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November 2, 2020

VIA EMAIL

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 Robert L. Bryant, III
Administrative Proceeding No. 3-19892

Dear Ms. Countryman:

Enclosed please find FINRA's Opposition to Application for Review for the above-referenced matter.

Sincerely,

/s/ Andrew Love

Andrew Love

Enclosure

cc: Jennifer A. Lesny Fleming, Esq.

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application for Review of

Robert L. Bryant, III

File No. 3-19892

FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application for Review of

Robert L. Bryant, III

File No. 3-19892

FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

I. INTRODUCTION

In September 2017, Robert L. Bryant, III and the State of Nebraska Department of Banking and Finance (the "Department") entered into a consent order (the "Order") to resolve allegations that Bryant falsified customer signatures on brokerage account documents. Pursuant to the Order, Bryant acknowledged that he improperly signed customers' signatures on five account documents. The Order expressly found that Bryant's misconduct violated Nebraska's statute prohibiting any device, scheme, or artifice to defraud or engaging in any act that operates as a fraud or deceit upon any person.

In accordance with FINRA's rules, in October 2017 FINRA notified Bryant's firm that the Order rendered him statutorily disqualified under the Securities Exchange Act of 1934 ("Exchange Act"), and that the firm had to initiate an eligibility proceeding under FINRA's rules if it wished to continue to employ Bryant. The firm declined to initiate an eligibility proceeding on Bryant's behalf and opted to terminate his association in November 2017. In June 2020, Bryant sought the Commission's review of FINRA's disqualification determination.

The sole issue presented by Bryant's appeal is whether the Order renders him statutorily disqualified. Pursuant to the express terms of the Order and the deceptive nature of Bryant's

underlying misconduct, the answer is unequivocally "yes." FINRA correctly determined that the Order rendered Bryant statutorily disqualified because it is a final order issued by a state securities regulator that is based upon violations of laws that prohibit fraudulent, manipulative, or deceptive ("FMD") conduct. Pursuant to the Order's terms, by improperly signing customer signatures on account documents—an inherently deceptive act—Bryant violated Nebraska's version of Exchange Act Rule 10b-5. The Order is unambiguous, squarely falls within the parameters of a disqualifying FMD order, and thus renders Bryant statutorily disqualified under the Exchange Act and FINRA's By-Laws.

Notwithstanding that the Order on its face constitutes a disqualifying FMD order, Bryant argues that the Order is not disqualifying. Bryant bases this argument on the Uniform Disciplinary Action Reporting Form ("Form U6") filed by the Department, which does not indicate that the order is based upon violations of laws that prohibit FMD conduct, and a subsequent letter from the Department confirming that its Form U6 was accurate. Relying on these two documents, Bryant concludes that FINRA erred in finding him statutorily disqualified under the Exchange Act and FINRA's By-Laws.

Bryant's arguments lack merit, and he misconstrues FINRA's role in the statutory disqualification process and the Exchange Act's regulatory scheme. Indeed, it is FINRA's obligation to independently analyze whether the Department's Order renders Bryant statutorily disqualified and requires him to undergo a FINRA eligibility proceeding to ensure that his association with a member firm is in the public interest and does not present an unreasonable risk of harm to the markets or investors. And while FINRA considers the Form U6 filed by a state regulator in conducting that analysis, it also considers other relevant information (such as the terms of the order, documents underlying the order, and the relevant statutes and regulations).

Under Bryant's reasoning, the Department's Form U6 would be the starting and end point for FINRA's analysis and would require finding that he is not disqualified. Bryant's interpretation would disregard that he acknowledged improperly signing customer signatures on account documents (in most cases without the customers' authorization to do so) in violation of Nebraska's statute prohibiting fraudulent and deceptive acts, as expressly set forth in the Order. Bryant could then freely associate with a firm without having to show that it is in the public interest that he be permitted to do so, and without any special supervisory procedures. Bryant's interpretation should be rejected, as it would undermine the Exchange Act's purposes and goal of protecting the investing public.

