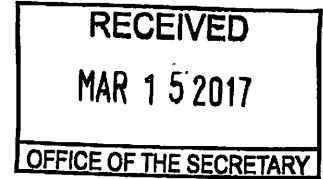


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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**



In the Matter of the Application of

Kalid Morgan Jones

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-17852

**FINRA'S MOTION TO DISMISS THE APPLICATION FOR REVIEW AND
TO STAY THE BRIEFING SCHEDULE**

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March 15, 2017

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**FINRA'S MOTION TO DISMISS THE APPLICATION FOR REVIEW AND
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I. INTRODUCTION

This case involves Kalid Morgan Jones's failure to respond to FINRA's requests for documents and information and FINRA's subsequent bar of Jones through an expedited proceeding. Jones did not respond to FINRA's warnings about being suspended and did not ask for a hearing, and his application for review by the Commission (the "Application for Review") is more than four months late. The Commission should dismiss Jones's Application for Review because it is untimely and because he failed to exhaust the administrative remedies available to him in FINRA's forum.

When FINRA learned that Jones had been arrested for a crime, FINRA opened an investigation to determine whether Jones had violated FINRA or other rules or whether further disciplinary action was necessary. FINRA served Jones with FINRA Rule 8210 requests for documents and information. Jones, however, failed to respond to the requests. FINRA then initiated an expedited proceeding against Jones, informing him that he would be suspended if he did not either request a hearing or respond fully to the information requests. Jones again failed

to respond and did not request a hearing, and FINRA suspended him. FINRA notified Jones of the suspension and explained that he could request termination of the suspension on the ground that he complied fully with FINRA's requests. FINRA also warned Jones that the suspension would convert to a bar three months from the date of the issuance of the original notice of suspension if Jones failed to request termination of the suspension. Jones took no action, never provided the requested information, and FINRA barred him.

More than four months after being notified of FINRA's bar, Jones submitted a one paragraph letter that was accepted by the Commission as an application for review. The Application for Review should be dismissed because it is untimely and because Jones failed to follow FINRA's procedures. The Commission should follow its long-standing precedent and dismiss the Application for Review.¹

II. FACTUAL BACKGROUND

Jones joined the industry when he registered with National Securities Corporation in April 2015. (RP 40.)² In February 2016, Jones left National Securities Corporation and on March 14, 2016 registered with Joseph Gunnar & Co. (*Id.*) Only three days later, Joseph Gunnar discharged Jones. (*Id.*) The Uniform Termination Notice for Securities Industry

¹ Pursuant to Commission Rule of Practice 161, FINRA requests that the Commission stay issuance of a briefing schedule in this matter while this motion is pending. *See* 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive arguments that Jones's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

² "RP ___" refers to the page numbers in the certified record filed by FINRA on January 4, 2016.

Registration (“Form U5”) filed by Joseph Gunnar indicated that Jones had been “[t]erminated for failure to accurately disclose information on the Firm’s pre-hire questionnaire.” (*Id.*)

A. FINRA’s Rule 8210 Requests for Information

On April 1, 2016, FINRA sent a FINRA Rule 8210 request for documents and information to Jones (the “First Request”).³ (RP 1-2.) The First Request asked Jones about a criminal arrest on August 15, 2015. The First Request asked Jones to describe the circumstances or events that led to the arrest, whether he had disclosed the arrest to National Securities Corporation and Joseph Gunnar, and to provide copies of documents related to the arrest. (RP 1.)

The First Request reminded Jones of his obligation to “respond to [the] request fully, promptly, and without qualification” and warned that “[a]ny failure ... to satisfy these obligations could expose [Jones] to sanctions, including a permanent bar from the securities industry.” (*Id.*)

FINRA sent the First Request by certified and first-class mail to Jones’s address of record as contained in CRD, 178-33 Murdock Ave., St. Albans, NY 11434 (the “CRD Address”), and requested a response from Jones no later than April 15, 2016. (RP 1, 37.) The certified mailing to the CRD Address was delivered on April 4, 2016 and signed for by a “D. Jones.”⁴ (RP 3.)

³ FINRA Rule 8210 requires persons subject to FINRA’s jurisdiction to provide documents and written information to FINRA, upon the request of FINRA staff, with respect to any matter involved in an investigation. The rule “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.” *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *aff’d*, 347 F. App’x 692 (2d Cir. 2009) (internal quotation marks omitted). The Commission has made clear that a person who fails to respond to a request issued under FINRA Rule 8210 impedes FINRA’s ability to detect misconduct and protect the investing public. *Id.* at *13-14.

