

# **HARD COPY**

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

In the Matter of the Application of

David K. Mallett

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-18015

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

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**I. INTRODUCTION**

Mallett's application for review should be dismissed because he failed to avail himself of FINRA's procedures. Mallett failed to respond to FINRA requests for information and documents related to his failure to disclose a felony charge and his late reporting of a lien. FINRA notified Mallett that he would be suspended unless he complied with the information and document requests. FINRA also notified Mallett that he had the opportunity to provide the requested information and documents and to state why he should not be suspended and eventually barred. Mallett ignored FINRA's numerous notices, and he did not take any action to contest FINRA's impending bar. Consequently, Mallett failed to exhaust his administrative remedies. The Commission should follow its previous decisions, find that Mallett failed to avail himself of FINRA's procedures, and dismiss Mallett's application for review.<sup>1</sup>

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<sup>1</sup> FINRA requests, pursuant to Commission Rule of Practice 161, that the Commission stay issuance of a briefing schedule in this matter while this motion is pending. The Commission should first evaluate the dispositive argument that Mallett's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

## II. FACTUAL BACKGROUND

The facts of this case occurred while Mallett was registered with FINRA member firm, Wunderlich Securities, Inc. RP 107.<sup>2</sup> Mallett joined Wunderlich Securities in June 2015. RP 107. The firm terminated him in July 2016. RP 107. Mallett has not been associated with another FINRA member firm since leaving Wunderlich Securities. RP 107.

In July 2016, Wunderlich Securities filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting that the firm had “discharged” Mallett for his “failure to appropriately advise [the firm] of disclosable events.” RP 107. It was Wunderlich Securities’ filing of the Form U5 that initiated FINRA’s investigation.

### A. The September 7, 2016 Request for Information

On September 7, 2016, Jennifer Schwin, a FINRA examiner, sent Mallett a letter requesting information and documents pursuant to FINRA Rule 8210. RP 1-2.<sup>3</sup> The letter sought information and documents concerning two discrete matters. RP 1. First, the letter asked Mallett to provide information and documents related to his failure to disclose a felony charge. Second, the letter sought information and documents concerning Mallett’s untimely reporting of a lien in the amount of \$108,174. RP 1. The letter asked Mallett to provide written statements explaining his failure to disclose the felony charge and his late reporting of the lien, and it

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<sup>2</sup> “RP \_\_\_” refers to the page numbers in the certified record filed by FINRA concurrently with this motion.

<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).

directed him to attach any supporting documentation to his response. RP 1. The letter asked Mallett to respond no later than September 21, 2016. RP 1.

FINRA sent the letter by certified and first-class mail to Mallett's address of record as contained in the Central Registration Depository ("CRD"®), 4801 Brandywine Cove, North Little Rock, AR 72120 ("CRD Address"). RP 1, 103. The letter sent by certified mail was returned to FINRA as unclaimed. RP 4-5. The first-class mail was not returned. Mallett did not respond to FINRA's letter.

**B. The September 28, 2016 Request for Information**

On September 28, 2016, Schwin sent Mallett a second request for information and documents made pursuant to FINRA Rule 8210. RP 7. The second information and document request set a response deadline of October 12, 2016. RP 7-9. Schwin sent the letter to Mallett by certified and first-class mail to the CRD Address. RP 7. The letter sent by certified mail was returned to FINRA as unclaimed. RP 11-12. The first-class mail was not returned. Mallett did not respond to FINRA's letter.

**C. The November 2, 2016 Request for Information**

On November 2, 2016, Schwin sent Mallett a "third and final" request for information and documents made pursuant to FINRA Rule 8210. RP 13. The third information and document request set a response deadline of November 16, 2016. RP 13-16. Schwin sent the letter to Mallett by certified and first-class mail to the CRD Address. RP 13. The letter sent by certified mail was returned to FINRA as not deliverable. RP 18-19. The first-class mail was returned to FINRA. RP 20. Again, Mallett did not respond to FINRA's letter.

