

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF THE	)	
APPLICATION OF:	)	ADMIN. FILE NO. 3-19892
	)	
	)	
ROBERT L. BRYANT, III	)	<b>ADDITIONAL BRIEFING IN SUPPORT</b>
	)	<b>OF APPLICATION FOR REVIEW OF</b>
	)	<b>ACTION TAKEN BY FINRA AND TO</b>
For Review of Action Taken by	)	<b>SET ASIDE STATUTORY</b>
FINRA	)	<b>DISQUALIFICATION</b>
	)	

Pursuant to the Commission’s Order of December 15, 2020, this brief addresses whether Mr. Bryant’s appeal “should be dismissed as untimely under Commission Rule of Practice 420(b).” Mr. Bryant respectfully submits it should not.

First, Commission Rule of Practice 420(b) is a procedural rule that is not jurisdictional in nature and, as such, should be raised in a timely motion and is otherwise subject to waiver, forfeiture, or equitable exceptions. Here, Mr. Bryant’s written request to seek review of the statutory disqualification action taken by FINRA was submitted in June of 2020, and the Commission opened a review proceeding and established a briefing schedule, which the parties have met. At no point during that briefing, or otherwise, has even the suggestion been made that Mr. Bryant’s appeal was untimely. Mr. Bryant respectfully submits that any such arguments, having not been previously raised, should be deemed to have been waived.

Even if not waived, the language of Commission Rule of Practice 420(b) expressly provides that the Commission can grant review beyond thirty days in “exceptional circumstances.” Here, such exceptional circumstances exist.

Namely, until the *Acosta* decision was rendered by the Commission, there simply was no precedent providing Mr. Bryant any right of appeal. To the contrary, FINRA had consistently taken the position that a SD Notice is “merely “FINRA’s initial action” and that an aggrieved person such as Mr. Bryant could “appeal to the Commission only if a member submits an MC-400 application ... and FINRA denies the application.” *Gregory Acosta*, Exchange Act Release No. 89121, 2020 SEC LEXIS 3589 (June 22, 2020). *Acosta* for the first time, however, established that a “SRO action having the effect of ‘barring’ an individual from association with the SRO’s members—whether the individual is formally barred or not—is reviewable under Section 19(d).” *Acosta*, Exchange Act Release No. 89121, 2020 SEC LEXIS 3589 at \*8, citing *Lawrence Gage*, Exchange Act Release No. 54600, 2006 WL 2987058, at \*5 (Oct. 13, 2006).

Accordingly, until the *Acosta* decision was rendered, an aggrieved individual like Mr. Bryant understood (based on FINRA’s position) that he or she could *not* file an appeal *unless and until an MC-400 Application was made and denied*. As there are no time limits on the making of any such MC-400 filing, the appeal time would be indefinitely delayed. Once the *Acosta* decision was rendered, however, it became clear that Mr. Bryant had the right to appeal his SD Notice *independent* of any MC-400 application. Mr. Bryant’s appeal fell within 30 days of the *Acosta* decision. This constitutes the precise type of exceptional circumstances that should allow the review of FINRA’s action.

Moreover, the very unique facts surrounding FINRA’s SD Notice of Mr. Bryant compels a finding of exceptional circumstances. Here, Mr. Bryant was statutorily disqualified even after

the Nebraska Department of Banking and Finance made clear—on at least two separate occasions—that the subject Consent Order with Mr. Bryant is not based on any violations of laws or regulations prohibiting fraudulent, manipulative or deceptive conduct (“FMD conduct”). Even when FINRA’s own Department of Enforcement eventually did its own investigation into the very same conduct and entered into an AWC with Mr. Bryant, FINRA declined to find that Mr. Bryant had engaged in any FMD conduct. Significantly, there is no authority to upholding a statutory disqualification where a state’s regulators, like Nebraska’s Department of Banking and Finance, have affirmatively found no FMD conduct. To allow FINRA’s SD Notice to stand on this record would be unjust and improper. Mr. Bryant respectfully submits that these very exceptional circumstances compels review by the Commission.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Jennifer A. Lesny Fleming, certify that on this 15th day of January, 2021, I caused the foregoing Additional Briefing In Support of Application For Review of Action Taken By FINRA And To Set Aside Statutory Disqualification, in the matter of the Application for Review of Robert L. Bryant, III, Administrative Proceeding No. 3-19892, to be served by electronic service on:

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