

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

In the Matter of the Application for Review of  
Gregory Acosta  
Administrative Proceeding File No. 3-18637

**FINRA'S BRIEF ON JURISDICTION**

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**FINRA’S BRIEF ON JURISDICTION**

Gregory Acosta seeks Commission review of a letter from FINRA staff informing his firm that he is statutorily disqualified as a result of an order entered by the Insurance Commissioner of the State of California (the “Insurance Commissioner”). The Insurance Commissioner’s order restricted Acosta’s insurance licenses based on a regulation authorizing such action against any person found to have “engaged in a fraudulent practice or act or [to have] conducted any business in a dishonest manner[.]” FINRA staff determined that the order disqualified Acosta under the Securities Exchange Act of 1934 (the “Exchange Act”) because the order was based on a regulation prohibiting fraudulent, manipulative, or deceptive conduct. FINRA staff notified Acosta’s firm that Acosta was disqualified and instructed the firm on how to initiate a proceeding to remain associated with him notwithstanding his disqualification. Rather than initiating this process, Acosta’s firm terminated its association with him. Acosta asks the Commission to review FINRA staff’s letter notifying his firm that he is statutorily disqualified.

The Commission should dismiss Acosta’s appeal because FINRA has not taken any final action that is subject to the Commission’s review. The Exchange Act provides the Commission

with jurisdiction to review FINRA’s *final* action in a statutory disqualification proceeding, not FINRA’s initial step of categorizing an event as disqualifying. There is no final action here because Acosta’s firm chose to terminate him rather than initiate FINRA’s internal process for reviewing statutory disqualification determinations. With no final action to review, the Commission lacks jurisdiction to consider Acosta’s appeal and should dismiss it.

### FACTUAL BACKGROUND

#### I. Statutory Disqualification and the Membership Continuance Process

FINRA’s By-Laws provide that no person shall continue to be associated with a FINRA member firm if such person becomes subject to a disqualification. *Interactive Brokers, LLC*, Exchange Act Release No. 80164, 2017 SEC LEXIS 701, at \*1 (Mar. 6, 2017) (citing FINRA By-Laws, Art. III, Sec. 3(b)).<sup>1</sup> FINRA’s By-Laws define “disqualification” as “any ‘statutory disqualification’ as such term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934.” *Id.* at \*1-2 (citing FINRA By-Laws Art. III, Sec. 4).

A FINRA member firm that continues to associate with a statutory disqualified person is subject to its own disqualification and may lose its FINRA membership. *Id.* at \*3 (citing FINRA By-Laws, Art. III, Sec. 3(d)). A member firm may, however, request discretionary relief from FINRA if it wishes to associate with a statutorily disqualified person. *Id.* FINRA Rules 9521 through 9527 set forth the process for a member firm to seek approval to associate with a statutorily disqualified person (the “Membership Continuance” process).

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<sup>1</sup> Additionally, under Section 15A(g)(2) of the Exchange Act, FINRA cannot allow a statutorily disqualified person to associate with a member firm unless FINRA notifies the Commission of its intent to do so. 15 U.S.C. § 78o-3(g)(2). FINRA’s notice must contain the information specified in Exchange Act Rule 19h-1. 17 C.F.R. 240.19h-1.

FINRA's Registration and Disclosure department (the "Registration Department") must issue written notice to a member firm if it "has reason to believe" that a person associated with the firm is statutorily disqualified. FINRA Rule 9522(a)(1).<sup>2</sup> The written notice must specify the grounds for the disqualification and explain how the firm can initiate the Membership Continuance process. FINRA Rule 9522(a)(1).

The Membership Continuance process begins when the member firm, known as the "sponsoring member," submits a Membership Continuance application. If the sponsoring member does not agree with the Registration Department's determination that the person is statutorily disqualified, it can explain the basis for its belief on the Membership Continuance application and challenge that determination during the Membership Continuance process. *See In the Matter of the Continued Association of X*, Redacted Decision No. SD04014, slip. op. at 1 (NASD NAC 2004), [http://www.finra.org/sites/default/files/NACDecision/p036507\\_0.pdf](http://www.finra.org/sites/default/files/NACDecision/p036507_0.pdf) (holding that person was not statutorily disqualified). The Membership Continuance application also must detail the terms of the sponsoring member's proposed association with the person, including any plan for the firm's heightened supervision of the person.

