



Andrew J. Love
Associate General Counsel

Direct: (202) 728-8281
Fax: (202) 728-8264

June 1, 2020

VIA ELECTRONIC SERVICE

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

**RE: In the Matter of the Application for Review of Blackbook Capital, Inc.
and Franklin Ogele, Admin. Proceeding No. 3-19771**

Dear Ms. Countryman:

Enclosed please find FINRA's Reply to Applicants' Opposition to Motion to Dismiss and Opposition to Motion for Leave to File Amended Petition in the above-referenced matter.

Please contact me at (202) 728-8281 if you have any questions.

Sincerely,

/s/ Andrew J. Love
Andrew J. Love

Enclosures

cc: Franklin Ogele
One Gateway Center, 26th Floor
Newark, New Jersey 07102
fogele@msn.com

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

In the Matter of the Application for Review of
Blackbook Capital, Inc. and Franklin Ogele
File No. 3-19771

**FINRA'S REPLY TO APPLICANTS' OPPOSITION TO MOTION TO DISMISS AND
OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED PETITION**

Applicants Blackbook Capital, LLC and Franklin Ogele have not presented any persuasive arguments why the Commission should not dismiss their appeal, as urged by FINRA in its motion dated May 15, 2020.¹ Further, applicants' motion for leave to file an amended petition is inappropriate in connection with this appellate proceeding and should be denied.

First and foremost, applicants' appeal is untimely, and they have not demonstrated that extraordinary circumstances warrant an extension of time to file this appeal. Applicants do not contest that the alleged FINRA actions underlying their appeal are a disclosure in BrokerCheck that has existed for nearly four years and FINRA's imposition of reporting requirements upon Blackbook eight years ago. Even giving credence to applicants' unsupported arguments that they only somehow "discovered" the actions they now complain of in April 2019 and August or October 2019, applicants *still* did not promptly file an appeal. Instead, they filed this appeal with the Commission in late April 2020 after their federal civil suit against FINRA was threatened with dismissal.

¹ The undersigned received a copy of applicants' opposition and motion for leave to file an amended petition, which is dated May 21, 2020, by U.S. mail on May 27, 2020.

Applicants' claim that FINRA's purported libel of them continues (through the BrokerCheck disclosure at issue) has no bearing on their inexcusable delay in bringing this appeal. Just as a firm that was denied FINRA membership but did not appeal could argue—four years later—that FINRA's denial continued to harm it, such an appeal to the Commission would, nevertheless, be untimely. Similarly unfounded is applicants' cursory argument that discovery in this proceeding is necessary to determine whether this appeal is untimely. *See Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *21 n.47 (Sept. 30, 2016) (rejecting applicant's request to engage in discovery as not permitted by Commission's rules and finding that regardless, the information sought by applicant was not relevant to the issues of whether he filed a timely application for review or whether the Commission has jurisdiction).

Second, applicants do not—and cannot—provide any jurisdictional basis under Exchange Act Section 19(d) for the Commission to review the actions purportedly taken by FINRA that applicants belatedly contest. The actions that applicants seek review of do not fall under any prong of Section 19(d), and their arguments concerning FINRA's constitutional infirmity have been repeatedly rejected by the Commission. Nor do such arguments create jurisdiction under Exchange Act Section 19(d) where none exists. *See Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 SEC LEXIS 1284, at *20 (June 3, 2019) (holding that applicant's arguments that, among other things, the appointment of FINRA arbitrators violated the Constitution do not create jurisdiction under Section 19(d)). Applicants' "appeal" is nothing more than their federal civil suit with a Commission administrative proceeding caption.²

² Applicants' claim that FINRA, in its motion to dismiss filed in the federal district court, "urged" them to have the Commission "weigh in" by filing this appeal is mistaken. Instead, FINRA argued that the federal district court should dismiss applicants' civil suit because the

[Footnote cont'd on next page]

Third, Blackbook and Ogele do not address FINRA’s argument that they expressly waived the right to challenge their inability to pay the \$50,000 fine imposed by the 2014 settlement with FINRA for *any reason*, including that FINRA unfairly or discriminatorily imposed monthly reporting requirements on the firm. They should not now be permitted to argue that FINRA somehow caused their inability to pay the fine in full, in contravention of the settlement.

Finally, the Commission should deny applicants’ request for leave to file an amended petition for review to add an additional cause of action against FINRA. Applicants misconstrue the purpose of this appellate proceeding and instead continue to treat this proceeding like a civil lawsuit.³ There is no mechanism to amend a petition for review before the Commission because of its very nature and purpose—to review, as an appellate body, specific actions by FINRA based primarily upon a record developed *before* a matter is appealed to the Commission. *See, e.g.,* 17 C.F.R. §§ 201.420, 460. Federal jurisprudence concerning amending a civil complaint is inapplicable to this matter.

[cont’d]

court lacked subject matter jurisdiction for various reasons and failed to state a claim under Federal Rule of Civil Procedure 12(b)(6) on several grounds.

³ Applicants seek to add a seventh cause of action against FINRA for “breach of implied contract and bad faith.” This new cause is not materially different than their claim that FINRA in 2012 unfairly imposed upon Blackbook the requirement that it file monthly FOCUS reports, which was part of their original petition. *See* applicants’ Exhibit A, at 33-36. In any event, this newly asserted cause of action is untimely, without a jurisdictional basis under Section 19(d), and was waived by applicants when they agreed to the 2014 settlement.

For all of these reasons and the reasons stated in FINRA's motion to dismiss, FINRA urges the Commission to dismiss this appeal and to deny applicants' motion.

Respectfully submitted,

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org

June 1, 2020

CERTIFICATE OF SERVICE

I, Andrew Love, certify that on this 1st day of June 2020, I caused a copy of FINRA's Reply to Applicants' Opposition to Motion to Dismiss and Opposition to Motion for Leave to File Amended Petition, in the matter of Application for Review of Blackbook Capital, Inc. and Franklin Ogele, Administrative Proceeding No. 3-19771, to be served by electronic mail on:

Vanessa A. Countryman, Acting Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090
apfilings@sec.gov

Franklin Ogele, Esq.
One Gateway Center, 26th Floor
Newark, New Jersey 07102
(973) 277-4239
fogele@msn.com

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org