For the reasons stated herein, FINRA urges the Commission to dismiss this appeal and affirm FINRA's determination that Bryant is statutorily disqualified.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Bryant's Background

Bryant entered the securities industry in June 1994. (RP 049.)[1] In September 2001, Bryant registered as an investment company products and variable contracts representative and as a general securities representative with Allstate Financial Services, LLC ("Allstate"). (RP 048.) Allstate terminated Bryant in June 2017 for "non-genuine signatures on brokerage account documentation." (RP 058.) Bryant registered with Chelsea Financial Services, Inc. ("Chelsea") from July 2017 until November 2017, and he is currently not associated with a member firm. (RP 058.)

[1] "RP ___" refers to the page numbers in the certified record filed by FINRA on August 11, 2020.

B. Bryant Settles Allegations of FMD Misconduct

On September 6, 2017, and in connection with the Department's investigation of Allstate's termination of Bryant, the Department entered the Order. (RP 001.) Pursuant to the Order, Bryant acknowledged that he had signed customer signatures on five "New Account Documents." (RP 002.) The Order provides that Bryant's falsification of customer signatures constituted a violation of Neb. Rev. Stat. § 8-1102(1) (Reissue 2012). (RP 002.) That statute, entitled "Fraudulent and other prohibited practices," provides that:

> It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
>
> (a) To employ any device, scheme, or artifice to defraud;
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Neb. Rev. Stat. § 8-1102(1).

The Order further states that Bryant waived his right to a hearing and voluntarily agreed to the Order. (RP 003.) The Order imposed fines and costs totaling $2,000, suspended Bryant for 20 business days, and required that he and Chelsea comply with a heightened supervisory plan for two years.[2] (RP 004.)

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[2] FINRA also sanctioned Bryant for his misconduct pursuant to a March 2019 Letter of Acceptance, Waiver and Consent (the "AWC"). (RP 009.) The AWC provided that in November 2016, the Firm asked Bryant to obtain updated new account documents, related to mutual funds, for approximately 157 of his customer accounts. (RP 010.) It further stated that in January and February 2017, Bryant forged signatures on new account documents for nine customers. The AWC also stated that Bryant did not receive customer authorization or consent

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C. FINRA Notifies Bryant's Firm that the Order Renders him Disqualified

Pursuant to FINRA Rule 9522(a)(1),

> If FINRA staff has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the member or applicant for membership under Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility.

About three weeks after the Department entered the Order, on September 29, 2017, FINRA staff notified Chelsea that Bryant was statutorily disqualified pursuant to the Order (the "SD Notice"), which found that Bryant violated Neb. Rev. Stat. § 8-1102(1). (RP 019.) The SD Notice stated that, as a result of Bryant's statutory disqualification, Chelsea was required to seek and obtain FINRA's approval to continue his association. (RP 017.) The SD Notice further provided that, if Chelsea declined to initiate an eligibility proceeding to obtain approval for Bryant's continued association, it must terminate him. (RP 019-20.) The SD Notice required Chelsea to either initiate an eligibility proceeding or terminate Bryant by October 18, 2017. (RP 020.)

D. Chelsea Asserts that Bryant Is Not Disqualified

Chelsea asked FINRA staff for an extension of the October 18, 2017 deadline. (RP 024.) In connection with Chelsea's request, it stated that the Department verbally informed the firm that it did not intend to render Bryant statutorily disqualified because of the Order. (RP 024.) In support, Chelsea pointed to the Form U6 filed by the Department, which indicated that the Order

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to sign their signatures, and found that Bryant's forgeries violated FINRA Rule 2010. (RP 010.) FINRA fined Bryant $5,000 and suspended him in all capacities for three months. (RP 011.)

was not an order based upon violation of a statute that prohibited FMD conduct. (RP 077.)[3] Chelsea also submitted an October 27, 2017 letter that it sought and obtained from Department staff, which simply stated that the Form U6 "accurately reflects the terms of the [Order.]" (RP 021.)