Each year, FINRA receives numerous Membership Continuance applications from sponsoring firms. Between January 2015 and November 2018, FINRA received a total of 106 Membership Continuance applications submitted by sponsoring firms seeking permission to associate with persons deemed statutorily disqualified. Decl. of Glynnis Kirchmeier at ¶ 3, Exhibit A, hereto.

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<sup>2</sup> The Registration Department routinely reviews state and federal regulators' filings, Forms U4 and U5, and other sources of information relating to the qualifications of persons to remain associated with member firms.

The Membership Continuance application is subject to multiple levels of review within FINRA. FINRA's Member Regulation department ("Member Regulation") conducts the initial review. Member Regulation assesses whether the sponsoring member has the requisite compliance and supervisory infrastructure to mitigate the risks posed by the proposed association.<sup>3</sup> Depending on the specific type of statutory disqualification, Member Regulation can approve the application and file a Rule 19h-1 notice directly with the Commission, it can recommend approval to the Chair of the Statutory Disqualification Committee, or it can recommend denial. *See* FINRA Rules 9522(e)(2), 9522(e)(3), 9523(a)(3).

If Member Regulation recommends denial, the sponsoring member may seek review by FINRA's National Adjudicatory Council (the "NAC"). The review process includes a hearing before a panel appointed by the NAC, at which the sponsoring member and the person may be represented by an attorney and present any relevant evidence. FINRA Rule 9524(a). Member Regulation has the burden of proving that the person is, in fact, statutorily disqualified. *See In the Matter of the Continued Membership of Firm 1*, Redacted Decision No. SD04016, slip op. at 7 (NASD NAC 2004), [http://www.FINRA.org/sites/default/files/NACDecision/p036513\\_0.pdf](http://www.FINRA.org/sites/default/files/NACDecision/p036513_0.pdf). If Member Regulation meets its burden, the sponsoring member has the burden of showing that it is in the public interest to permit the person's employment. *Timothy H. Emerson, Jr.*, Exchange

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<sup>3</sup> A significant benefit of requiring statutorily disqualified persons to undergo the Membership Continuance process is that, should FINRA elect to approve an application, FINRA can require that the firm implement and administer a stringent plan of supervision over the disqualified person. *See Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (stating that "[i]n determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.").



Act Release No. 60328, 2009 SEC LEXIS 2417, at \*11 (July 17, 2009) (quoting *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992)). In making its decision, the NAC considers all the relevant evidence, the “public interest,” and the “protection of investors.” FINRA Rule 9524(b)(1).

The NAC’s decision on the application constitutes the “final action of FINRA.” FINRA Rule 9524(b)(3).<sup>4</sup> The NAC may find that the person is not statutorily disqualified and dismiss the proceeding. If the NAC determines that the person is statutorily disqualified, it may approve or deny the Membership Continuance application. If the NAC approves the application, FINRA files the decision and related documents with the Commission pursuant to Exchange Act Rule 19h-1. *See* FINRA Rule 9524(b)(3). The Commission may then issue an acknowledgement letter or an order, which concludes the statutory disqualification proceeding. *See* FINRA Rule 9524(b)(3). If the NAC denies the application, FINRA files notice of its denial pursuant to Exchange Act Rule 19d-1. The sponsoring member or the person may then appeal that decision to the Commission. *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at \*2 n.5 (June 26, 2014) (both the sponsoring member and the person may appeal FINRA’s denial of a Membership Continuance application).

## **II. The Registration Department Determines That Acosta Is Statutorily Disqualified**

In January 2018, the California Department of Insurance filed an Accusation against Acosta and his company, Diamond Bar Executive Benefit Programs & Insurance Services, Inc.

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<sup>4</sup> Before the NAC’s decision becomes final, it is subject to review by FINRA’s Board of Governors. FINRA Rule 9524(b)(3). The Board of Governors may affirm, modify, or reverse the NAC’s decision, or remand it to the NAC with instructions. FINRA Rule 9525.

("EBP"). See RP 1-10.<sup>5</sup> In its Accusation, the Department of Insurance alleged that Acosta, doing business as EBP, had taken out a \$750,000 life insurance policy in the name of an elderly customer without the customer's knowledge, and that EBP was the policy's owner and beneficiary. RP 2. The Department of Insurance further alleged that Acosta had borrowed \$750,000 from the same customer. RP 2. Based on these allegations, the Department of Insurance averred that Acosta and EBP were subject to discipline "for violations of [California Insurance Code] Sections 1668(i) and (j)." RP 4. Significantly, California Insurance Code Section 1668(i) authorizes the Insurance Commissioner to deny or suspend the license of a person who has "engaged in a fraudulent practice or act or has conducted any business in a dishonest manner[.]" Cal. Ins. Code § 1668(i).

