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**BEFORE THE**

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C.**

In the Matter of the Application

of McBarron Capital LLC

For Review of Action Taken By

FINRA

File No. 3-17939

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

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Dated: May 26, 2017

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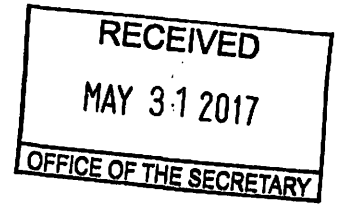
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**I. INTRODUCTION**

FINRA moves to dismiss McBarron Capital LLC's ("McBarron") April 17, 2017 Application for Review because it is untimely. McBarron filed the Application for Review almost two months after it was notified of its expulsion from FINRA membership and more than three weeks after its time for appeal had passed. Commission rules provide that an aggrieved person applying for review must file such an application within 30 days after receiving notice of a determination by FINRA. McBarron has neither timely filed its Application for Review, nor made the required showing of "extraordinary circumstances" sufficient to justify an extension of its time to file. Consequently, the Commission should dismiss McBarron's Application for Review.<sup>1</sup>

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<sup>1</sup> 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. §

## II. FACTUAL BACKGROUND

McBarron registered as a FINRA member firm in December 2004. *See* McBarron's CRD, attached as Exhibit A. On December 8, 2016, FINRA cancelled McBarron's membership for its failure to pay certain outstanding fees owed to FINRA.<sup>2</sup> *Id.*

### A. FINRA Requests Information From McBarron in Connection With McBarron's Cycle Examination

From September through October 2016, FINRA served three FINRA Rule 8210 requests for documents and information on McBarron (the "8210 Requests") and follow-up requests when McBarron failed to respond.<sup>3</sup> (RP 1-26, 29-32, 115-120.)<sup>4</sup> The 8210 Requests were sent to McBarron's address of record as reflected in the Central Registration Depository ("CRD<sup>®</sup>") (the "CRD Address"), to the attention of James Crafa, McBarron's Chief Executive Officer and Chief

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201.161. The Commission should first evaluate the dispositive argument that McBarron's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

<sup>2</sup> The Commission has already dismissed McBarron's attempt to appeal this earlier cancellation of its membership by FINRA. On April 20, 2017, the Commission issued an order dismissing McBarron's application for review of the cancellation because McBarron failed to file a brief in support of its application. *McBarron Capital LLC*, Exchange Act Release No. 80499, 2017 SEC LEXIS 1203 (Apr. 20, 2017). McBarron submitted a brief after the Commission issued this decision and, on May 11, 2017, the Commission issued an order to show cause why the proceeding should be reopened. *McBarron Capital LLC*, Exchange Act Release No. 80662, 2017 SEC LEXIS 1419 (May 11, 2017).

<sup>3</sup> 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.

<sup>4</sup> "RP \_\_\_" refers to the page numbers in the certified record filed by FINRA on May 18, 2017.

Compliance Officer. (RP 1, 9, 22, 21, 29, 115.) With the exception of twelve pages of documents Crafa sent to FINRA on October 26, 2016, McBarron failed to respond to the 8210 Requests and Crafa sent a letter stating that further exams by FINRA were unnecessary and that Crafa intended to complain about FINRA's 8210 Requests to FINRA's "business conduct committee." (RP 27.)

B. FINRA Warns McBarron About Its Failure to Respond

On November 15, 2016, FINRA sent a notice to McBarron at the CRD Address informing McBarron that it would be suspended from membership under FINRA Rule 9552 for its failure to provide the requested documents and information if it did not take corrective action or request a hearing by December 9, 2016 (the "Pre-Suspension Notice").<sup>5</sup> (RP 137.) McBarron neither responded to the 8120 Requests, nor requested a hearing.

On December 9, 2016, FINRA notified McBarron that it was suspended and explained that unless it filed a written request for termination of the suspension on the grounds of full compliance with the Pre-Suspension Notice, it would be automatically expelled from membership on February 21, 2017 (the "Suspension Notice").<sup>6</sup> (RP 161-62.) Once again,

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<sup>5</sup> FINRA Rule 9552(a) states that

[i]f a member . . . 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.

<sup>6</sup> 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."

McBarron did not respond and, on February 21, 2017, FINRA notified McBarron that it was expelled from FINRA membership (the “Expulsion Notice”). (RP 167-68.) The Expulsion Notice advised McBarron that “[t]o comply with the [Commission’s] rule regarding timeliness, [McBarron] must file [its] application for review within thirty days of the [firm’s receipt] of the Expulsion Notice. (RP 167.) The Expulsion Notice was sent to McBarron’s CRD Address by certified mail and first class mail, and to Crafa by email. (*Id.*) On April 17, 2017, almost two months later, McBarron filed an application for review with the Commission.

