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February 16, 2021

**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 Supplemental Brief in 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 SUPPLEMENTAL BRIEF IN  
OPPOSITION TO APPLICATION FOR REVIEW**

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February 16, 2021

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
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In the Matter of the Application for Review of

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**I. INTRODUCTION**

Pursuant to the Commission's Order Requesting Additional Briefing dated December 15, 2020, FINRA files this supplemental brief to address whether Robert L. Bryant, III's appeal should be dismissed as untimely. For the reasons set forth herein, the Commission should dismiss this application for review because Bryant has not demonstrated that extraordinary circumstances exist to excuse filing his appeal more than 2.5 years late.

**II. BACKGROUND**

On September 6, 2017, Bryant 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. (RP 001.) 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.

On September 29, 2017, FINRA notified Bryant's employing 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. (RP 019.) Although the Firm disputed that the Order rendered Bryant statutorily disqualified, it declined to initiate an eligibility proceeding on Bryant’s behalf and opted to terminate his association in November 2017. (RP 033.)

Several years later, on June 4, 2020, Bryant wrote to the Commission seeking its review of FINRA’s September 2017 disqualification determination. More than two weeks after Bryant’s letter to the Commission, on June 20, 2020, 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 because FINRA’s determination effectively barred Acosta. *Id.* at \*8-13.

In late July 2020, the Commission acknowledged Bryant’s June 4, 2020 letter as an application for review and ordered the parties to submit briefs. The parties did so in October and November 2020. On December 15, 2020, the Commission ordered the parties to submit additional briefs to address whether Bryant’s appeal should be dismissed as untimely.

### **III. ARGUMENT**

The Commission should reject Bryant’s application for review because it is untimely. Under Exchange Act Section 19(d), a party must file an application for review of an action by a self-regulatory organization within 30 days of receiving notice of such action. *See* 15 U.S.C. § 78s(d)(2); *see also* 17 C.F.R. § 201.420(b); *Orbixa Techs., Inc.*, Exchange Act Release No. 70893, 2013 SEC LEXIS 3588, at \*9 n.12 (Nov. 15, 2013) (dismissing applicant’s appeal because it failed to file application for review within 30 days of notice of SRO’s action and holding that an SRO’s failure to file notice with the Commission does not extend the 30-day

deadline to appeal). The Commission has “long held that [it] will not extend the thirty-day period for seeking review absent extraordinary circumstances.” *Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at \*9 (Sept. 30, 2016). The extraordinary circumstances exception to timely filing an appeal is “narrowly construed and applied only in limited circumstances.” *Michael Ross Turner*, Exchange Act Release No. 81693, 2017 SEC LEXIS 2974, at \*16 (Sept. 22, 2017).

Here, Bryant’s appeal falls well outside of the 30-day deadline. The Exchange Act and the Commission’s Rules of Practice required that Bryant file this appeal by October 30, 2017. Instead, Bryant waited until early June 2020—more than 31 months after the deadlines set forth in the Exchange Act and the Commission’s rules.

Moreover, Bryant has not established that extraordinary circumstances warrant extending these deadlines. First, the Commission should reject Bryant’s assertion that it cannot consider whether his application should be dismissed as untimely because this argument has been waived (either because FINRA did not raise the issue in its brief or because of inaction by the Commission until it ordered additional briefing). Pursuant to Commission Rule of Practice 421, the Commission “may at any time prior to issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties.” *See* 17 C.F.R. § 201.421(b). Rule of Practice 421(b) further provides that the Commission may order parties to file supplemental briefs if it believes that “such briefing would significantly aid the decisional process.” *Id.* The Commission expressly requested supplemental briefs on the issue of timeliness pursuant to Rule 421(b), and the exercise of its authority under this rule is entirely appropriate.

Second, Bryant’s argument that he had no right of appeal until the Commission issued its decision in *Acosta* is a red herring and should be rejected for purposes of considering whether he

has demonstrated extraordinary circumstances to excuse his late appeal. Bryant filed his appeal on June 4, 2020, several weeks *before* the Commission issued *Acosta*. Thus, Bryant could not have relied upon *Acosta's* holding—that a disqualification notice having the effect of barring an individual is a reviewable FINRA action—when he filed his appeal. Although the record is silent regarding Bryant's reasons for waiting 31 months to file his appeal, *Acosta* could not have been the impetus behind his appeal and its issuance does not constitute an extraordinary circumstance that justifies his late filing. *Cf. Pennmont Secs.*, Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at \*18 (Apr. 23, 2010) (holding that extraordinary circumstances may be shown if the reason for the untimely appeal is beyond the applicant's control). Moreover, even if as Bryant asserts he believed that FINRA's position was that the Commission lacked jurisdiction to review the September 2017 disqualification notice, FINRA's position on the appealability of a statutory disqualification notice has no bearing on the Commission's determination whether such a notice is reviewable under the Exchange Act or Bryant's ability to timely seek the Commission's review.

Third, the Commission should reject Bryant's argument that the purported merits of his case demonstrate that extraordinary circumstances exist to consider his late-filed appeal. As set forth in FINRA's brief in opposition, the Order is unambiguous. It rendered Bryant statutorily disqualified under the Exchange Act and FINRA's By-laws 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 conduct. Bryant's argument that the Commission should disregard the terms of the Order and the nature of the state statute Bryant violated, and rely entirely on the Department's characterization of the Order, is without support and defies logic. Moreover, Bryant should not be permitted to rely upon the purported merits of his brief to circumvent his

failure to timely file this appeal. Giving credence to this argument would eviscerate the deadlines for filing timely appeals set forth in the Exchange Act and the Commission's rules. *See Pennmont Secs.*, 2010 SEC LEXIS 1353, at \*22 (“We believe that the measure of whether an untimely application presents an extraordinary circumstance is not simply the relative weight of the arguments presented on appeal - otherwise, the ‘extraordinary circumstances’ requirement would be read out of Commission Rule of Practice 420.”).

#### **IV. CONCLUSION**

For all these reasons, the Commission should dismiss Bryant's appeal as untimely as he has failed to demonstrate that extraordinary circumstances justify accepting his late-filed appeal. Should the Commission find that Bryant has shown that extraordinary circumstances exist to justify his late-filed appeal, FINRA respectfully requests that the Commission dismiss this appeal for the reasons set forth in its brief dated November 2, 2020.

Respectfully submitted,

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February 16, 2021

**CERTIFICATE OF SERVICE**

I, Andrew Love, certify that on this 16<sup>th</sup> day of February 2021, I caused a copy of FINRA's Supplemental 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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