In May 2018, in response to the Insurance Department's Accusation, Acosta executed a Stipulation and Waiver on behalf of himself and EBP. See RP 16-18.<sup>6</sup> Without admitting or denying the allegations in the Accusation, Acosta and EBP acknowledged that, if proven true, the allegations "are grounds for the discipline ... of Respondents' licenses and licensing rights, pursuant to the provisions of the Insurance Code of the State of California referred to in said Accusation[.]" RP 16 (emphasis added). Acosta and EBP consented to restrictions on their insurance licenses and licensing rights, and agreed to "come into compliance with California Insurance Code section 1668.1," which, among other things, prohibits a licensee from inducing a client to make a loan to the licensee or naming the licensee as the beneficiary of a life insurance policy. RP 17; Cal. Ins. Code § 1668.1(a) and (b). Acosta and EBP represented that they had

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<sup>5</sup> "RP" refers to the page numbers in the certified record filed by FINRA on August 27, 2018.

<sup>6</sup> Acosta was represented by counsel before the Department of Insurance and initially had requested a hearing on the Accusation. See RP 11-14.

“fully reviewed each and every paragraph of this Stipulation and Waiver, understand the same, and are in agreement with all of its terms and conditions.” RP 18.

Days later, the Insurance Commissioner entered an order adopting the terms of the Stipulation and Waiver. RP 15. The order stated that the Stipulation and Waiver was “attached hereto and made a part hereof[.]” RP 15. The order further stated that the Insurance Commissioner “adopts the terms of the Stipulation and Waiver and such Stipulation and Waiver shall be binding on [Acosta and EBP].” RP 15.

The Registration Department became aware of the Insurance Commissioner’s order in June 2018, when Acosta’s firm, Kestra Investment Services, LLC, disclosed it via an amendment to Acosta’s Uniform Application for Securities Industry Registration (Form U4). RP 41-43. The Registration Department requested additional information about the California proceeding, which Kestra provided. RP 45-75. The Registration Department determined that Acosta is statutorily disqualified under Exchange Act Section 3(a)(39)(F), which provides that a person is statutorily disqualified if he or she is subject to a final order of a state insurance commission that is “based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.” 15 U.S.C. § 78c(a)(39)(F) (incorporating within the definition of “statutory disqualification” any order enumerated in Exchange Act Section 15(b)(4)(H), 15 U.S.C. § 78o(b)(4)(H)).

### **III. Kestra Terminates Acosta After Receiving the Registration Department’s Letter Regarding Acosta’s Statutory Disqualification**

In July 2018, the Registration Department sent a letter to Kestra notifying the firm that Acosta was statutorily disqualified as a result of the Insurance Commissioner’s order. RP 77-78. The Registration Department’s letter told the firm how to initiate the Membership Continuance process, and stated that the firm’s failure to do so “could result” in a revocation of Acosta’s

registration. RP 77-78. Rather than initiating the Membership Continuance process, Kestra terminated Acosta's association with the firm on July 16, 2018. RP 79-83.

#### **IV. Acosta Seeks Commission Review of the Registration Department's Letter**

On August 10, 2018, Acosta filed his application seeking the Commission's review of the Registration Department's letter. RP 85.<sup>7</sup> On September 17, 2018, the Commission issued an Order Scheduling Briefs. The Commission directed the parties to submit briefs "limited to the issue of whether the Commission has jurisdiction over this appeal pursuant to Section 19(d)(2) of the Securities Exchange Act of 1934."

### **ARGUMENT**

#### **I. The Commission Lacks Jurisdiction to Review the Registration Department's Letter**

The Commission lacks jurisdiction to review the Registration Department's letter and should dismiss Acosta's application. A FINRA action "is not reviewable merely because it adversely affects the applicant." *WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 SEC LEXIS 3699, at \*10 (Sept. 9, 2015). Rather, there must be a statutory basis for the Commission to exercise its jurisdiction. *Id.* Under Exchange Act Section 19(d), the Commission has jurisdiction to review any FINRA final action that (1) imposes a final