**D. The February 3, 2017 Pre-Suspension Notice**

After Mallett failed to respond to FINRA's three requests for information and documents, FINRA's Department of Enforcement ("Enforcement") sought to suspend Mallett from associating with any FINRA member firm pursuant to FINRA Rule 9552(a).<sup>4</sup> RP 61-62. On February 3, 2017, Laura Blackston, an Enforcement attorney, warned Mallett in a letter (the "Pre-Suspension Notice") that FINRA planned to suspend him on February 27, 2017 for his failure to respond to the requests for information and documents. RP 61-62.

The Pre-Suspension Notice stated that Mallett could avoid imposition of the suspension if he took corrective action by complying with the information and document requests before the suspension took effect. RP 61-62. The Pre-Suspension Notice further explained that Mallett had the opportunity to request a hearing to contest the imposition of the suspension and to seek termination of the suspension if he complied fully with the original requests. RP 61-62. Finally, the Pre-Suspension Notice stressed that Mallett would be in default, and barred on May 8, 2017, if he failed to request termination of the suspension within three months. RP 62; *see also* FINRA Rule 9552(h).<sup>5</sup>

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<sup>4</sup> FINRA Rule 9552(a) states that:

If 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.

<sup>5</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."



Before sending the Pre-Suspension Notice, Nicole Stone, a Senior Paralegal in Enforcement, searched a “Comprehensive Person Report” database in LexisNexis. RP 21-59. On February 2, 2017, the Comprehensive Person Report identified the CRD Address with slight variations as Mallett’s current address.<sup>6</sup> RP 22, 103.

FINRA sent the Pre-Suspension Notice to the CRD Address by certified and first-class mail. RP 61-62. The certified and first-class mailings were returned to FINRA. RP 63-64. Mallett did not respond to the Pre-Suspension Notice.

**E. The February 27, 2017 Suspension Notice**

On February 27, 2017, Enforcement attorney Jasmine Shergill notified Mallett in a letter (the “Suspension Notice”) that he was suspended from association with any FINRA member firm in any capacity. RP 75. The Suspension Notice stated that Mallett was suspended in accordance with the Pre-Suspension Notice because he had failed to provide FINRA with the requested information and documents. RP 75. The Suspension Notice advised Mallett that he could file a written request for termination of the suspension on grounds of full compliance with the information and document requests, and it reiterated the warning that Mallett’s failure to seek relief from the suspension by May 8, 2017 would result in a default pursuant to FINRA Rule 9552(h) and an automatic bar. RP 75.

Before sending the Suspension Notice, Enforcement staff searched a public records database in LexisNexis. RP 73-74. On February 27, 2017, the public records database identified the CRD Address with slight variations as Mallett’s current address.<sup>7</sup> RP 73, 103.

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<sup>6</sup> The CRD Address is, “4801 Brandywine Cove, North Little Rock, AR 72120.” RP 103. The current address from the February 2, 2017 Comprehensive Person Report is, “4801 Brandywine CV, Sherwood, AR 72120-3984.” RP 22.

<sup>7</sup> The address variations are the same as those discussed *supra* note 6. RP 73, 103.

FINRA sent the Suspension Notice to the CRD Address by certified and first-class mail. RP 75. The certified and first-class mailings were returned to FINRA.<sup>8</sup> RP 76-80. Mallett did not respond to the Suspension Notice.

**F. The May 8, 2017 Bar Notice**

Mallett did not challenge his suspension in the months leading up to May 8, 2017. Accordingly, on that date, Enforcement attorney Olha Kolisnyk notified Mallett that he was in default, and barred (the “Bar Notice”). RP 83-84.

Following the same procedures that it did with the Suspension Notice, Enforcement staff searched a public records database in LexisNexis prior to sending the Bar Notice. RP 81-82. On May 8, 2017, the public records database identified the CRD Address with slight variations as Mallett’s current address.<sup>9</sup> RP 81, 103.