⁴ There is no evidence in the record indicating that the first class mailing was returned.

On April 26, 2016, FINRA sent Jones a second FINRA Rule 8210 request for information (the “Second Request”), which enclosed the First Request. (RP 5.) The Second Request noted that while Jones was granted an extension until April 22, 2016 to reply to the First Request, he had failed to provide the requested documents and information by this extended deadline. (*Id.*) The Second Request reminded Jones of his obligation to provide documents and information to FINRA under FINRA Rule 8210 and directed him to respond by May 10, 2016. (*Id.*) The Second Request was sent by certified and first-class mail to Jones’s CRD Address. (RP 5, 37.) The certified mailing was delivered on April 28, 2016 and signed for by “D. Jones.”⁵ (RP 6.) Jones did not respond.

On June 1, 2016, FINRA made a final attempt to get Jones to comply with his FINRA Rule 8210 obligations by sending him a third request for documents and information (the “Third Request”). (RP 7.) The Third Request enclosed copies of the First and Second Requests and reminded him that failure to comply could result in disciplinary action against him. (*Id.*) The Third Request was sent to Jones’s CRD Address by certified and first class mail and stated that the requested documents and information be submitted by June 8, 2016. (*Id.*) The Third Request was delivered to the CRD Address and signed for by “D. Jones” on June 3, 2016.⁶ (RP 8.) Again, Jones did not respond.

B. The June 22, 2016 Pre-Suspension Notice

After Jones failed to respond to FINRA’s repeated requests for documents and information, FINRA’s Department of Enforcement (“Enforcement”) sought to suspend Jones

⁵ There is no evidence in the record that the first class mailing was returned to FINRA.

⁶ There is no evidence in the record that the first class mailing was returned to FINRA.

from associating with any FINRA member firm pursuant to FINRA Rule 9552.⁷ (RP 9-10.) On June 22, 2016, Matthew Minerva, Principal Regional Counsel with Enforcement, sent Jones a letter (the “Pre-Suspension Notice”) notifying him that FINRA planned to suspend him on July 18, 2016, for his failure to respond to the First, Second, and Third Requests. (RP 9.) Enforcement included copies of the First, Second, and Third Requests with the Pre-Suspension Notice. (*Id.*)

The Pre-Suspension Notice stated that Jones could avoid imposition of the suspension if he complied with the information requests before the suspension date of July 18, 2016. (*Id.*) The Pre-Suspension Notice further explained that Jones had the opportunity to request a hearing before the suspension date to contest the imposition of the suspension and that such a request would stay the effectiveness of the suspension. (*Id.*) The Pre-Suspension Notice also explained that Jones could seek termination of the suspension on the ground of full compliance with the Pre-Suspension Notice, and that failure to request termination of the suspension within three

⁷ FINRA Rule 9552(a) states that

[i]f a member, person associated with a member or person subject to FINRA’s jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, or fails to keep its membership application or supporting documents current, FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

months of the issuance of the Pre-Suspension Notice would result in bar on September 26, 2016. (RP 10.); *see also* FINRA Rule 9552(h).⁸

FINRA sent the Pre-Suspension Notice to Jones's CRD Address by certified and first-class mail. (RP 9.) The certified mailing was delivered and signed for by "K. Jones" on June 25, 2016.⁹ (RP 15.) Jones, however, neither responded to the Pre-Suspension Notice, nor answered FINRA's outstanding requests for documents and information.

C. The July 18, 2016 Suspension Notice

On July 18, 2016, David Camuzo, a Director in Enforcement, notified Jones in a letter (the "Suspension Notice") that he was suspended, effective immediately, from association with any FINRA member firm in any capacity, in accordance with the Pre-Suspension Notice. (RP 19.) The Suspension Notice advised Jones that he could file a written request to terminate the suspension based on full compliance with the Pre-Suspension Notice. (*Id.*) The Suspension Notice reiterated the warning that Jones's failure to request termination of the suspension by September 26, 2016, would result in an automatic bar pursuant to FINRA Rule 9552(h). (*Id.*)

FINRA sent the Suspension Notice by certified and first-class mail to Jones's CRD Address. (*Id.*) Prior to mailing the Suspension Notice, FINRA staff searched the LEXIS Public Records database. (RP 17.) That search confirmed that Jones lived at 17833 Murdock Avenue in NY, but listed the city as Jamaica instead of St. Albans, which Jones had listed in CRD. (*Id.*) The zip code—11434—remained the same. This was essentially the same address, however, in

⁸ FINRA Rule 9552(h) states, "[a] member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred."