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<sup>7</sup> On August 24, 2018, Acosta filed a complaint against FINRA in the U.S. District Court for the Central District of California seeking injunctive and declaratory relief. *See Acosta v. Fin. Indus. Reg. Auth.*, No. 2:18-cv-07432 (C.D. Cal.). Acosta asked the court to enjoin FINRA from designating him as statutorily disqualified and requested a declaration that "FINRA lacks statutory authority to disqualify a registered representative ... by reason of a state insurance commission order that neither references nor incorporates any fraud-based statute," and that "FINRA's statutory disqualification determination relating to [Acosta] is in error and may not lawfully continue." FINRA moved to dismiss Acosta's complaint for lack of jurisdiction and failure to exhaust administrative remedies. On November 5, 2018, without ruling on FINRA's motion to dismiss, the court stayed the case pending resolution of this appeal.

disciplinary sanction, (2) denies or conditions membership or participation, (3) prohibits or limits any person in respect to access to services offered by FINRA or any FINRA member, or (4) bars any person from associating with a FINRA member. *Id.*; 15 U.S.C. § 78s(d). The Registration Department's letter is not FINRA's final action on Acosta's statutory disqualification, and therefore there is no FINRA action for the Commission to review.

**A. The Registration Department's Letter Is Not FINRA's Final Action Denying Membership or Participation**

While FINRA's final action on a statutory disqualification is reviewable as a denial of membership or participation, the Registration Department's letter to Kestra is not FINRA's final action on Acosta's disqualification—it is FINRA's initial action.<sup>8</sup> Once the Registration Department learned about the Insurance Commissioner's order, it had reason to believe that Acosta was statutorily disqualified. Under FINRA Rule 9522, the Registration Department was required to notify Kestra that the firm needed to initiate the Membership Continuance process if it wished to continue to associate with Acosta. If Kestra had done so, the Registration Department's determination of Acosta's statutory disqualification would have been reviewed by the NAC, if Kestra had argued the issue. The NAC's decision would constitute FINRA's final action on Acosta's statutory disqualification: if the NAC upheld the Registration Department's determination that Acosta is disqualified, and denied Kestra's Membership Continuance application, the Commission would have jurisdiction to review the NAC's decision. The Commission's jurisdiction was never triggered, however, because Kestra chose to terminate Acosta's registration rather than pursue the Membership Continuance process.

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<sup>8</sup> Acosta does not identify any specific jurisdictional basis for his appeal.

Indeed, FINRA was not required to file notice with the Commission of the Registration Department's letter precisely because the letter was *not* FINRA's final action. Under Exchange Act Section 19(d)(1), the Commission has jurisdiction to review any FINRA action for which FINRA is required to file notice with the Commission, which includes any denial of membership or participation in FINRA. The Commission implemented Section 19(d)(1)'s notice requirements through Exchange Act Rule 19d-1.<sup>9</sup> Rule 19d-1 provides that, in a non-disciplinary action, FINRA is required to file notice of any "final action" to deny, terminate, or limit participation in FINRA. 17 C.F.R. 240.19d-1(e), (g). The rule further provides that no such action "shall be considered 'final' ... if such person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies within such organization with respect to such a matter." 17 C.F.R. 240.19d-1(e), (g). In this case, FINRA's administrative process was never invoked, much less exhausted. FINRA was not required to file notice with the Commission because it never took final action on Acosta's statutory disqualification.

Acosta erroneously contends that, because Kestra chose to terminate him, FINRA has denied him the right to appeal the Registration Department's determination that he is statutorily disqualified. Acosta is incorrect. While Kestra declined to submit a Membership Continuance application on Acosta's behalf, Acosta remains free to find another member firm to sponsor his application. Through the Membership Continuance process, Acosta will be free to challenge Member Registration's determination that he is statutorily disqualified.

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<sup>9</sup> See Provision for Notices by Self-Regulatory Organizations of Disciplinary Sanctions; Stays of Such Actions; Appeals; and Admissions to Membership or Association of Disqualified Persons (the "Final Rule"), Exchange Act Release No. 13726, 1977 SEC LEXIS 1303 (July 8, 1977).

The Commission's decision in *Interactive Brokers*, a recent case involving similar circumstances, confirms that the Commission lacks jurisdiction to consider Acosta's appeal because the Membership Continuance process has not been completed. In that case, the Registration Department determined that a firm's associated person was subject to statutory disqualification due to an order issued by a foreign regulatory authority. *Interactive Brokers*, 2017 SEC LEXIS 701, at \*3. The firm initiated the Membership Continuance process and sought a preliminary ruling from the hearing panel on whether the foreign order was, in fact, disqualifying (the very same issue Acosta raises in his appeal). *Id.* at \*4. After considering the parties' briefs on this issue, the hearing panel ruled that the foreign order was disqualifying and scheduled a hearing on the merits of the firm's application. *Id.* at \*4-5. The firm immediately attempted to appeal the hearing panel's decision on the effect of the foreign order. *Id.* at \*5.