FINRA sent the Bar Notice to the CRD Address and the CRD Address with variations as noted in the LexisNexis public records database. RP 81, 83-84, 103. FINRA sent the Bar Notice to Mallett by certified and first-class mail. RP 83. The certified and first-class mailings were returned to FINRA. RP 88-96. Mallett did not respond to the Bar Notice. Approximately one month after FINRA mailed the Bar Notice, on June 5, 2017, Mallett, through counsel, submitted an application for review to the Commission. RP 97-101.

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<sup>8</sup> An individual named “Jeffrey Britton” signed the certified mail receipt for the return of the Suspension Notice to FINRA. RP 80. Jeffrey Britton was a FINRA Enforcement employee.

<sup>9</sup> The address variations are the same as those discussed *supra* notes 6 and 7. RP 81, 103.

### **III. ARGUMENT**

The Commission should dismiss Mallett's application for review. Mallett failed to exhaust his administrative remedies by providing the requested documents and information, requesting a hearing, or requesting the termination of his suspension.

Mallett does not dispute the bases of FINRA's action because he cannot. Mallett moved from his marital home, but failed to update his records in CRD to reflect the move. Mallett's attempts to blame others – FINRA, Wunderlich Securities, even the US Postal Service – for his failure to update his CRD records must fail. And his claimed "medical disability" and collateral attacks of the bases of FINRA's inquiry – his failure to disclose the felony charge and his untimely reporting of the lien – are wholly unpersuasive.

Mallett's application for review provides no basis to excuse his failure to exhaust his administrative remedies. The Commission should dismiss this appeal.

#### **A. FINRA Has Jurisdiction over Mallett**

Mallett is subject to FINRA's jurisdiction. FINRA served Mallett with the first, second, and third requests for information and documents and the Pre-Suspension, Suspension, and Bar Notices within two years of Wunderlich Securities' termination of him.

Under Article V, Section 4(a)(iii) of FINRA's By-Laws, FINRA retains jurisdiction over an associated person for at least two years after the effective date of the termination of the associated person's registration, based on, among other types of conduct, such person's failure, while subject to FINRA's jurisdiction, to provide FINRA with information and documents. *See generally NASD Notice to Members 92-19*, 1992 NASD LEXIS 50, at \*2-5 (Apr. 1992) (noting that FINRA retains jurisdiction over associated persons for two years after their termination, and associated persons are required to provide information and documents to FINRA as long as FINRA retains jurisdiction over them). Once associated persons are subject to FINRA's

jurisdiction, either through retained jurisdiction or current employment with a FINRA member firm, FINRA Rules 8210 and 9552 apply and require these associated persons to comply fully with FINRA's requests for information and documents.

The record establishes that Mallett became associated with Wunderlich Securities in June 2015, and that the firm discharged him in July 2016. RP 107. FINRA retained jurisdiction over Mallett for two years after the termination of his registration, i.e., through July 2018, a period that covers the requests and expedited proceedings at issue in this case. RP 1-2, 7, 13, 61-62, 75, 83-84. Accordingly, Mallett was subject to FINRA's jurisdiction and obligated to follow FINRA's rules.

**B. FINRA Provided Mallett with Proper Notice of These Proceedings**

FINRA not only properly exercised jurisdiction over Mallett, FINRA also properly sent Mallett the requests for information and documents and the Pre-Suspension, Suspension, and Bar Notices to Mallett's CRD Address. FINRA Rule 8210(d) provides that a notice under FINRA 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 [CRD]."

Here, FINRA's first, second, and third requests for information and documents were sent to Mallett's CRD Address. RP 1, 7, 13, 103. Accordingly, FINRA properly served the first, second, and third requests for information and documents, and Mallett 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).

FINRA Rule 9134 governs service of the pre-suspension, suspension, and bar notices in expedited proceedings under FINRA Rule 9552. *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 US Postal Service by using first class mail [or] first class certified mail.”