⁹ There is no evidence in the record that the first class mailing was returned to FINRA.

an abundance of caution, FINRA sent separate copies of the Suspension Notice to the address with each of the listed cities. (RP 19.)

Both certified mailings were delivered and signed for on July 21, 2016. (RP 20-23.)

There is no evidence in the record that the first class mailings were returned to FINRA.

D. The September 26, 2016 Bar Notice

In the more than three months following the Pre-Suspension Notice, Jones did not request termination of his suspension. Accordingly, on September 26, 2016, Jasmine Shergill, a Senior Attorney in Enforcement, notified Jones that, effective immediately, he was barred from associating with any FINRA member in any capacity (the “Bar Notice”). (RP 25-26.)

FINRA sent the Bar Notice by certified and first-class mail to Jones’s CRD Address, sending separate copies using St. Albans and Jamaica in the address. (RP 25.) Prior to sending the Bar Notice, FINRA staff again conducted a search for Jones on the LEXIS Public Records database. (RP 31.) The search once again indicated that the CRD Address was Jones’s current address. (*Id.*) The certified mailing was delivered and signed for on October 1, 2016. (RP 27-30.) Jones indicates in his Application for Review that he received the Bar Notice. (RP 33.)

On February 7, 2017, more than four months after the Bar Notice was delivered to Jones, he submitted his Application for Review to the Commission. (*Id.*)

III. ARGUMENT

The Commission should dismiss the Application for Review because it is untimely and because Jones failed to exhaust his administrative remedies by either providing the requested documents and information, requesting a hearing, or requesting the termination of his suspension. Jones appears to acknowledge his failures in the Application for Review, referring to his “lack of correspondence on my end” and “an error in me sending information.” Jones also

refers to a handwritten letter of which there is absolutely no evidence in FINRA's records and a copy of which he has failed to provide despite FINRA's request. (RP 47.) Jones's Application for Review provides absolutely no basis to excuse his untimeliness or failure to exhaust his administrative remedies and, indeed, there can be no excuse. The Commission should dismiss this appeal.

A. FINRA Has Jurisdiction Over Jones

Jones is subject to FINRA's jurisdiction because he was a person associated with a FINRA member firm and FINRA served its First, Second, and Third Requests and the FINRA Rule 9552 notices within two years of Jones's termination by Joseph Gunnar. FINRA Rules 8210 and 9552 apply to persons subject to FINRA's jurisdiction. Under Article IV, Section 1(a)(1) of the FINRA By-Laws, when Jones applied for registration with FINRA, he agreed to comply with FINRA's By-Laws and rules. Article V, Section 4(a)(iii) of FINRA's By-Laws provides that FINRA retains jurisdiction over an associated person for at least two years after the effective date of termination of the associated person's registration, based upon, among other types of conduct, such person's failure, while subject to FINRA's jurisdiction, to provide information requested by FINRA. *See also NASD Notice to Members 92-19*, 1992 NASD LEXIS 50 (Apr. 1992) (noting that FINRA retains jurisdiction over associated persons for two years after termination and associated persons are required to provide information to FINRA as long as it retains jurisdiction).

The record establishes that Jones became associated with National Securities Corporation in April, 2015. (RP 40.) At that point, Jones was subject to FINRA's jurisdiction and obligated to follow its rules, including the obligation to provide documents and information under FINRA Rule 8210 and the obligation to follow the procedures set out in FINRA Rule 9552. Moreover,

FINRA retained jurisdiction over Jones for two years after the termination of his registration with FINRA on March 17, 2016—i.e., through March 17, 2018—a period which covers the requests and proceedings at issue in this case. (*Id.*)

B. FINRA Properly Served Its Rule 8210 Requests and Rule 9552 Notices and Jones Received Them

FINRA properly sent all the notices to Jones's CRD Address as required by FINRA rules and Jones received copies of all the FINRA Rule 8210 requests and FINRA Rule 9552 notices.

