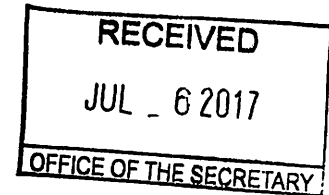


**HARD COPY**



**KAUFMAN DOLOWICH & VOLUCK, LLP**  
Tad A. Devlin (SBN 190355)  
Aaron M. Cargain (SBN 281336)  
425 California Street, Suite 2100  
San Francisco, CA 94104  
Telephone: (415) 926-7600  
Facsimile: (415) 926-7601

Attorneys for MICHAEL R. TURNER

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

In the Matter of the Application of  
Michael R. Turner  
For Review of Disciplinary Action Taken by  
Financial Industry Regulatory Authority  
(formerly NASD)

File No. 3-17995

**MICHAEL R. TURNER'S OPPOSITION  
TO FINRA'S MOTION TO DISMISS  
TURNER'S APPLICATION FOR  
REVIEW AND TO STAY THE BRIEFING  
SCHEDULE**

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	1
II.	STATEMENT OF FACTS .....	2
III.	ARGUMENT.....	8
	A. FINRA failed to comply with its own Rules regarding procedure of service .....	8
	B. Exceptional circumstances warrant review of Turner’s appeal .....	11
	C. The SEC may consider Turner’s appeal in the interests of justice .....	12
IV.	CONCLUSION.....	13

**TABLE OF AUTHORITIES**

**DECISIONS**

*Destina Mantar*, Exchange Act Release No. 79851, 2017 SEC LEXIS 194,  
at \*11 (January 19, 2017) ..... 10

*Kevin E. Murphy*, Exchange Act Release No. 79016, 2016 SEC LEXIS  
3772, at \*11-13 (September 30, 2016) ..... 8

**STATUTES**

SEC Rule 100(c) ..... 1, 12, 13

SEC Rule 420 ..... 12

**RULES**

FINRA Rule 8210(d)(1) ..... 8, 11

FINRA Rule 9134(b)(1) ..... 8, 9, 13

NASD (227669) ..... 2

## I. INTRODUCTION

Michael Turner served as an investment advisor for nearly 13.5 years, and maintained an exemplary professional record over the course of his tenure. It was not until FINRA<sup>1</sup> barred Turner from associating with any member firm that he had a mark on his professional record. FINRA barred Turner after he did not respond to its requests for information, which Turner did not receive, and which FINRA admits were returned unclaimed.

Once Turner learned of the bar, he diligently sought reinstatement both himself and through retained counsel. He was unaware of the ability to pursue an appeal with the SEC directly, and his former counsel did not advise him of the option to do so.

Extraordinary circumstances warrant the SEC's consideration of Turner's appeal. Turner did not receive FINRA's requests for information, and FINRA admits all of its requests were returned unclaimed. Turner admits it was his responsibility to update his Central Registration Depository ("CRD") address of record. He mistakenly believed his employers had done so, as it was customary for them to do so in the office where he worked.

Also, FINRA failed to follow its own procedures with regard to providing notice. FINRA nevertheless argues Turner should be barred for not complying with its rules despite the fact its employees failed to do so. It would be manifestly unjust and inequitable to not allow this matter to proceed on the merits given the circumstances.

If the SEC determines extraordinary circumstances are not present here, it may nevertheless allow Turner's appeal to either be remanded to FINRA or to proceed on its merits. SEC Rule 100(c) provides the Commission, upon its determination that to do so would serve the

---

<sup>1</sup> Formerly NASD during periods relevant to this appeal, but referred to hereafter as FINRA for the sake of simplicity.

interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary.

The interests of justice would be served here by allowing Turner's appeal to proceed. Over the course of his career, Turner's demonstrated a commitment to his clients and the financial industry. His bar is the result of a misunderstanding his former employer had updated his CRD address of record.

FINRA would not be prejudiced by allowing this matter to proceed on its merits. It failed to follow its procedures related to mailing the requests for information; this fact alone should warrant the denial of its motion to dismiss. Also, Turner will immediately provide the information FINRA sought in its original requests.

Turner seeks the opportunity to serve the public once again in his former capacity as an investment advisor. He asks the SEC for the opportunity to do so again.

## **II. STATEMENT OF FACTS**

Michael Turner is an individual who at all times relevant to this Appeal was a resident of San Joaquin County, California. Turner was an investment advisor, registered with the National Association of Securities Dealers ("NASD") under CRD# 2272669. (Declaration of Michael R. Turner "Turner Decl. at ¶ 2)

Turner passed the Series 7 examination on October 14, 1992, and the Series 63 examination on October 21, 1992. Turner held Series 7 and 63 securities licenses, and was licensed to sell securities in the State of California at all times relevant to this Appeal. (*Id.* at ¶ 3)

Turner was an employee of American Express Financial Advisors, Inc. ("AMEX") from October 1992 until mid-2004. On October 13, 2003, AMEX issued a Letter of Caution to Turner

in relation to transactions he executed on behalf of his long-time client, Phyllis Fries.<sup>2</sup> (*Id.* at ¶ 4; FINRA Motion at pp. 2-3)

Ms. Fries was a client of Turner's before and after the financial crisis following the September 11, 2001, attacks. Between September 11, 2001, and mid-2003, Turner believed it was necessary to periodically reallocate Ms. Fries' capital given the turbulent financial climate, in order to preserve and grow her assets. (Turner Decl. at ¶ 5)