The record reflects that FINRA sent the Pre-Suspension, Suspension, and Bar Notices to Mallett’s CRD Address by first-class and certified mail, as allowed by FINRA Rule 9134(b)(1). RP 61-62, 75, 83-84, 103. Consequently, the record demonstrates that FINRA properly served Mallett. *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).

### **C. Mallett Failed to Keep FINRA Apprised of His Current Address**

Mallett represents that he “moved from his former marital home . . . . [and,] [h]e filed forwarding orders with the [US] Postal Service, but did not receive any of the letters from FINRA.” RP 99 (Mallett’s Notice of Appeal). But it was Mallett’s responsibility to provide FINRA with a current address. It is well settled that all registered representatives are required to sign and file a Uniform Application for Securities Industry Registration or Transfer (“Form

U4”), “which obligates them to keep a current address on file with the NASD at all times.”

*Nazmi C. Hassanieh*, 52 S.E.C. 87, 90 (1994).

Because registered persons are subject to FINRA’s jurisdiction for at least two years after leaving the securities industry, they are obliged to keep their addresses current with FINRA, even after they leave the industry. *Warren B. Minton, Jr.*, 55 S.E.C. 1170, 1178 n.16 (2002).

Ignorance of this requirement does not excuse a registered person’s noncompliance. *Id.*

(rejecting claim that applicant was unaware of duty to update Form U4). FINRA has reminded registered persons of this obligation. *See NASD Notice to Members 97-31*, 1997 NASD LEXIS 35, at \*2 (May 1997). This requirement prevents registered persons from thwarting FINRA’s disciplinary process, and evading regulatory liability and oversight, by not giving FINRA a current address or leaving a forwarding address. *See Gowadia*, 53 S.E.C. 786, 790 (1998).

At a minimum, Mallett had a responsibility to inform FINRA of a forwarding address.<sup>10</sup> *See Hassanieh*, 52 S.E.C. at 90 (rejecting applicant’s defense that he had not received FINRA’s letters which were sent while he was living with friends, and holding that applicant had responsibility to provide FINRA with his current address). He did not do that in this case.

Moreover, despite the fact that Mallett now maintains his residence at an address other than the

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<sup>10</sup> Mallett blames others for his failure to keep his address current in CRD. He blames the US Postal Service. Mallett states, “[h]e filed orders with the [US] Postal Service, but did not receive any of the letters from FINRA.” RP 99. He blames his former member firm, Wunderlich Securities. Mallett states, “[a]lthough working for Wunderlich [Securities], he did not receive any correspondence from his employer.” RP 100. He blames FINRA. Mallett states, “FINRA failed to exercise due caution/diligence when trying to serve [r]espondent with [the] Notices.” But Mallett may not delegate his compliance responsibilities, such as the updating of his address in CRD, to others. *See Justine Susan Fischer*, 53 S.E.C. 734, 741 & n.4 (1998) (holding that “[a] broker has responsibility for his . . . own actions and cannot blame others for [his] own failings”); *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at \*73 (Jan. 30, 2009) (stating that associated persons must take responsibility for compliance with regulatory requirements), *aff’d*, 416 F. App’x 142 (2010). The Commission should reject Mallett’s blame-shifting arguments.

CRD Address, he still has not updated his CRD records to reflect this change, something that he is obligated to do. RP 100, 103.<sup>11</sup> Mallett's failure to keep his address current does not excuse his failure to respond to the requests for information and documents or the Pre-Suspension, Suspension, and Bar Notices.

**D. Mallett Failed to Exhaust His Administrative Remedies**

FINRA properly exercised jurisdiction over Mallett and provided Mallett with proper notice of these proceedings. Based on these facts, the Commission is precluded from considering Mallett's application for review because Mallett failed to exhaust his administrative remedies.