FINRA staff granted Chelsea an extension, considered the Department's Form U6 and letter confirming the accuracy of that form, and reaffirmed its determination that Bryant is statutorily disqualified based on the Order because it was an order of a state regulator based upon violations of laws that prohibit FMD conduct. (RP 030.) Chelsea forwarded this information to the Department "with the hope that they will amend the original order to remove Mr. Bryant from Statutory Disqualification." (RP 029.) The Department, however, refused to amend the Order. (RP 033.) Chelsea then terminated Bryant.[4] (RP 033.)

E. Bryant Seeks Relief from the Commission

On June 4, 2020, Bryant filed with the Commission a letter. The letter asked if the Commission could "waive" Bryant's statutory disqualification because the Order purportedly is not statutorily disqualifying. Bryant asserted that the Department did not intend to render him statutorily disqualified pursuant to the Order, as evidenced by the Department's Form U6 and the October 27, 2017 letter from the Department confirming the accuracy of its Form U6.

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[3] Form U6 "is used by SROs, regulators, and jurisdictions to report disciplinary actions against broker-dealers and associated persons." *See* FINRA Form U6, https://www.finra.org/registration-exams-ce/classic-crd/forms (last visited Oct. 23, 2020).

[4] For the next several months, Bryant, through counsel, continued to argue to FINRA staff that it erroneously concluded that the Order rendered Bryant statutorily disqualified. FINRA staff rejected these arguments. (RP 037-42.)

Shortly after Bryant filed his letter, the Commission issued its decision in *Gregory Acosta*, Exchange Act Release No. 89121, 2020 SEC LEXIS 3470 (June 22, 2020). In *Acosta*, the Commission held that, among other things, it had jurisdiction under Exchange Act Section 19(d) to consider Acosta's appeal of a determination by FINRA staff that he was statutorily disqualified. *Id.* at *8-13. The Commission determined that Acosta, who was not associated with a member firm, was effectively barred by virtue of FINRA staff's disqualification determination because FINRA's rules require a member firm to sponsor a disqualified individual in an eligibility proceeding. *Id.* at *9. Subsequently, the Commission acknowledged Bryant's June 4, 2020 letter as an application for review.

III. ARGUMENT

The Commission should dismiss this appeal because the Order is a final order of a state securities regulator based upon violations of laws that prohibit FMD conduct. As such, Bryant is statutorily disqualified under the Exchange Act and FINRA's By-Laws.

Exchange Act Section 19(f) sets forth the applicable standard of review. *See Acosta*, 2020 SEC LEXIS 3470, at *20-21. That section provides that if the Commission finds that: (1) the "specific grounds" upon which FINRA based its action "exist in fact"; (2) such action is in accordance with FINRA's rules; and (3) such rules are, and were applied in a manner consistent with the purposes of the Exchange Act, it "shall dismiss the proceeding," unless it finds that such action "imposes any burden on competition not necessary or appropriate in furtherance of the purposes" of the Exchange Act. *See* 15 U.S.C. § 78s(f); *Acosta*, 2020 SEC LEXIS 3470, at *20-21; *William J. Haberman*, 53 S.E.C. 1024, 1027 (1998), *aff'd*, 205 F.3d 1345 (8th Cir. 2000)

(table).[5] Applying the standard set forth in Exchange Act Section 19(f), the Commission should dismiss Bryant's appeal.

A. The Specific Grounds of the SD Notice Exist in Fact

Under the Exchange Act, an individual is statutorily disqualified if he is subject to a final order of a state securities regulator that is based on violations of any laws that prohibit FMD conduct. *See* 15 U.S.C. §§ 78c(a)(39)(F), 78o(b)(4)(H)(ii); *see also* FINRA By-Laws, Art. III, Sec. 4 (incorporating the definition of statutory disqualification set forth in the Exchange Act).

