UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

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

At no point during Mr. Bryant's numerous interactions with FINRA, nor during the entirety of the regular briefing before this Commission, has FINRA taken the position that Mr. Bryant should have filed the subject appeal of his statutory disqualification at an earlier date. The reason is simple: There was no recognized right of appeal until the Commission's decision was rendered in *Gregory Acosta,* Exchange Act Release No. 89121, 2020 SEC LEXIS 3589 (June 22, 2020).

Rather, until *Acosta*, FINRA had consistently taken the position that a SD Notice is "merely "FINRA's initial action" and that an aggrieved person could "appeal to the Commission ***only if*** a member submits an MC-400 application … ***and*** FINRA denies the application." See *Gregory Acosta,* Exchange Act Release No. 89121, 2020 SEC LEXIS 3589 (June 22, 2020)(emphasis added). Mr. Bryant never met FINRA's then-stated requirements for appeal as his former employer could not provide the type of local supervision that would be required to support even the filing of a MC-400 application on his behalf. (See Bryant Declaration of September 30, 2020 at ¶ 16). For

FINRA to now claim that Mr. Bryant should have filed an appeal at some earlier date, when FINRA itself maintained there was not even a right of appeal at all, is specious.

Moreover, Mr. Bryant did not simply "wait" to seek relief as suggested by the wording in FINRA's recent briefing. Although he understood from FINRA that he had no right to appeal *per se*, Mr. Bryant engaged in a steady and painstaking effort from the date he received the improvidently granted SD Notice to the present to try to seek relief. As the attached Supplemental Affidavit reflects (a true and correct copy of which is attached hereto and incorporated herein as Exhibit 1), Bryant engaged in *numerous and repeated* contacts with various departments of FINRA, and at every turn, was told by FINRA that his only avenue of relief was the submission of a MC-400 application, which he could not obtain. After his numerous communications with FINRA, and then various departments at the Commission, his efforts culminated in his *pro se* filing of a letter to the Commission requesting "any opportunity for relief via a waiver." Two weeks later, the Commission rendered *Acosta, supra,* for the first time establishing his right to appeal his SD Notice, independent of any MC-400 application. The new *Acosta* precedent, combined with Mr. Bryant's extensive and diligent efforts to seek relief throughout the entirety of the process, should respectfully constitute the precise type of exceptional circumstances necessary for review of FINRA's action.

Finally, and notwithstanding FINRA's efforts to minimize their importance, the very unique and compelling facts surrounding FINRA's SD Notice further supports 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").[1] Significantly, there is no authority—and FINRA has cited none—that would support upholding a statutory disqualification where a state's regulators, like Nebraska's Department of Banking and Finance, have affirmatively found no FMD conduct.

For all these reasons, Mr. Bryant respectfully submits that these very exceptional circumstances compel review by the Commission.

Respectfully submitted,

/s/ *Jennifer A. Lesny Fleming*

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[1] Despite Nebraska's Department of Banking and Finance's clear statements, FINRA repeatedly states in its briefing that 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." This is not accurate. Rather, Nebraska's statute is broader than fraud and expressly comprises "fraudulent *and other prohibited practices*." Accordingly, simply because the Consent Order references a violation of Nev. Rev. Stat. §8-1102(1) does not mean that the violation was based in fraud but, only, that it was some "prohibited practice." The fact that the NE Department confirmed in two separate documents that Mr. Bryant's conduct was *not* fraudulent, manipulative or deceptive establishes that it must have been some "other prohibited practice" as the statute contemplates.

## CERTIFICATE OF SERVICE

I, Jennifer A. Lesny Fleming, certify that on this 2nd day of March, 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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Respectfully submitted,

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| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF: | ) ) ) ) | ADMIN. FILE NO. 3-19892 |
| ROBERT L. BRYANT, III | ) ) ) ) ) | **SUPPLEMENTAL AFFIDAVIT OF ROBERT L. BRYANT III IN SUPPORT OF APPLICATION FOR REVIEW OF ACTION TAKEN BY FINRA AND TO SET ASIDE STATUTORY DISQUALIFICATION** |
| For Review of Action Taken by FINRA | ) | |

Robert L. Bryant III, being first duly sworn according to law, deposes and states as follows based on his personal knowledge:

1. This Supplemental Affidavit is being submitted in connection with my Additional Reply Briefing In Support Of Application For Review Of Action Taken By FINRA And To Set Aside Statutory Disqualification, filed contemporaneously herewith.
2. In or around September 29 of 2017, I received a letter from FINRA indicating that I was subject to statutory disqualification (the "SD Notice"). FINRA did not advise me then, nor has ever advised me, that I had any right to appeal the decision. To the contrary, I understood that it was FINRA's position that any right to appeal would not be triggered unless and until I had my employer file an MC-400 Application on my behalf and that it was denied.
3. I attempted many different things in an effort to seek some relief from the SD Notice.
4. From September 29, 2017 to November 30, 2017, I had numerous discussions with my then-employer, Chelsea Financial, in an effort to convince it to file an MC-400.Unfortunately, on November 30, my employer notified me that it could not submit the MC-400 on my behalf due to its inability to provide local supervision as would be required. I was, therefore,

forced to resign on December 1, 2017.