As the Commission has emphasized, "it 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." *Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 SEC LEXIS 1403, at \*12 (May 9, 2017). Requiring that respondents exhaust their administrative remedies before FINRA "promotes the efficient resolution of disciplinary disputes between [self-regulatory organizations] and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations." *Id.* at 11. To be sure, "[w]ere [self-regulatory organizations'] members, or former [self-regulatory organizations'] members, free to bring their . . . grievances before the [Commission] without first exhausting [their self-regulatory organizations'] remedies, the self-regulatory function of [self-regulatory organizations] could be compromised." *Id.* at 11-12.

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<sup>11</sup> FINRA obtained Mallett's Composite Information Form, which includes Mallett's CRD Address, from CRD on June 12, 2017. RP 103.

The precedent with respect to FINRA Rule 9552 expedited proceedings is well-settled. The Commission has consistently dismissed respondents' applications for review where respondents failed to exhaust their administrative remedies under FINRA Rule 9552. *See, e.g., Jones*, 2017 SEC LEXIS 1403, at \*11 (dismissing applicant's appeal for failure to exhaust administrative remedies where FINRA barred applicant under FINRA Rule 9552 for failing to respond to FINRA Rule 8210 requests); *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, \*9-11 (June 22, 2016) (same); *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 Mallett did not respond to any of FINRA's notices until he filed the application for review with the Commission. These notices included three requests for information and documents pursuant to FINRA Rule 8210, and the Pre-Suspension, Suspension, and Bar Notices under FINRA Rule 9552.

By repeatedly failing to respond to FINRA's requests for information and documents and disregarding the directions set forth in the Pre-Suspension and Suspension Notices, Mallett failed to exhaust his administrative remedies and is precluded from challenging FINRA's action before the Commission. *See, e.g., Jones*, 2017 SEC LEXIS 1403, at \*11; *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at \*13-14 (Apr. 10, 2014) (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 S. 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”). Based on these facts, the Commission should dismiss Mallett’s application for review.

**E. The Commission Should Reject Mallett’s Attacks on the Merits of FINRA’s Bar**

On appeal, Mallett attempts to attack the bases of FINRA’s inquiry – Mallett’s failure to disclose his felony charge and his untimely reporting of a lien. Mallett represents that his attorney provided Wunderlich Securities’ attorney with an “oral summary of the events and sent copies of all documents in [Mallett’s] possession related to the arrest and subsequent charges” to that attorney. RP 99. Concerning the late-reported lien, Mallett asserts that “he was not aware that the lien should be reported to his employer[, and] . . . [l]ess that [sic] three months later, he made his employer aware of the filing of the lien.” RP 99. Mallett’s argument misses the point.

Mallett’s reasons for not responding to FINRA’s requests and notices do not mitigate his failure to comply with FINRA’s procedures. Mallett did not respond to FINRA’s requests and notices, failed to raise these issues, and failed to request a hearing to challenge his impending sanction. Mallett cannot complain at this stage about the consequences of his choices. *See Profeta*, 2010 SEC LEXIS 1563, at \*7-8 (dismissing for failure to exhaust administrative remedies and refusing to consider the applicant’s assertions that he “was not charged with anything” and “ha[s] no recollection of any conviction” because the applicant “chose not to respond to FINRA’s letters to raise these issues or request a hearing to challenge his impending sanction, and therefore cannot complain at this stage about the consequence of his choice”); *see also Jones*, 2017 SEC LEXIS 1403, at \*17 (rejecting applicant’s argument that “his bar should be lifted because he ha[s] no criminal record” because the “argument . . . goes to the merits of the bar FINRA imposed[, and the applicant] cannot argue about the merits of the bar since he did not

timely raise this issue in the first instance to FINRA through its administrative process by, for example, requesting a hearing in response to the Pre-Suspension Notice”).