The Order squarely qualifies as a disqualifying FMD order. First, Bryant does not dispute that the Order is a "final order" of a state securities regulator. And, the record shows that the Order is the final disposition of the Department, issued pursuant to its statutory authority, that provided Bryant with notice and an opportunity for a hearing. *See* RP 003; *Nicolas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 5100, at *25 (Jun. 26, 2014) (holding that a final order means a written directive from a state regulator pursuant to its statutory authority that provides for notice, opportunity for a hearing, and constitutes a final disposition by the regulator).

Second, the Order on its face is based upon violations of laws that prohibit FMD conduct. The Order contains findings that Bryant's falsification of customer signatures violated Neb. Rev. Stat. § 8-1102(1). *See* RP 002; *Acosta*, 2020 SEC LEXIS 3470, at *24 (holding that to constitute a statutorily disqualifying FMD order, an order must indicate that it is based on a violation of a statute that prohibits FMD conduct); *Savva*, 2014 SEC LEXIS 5100, at *34-35 (finding order disqualifying where it contained findings that applicant violated state regulations prohibiting

[5] Bryant does not assert, and the record does not demonstrate, that FINRA's SD Notice imposes an unnecessary or inappropriate burden on competition.

unauthorized transactions, unsuitable recommendations, and engaging in high pressure sales practices). In turn, Nebraska's statute prohibits any device, scheme, or artifice to defraud or engaging in any act that operates as a fraud or deceit upon any person. *See* Neb. Rev. Stat. §§ 8-1102(1)(a), (c). Indeed, Nebraska's statute prohibiting fraudulent practices is nearly identical to Exchange Act Rule 10b-5. *See Hirt v. UM Leasing Corp.*, 614 F. Supp. 1066, 1071 (D. Neb. 1985) (stating that Neb. Rev. Stat. § 8-1102(1) is the state's counterpart to Rule 10b-5 and prohibits the same acts).

Moreover, Bryant's falsification of customer signatures on account documents, sometimes without their authority or consent, was, at a minimum, deceptive misconduct. Bryant falsely created the impression that the customers had reviewed and signed the documents at issue, when they had not.[6] *See Savva*, 2014 SEC LEXIS 5100, at *36 (holding that order was an FMD order where state found that applicant engaged in practices that were, at a minimum, deceptive); *see also The Dratel Group, Inc.*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035, at *74 (Mar. 17, 2016) (characterizing as deceptive applicant's failure to maintain accurate records, falsification of documents, and his use of inaccurate date and time stamps on trade tickets); *Richard P. Sandru*, Exchange Act Release No. 70161, 2013 SEC LEXIS 2346, at *12 (Aug. 12, 2013) (holding that respondent violated Rule 10b-5 when he, among other things, forged customer signatures on documents); *Brendan E. Murray*, Initial Decisions Release No. 332, 2007 SEC LEXIS 1486, at *35 (July 10, 2007) (stating that knowingly forging documents is "an inherently deceptive act").

[6] Bryant argues that no customer was harmed by his misconduct and downplays the significance of the forms that he improperly signed on behalf of customers. *See, e.g.*, Bryant Br. at 3-4. This argument ignores that, at a minimum, Bryant deceived Allstate by providing it with forms purportedly signed and reviewed by customers when they had not done so.

Despite the express terms of the Order and the deceptive nature of Bryant's misconduct underlying the Order, Bryant argues that he is not disqualified because the Department's Form U6 did not indicate that the Order was an FMD order (and its October 27, 2017 letter confirmed the accuracy of the Form U6). *See* Bryant Br. at 1-2, 7. He also argues that he is not disqualified because the Department did not intend for the Order to disqualify him, as evidenced by the Form U6 and the Department's letter. *See* Bryant's June 4, 2020 appeal letter; *see also* Bryant's Br. at 8-9 (asserting that neither he nor the Department understood that the Order would disqualify Bryant). Bryant essentially argues that a state regulator's characterization of an order on its Form U6 is the *only* relevant consideration in determining whether such order is disqualifying under the Exchange Act and FINRA's By-Laws. FINRA's rules, the structure and purpose of the Exchange Act's statutory disqualification provisions, and Commission precedent do not support Bryant's narrow interpretation of how FINRA should analyze final state orders that are based on laws that prohibit FMD conduct. The Commission should therefore reject it.