Turner explained to Ms. Fries each and every suggested strategy, corresponding risk, and the cost associated with reallocating the assets. Ms. Fries authorized all trades, as Turner did not have discretionary power over Ms. Fries' accounts.<sup>3</sup> (Turner Decl. at ¶ 6)

Turner employed a substantially similar, if not identical, strategy to a number of his clients' financial portfolios. AMEX neither investigated nor issued letters of caution with respect to transactions involving Turner's other clients. (*Id.* at ¶ 7)

During his tenure as an investment adviser, neither Ms. Fries nor any other client of Turner filed complaints in regard to the manner in which their assets were handled, or about the number of trades Turner executed for the purpose of preserving and growing their portfolios. (*Id.* at ¶ 8)

In mid-2004, Turner switched employers, and began working for Union Safe Deposit Bank ("USDB") in its Corporate Fiduciary Department. USDB allowed Turner to retain his

---

<sup>2</sup> Turner acknowledges the U5s submitted by FINRA provide client accounts may have been subject to multiple sales charges and FINRA's requests for information list several individuals. However, to the best of Turner's knowledge, and upon information and belief, the Letter of Caution referenced only Ms. Fries. (*Id.* at ¶ 4.)

<sup>3</sup> Turner did not have discretionary power over any of his clients' accounts, and all strategy, risk, and cost issues were fully explained and consented to by all of his clients. (*Id.* at ¶ 7)

Series 7 and 63 licenses. Shortly thereafter, USDB was acquired by Bank of the West. Turner stayed on with Bank of the West in its Corporate Fiduciary Department. (*Id.* at ¶ 9)

Bank of the West's internal policies prohibited employees in the Corporate Fiduciary Department from maintaining securities licenses, and it did not renew Turner's licenses. Because Turner was satisfied with his employment situation at the time, he intended to allow his licenses to lapse and would renew them if and when appropriate. (*Id.* at ¶ 10)

In August 2004, Turner also changed residences. He moved from [REDACTED] Dody Drive, Manteca, CA [REDACTED] ("Dody Drive Address") to [REDACTED] Bankston Drive, Tracy, CA [REDACTED] ("Bankston Drive Address"). (*Id.* at ¶ 11)

Turner was under the impression USDB and/or Bank of the West had informed FINRA of his changes in employment and address, as it was customary for employers to advise FINRA of such administrative issues. Upon information and belief, neither USDB nor Bank of the West provided notice to FINRA of Turner's changes in employment and address. (*Id.* at ¶ 12)

Upon information and belief, in October 2004, AMEX filed an Amended Form U5 ("U5") with FINRA advising of Turner's job change. Also upon information and belief, the U5 contained information related to the Letter of Caution addressing Turner's handling of Ms. Fries' account. (*Id.* at ¶ 13)

FINRA contends it sent four requests to Turner for information pursuant to FINRA Rule 8210 concerning the matters reported in the U5. (FINRA Motion at pp. 3-5)

FINRA alleges it sent the first request to Turner on March 24, 2005, by first-class and certified mail, to the Dody Drive Address, which was Turner's CRD address of record. FINRA admits the US Postal Service returned the March 24, 2005, certified letter unclaimed on April 27, 2005. FINRA also admits it received the returned envelope with a "Notify Sender of New

Address” sticker on it, providing Turner’s mailing address as the Bankston Drive Address. (FINRA Motion at pp. 3, ¶ 4 – 4, ¶ 1) Turner did not reside at the Dody Drive Address when FINRA sent its first letters, and did not receive them. (Turner Decl. at ¶ 14)

FINRA contends it sent a second request by first class and certified mail to Turner at the Dody Drive Address on April 15, 2005. FINRA admits the second registered letter was returned unclaimed on July 13, 2015. (FINRA Motion at pp. 3, ¶ 4; 4, ¶ 4) Turner did not reside at the Dody Drive Address at the time the second letters were sent, and did not receive them. (Turner Decl. at ¶ 15)

FINRA claims it sent a third request by certified and first-class mail to Turner on May 3, 2005, to the Dody Drive and Bankston Drive Addresses. FINRA admits the certified letters were returned unclaimed on July 28, 2005. (FINRA Motion at p. 4, ¶¶ 2, 4) Turner did not receive FINRA’s third letters. (Turner Decl. at ¶ 16)

FINRA claims it sent a fourth request by certified and first-class mail to Turner on June 3, 2005, to the Dody Drive and Bankston Drive Addresses. FINRA admits the certified letters were returned unclaimed on July 28, 2005. (FINRA Motion at p. 4, ¶¶ 2, 4) Turner did not receive FINRA’s fourth letters. (Turner Decl. at ¶ 17)

FINRA claims on September 28, 2005, it sent to the Dody Drive and Bankston Drive Addresses, by overnight courier and regular mail, a letter notifying Turner he would be suspended on October 24, 2005, if he did not provide the information previously requested (“Notice of Intent to Suspend). (FINRA Motion at p. 5, ¶ 2) Turner did not reside at the Dody Drive or Bankston Addresses when the Notice of Intent to Suspend letters were sent, and did not receive them. (Turner Decl. at ¶ 18)



