is formally barred or not—is reviewable under Section 19(d).").[9] As described above, FINRA took no action in this case that had any similar effect on Wilson-Davis or any of its associated persons. FINRA's acknowledgment of the withdrawn CMA does not formally bar or have the effect of barring any person from becoming associated with any member of FINRA. Whatever the consequence to WD Clearing of the withdrawn CMA, it does not constitute a bar because its individual members, such as Hurry, remain free to associate with a FINRA member. *See Joseph Dillon*, 54 S.E.C. at 695-66. Indeed the record shows, and WD Clearing concedes, that Hurry is currently associated with two FINRA members, Alpine Securities and Scottsdale Capital. (RP 3012-13, 3018; Opposition at 8 n.23). The interim restrictions, which are no longer in effect, did not bar any representative of Wilson-Davis or individual members of WD Clearing from FINRA association.

III. CONCLUSION

WD Clearing's brief in opposition makes even clearer that there is no jurisdictional basis for the Commission to entertain WD Clearing's appeal. The Commission should dismiss WD Clearing's application for review because its appeal involves the wrong party, a failure to follow

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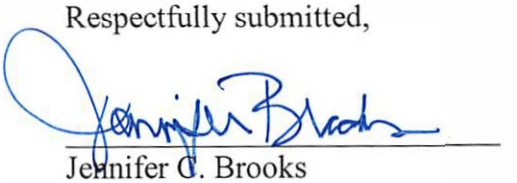
[9] The Commission previously has interpreted this provision as directed at decisions denying licensing exemptions for employees seeking to become associated with a member firm. *See Frank R. Rubba*, 53 S.E.C. 670, 672-73 (1998); *Exchange Services Inc.*, 48 S.E.C. 210, 210-11, 214 (1985).

FINRA rules, and a challenge to a decision made not by FINRA, but by Wilson-Davis, who chose not to pursue final FINRA action. There is no FINRA action that is "subject to review" under § 19(d) of the Exchange Act. Thus, none of the four possible grounds for Commission jurisdiction set forth by Exchange Act § 19(d) applies to this case. The Commission should follow its well-established precedent related to its jurisdiction and dismiss WD Clearing's application for review.

Respectfully submitted,



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