As an initial matter, the Commission has held that where an order is unambiguous, the parties' intent in agreeing to that order is irrelevant to determining whether the order renders an individual statutorily disqualified. *See Meyers Assocs., L.P.*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096, at *22-23 (Sept. 29, 2017) (finding that the parties' intent is irrelevant in determining whether a consent order is statutorily disqualifying when the order is unambiguous). Here, the Order is unambiguous—it states that Bryant violated Nebraska's statute prohibiting fraudulent and deceptive acts and practices by falsifying customer signatures.[7] *See Acosta*, 2020

[7] Bryant also ignores that the Department refused to amend the Order after Chelsea informed it that FINRA had not changed its disqualification determination despite the Form U6 and the Department's October 27, 2017 letter. *See Meyers Assocs.*, 2017 SEC LEXIS 3096, at *22 (rejecting argument that state regulator did not intend to bar disqualified individual and

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SEC LEXIS 3470, at *24 (holding that "to trigger a statutory disqualification under [Section 15(b)(4)(H)(ii)] the state's 'final order' must indicate, as did the order in *Savva*, that the order is 'based on violations' of such provisions").

Moreover, whereas the Exchange Act provides the general framework for what constitutes a statutory disqualification and prohibits the association or continued association of a disqualified individual absent specific relief, FINRA is tasked with processing statutory disqualification applications and, where necessary, interpreting whether a state regulator's order is disqualifying under the Exchange Act and FINRA's By-Laws. *See, e.g.*, *Meyers Assocs.*, 2017 SEC LEXIS 3096 (affirming FINRA's determination that an individual was disqualified pursuant to a state securities regulator's order under the Exchange Act and FINRA's By-Laws and affirming denial of firm's membership continuance application); *Savva*, 2014 SEC LEXIS 5100 (same).

In determining whether an individual is subject to statutory disqualification and thus must undergo a FINRA eligibility proceeding, FINRA Rule 9522(a) provides that if FINRA staff concludes that an individual has been rendered statutorily disqualified, it shall notify the individual's employing firm so that the firm can initiate an eligibility proceeding or terminate its association with the individual. In making this determination, FINRA considers the Form U6 filed by the state regulator at issue. *See, e.g.*, *Continued Ass'n of X*, Redacted Decision No. SD12008, slip op. at 5 (FINRA NAC 2012), http://www.finra.org/sites/default/files/NAC Decision/p284393_0.pdf (stating that "[g]enerally, FINRA weighs a state's determination, as

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noting that applicants unsuccessfully attempted to get state regulator to amend its order so that it did not have the effect of barring disqualified individual).

indicated on the state's Form U6, in considering whether an individual violated a law prohibiting fraudulent, manipulative, or deceptive conduct") (last visited Oct. 26, 2020), *aff'd*, *Savva*, 2014 SEC LEXIS 2270. FINRA, however, also considers other pertinent information, such as the order at issue, the documents underlying the order, and the relevant statutes or regulations that have been violated. *See Meyers Assocs.*, 2017 SEC LEXIS 3096; *Savva*, 2014 SEC LEXIS 5100; *cf. Acosta*, 2020 SEC LEXIS, 3470, at *18 (stating that FINRA's determination that a person is disqualified is a "question of law" and that the order underlying FINRA's determination bears on the Commission's review). FINRA must independently decide whether a state's order renders an individual statutorily disqualified under the Exchange Act and its By-Laws, without giving controlling weight to the content of a Form U6.[8]