Upon information and belief, FINRA, with full knowledge Turner had not received the certified letters it claims it sent, initiated the FINRA Rule 9552 non-summary suspension hearing on October 24, 2005. Also upon information and belief, FINRA made no other attempt to contact Turner. (Turner Decl. at ¶ 19)

FINRA alleges on October 24, 2005, it sent Turner a notice advising he was suspended pursuant to NASD Rule 9552, and in accordance with the Notice of Intent to Suspend. The October 24, 2005, letters, like the letters before them, were sent to the Dody Drive and Bankston Drive Addresses. (FINRA Motion at pp. 5, ¶ 3 – 6, ¶ 1) Turner did not reside at the Dody Drive or Bankston Addresses when the October 24, 2005, letters were sent, and did not receive them. (Turner Decl. at ¶ 20)

FINRA alleges on April 4, 2006, it sent Turner letters advising he was barred from associating with any member firm in any capacity. The letters were supposedly sent to the Dody and Bankston Drive Addresses. (FINRA Motion at p. 5, ¶ 2) Turner did not reside at the Dody Drive or Bankston Addresses when the April 4, 2006, letters were sent, and did not receive them. (Turner Decl. at ¶ 21)

In 2009 Bank of the West changed its internal policies, and allowed its employees in the corporate fiduciary department to obtain and maintain securities licenses. Its policy was discretionary, meaning employees in the corporate fiduciary department were permitted, but not required, to have securities licenses. Bank of the West conducted a check on the status Turner's Series 7 and 63 licenses, and determined he had been barred. Bank of the West alerted Turner of the bar. Turner contacted FINRA, and communicated with its employee Mariann Miller. It was Turner's belief based on his communications with Ms. Miller no action was necessary at the time. (*Id.* at ¶ 22)

In or about Fall 2011, Turner applied for a position with a major financial institution. He was tentatively offered the position, but the offer was rescinded when the institution learned of the FINRA bar during a background check. It was then Turner understood the gravity of the FINRA bar. (*Id.* at ¶ 23)

In November 2011, Turner contacted FINRA and was advised AMEX had submitted the U5, FINRA supposedly sent four requests for information regarding the information contained in the U5, and he had been barred for failing to respond to the requests for information. Turner sought reinstatement from FINRA directly, but it declined his request. Turner also sought advice from retained counsel, who did not apprise him of the option to seek review by the SEC. (*Id.* at ¶ 24)

In 2011 Turner's counsel advised he could seek reinstatement by FINRA if he was sponsored by a brokerage firm to do so. Turner contacted several brokerages seeking sponsorship, but all declined his request. He sought further advice from another attorney, who informed him there was nothing he could do to seek reinstatement. (*Id.* at ¶ 25)

In 2015, Turner contacted FINRA again in an attempt to have the default entered against him vacated. Turner also briefly consulted with another attorney to consider his options related to the default. His communications with FINRA and other counsel were unavailing. (*Id.* at ¶ 26)

Between when Turner was licensed in October 1992 and barred in April 2006, he maintained an impeccable professional compliance record. The only regulatory event listed in Turner's FINRA record relates to his default bar. (*Id.* at ¶ 27, Ex. A, p. 5) Turner has been diligent in seeking reinstatement, but was unaware of his option to pursue the appeal directly to the SEC. As soon as he became aware of the option to appeal the FINRA bar with the SEC, he did so. (*Id.* at ¶ 28)

### III. ARGUMENT

#### A. FINRA failed to comply with its own Rules regarding procedure of service

FINRA failed to properly serve its requests for information, Notice of Intent to Suspend, notice of suspension, and bar letter. FINRA's motion to dismiss should be denied, and this matter should be remanded to FINRA for further consideration of the basis for its action of barring Turner in an expedited proceeding.

Governing authority provides actual knowledge may be imputed to FINRA that Turner's CRD address was out of date given it received notice its letters were returned unclaimed.

FINRA Rule 9134(b)(1) provides in part:

Papers served on a natural person may be served at the natural person's residential address as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated.

FINRA Rule 8210(d)(1) provides in part:

If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to the last known business address of the member.

When requests for information are sent to an individual's CRD address and returned to FINRA, it may be inferred FINRA has actual knowledge the individual's CRD address is out of date. *See Kevin E. Murphy*, Exchange Act Release No. 79016, 2016 SEC LEXIS 3772, at \*11-13 (September 30, 2016).

As in the instant matter, in *Murphy*, Appellant appealed a FINRA order barring him from association for failing to provide information and documents in connection with a FINRA investigation. On December 17, 2015, Murphy was terminated by his former employer for purportedly violating a firm policy by using its name in a personal situation. The employer filed a Form U5 disclosing Murphy's termination, and FINRA commenced an inquiry to determine whether violations of federal securities laws or SRO rules occurred. (*Id.* at \*1-2) FINRA claimed it sent requests for information, a notice of suspension hearing, and ultimately a letter advising of Murphy's bar in the following months. All of FINRA's correspondence, as in the instant matter, was returned to FINRA as undeliverable. Murphy was barred on or around July 18, 2016. (*Id.* at \*2-7)

Murphy filed an appeal with the SEC, alleging he asked his former employer to update his CRD address before he was terminated. (*Id.* at \*8-9) The SEC recognized "the crux of [Murphy's] application is that he did not receive FINRA's requests for information or Presuspension or Suspension notices." (*Id.* at \*9)