Mallett failed repeatedly to pursue his administrative remedies to prevent or challenge his suspension. After issuance of the Pre-Suspension Notice, Mallett had the opportunity to request a hearing and set forth the reasons why he believed his suspension should be set aside. RP 61-62. But Mallett did not respond. After issuance of the Suspension Notice, Mallett had the opportunity to move for reinstatement. RP 75. Again, Mallett did nothing. Accordingly, pursuant to FINRA Rule 9552(h), Mallett was barred. RP 83-84. Based on these facts, the Commission should dismiss Mallett’s application for review.

**F. Mallett’s “Medical Disability” Does Not Excuse His Failure to Respond to FINRA’s Requests and Notices**

Mallett points to personal health issues and implies that they may be the reason why he failed to respond to FINRA’s requests and notices. Mallett states that he “suffered from a medical disability during a majority of the time that the events described in the FINRA letter occurred[, and] that made it difficult for him to make rational decisions.” RP 99. Mallett’s argument misses the mark.

If Mallett was unable to meet the deadlines in FINRA’s requests and notices because of a medical disability, “it was his obligation to contact FINRA, explain the reasons why his response would be delayed, and propose alternate arrangements.” *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at \*73 (Sept. 24, 2015); *see also Charles C. Fawcett*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at \*18 (Nov. 8, 2007) (“As we have often noted, recipients of requests under [FINRA] Rule 8210 must promptly respond to the requests or explain why they cannot.”). FINRA properly notified Mallett of these proceedings, Mallett did not respond to respond to FINRA’s notices, and FINRA properly barred Mallett

pursuant to FINRA Rule 9552. The Commission should reject Mallett's self-serving statements and dismiss his application for review.

#### IV. CONCLUSION

Mallett failed to respond to FINRA's requests for information, and consequently, was suspended. He then ignored FINRA's Pre-Suspension, Suspension, and Bar Notices, and he failed to avail himself of FINRA's administrative procedures to request a hearing or terminate the suspension. As a result, Mallett was barred, in accordance with FINRA's rules. Mallett failed to exhaust his administrative remedies, and the Commission should dismiss his application for review.

Respectfully submitted,



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jante.turner@finra.org – Electronic Mail

June 21, 2017

**CERTIFICATE OF SERVICE**

I, Jante C. Turner, certify that on June 21, 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 David K. Mallett, Administrative Proceeding No. 3-18015, to be served by messenger on:

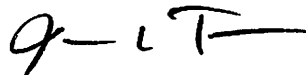
Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Room 10915  
Washington, DC 20549-1090

and via overnight Federal Express and Electronic Mail:

Andrew L. Clark, Esq.  
1 Samantha Lane  
Maumelle, AR 72113  
501-658-0294 – Telephone  
lawyerclark@msn.com – Electronic Mail

Different methods of service were used because courier service could not be provided to the applicant's counsel.

Respectfully submitted,



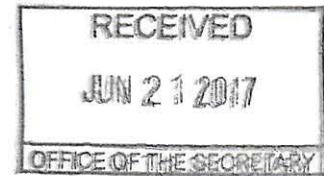
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Jante C. Turner  
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Financial Industry Regulatory Authority

**HARD COPY**



**Jante C. Turner**  
Associate General Counsel

Telephone: 202-728-8317  
Facsimile: 202-728-8264

June 21, 2017

**VIA MESSENGER**

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

**RE: APPLICATION FOR REVIEW OF DAVID K. MALLET  
ADMINISTRATIVE PROCEEDING FILE NO. 3-18015**

Mr. Fields:

Enclosed are the following documents for the above-captioned matter: (1) an original and three copies of FINRA's Motion to Dismiss the Application for Review and to Stay Briefing Schedule; (2) an original and three copies of the index to the certified record; and (3) the certified record. Please contact me at 202-728-8317 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Turner".

Jante C. Turner

cc: Andrew L. Clark, Esq.  
1 Samantha Lane  
Maumelle, AR 72113  
501-658-0294 – Telephone  
lawyerclark@msn.com – Electronic Mail

Enclosures