The importance of having FINRA determine the threshold issue of whether an individual is statutorily disqualified under the Exchange Act and its By-Laws is underscored here. The Order contains findings that Bryant violated Nebraska's version of Exchange Act Rule 10b-5 by

[8] *Acosta* and *Savva* do not address the specific situation at issue here (i.e., where an order on its face is statutorily disqualifying as an FMD order, but the Form U6 filed by the state regulator issuing the order indicates that it is not). Neither case, however, stands for the proposition that FINRA is bound by the characterization of an order on a Form U6 irrespective of other documents that conflict with that characterization and are crucial to the disqualification analysis. In *Acosta*, the Commission set aside FINRA's determination that Acosta was statutorily disqualified because of a state regulator's FMD order. The Commission held that neither the order at issue, nor the stipulation underlying the order, referenced a statute that prohibits FMD conduct or contained a finding that Acosta violated an FMD provision. *See* 2020 SEC LEXIS 3470, at *21-24. The Commission further observed that the state regulator did not appear to file a Form U6. *Id.* at *23. Unlike *Acosta*, here the Order explicitly contains a finding that Bryant violated Nebraska's statute prohibiting fraudulent and deceptive acts and practices. And, while the Commission in *Savva* noted that the state regulator filed a Form U6 characterizing its order as an FMD order, it did so in the context of analyzing the state statute at issue and Savva's underlying misconduct and determining that the regulator's order found that he violated a statute that prohibits FMD conduct. *See Savva*, 2014 SEC LEXIS 5100, at *34-36.

falsifying customer signatures.[9] On its face, the order qualifies as an FMD order. *See Acosta*, 2020 SEC LEXIS 3470, at *24. Moreover, Bryant's misconduct was, at a minimum, deceptive. Nonetheless, the Department indicated on its Form U6 that the Order did not involve the violation of laws that prohibit FMD conduct. Under the circumstances, FINRA would have been derelict in its duties to protect investors and the markets if it did not question the characterization of the Order by the Department on its Form U6 and independently determine that the Order rendered Bryant statutorily disqualified under the Exchange Act and FINRA's By-Laws. Bryant's interpretation of FINRA's role would require it to simply adopt Nebraska's characterization of the Order as set forth on its Form U6, without independently assessing the Order, Bryant's underlying misconduct, and the Nebraska statute in question, and conclude (erroneously) that the Order is not disqualifying. FINRA's independent analysis of whether the Order renders Bryant disqualified, in which it examines more than simply the relevant Form U6, helps to avoid such a result and ensures that similar orders of various states are interpreted consistently.[10]

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[9] Bryant implies that because the Department did not specify in the Order which subsection of its statute prohibiting fraudulent and deceptive acts and practices Bryant violated, the Order is somehow flawed for purposes of FINRA's disqualification determination. *See* Bryant's Br. at 4. The Commission should reject this argument, as Bryant's falsification of customer signatures constituted both a device, scheme, or artifice to defraud under subsection (a) and an act, practice, or course of business which would operate as a fraud or deceit upon any person under subsection (c). Further, Bryant's assertion that he did not in the Order admit to any FMD conduct is not determinative. *See Savva*, 2014 SEC LEXIS 5100, at *32 (holding that a consent order with "neither admit nor deny" language can serve as the basis for a statutory disqualification).

[10] In contrast, other federal securities laws give state regulators the authority to dictate whether an individual is statutorily disqualified. *See, e.g.*, 17 C.F.R. § 230.506(d)(2)(iii) (providing that if a state or federal regulator issuing an FMD order advises in writing that Rule 506 disqualification is not necessary under the circumstances, the individual will not be statutorily disqualified and prohibited from participating in Reg D offerings).