As in the current matter, FINRA argued it was Murphy's responsibility to ensure his CRD address was current. The SEC agreed. (*Id.* at \*10) FINRA further argued because it is entitled to rely on its records, it properly served Murphy at his CRD address, and it did so consistent with its rules and specifically Rule 9134(b)(1). The SEC found FINRA's argument on this point unavailing. (*Id.* at \*10-11)

The *Murphy* opinion provides "Rule 9134(b)(1) also provides, however, that if there is 'actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address....' That the requests for information sent to Murphy's address were returned

to FINRA suggests that FINRA had actual knowledge that Murphy's CRD address was out of date." (*Id.* at \*11-12) The SEC further concluded FINRA failed to follow its service procedures articulated under FINRA Rule 9134(b)(1). (*Id.* at \*12)

The SEC remanded the matter to FINRA on the ground the record did not contain sufficient evidence for the SEC to determine if FINRA complied with its service rules, and for FINRA's consideration of the appropriateness of barring Murphy in an expedited proceeding. (*Id.* at \*13)

In *Destina Mantar*, Exchange Act Release No. 79851, 2017 SEC LEXIS 194, at \*11 (January 19, 2017), the SEC held in part:

... in many of the cases that FINRA cites involving expedited proceedings where we dismissed the application for review there was evidence that the applicants had actual notice of the requests for information. *In cases challenging a bar imposed in expedited proceedings where there is reason to believe the applicant did not have actual notice of FINRA's information requests or notices, we have regularly remanded the matter back to FINRA.*

(*Id.*, emphasis added.)

It can be inferred from the record – i.e., the numerous letters sent to Turner which were returned to FINRA – FINRA had actual knowledge Turner's CRD address was out of date as early as April 27, 2005. (FINRA Motion at p. 3, ¶ 4) Despite the fact FINRA had actual knowledge Turner was no longer at his CRD address, it proceeded to send its third and fourth requests for information, the Notice of Intent to Suspend, and the bar letter to the Dody Address.

Further, it can be inferred FINRA had knowledge Turner was not at the Bankston Address as of July 28, 2005, when it received the third request letters unclaimed. (*Id.* at pp. 4, ¶ 5 – 5, ¶ 1) Nevertheless, FINRA proceeded to send the Notice of Intent to Suspend, suspension notice, and bar letters to the Dody and Bankston Addresses with full knowledge those addresses were out of date.

Also, there is nothing in the record substantiating FINRA sent its requests for information, the Notice of Intent to Suspend, suspension notice, and bar letters to Duerr Financial Corporation (“Duerr”). Pursuant to FINRA Rule 8210(d)(1), FINRA was required to send its correspondence to Duerr, but failed to do so.

Accordingly, Turner respectfully requests this matter be remanded to FINRA so it can determine the appropriateness of barring Turner in an expedited proceeding. If the SEC is disinclined to grant this request, FINRA’s motion to dismiss and for a stay should be denied to allow the appeal to proceed and for all issues to be fully briefed.

**B. Exceptional circumstances warrant review of Turner’s appeal**

Turner acknowledges untimely applications for review are only granted under extraordinary circumstances. Extraordinary circumstances exist in the instant matter.

Several years passed before Turner became aware of FINRA’s bar. Turner did not receive FINRA’s letters, and FINRA essentially admits the same by acknowledging its letters were returned unclaimed. Once Turner became aware of the bar, he diligently sought reinstatement.

In 2009 Turner contacted FINRA directly and was provided with minimal information about how to proceed. In 2011, he sought reinstatement himself, but FINRA denied his efforts. He also sought representation to address the issue, but his counsel did not inform him of the option to file an appeal to the SEC of FINRA’s ruling.

In 2015, he again sought advice and counsel as to pursuing options for reinstatement with FINRA. (Turner Decl. at ¶ 26)

Turner maintained an impeccable professional compliance record during his 13.5 year tenure as an investment advisor. The only regulatory event listed in Turner's FINRA record relates to his default bar.

Given the combination of FINRA's failure to follow its procedures for service, the fact Turner did not receive FINRA's communications, Turner's diligence in seeking reinstatement, and his exemplary service record, extraordinary circumstances warrant review of Turner's appeal.

**C. The SEC may consider Turner's appeal in the interests of justice**

Pursuant to SEC Rule 100(c), the Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary.

Turner respectfully asks the SEC to waive the 30-day requirement articulated under SEC Rule 420, as to do so would serve the interests of justice and not result in prejudice to FINRA. Prior to his bar, Turner maintained a flawless professional record. Justice would be served by remanding this matter to FINRA to allow Turner to respond to its requests for information. Alternatively, justice would be served by allowing this appeal to proceed on its merits before the SEC.

FINRA would not be prejudiced by an order directing it to consider information responsive to its original requests. FINRA could make a decision as to whether discipline is warranted under the circumstances. FINRA also cannot show it would be prejudiced given its failure to comply with its procedures for service as articulated above. It would be inequitable to allow FINRA to contend Turner should be barred for allegedly failing to follow protocol when

its employees did the same. FINRA also would not be prejudiced by allowing Turner's appeal to proceed on its merits.