The Commission held that, while FINRA's final action on a statutory disqualification was reviewable as a denial of membership or participation, it lacked jurisdiction to consider the firm's appeal because FINRA had not yet made a final decision on the sponsoring firm's Membership Continuance application. The Commission found that FINRA's determination about the effect of the foreign order did not deny membership or participation for jurisdictional purposes because "FINRA ha[d] not yet made a final determination to deny the membership continuance application under the terms of the proposed association." *Id.* at \*7. The Commission explained that FINRA had not taken "final action" on the firm's application, and would not do so until the NAC "held its hearing, considered the issues, [and] presented a decision to the Board of Governors for review." *Id.* at \*7-8. As a result, the Commission dismissed the firm's appeal for lack of jurisdiction. *Id.* at \*10.

The FINRA action at issue in this case is even further removed from “final action,” and thus even further removed from the Commission’s jurisdiction. As in *Interactive Brokers*, here, the Registration Department determined that Acosta was statutorily disqualified and notified Kestra. Unlike the firm in *Interactive Brokers*, however, rather than initiating the Membership Continuance process, Kestra chose to terminate its association with Acosta. Kestra’s decision deprived FINRA of the opportunity, for the time being, to consider all of the relevant evidence and render a final, reviewable decision on Acosta’s disqualification. But Acosta remains free to find another firm to sponsor his Membership Continuance application.

Given that the hearing panel’s preliminary determination on the effect of the foreign order in *Interactive Brokers* was not a FINRA action subject to Commission review, the same result applies here when the Registration Department’s determination about the effect of the Insurance Commissioner’s order is even *more preliminary* than FINRA’s action in *Interactive Brokers*.

Similarly, the Commission’s decision in *WD Clearing* makes clear that a determination by FINRA staff does not trigger the Commission’s jurisdiction under Exchange Act Section 19(d), even if that determination adversely affects the applicant. In *WD Clearing*, a FINRA member firm (the “Seller”) had agreed to sell itself to another entity (the “Buyer”). *WD Clearing*, 2015 SEC LEXIS 3699 at \*4-5. The Seller submitted an application to FINRA requesting approval of the change in ownership. *Id.* at \*5. FINRA staff notified the Seller that FINRA had decided to bring a disciplinary action against a person associated with the Buyer. *Id.* at \*7-8. Following that communication, the Seller withdrew its application to transfer ownership to the Buyer because it “understood that the ‘issues associated with [the disciplinary action] would ultimately cause FINRA to deny [the Seller’s application],’ and that FINRA staff had



‘requested that [the Seller] withdraw the [application].’” *Id.* at \*8. The Buyer sought the Commission’s review of the Seller’s decision to withdraw the application. The Buyer argued that the Seller’s withdrawal was a “de facto denial” of the application by FINRA because it was precipitated by FINRA’s warning to the Seller that the application would be denied. *Id.* at \*1.

The Commission rejected the Buyer’s argument. It held that it lacked jurisdiction to consider the appeal as a denial of membership or participation because, even if the Seller withdrew its application in response to a request from FINRA staff, “an informal staff request does not constitute a final decision or an official FINRA action . . . . [The Seller] was free to decline a request to withdraw and proceed with its application process.” *Id.* at \*12. The same is true here. The Registration Department’s letter did not terminate Acosta—it merely notified Kestra that Acosta was statutorily disqualified and that the firm needed to initiate the Membership Continuance process if it wished to continue to associate with him. Rather than doing so, Kestra terminated Acosta. But Acosta remains free to find a different firm to sponsor his Membership Continuance application. Kestra’s decision to take adverse action against Acosta in response to the Registration Department’s letter does not transform the letter into FINRA’s final action on Acosta’s statutory disqualification.