Bryant argues that FINRA substituted its own judgment concerning the Order for the Department's judgment and that Nebraska is in the best position to construe its own laws. *See* Bryant's Br. at 2, 7. Bryant again misconstrues the statutory disqualification process and FINRA's role in that process. FINRA routinely assesses whether a state order is statutorily disqualifying under the Exchange Act and its By-Laws and, if it is, issues a notice pursuant to FINRA Rule 9522. While FINRA will weigh a state's characterization of an order that it issued, it is FINRA's responsibility to determine whether the order is disqualifying based on additional relevant information. FINRA did so here after considering the Order's terms, the Nebraska statute that Bryant was found to have violated, and Bryant's underlying deceptive misconduct.[11]

Similarly, and contrary to Bryant's arguments, the fact that FINRA sanctioned Bryant for the same misconduct and characterized the AWC sanctioning Bryant as not involving a violation of a statute or regulation prohibiting FMD conduct was entirely appropriate and not inconsistent with its conclusion that the Order rendered Bryant statutorily disqualified. *See* Bryant's Br. at 5. The Department's Order is disqualifying under Exchange Act Section 3(a)(39) as a state regulator's order based upon violations of laws that prohibit FMD conduct. In contrast, FINRA is not a state securities regulator and the AWC was not based upon Bryant's violation of Nebraska law, but a violation of FINRA rules. The AWC is therefore by its terms not statutorily disqualifying under the Exchange Act as a state regulator's FMD order. Nor is the AWC, which

[11] Resting the statutory disqualification determination under the Exchange Act entirely in the hands of the fifty states through nothing more than a box they check or do not check on Form U6, as contemplated by Bryant, would invite inconsistency of results for conduct that is fraudulent, manipulative, or deceptive. FINRA's approach, where it carefully weighs the state's Form U6, along with the order at issue, the documents underling the order, and the relevant state statutes in making the disqualification determination, is consistent with Rule 9522 and the purpose of the Exchange Act's statutory disqualification provisions.

found that Bryant violated just and equitable principles of trade by forging customer signatures, disqualifying under any other Exchange Act provision. *See* 15 U.S.C. § 78c(a)(39). FINRA's characterization of the AWC on its Form U6 was entirely appropriate and has no bearing on whether Bryant is disqualified by the Order.

For all these reasons, the specific grounds for Bryant's statutory disqualification exist in fact, and the Commission should reject Bryant's arguments to the contrary.

B. FINRA Issued the SD Notice in Accordance with its Rules

Turning to the second prong of Exchange Act Section 19(f), there is no dispute that FINRA issued the SD Notice in accordance with its rules.

After reviewing the Order and the Nebraska statute prohibiting fraudulent and deceptive acts, FINRA staff had reason to believe that Bryant was statutorily disqualified. Consequently, and pursuant to FINRA Rule 9522(a)(1), FINRA staff issued Chelsea the SD Notice. The SD Notice notified the firm that the Order rendered Bryant statutorily disqualified under the Exchange Act, and that if Chelsea wished to continue Bryant's association, it must initiate an eligibility proceeding on Bryant's behalf. (RP 029.) FINRA followed its rules when it issued the SD Notice.

C. FINRA Rule 9522 Is in Accord and Consistent with the Exchange Act's Purposes

Finally, FINRA Rule 9522's requirement that FINRA staff send a notification if it determines that an individual is statutorily disqualified, and FINRA's issuance of the SD Notice here, is in accord and consistent with the purposes of the Exchange Act. A central purpose of the Exchange Act is to promote market integrity and enhance investor protection. *See, e.g.*, *United States v. O'Hagan*, 521 U.S. 642, 658 (1997) (stating that in passing the Exchange Act, one of Congress's animating objectives was "to insure honest securities markets and thereby promote

investor confidence"). In this vein, FINRA was formed to "adopt, administer, and enforce rules of fair practice," "[t]o promote . . . high standards of commercial honor," and "to promote just and equitable principles of trade for the protection of investors." FINRA Manual, Restated Certificate of Incorporation of Financial Industry Regulatory Authority, Inc., Objects or Purposes (Third) (1) and (3) (July 2, 2010). Within the structure created by the Exchange Act, FINRA promulgates and enforces rules to "protect investors and the public interest."