#### **IV. CONCLUSION**

It would be manifestly unjust to Turner if the SEC refuses to either remand his appeal to FINRA and require it to consider his responses to its requests for information, or to allow this appeal to proceed on its merits. Turner had a flawless professional record over his 13.5 year career. He diligently sought reinstatement once he learned of the default. He was not advised by his former counsel of the option to pursue his appeal with the SEC.

FINRA failed to comply with its procedure for service as articulated under FINRA Rule 9134(b)(1), as it had actual knowledge its correspondence to Turner were returned unclaimed. FINRA had knowledge as early as April 27, 2005, Turner's CRD address, the Dody Drive Address, was out of date. FINRA had knowledge as of July 28, 2005, the letters sent to the Bankston Address were unclaimed. Nevertheless, it continued to send communications to those addresses, suspend, and ultimately bar Turner. It did not send the requests to Turner's former employer, Duerr Financial Corporation, as it was required to do pursuant to FINRA Rule 9134(b)(1).

Extraordinary circumstances warrant the SEC's consideration of this appeal. If the SEC determines the circumstances articulated above are not extraordinary, it may nevertheless, consider this appeal pursuant to SEC Rule 100(c), as it would be the interests of justice to do so.




Turner respectfully asks the SEC to remand this matter to FINRA with instructions it consider evidence responsive to its initial requests for information. Alternatively, Turner asks the SEC to deny FINRA's motion and to allow Turner's appeal to proceed on its merits.

DATED: July 5, 2017

**KAUFMAN DOLOWICH & VOLUCK, LLP**

By: \_\_\_\_\_

  
Tad A. Devlin  
Aaron M. Cargain  
Attorneys for Michael R. Turner

4815-0604-8331, v. 1

## CERTIFICATE OF COMPLIANCE

I, Aaron M. Cargain, certify that the foregoing Michael R. Turner's Opposition to FINRA's Motion to Dismiss Turner's Application for Review and to Stay the Briefing Schedule (File No. 3-17995), complies with the length limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 3,945 words.



Tad A. Devlin  
Aaron M. Cargain  
Attorneys for Michael R. Turner

**CERTIFICATE OF SERVICE**

**In the Matter of the Application for Review of Michael R. Turner**

**Administrative Proceeding No. 3-17995**

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 425 California Street, Suite 2100, San Francisco, California 94104. On the execution date below and in the manner stated herein, I served the following documents:

**MICHAEL R. TURNER'S OPPOSITION TO FINRA'S MOTION TO DISMISS  
TURNER'S APPLICATION FOR REVIEW AND TO STAY THE BRIEFING  
SCHEDULE**

on all interested parties in this action by placing  the original or  a true copy of the original thereof enclosed in sealed envelopes addressed as follows:

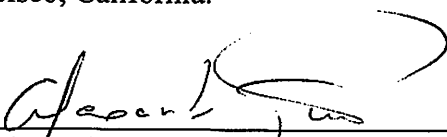
Attention: Donna Willingham  
Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE, Mail Stop 1090  
Washington, DC 20549  
Telephone: (800) 732-0330  
Facsimile: (202) 772-9295

Michael Garawski  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
Telephone: (202) 728-8835  
Facsimile: (202) 728-8264

BY FED EX I caused such envelope(s) to be placed for FedEx collection and delivery at San Francisco, California. I am readily familiar with the firm's practice of collection and processing correspondence for FedEx mailing. Under that practice it would be deposited with the FedEx office on that same day with instructions for overnight delivery, fully prepaid, at San Francisco, California in the ordinary course of business.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 5, 2017, at San Francisco, California.

  
\_\_\_\_\_  
Alexandra Guardado

**HARD COPY**

RECEIVED  
JUL 6 2017  
OFFICE OF THE SECRETARY

**KAUFMAN DOLOWICH & VOLUCK, LLP**

Tad A. Devlin (SBN 190355)  
Aaron M. Cargain (SBN 281336)  
425 California Street, Suite 2100  
San Francisco, CA 94104  
Telephone: (415) 926-7600  
Facsimile: (415) 926-7601

Attorneys for MICHAEL R. TURNER

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

In the Matter of the Application of  
Michael R. Turner  
For Review of Disciplinary Action Taken by  
Financial Industry Regulatory Authority  
(formerly NASD)

File No. 3-17995

**DECLARATION OF MICHAEL R.  
TURNER IN SUPPORT OF HIS  
OPPOSITION TO FINRA'S MOTION TO  
DISMISS AND TO STAY THE BRIEFING  
SCHEDULE**

## DECLARATION OF MICHAEL R. TURNER

I, Michael R. Turner, declare as follows:

1. I make this declaration to provide factual information in support of my opposition to FINRA's motion to dismiss and to stay my appeal to the Securities and Exchange Commission ("SEC") of FINRA's April 3, 2006, ruling barring me from association with any FINRA member in any capacity. I have personal knowledge of the facts contained in this declaration, and if called as a witness I would testify competently thereto. As to those facts which I state are made upon information and belief, I believe them to be true, and would testify to the same.

2. At all times relevant to this Appeal, I was a resident of San Joaquin County, California. I was an investment advisor, registered with the National Association of Securities Dealers ("NASD"<sup>1</sup>) under CRD# 2272669.

3. I passed the Series 7 examination on October 14, 1992, and the Series 63 examination on October 21, 1992. I held Series 7 and 63 securities licenses, and was licensed to sell securities in the State of California at all times relevant to this Appeal.

