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OFFICE OF THE SECRETARY

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

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In the Matter of the Application of
Dakota Securities International, Inc.
For Review of Disciplinary Action Taken by
FINRA
File No. 3-18382

**FINRA'S REPLY IN SUPPORT OF THE MOTION TO DISMISS
THE APPLICATION FOR REVIEW**

In its April 4, 2018 Motion to Dismiss the Application for Review and To Stay the Briefing Schedule (the "Motion to Dismiss"), FINRA argues that the appeal of Dakota Securities International, Inc. ("Dakota") should be dismissed on two grounds. Primarily, Dakota's appeal should be dismissed because the Commission lacks jurisdiction to entertain it. The Expedited Decision that Dakota appeals provided that a suspension would be imposed if the firm did not pay certain arbitration fees prior to the effective date of the suspension. Dakota, however, paid the fees prior to the suspension's effective date and the suspension was not imposed. Accordingly, FINRA never imposed a final disciplinary sanction on Dakota, and the Commission lacks jurisdiction under Section 19(d) of the Securities Exchange Act of 1934 (the "Exchange Act") to hear this appeal. Additionally, the appeal should be dismissed because it is moot: Dakota is not aggrieved because the suspension was not imposed. For these reasons, the Commission should dismiss Dakota's application for review.

I. Jurisdiction Is a Threshold Issue, Without It the Commission Cannot Review the Underlying Expedited Decision

Dakota misunderstands that the Commission must have jurisdiction before this application for review can proceed. In its April 25, 2018 opposition to the Motion to Dismiss, (“Opposition”),¹ Dakota does not address the jurisdictional issues raised by FINRA. Rather, Dakota argues about the merits of the underlying Expedited Decision and whether the firm established a bona fide inability to pay. As the Commission’s May 1, 2018 order in this matter acknowledges, however, consideration of the threshold question of the Commission’s jurisdiction should come first, as briefing on the substance of Dakota’s appeal may not be necessary if the Motion to Dismiss is granted. A decision on the issue of jurisdiction will conserve Commission resources and is necessary for the orderly administration of appeals to the Commission.

FINRA’s discussion of why Dakota’s appeal does not meet any part of Exchange Act Section 19(d) and the favorable case law cited by FINRA is unrefuted. Specifically, Dakota does not distinguish its appeal from *Wedbush Morgan Securities*, in which the Commission found that it lacked jurisdiction under Exchange Act Section 19(d) where a suspension was never effective. *See Wedbush Morgan Securities, Inc.*, Exchange Act Release No. 57138, 2008 SEC LEXIS 57 (Jan. 14, 2008) (dismissing an appeal for lack of jurisdiction where the applicant paid outstanding interest due prior to the suspension date and the suspension was never imposed).

¹ While Dakota’s Opposition is dated April 25, 2018, it does not include a certificate of service and FINRA did not receive a copy until May 1, 2018.

In *Wedbush*, as with *Dakota*, FINRA had ordered the firm to make payment by a specific date. *Id.* at *10-11. In *Wedbush*, as is the case here, *Wedbush* made full payment to FINRA and no suspension was imposed. *Id.* As the Commission concluded: “[FINRA] took no action within the meaning of Section 19(d) of the Exchange Act that is subject to review by the Commission, and *Wedbush*’s appeal must be dismissed for lack of jurisdiction.” *Id.* So too here, and the Commission lacks jurisdiction for the same reasons.

Nor does *Dakota* address FINRA’s argument that its appeal is moot. *Dakota* paid the arbitration fees, and the suspension never was imposed. *Dakota* fails to explain how even a favorable decision by the Commission would provide it with any relief. Consequently, *Dakota* is not “aggrieved” by FINRA’s final action, and it has no basis to appeal that decision to the Commission. See *Daniel M. Pecoraro*, 48 S.E.C. 875, 875 n.1 (1987) (finding that respondent who was not “aggrieved” by determination of self-regulatory organization had no basis for appeal and dismissing respondent’s appeal on those grounds).

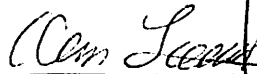
None of the issues raised in *Dakota*’s Opposition has any bearing on jurisdiction. *Dakota*’s main points—(1) whether *Dakota* proved an inability to pay; (2) whether the original arbitration claim against the firm was “frivolous”; (3) whether *Dakota*’s request to waive the arbitration fees should have been granted; and (4) whether FINRA should have told the firm’s CEO that it was unlikely a hardship waiver would be granted to an active FINRA member firm—are arguments that the underlying Expedited Decision was incorrect. But the Commission cannot address the merits of *Dakota*’s challenge to the Expedited Decision because it lacks the jurisdiction to do so.

There is no dispute that Dakota paid the arbitration fees it owed and, consequently, the suspension for failure to pay the fees was never imposed. *See* Motion to Dismiss Exhibits A & B. Under these circumstances, the Commission lacks jurisdiction over the appeal.

II. Conclusion

The Commission should dismiss this appeal because, under Section 19(d) of the Exchange Act, the Commission lacks jurisdiction to hear it. The suspension ordered in the Expedited Decision never went into effect, and FINRA did not impose a disciplinary sanction. Accordingly, the Commission should dismiss the application for review.

Respectfully submitted,



Alan Lawhead
Vice President and Director – Appellate Group
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8853

May 8, 2018

CERTIFICATE OF SERVICE

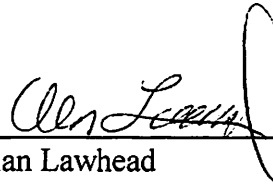
I, Alan Lawhead, certify that on this 8th day of May 2018, I caused a copy of the foregoing FINRA's Reply in Support of the Motion to Dismiss, In the Matter of Dakota Securities International, Inc., Administrative Proceeding File No. 3-18382 to be served by messenger and facsimile on:

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

and via FedEx on:

Gary Cuccia
Dakota Securities International, Inc.
5966 S Dixie Highway - Suite 300
Miami, FL 33143

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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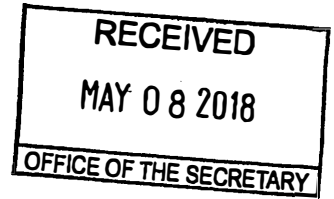
Celia L. Passaro
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VIA MESSENGER AND FACSIMILE

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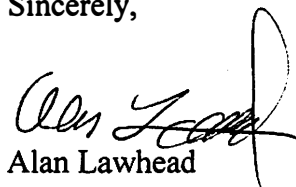
RE: In the Matter of the Application for Review of Dakota Securities International, Inc., Administrative Proceeding No. 3-18382

Dear Mr. Fields:

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

Please contact me at (202) 728-8853 if you have any questions.

Sincerely,



Alan Lawhead

Enclosures

cc: Gary Cuccia (via FedEx)