Under the Exchange Act, individuals subject to FMD orders are statutorily disqualified and must seek and obtain FINRA's approval to continue to associate with a broker-dealer. *See* 15 U.S.C. §§ 78c(a)(39)(F), 78o(b)(4)(H)(ii); FINRA By-Laws, Art. III, Sec. 4; FINRA Rule 9522. The Exchange Act and its rules establish the framework within which FINRA evaluates whether to allow an individual who is subject to a statutory disqualification to associate with a broker-dealer. *See* 15 U.S.C. § 78o-3(g)(2) ("A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification."); *see also* 17 C.F.R. § 240.19h–1. The FINRA Rule 9520 Series sets forth the process pursuant to which a disqualified individual may associate, or continue to associate, with a member firm notwithstanding his statutory disqualification. *See Savva*, 2014 SEC LEXIS 5100, at *6 (stating that the Exchange Act's statutory disqualification provisions "are not self-executing" and must be implemented by a self-regulatory organization).

The first step that FINRA takes in connection with the statutory disqualification process is to evaluate whether individuals are disqualified and, if it determines that they are, to send notification of that determination. *See* FINRA Rule 9522(a)(1). In doing so here, FINRA

evaluated the Order, the Nebraska statute that Bryant violated and expressly referenced in the Order, and Bryant's underlying misconduct, and weighed these factors against the Form U6 filed by the Department and its letter confirming the form's accuracy, to conclude that Bryant was statutorily disqualified because he is subject to an FMD order. Consequently, it issued the SD Notice to further the purposes of the Exchange Act's statutory disqualification provisions and to ensure that Bryant's continued participation in the industry was in the public interest and did not create an unreasonable risk of harm to the markets or investors. *See Acosta*, 2020 SEC LEXIS 3470, at *17 ("we reiterate the important role that disqualification plays in ensuring that persons who come within the statutory parameters for disqualification are monitored effectively and prevented from returning to the industry absent a finding that such association would be in the public interest"); *Savva*, 2014 SEC LEXIS 5100 (holding that FINRA appropriately denied membership continuance application based upon its determination that Savva's continued association with his firm was not in the public interest and would create an unreasonable risk of harm to the markets or investors).[12] FINRA Rule 9522(a)(1), and FINRA's issuance of the SD Notice in accordance with that rule, is entirely consistent with the purposes of the Exchange Act. *See Meyers Assocs.*, 2017 SEC LEXIS 3096, at *31-33 (holding that FINRA's determination that individual was statutorily disqualified and denial of membership continuance application was consistent with the Exchange Act and its purposes and rejecting applicants' argument that

[12] If the Commission determines that the grounds for the SD Notice exist in fact and Bryant is statutorily disqualified because of the Order, as urged by FINRA, Bryant may seek to associate with a member firm through a FINRA eligibility proceeding. It is at this point where Bryant's explanations of the circumstances surrounding the Order, including the severity of the sanctions imposed and his personal circumstances at the time (which he describes in his brief and accompanying affidavit and are not relevant to whether FINRA properly issued the SD Notice), would be considered.

FINRA's interpretation of what constitutes a disqualifying state securities regulator's bar order was against public policy).

IV. CONCLUSION

The Commission should dismiss Bryant's appeal. The Order unambiguously renders Bryant statutorily disqualified, and FINRA issued the SD Notice in accordance with its rules and the purposes of the Exchange Act. Bryant's argument that a Form U6 is the only information that FINRA may consider in determining whether an individual is statutorily disqualified is untenable and should be rejected. For all these reasons, FINRA urges the Commission to dismiss this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Andrew Love, certify that on this 2nd day of November 2020, I caused a copy of FINRA's Brief in Opposition to Application for Review, in the matter of Application for Review of Robert L. Bryant, III, Administrative Proceeding No. 3-19892, to be served by electronic mail on:

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