4. I was an employee of American Express Financial Advisors, Inc. ("AMEX") from October 1992 until mid-2004. On October 13, 2003, AMEX issued a Letter of Caution to me in relation to transactions I executed on behalf of my long-time client, Phyllis Fries. I acknowledge the U5s submitted by FINRA in support of its motion provide client accounts other than Ms. Fries' may have been subject to multiple sales charges, and FINRA's requests for information list several individuals. However, to the best of my knowledge, and upon information and belief, the Letter of Caution referenced only Ms. Fries' account.

---

<sup>1</sup> NASD shall be referred to throughout this declaration as FINRA for the sake of simplicity.

5. Ms. Fries was a client of mine before and after the financial crisis following the September 11, 2001, attacks. Between September 11, 2001, and mid-2003, I believed it was necessary to periodically reallocate Ms. Fries' capital given the turbulent financial climate, in order to preserve and grow Ms. Fries' assets.

6. I explained to Ms. Fries each and every suggested strategy, corresponding risk, and the cost associated with reallocating the assets. Ms. Fries authorized all trades, as I did not have discretionary power over her accounts.

7. I employed a substantially similar, if not identical, strategy to a number of my clients' financial portfolios. I similarly did not have discretionary power over any of my other clients' accounts, and all strategy, risk, and cost issues were fully explained and consented to by all of my clients. AMEX did not issue letters of caution with respect to transactions involving my other clients.

8. During my tenure as an investment adviser, neither Ms. Fries nor any other client filed complaints in regard to the manner in which their assets were handled, or about the number of trades I executed for the purpose of preserving and growing their portfolios.

9. In mid-2004, I switched employers, and began working for Union Safe Deposit Bank ("USDB") in its Corporate Fiduciary Department. USDB allowed me to retain my Series 7 and 63 licenses. Shortly thereafter, USDB was acquired by Bank of the West. I stayed on with Bank of the West in its Corporate Fiduciary Department.

10. At the time, Bank of the West's internal policies prohibited employees in the Corporate Fiduciary Department from maintaining securities licenses, and it did not renew my licenses. Because I was satisfied with my employment situation in 2004, I intended to allow my licenses to lapse and planned to renew them if and when appropriate.

11. In August 2004, I also changed residences. I moved from [REDACTED] Dody Drive, Manteca, CA [REDACTED] (“Dody Drive Address”) to [REDACTED] Bankston Drive, Tracy, CA [REDACTED] (“Bankston Drive Address”).

12. I was under the impression USDB and/or Bank of the West had informed FINRA of my changes in employment and address, as it was customary for employers to advise FINRA of such administrative issues. However, upon information and belief, neither USDB nor Bank of the West provided notice to FINRA of my changes in employment and address.

13. Upon information and belief, in October 2004, AMEX filed an Amended Form U5 (“U5”) with FINRA advising of my job change. Also upon information and belief, the U5 contained information related to the Letter of Caution addressing my handling of Ms. Fries’ account.

14. I did not reside at the Dody Drive Address on March 24, 2005, when FINRA allegedly sent its first requests for information, and I did not receive the letters.

15. I did not reside at the Dody Drive Address on April 15, 2005, when FINRA allegedly sent its second requests for information, and I did not receive the letters.

16. I did not receive FINRA’s third requests for information, allegedly sent on May 3, 2005.

17. I did not receive FINRA’s fourth requests for information, allegedly sent on June 3, 2005.

18. I did not reside at the Dody Drive or Bankston Drive Addresses on September 28, 2005, when FINRA allegedly sent its letters concerning its notice of intent to suspend me, and did not receive the letters.



19. Upon information and belief, FINRA made no other attempt to contact me prior to initiating its suspension proceeding.

20. I did not reside at the Dody Drive or Bankston Drive Addresses on October 24, 2005, when FINRA allegedly sent its letters advising that I had been suspended, and I did not receive the letters.

21. I did not reside at the Dody Drive or Bankston Drive Addresses on April 4, 2006, when FINRA allegedly sent its letters advising I had been barred from associating with any member, and I did not receive the letters.

22. In 2009 Bank of the West changed its internal policies, and allowed its employees to obtain and maintain securities licenses. Its policy was discretionary, meaning employees who worked in the corporate fiduciary department were allowed, but not required, to hold securities licenses. Bank of the West conducted a check on the status of my Series 7 and 63 licenses, and determined I had been barred. Bank of the West alerted me of the bar. I contacted FINRA, and communicated with its employee Mariann Miller. It was my understanding at the time no action was necessary.

23. In or about Fall 2011, I applied for a position with a major financial institution. I was tentatively offered the position, but the offer was rescinded when the institution learned of the FINRA bar. It was then I understood the gravity of the bar, and of the need to take correction action.

24. In November 2011, I contacted FINRA and was advised AMEX had submitted the U5, FINRA supposedly sent four requests for information to me regarding the information contained in the U5, and I had been barred for failing to respond to the requests for information. I sought reinstatement from FINRA directly, but it declined my request. I also retained an

attorney to address the bar, but was not apprised of the option to appeal FINRA's ruling with the SEC.

25. In 2011, I was advised by my former counsel I could seek reinstatement by FINRA if I was sponsored by a brokerage firm to do so. I contacted several brokerages to request sponsorship, but each declined my request. I also sought advice from another attorney, who informed me there was nothing I could do to seek reinstatement.