FINRA Rule 8210(d) provides that a notice under Rule 8210 “shall be deemed received” by a “currently or formerly registered person to whom it is directed by mailing . . . [to the] last known residential address of the person as reflected in the Central Registration Depository.” Here, the First, Second, and Third Requests were sent to Jones's CRD Address. (RP 1, 5, 7). Accordingly, FINRA properly served the First, Second, and Third Requests and Jones is deemed to have received them. *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *29 (July 27, 2015) (stating that applicant was deemed to have received FINRA's Rule 8210 requests where they had been mailed to his CRD address); *Ashton Noshir Gowadia*, 53 S.E.C. 786, 789 (1998) (stating that under NASD rules an individual is deemed to have received any notice to which he is entitled if it is mailed to the last known address reflected in CRD).

Moreover, the record shows that each of the requests were delivered and signed for and Jones does not dispute receiving the requests. (RP 3, 6, 8.) In fact, after receiving the First Request, Jones requested and was granted an extension of his time to reply. (RP 5.)

FINRA Rule 9134 governs service of notices of suspension in FINRA Rule 9552 expedited proceedings. *See* FINRA Rule 9552(b). FINRA Rule 9134(b)(1) provides that, “[p]apers served on a natural person may be served at the natural person's residential address, as

reflected in the [CRD], if applicable.” FINRA Rule 9134(a)(2) provides that service may be accomplished by “mailing the papers through the U.S. Postal Service by using first class mail [or] first class certified mail.”

The record reflects that FINRA sent the Pre-Suspension Notice, the Suspension Notice, and the Bar Notice to Jones’s CRD Address by first-class and certified mail, as allowed by Rule 9134(b)(1). (RP 17, 73, 79.) Therefore, the record demonstrates that FINRA properly served Jones. *See, e.g., Mark Steckler*, Exchange Act Release No. 71391, 2014 SEC LEXIS 283, at *10-11 (Jan. 24, 2014) (finding FINRA’s communications were deemed to have been received by applicant, regardless of whether he had actual receipt, when FINRA properly served him at his CRD address); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *7 (Apr. 18, 2013) (noting that Rule 9552 provides for service of notice by mail at an individual’s CRD address).

Again, the record is replete with evidence that Jones had actual knowledge of the FINRA Rule 9552 notices. Each was delivered and signed for by individuals at the CRD Address. (RP 15, 20-23, 27-30.) Jones does not claim that he was not aware of the Rule 9552 proceedings but, rather, concedes to—what he terms—a “lack of correspondence on my end.” (RP 33.) Based on the record, there can be no doubt that FINRA properly served Jones and that Jones was aware of FINRA’s requests for information and documents and the FINRA Rule 9552 proceedings.

C. Jones’s Application for Review By the Commission is Untimely

Jones’s Application for Review should be dismissed on the grounds that it is untimely. Section 19(d)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) provides that any person aggrieved by a final disciplinary sanction imposed by a self-regulatory organization may file an appeal “within thirty days” after the date the notice of the self-regulatory organization’s

determination was filed with the SEC and received by the aggrieved person, or “within such longer period as [the SEC] may determine.” 15 U.S.C. § 78s(d)(2). SEC Rule of Practice 420 is the “exclusive remedy” for seeking an extension of the 30-day appeal period. 17 C.F.R. § 201.420(b). That rule provides that the Commission will allow the filing of a late application for review only upon “a showing of extraordinary circumstances.” *Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 SEC LEXIS 1153, at *7 & n.9 (May 20, 2008).

Jones’s appeal is untimely and the Commission should dismiss it. Shergill sent the Bar Letter on September 26, 2016. (RP 25-26) The Bar Letter was delivered and signed for on October 1, 2016. (RP27-30.) The Bar Letter itself cautioned Jones that if he wanted to seek review by the Commission he “must file the application for review within thirty days of [his] receipt of [the] letter.” (RP 25.) Jones’s Application for Review is dated February 7, 2016—well past the 30-day appeal deadline. The Commission has declined to review late applications for review under similar circumstances. *See Aliza Manzella*, Exchange Act Release No. 77084, 2016 SEC LEXIS 464 (Feb. 8, 2016) (dismissing an application for review where it was submitted nine months late); *Warren B. Minton, Jr.*, 55 S.E.C. 1170, 1178-79 (2002) (refusing to accept an application for review filed 2.5 years after final NASD action); *Lance E. Van Alstyne*, 53 S.E.C. 1093, 1099 (1988) (refusing to accept an application for review filed five months after notice of NASD decision). Accordingly, the Commission should dismiss Jones’s appeal because it is untimely.