**B. The Registration Department’s Letter Does Not Fall Within Any of the Exchange Act’s Other Bases of Jurisdiction**

The Registration Department’s letter does not fall within any of the remaining three bases of jurisdiction under the Exchange Act. It does not impose any final disciplinary sanction because Acosta’s disqualification arose automatically, by operation of the Exchange Act, from the insurance commissioner’s order; it was not imposed by FINRA following a disciplinary proceeding. *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*37 (Mar. 15, 2016) (“FINRA does not subject a person to statutory disqualification as a

penalty or remedial sanction. Instead, a person is subject to statutory disqualification by operation of [the] Exchange Act ....”), aff’d, 672 F. App’x 865 (10th Cir. 2016). The Registration Department’s letter does not bar Acosta from associating with any FINRA member because statutory disqualification is not a bar; Acosta may associate with a FINRA member as long as FINRA approves a Membership Continuance application submitted on his behalf. *Savva*, 2014 SEC LEXIS 2270, at \*4 (“A statutory disqualification constitutes an encumbrance to membership in ... a self-regulatory organization (‘SRO’), but it does not necessarily preclude a person from participating in the securities industry.”).<sup>10</sup> Even if statutory disqualification were considered a bar, the Registration Department’s letter is not FINRA’s final action. *Interactive Brokers*, 2017 SEC LEXIS 701, at \*9 (“Even assuming that the denial of a membership continuance application could be considered a bar from association, [the Sponsoring Firm’s] membership continuance application has not yet been denied.”). And the Registration Department’s letter does not prohibit Acosta with respect to services offered by FINRA or any of its members because it does not deny or limit Acosta’s ability to use any fundamentally important services offered by FINRA or any FINRA member. *Sky Capital LLC*, Exchange Act Release No. 55828, 2007 SEC LEXIS 1179, at \*15 (May 30, 2007); *Interactive Brokers*, 2017 SEC LEXIS 701, at \*8-9. The Commission therefore lacks jurisdiction to review the Registration Department’s letter under Exchange Act Section 19(d).

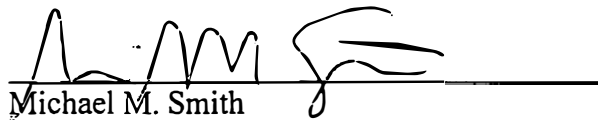
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<sup>10</sup> See also Final Rule, 1977 SEC LEXIS 1303, at \*8 (“A statutory disqualification does not necessarily bar the person from membership or participation in an SRO. It permits the SRO to deny or condition the membership or participation or association with a member of such a person, but the Act requires the SRO to take such action if the Commission so orders. An SRO proposing to admit to membership, participation or association a person subject to a statutory disqualification must give notice to the Commission 30 days prior to such action.”).

**CONCLUSION**

The Commission should dismiss Acosta's application because the Registration Department's letter is not FINRA's final action on Acosta's statutory disqualification and therefore it is not reviewable under Exchange Act Section 19(d).

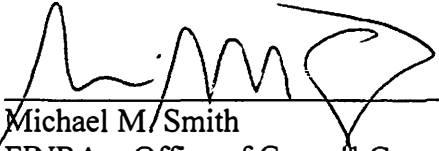
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael M. Smith", is written over a horizontal line.

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**CERTIFICATE OF COMPLIANCE**

I, Michael M. Smith, certify that this brief complies with the length limitation set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 3,585 words.



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**CERTIFICATE OF SERVICE**

I, Michael M. Smith, certify that, on November 16, 2018, I caused the original and three copies of FINRA's Brief on Jurisdiction in the matter of the Application for Review of Gregory Acosta, Administrative Proceeding File No. 3-18637, to be served via messenger on:

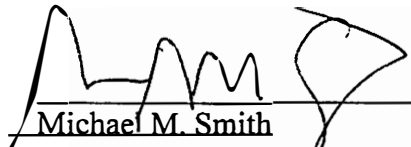
Brent Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Room 10915  
Washington, DC 20549

and via Federal Express Overnight Delivery and Electronic Mail on:

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Service was made on the Commission via messenger and on applicant's counsel via Federal Express and Electronic Mail due to the distance between FINRA's office and applicant's counsel's addresses.

Respectfully submitted,



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November 16, 2018

**VIA MESSENGER**

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

**RE: In the Matter of the Application of Gregory Acosta**  
**Administrative Proceeding No. 3-18637**

Dear Mr. Fields:

Enclosed please find the original and three copies of the FINRA's Brief on Jurisdiction in the above-captioned matter.

Please contact me at (202) 728-8177 if you have any questions.

Very truly yours,

*/s/ Michael M. Smith*

Michael M. Smith

cc: Richard D'Amura, Esq.  
Brennan Love