26. In 2015, I contacted FINRA again in an attempt to have the default entered against me vacated. I also briefly consulted with another attorney in seeking to address this issue. My communications with FINRA and with counsel were unavailing.

27. Between when I was licensed in October 1992 and barred in April 2006, I maintained a perfect compliance record. The only regulatory event listed in my FINRA record relates to the default bar. A true and correct copy of my broker check report is attached hereto as Exhibit "A." Page five of the report evidences there have been no other disciplinary actions instituted or taken against me.

28. I have been diligent in seeking reinstatement, but was unaware of the option to pursue the appeal directly to the SEC until very recently. As soon as I became aware of the option to pursue the FINRA bar with the SEC, I did so.

29. I understand and appreciate FINRA's need to rely on its CRD records. I certainly would have updated my CRD address had I known my former employers did not do so.

30. I also would have promptly responded to FINRA's requests for information had I received them.

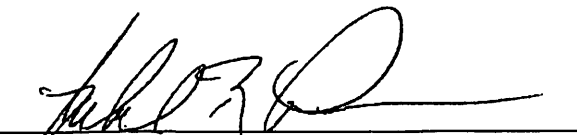
31. I ask the SEC to grant my appeal of the FINRA bar, as it would be in the interest of justice to do so. The bar was the result of an inadvertent error, one I surely will not make again if I am reinstated with FINRA.

32. FINRA will not be prejudiced if the SEC grants my appeal, as I stand ready to provide all information it needs to evaluate the circumstances surrounding the trades I executed on my clients' behalf.

33. Contrarily, I will be severely prejudiced if the SEC grants FINRA's motion to dismiss. As a licensed investment advisor, I am able to earn approximately 30% more than I am currently earning.

34. Based on the foregoing, I respectfully ask the SEC to deny FINRA's motion to dismiss and stay my appeal, and to remand my appeal to FINRA to evaluate the circumstances surrounding its requests for information.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct. This declaration was executed on July 3, 2017, in Tracy, California.

  
Michael R. Turner

**Exhibit "A"**



**BrokerCheck Report**  
**MICHAEL ROSS TURNER**  
CRD# 2272669

<b><u>Section Title</u></b>	<b><u>Page(s)</u></b>
Report Summary	1
Broker Qualifications	2 - 3
Registration and Employment History	4
Disclosure Events	5

## About BrokerCheck®



BrokerCheck offers information on all current, and many former, registered securities brokers, and all current and former registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**

- BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.

- Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

- **Where did this information come from?**

- The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:
  - information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
  - information that regulators report regarding disciplinary actions or allegations against firms or brokers.

- **How current is this information?**

- Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.

- **What if I want to check the background of an investment adviser firm or investment adviser representative?**

- To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <https://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P455414>.

- **Are there other resources I can use to check the background of investment professionals?**

- FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.

Thank you for using FINRA BrokerCheck.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at

[brokercheck.finra.org](http://brokercheck.finra.org)



For additional information about the contents of this report, please refer to the User Guidance or [www.finra.org/brokercheck](http://www.finra.org/brokercheck). It provides a glossary of terms and a list of frequently asked questions, as well as additional resources.

[For more information about FINRA, visit www.finra.org.](http://www.finra.org)

**MICHAEL R. TURNER**

CRD# 2272669

**Report Summary for this Broker**

This broker is not currently registered.

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

**Broker Qualifications**

This broker is not currently registered.

**This broker has passed:**

- 0 Principal/Supervisory Exams
- 1 General Industry/Product Exam
- 1 State Securities Law Exam

**Registration History**

This broker was previously registered with the following securities firm(s):

**DUERR FINANCIAL CORPORATION**

CRD# 18558  
CHINO HILLS, CA  
04/2004 - 01/2005

**AMERICAN EXPRESS FINANCIAL ADVISORS INC.**

CRD# 6363  
MINNEAPOLIS, MN  
10/1992 - 03/2004

**IDS LIFE INSURANCE COMPANY**

CRD# 6321  
MINNEAPOLIS, MN  
10/1992 - 03/2004

**Disclosure Events**

This broker has been involved in one or more disclosure events involving certain final criminal matters, regulatory actions, civil judicial proceedings, or arbitrations or civil litigations.

Are there events disclosed about this broker? Yes

The following types of disclosures have been reported:

Type	Count
Regulatory Event	1

**Investment Adviser Representative Information**

The information below represents the individual's record as a broker. For details on this individual's record as an investment adviser representative, visit the SEC's Investment Adviser Public Disclosure website at

<https://www.adviserinfo.sec.gov>

## Broker Qualifications



### Registrations

This section provides the self-regulatory organizations (SROs), states and U.S. territories the broker is currently registered and licensed with, the category of each registration, and the date on which the registration became effective. This section also provides, for each firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered.



## Broker Qualifications



### Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

This individual has passed 0 principal/supervisory exams, 1 general industry/product exam, and 1 state securities law exam.

### Principal/Supervisory Exams

Exam	Category	Date
No information reported.		

### General Industry/Product Exams

Exam	Category	Date
General Securities Representative Examination	Series 7	10/14/1992

### State Securities Law Exams

Exam	Category	Date
Uniform Securities Agent State Law Examination	Series 63	10/21/1992

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at [www.finra.org/brokerqualifications/registeredrep/](http://www.finra.org/brokerqualifications/registeredrep/).