D. Jones Failed to Exhaust His Administrative Remedies

Even if Jones’s Application for Review was filed timely—which it was not—the Commission is precluded from considering Jones’s Application for Review because he failed to follow FINRA procedures, and consequently, failed to exhaust his administrative remedies. As

the Commission has emphasized, “[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review.” *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at *9 (Apr. 10, 2014) (internal quotation marks omitted). The Commission has repeatedly held that requiring respondents to exhaust their administrative remedies before FINRA is necessary to FINRA’s important regulatory functions, promotes development of the record, allows FINRA the opportunity to correct any error in its earlier decisions, and promotes the efficient resolution of disputes between FINRA and its members. *See, e.g., Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at *6-7 (Sept. 19, 2014) (*quoting MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004)); *Mullins*, 2014 SEC LEXIS 1268, at *10 (same); *Martinez*, 2013 SEC LEXIS 1147, at *12 (same).

The precedent with respect to FINRA Rule 9552 expedited proceedings is well-settled, and the Commission has consistently dismissed respondents’ applications for review where respondents failed to exhaust their administrative remedies under FINRA Rule 9552. *See, e.g., Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, *9-11 (June 22, 2016) (dismissing applicant’s appeal for failure to exhaust administrative remedies where FINRA barred applicant under Rule 9552 for failing to respond to Rule 8210 requests); *Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 SEC LEXIS 4732, at *7-8 (Dec. 4, 2014) (same); *Norman Chen*, Exchange Act Release No. 65345, 2011 SEC LEXIS 3224, at *6, 11 (Sept. 16, 2011) (same).

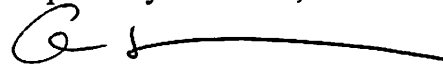
The record establishes that Jones did not respond to any of FINRA’s notices until filing his late Application for Review with the Commission. These notices included three requests for documents and information pursuant to FINRA Rule 8210, and the notice under FINRA Rule

9552. By repeatedly failing to respond to FINRA's requests for information and disregarding the directions set forth in the Pre-Suspension and Suspension Notices, Jones failed to exhaust his administrative remedies and is precluded from challenging FINRA's action before the Commission. *See, e.g., Mullins*, 2014 SEC LEXIS 1268, at *13-14 (relying on "well-established precedent" when dismissing an application for review in a FINRA Rule 9552 proceeding where applicant failed to request a hearing or take corrective action in FINRA's forum); *Gregory Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *6 (May 6, 2010) (finding in a Rule 9552 proceeding that "FINRA's actions were in accordance with its rules and the purposes of the Exchange Act [when] rules set forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action"). The Commission, accordingly, should dismiss the application for review.

IV. CONCLUSION

Jones failed to respond to FINRA's requests for documents and information, failed to take corrective action or request a hearing, and failed to request termination of his suspension. Jones also failed to timely file his appeal with the Commission. Consequently, Jones was barred in accordance with FINRA's rules and the time to challenge the bar has passed. Accordingly, the Commission should dismiss Jones's Application for Review.

Respectfully submitted,



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March 15, 2017

CERTIFICATE OF SERVICE

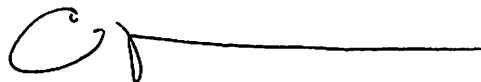
I, Celia L. Passaro, certify that on this 15th day of March 2017, I caused a copy of FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule, in the matter of Application for Review of Kalid Morgan Jones, Administrative Proceeding No. 3-17852, to be served by messenger and fax on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090
Fax: (202) 772-9324

and via FedEx and certified mail on:

Kalid Morgan Jones
[REDACTED]

Service was made on the Commission by messenger and fax and on Applicant by FedEx and certified mail due to the distance between the office of FINRA and Applicant.



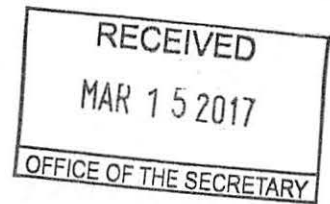
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March 15, 2017

VIA MESSENGER AND FACSIMILE

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090
Fax: (202) 772-9324

RE: In the Matter of the Application for Review of Kalid Morgan Jones
Administrative Proceeding No. 3-17852

Dear Mr. Fields:

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

Please contact me at (202) 728-8985 if you have any questions.

Very truly yours,

Celia L. Passaro

Enclosures

cc: Kalid M. Jones (via FedEx and certified mail)