### III. ARGUMENT

The Commission should dismiss McBarron’s Application for Review because it is untimely and McBarron has failed to establish “extraordinary circumstances” sufficient to justify an extension of its time to submit an application for review.

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). Commission 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 not extend this 30-day period, absent a showing of extraordinary circumstances.” *Id.*; *see also, Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 SEC LEXIS 1153, at \*7 & n.9 (May 20, 2008).

The Commission has stated that the “extraordinary circumstances” exception to the 30-day filing rule should be “narrowly construed and applied only in limited circumstances” because “strict compliance with filing deadlines facilitates finality and encourages parties to act

timely in seeking relief.” See *Manuel P. Arsenio*, Exchange Act Release No. 62315, 2010 SEC LEXIS 2014, at \*20-21 (June 17, 2010). The Commission has explained that a showing of extraordinary circumstances may be made where “an applicant’s failure timely to file was beyond the control of the applicant.” *Id.* at \*21. The Commission, however, has routinely rejected applications for review where the applicants did not act promptly to pursue their appeals. See, e.g., *Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 SEC LEXIS 1403, at \*18-20 (May 9, 2017) (dismissing an untimely application for review where applicant never sought an extension of the time to file and provided no explanation for his late filing); *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, at \*8 (June 22, 2016) (dismissing an untimely application for review where applicant claimed not to have received timely notice from FINRA because he failed to update his CRD address); *Aliza Manzella*, Exchange Act Release No. 77084, 2016 SEC LEXIS 464 (Feb. 8, 2016) (dismissing an untimely application for review where applicant never sought an extension).

McBarron’s appeal is untimely and the Commission should dismiss it. FINRA sent the Expulsion Notice on February 21, 2017 by certified mail, first class mail, and email. (RP 167-68.) The Expulsion Notice cautioned McBarron that if it wanted to seek review of FINRA’s decision, its application for review must filed with the Commission within 30 days. (*Id.*) McBarron, however, did not file its Application for Review until April 17, 2017, almost two months after the Expulsion Notice was sent and well past the 30-day appeal deadline. (RP 171-72.) The Application for Review provides absolutely no explanation for its lateness, much less a showing of “extraordinary circumstances.” Accordingly, the Commission should dismiss McBarron’s appeal because it is untimely.

**IV. CONCLUSION**

McBarron failed timely to file its appeal with the Commission and gives no explanation that would excuse its lateness. Consequently, the Commission should dismiss McBarron's Application for Review.

Respectfully submitted,



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May 26, 2017



**CERTIFICATE OF SERVICE**

I, Celia L. Passaro, certify that on this 26th day of May 2017, I caused the original and three copies of FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule in the matter of Application for Review of McBarron Capital LLC, Administrative Proceeding File No. 3-17939, to be served by messenger on:

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, DC 20549-1090

and a copy to be served via FedEx on:

McBarron Capital LLC  
Attn: James Crafa  
75 Holly Hill Lane, Suite 100,  
Greenwich, CT 06830

McBarron Capital LLC  
Attn: James Crafa  
100 Hart St.  
Clark, NJ 07066

Service was made on the Commission by messenger and on the applicant by overnight delivery service due to the distance between FINRA's offices and the applicant.



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# Exhibit A

## Applicant Information

**Organization CRD Number: 131431**

**Organization Name: MCBARRON CAPITAL LLC**

**Organization SEC Number: 8-66460**

**Applicant Name: MCBARRON CAPITAL LLC**

[View IA Record](#)

**Main Address**

10/31/75 HOLLY HILL LANE  
SUITE 100  
GREENWICH, CT 06830  
UNITED STATES

**Mail Address**

75 HOLLY HILL LANE  
SUITE 100  
GREENWICH, CT 06830  
UNITED STATES

**Contact Employee Name and Title**

JAMES CRAFA, CEO/COMPLIANCE OFFICER

**Contact Employee Telephone Number**

212-446-0006

**Business Telephone Number**

212 446-0006

**IRS Employer Identification Number**

32-0088304

**FINRA District**

11-Boston

**Statutory Disqualification Status**

Yes

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## Organization Registration Status History

**Organization CRD Number: 131431****Organization Name: MCBARRON CAPITAL LLC****Organization SEC Number: 8-66460****Applicant Name: MCBARRON CAPITAL LLC**[View IA Record](#)

<b>SRO/SEC/Jurisdiction</b>	<b>Registration Status</b>	<b>Status Effective Date</b>	<b>Changed By</b>
FINRA	EXPELLED	02/21/2017	VTHOMAS
FINRA	CANCELLED	12/08/2016	TFULMORE
FINRA	TERMREQUEST	10/31/2016	OPM AUTOMATED PROCESSING
FINRA	APPROVED	12/01/2004	BGRIFFIN
FINRA	PENDING	04/14/2004	

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