## Registration and Employment History

### Registration History

The broker previously was registered with the following securities firms:

Registration Dates	Firm Name	CRD#	Branch Location
04/2004 - 01/2005	DUERR FINANCIAL CORPORATION	18558	CHINO HILLS, CA
10/1992 - 03/2004	AMERICAN EXPRESS FINANCIAL ADVISORS INC.	6363	MINNEAPOLIS, MN
10/1992 - 03/2004	IDS LIFE INSURANCE COMPANY	6321	MINNEAPOLIS, MN

### Employment History

This section provides up to 10 years of an individual broker's employment history as reported by the individual broker on the most recently filed Form U4.

Please note that the broker is required to provide this information only while registered with FINRA or a national securities exchange and the information is not updated via Form U4 after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

Employment Dates	Employer Name	Employer Location
04/2004 - Present	DUERR FINANCIAL CORPORATION	IRVINE, CA
03/2004 - Present	UNION SAFE DEPOSIT BANK	STOCKTON, CA

## Disclosure Events



What you should know about reported disclosure events:

**1. Disclosure events in BrokerCheck reports come from different sources:**

- As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, their employing firms, and regulators. When more than one source reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions are separated by a solid line with the reporting source labeled.

For your convenience, below is a matrix of the number and status of regulatory disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.

	Final	On Appeal
Regulatory Event	1	0



## Disclosure Event Details

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

### Regulatory - Final

This type of disclosure event involves a final, formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulator such as the Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations.

#### Disclosure 1 of 1

Reporting Source:	Regulator
Regulatory Action Initiated By:	NASD
Sanction(s) Sought:	Suspension
Date Initiated:	09/28/2005
Docket/Case Number:	E0120040326-02
Employing firm when activity occurred which led to the regulatory action:	
Product Type:	No Product
Allegations:	RESPONDENT IS SUSPENDED PURSUANT TO THE PROVISIONS OF RULE 9552 SERIES NON-SUMMARY SUSPENSION SANCTION.
Current Status:	Final
Resolution:	letter
Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?	No
Resolution Date:	04/03/2006
Sanctions Ordered:	Bar (Permanent)



If the regulator is the SEC, CFTC, or an SRO, did the action result in a finding of a willful violation or failure to supervise?

No

(1) willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or to have been unable to comply with any provision of such Act, rule or regulation?

(2) willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board? or



(3) failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation by such person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any such Acts, or any of the rules of the Municipal Securities Rulemaking Board?

#### Sanction 1 of 2

**Sanction Type:** Bar (Permanent)  
**Capacities Affected:** All Capacities  
**Duration:** Indefinite  
**Start Date:** 04/03/2006  
**End Date:**

#### Sanction 2 of 2

**Sanction Type:** Suspension  
**Capacities Affected:** All Capacities  
**Duration:** n/a  
**Start Date:** 10/24/2005  
**End Date:** 04/02/2006

#### Regulator Statement

RESPONDENT WAS SUSPENDED OCTOBER 24, 2005, FROM ASSOCIATING WITH ANY NASD MEMBER FIRM IN ANY CAPACITY. RESPONDENT FAILED TO REQUEST TERMINATION OF THE SUSPENSION WITH IN SIX MONTHS OF THE DATE OF THE NOTICE OF INTENT, THEREFORE HE IS AUTOMATICALLY BARRED FROM ASSOCIATION WITH ANY NASD MEMBER IN ANY CAPACITY PURSUANT TO NASD RULE 9552(H).

On May 26, 2017, Michael Turner filed to the SEC an application for review of the



April 4, 2006 bar letter filed pursuant to NASD Rule 9552(h).

## End of Report



**This page is intentionally left blank.**



**CERTIFICATE OF SERVICE**

**In the Matter of the Application for Review of Michael R. Turner**

**Administrative Proceeding No. 3-17995**

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 425 California Street, Suite 2100, San Francisco, California 94104. On the execution date below and in the manner stated herein, I served the following documents:

**DECLARATION OF MICHAEL R. TURNER IN SUPPORT OF HIS OPPOSITION TO FINRA'S MOTION TO DISMISS AND TO STAY THE BRIEFING SCHEDULE**

on all interested parties in this action by placing  the original or  a true copy of the original thereof enclosed in sealed envelopes addressed as follows:

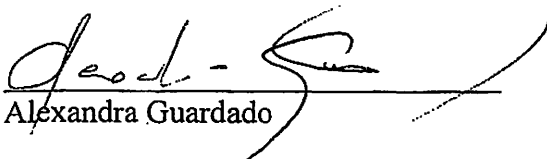
Attention: Donna Willingham  
Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE, Mail Stop 1090  
Washington, DC 20549  
Telephone: (800) 732-0330  
Facsimile: (202) 772-9295

Michael Garawski  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
Telephone: (202) 728-8835  
Facsimile: (202) 728-8264

BY FED EX I caused such envelope(s) to be placed for FedEx collection and delivery at San Francisco, California. I am readily familiar with the firm's practice of collection and processing correspondence for FedEx mailing. Under that practice it would be deposited with the FedEx office on that same day with instructions for overnight delivery, fully prepaid, at San Francisco, California in the ordinary course of business.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 5, 2017, at San Francisco, California.

  
Alexandra Guardado