5. In addition to seeking a MC-400 application, I had numerous communications with FINRA, through my legal counsel, to see if there was some way to resolve any of the issues related to the SD Notice. From February through March of 2018, I had my lawyer engage in separate discussions with FINRA's Manager of Statutory Disqualification, FINRA's Department of Registration and Disclosure, and FINRA's Legal and Policy Department, but none agreed to provide any relief, or avenues for relief, from the SD Notice.
6. On April 10, 2018 I further made an inquiry to FINRA's Ombudsman asking the following: "Due to a State Consent Order that I signed last Fall I became Statutorily Disqualified. The State specifically checked "No" on the U4 as to whether there was Fraud found. The State also drafted a letter for me reiterating their finding of no fraud. My question is whether there have been any recent changes at FINRA to allow for relief from the SD in a case like this that might be less onerous than the MC 400 route." On April 12, 2018 the FINRA Ombudsman told me that they were not aware of any other avenue to seek relief.
7. From April of 2018 to approximately September 2018, I decided to see if perhaps it was possible to start a State RIA even in light of my SD Notice. After many months of research, I was unable to find a way for me to have the two-year heightened compliance that my Nebraska Consent Order required.
8. On December 2, 2018, I received a phone message on our home answering machine from Min Choi of FINRA enforcement for me to call him regarding alleged violations of FINRA regulations. I learned that FINRA was investigating me for the same conduct as implicated by the SD Notice.
9. After several months of investigation by FINRA, FINRA ultimately submitted to me a letter of Acceptance, Waiver and Consent ("AWC") for my execution, which was entered on March 27, 2019. The AWC determined that my same conduct in signing the New Account

Documents violated FINRA Rule 2010 with regard to observing high standards of commercial honor and just and equitable principles of trade and FINRA Rule 4511 by causing my prior firm, Allstate, to maintain inaccurate books and records. FINRA did not ban me from the industry, but only entered a three-month suspension and a $5,000 fine. Further, FINRA reported on my BrokerCheck that it did *not* consider the conduct to constitute "a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct" and checked the answer "No" to question 12 when disclosing the regulatory violation.

10. I had my lawyer inquire with the FINRA investigator for the AWC, Min Choi, as to whether Enforcement would have any leverage with FINRA's Statutory Disqualification Department with respect to its own finding that I had not engaged in FMD conduct. Mr. Choi reported back that he had no ability to influence FINRA's separate department.
11. By the terms of the AWC, my suspension ran from April 1 to June 30, 2019.
12. After my suspension ended in the summer of 2019, I again pursued my former employer, Chelsea Financial, to inquire as to whether they would reconsider filing an MC-400 on my behalf. Again, they declined to do so citing the fact that the MC-400 process can be difficult to manage for broker-dealers. Again, the main obstacle they were concerned with was the location of their offices in New York being a long distance from my office in Nebraska and that FINRA might not approve such an arrangement.
13. In early October 2019, I again spoke by phone with Lorraine Lee-Stepney with FINRA's Statutory Disqualification Department regarding my status and whether the March AWC would cause a reconsideration of my status of being statutorily disqualified. She indicated to me that having the AWC signed with FINRA just might change my status. She said she would investigate that. Also, she looked at when my last day in 2017 was with Chelsea to see if I would fall within the 2-year time frame to not have to retake the Series 7 but rather

be able to reactivate my previous Series 7 license.

14. In October, 2019, I spoke further with Lorraine Lee of FINRA. We discussed what FINRA department I should contact for a waiver if I was just outside the 2-year time frame from the last time I was with a broker-dealer so that I would be able to retain my Series 7.

15. On October 16, 2019, I sent an email checking in with Lorraine Lee-Stepney of FINRA to see if she had any answers on whether my statutory disqualification status would be gone after the AWC was signed.

16. From October 18-25, 2019 I had more correspondence with FINRA RAD regarding the circumstances that led to my statutory disqualification. After additional review, there was no change to me being subject to statutory disqualification.

17. From February 11-18 2020, I sent some additional ideas/arguments to FINRA RAD regarding my statutory disqualification, specifically asking whether something I found would apply to me. In FINRA's rules there is a section titled *Notice of admission or continuance notwithstanding a statutory disqualification.* It mentioned approval by a SRO can allow a waiver for a statutory disqualification. Because FINRA did not ban me when I settled with the Enforcement Department there earlier that year through the AWC, I wondered if that would count as "approval" by a SRO. I found out that Lorraine Lee of FINRA had just retired when my email was responded to by a different employee with FINRA RAD.

18. I then had correspondence with Glynnis Kirchmeier and Patricia Delk-Mercer of FINRA RAD that culminated in a Zoom meeting on February 18, 2020 with Glynnis Kirchmeier and one other FINRA representative. They indicated to me that they saw no way out of the statutory disqualification other than a broker dealer filing a MC-400, which I was unable to secure.

19. On May 11, 2020 I emailed Christopher Dragos of FINRA. He was suggested by Patricia

Delk-Mercer as someone to speak to regarding having any avenue to appeal the statutory disqualification within FINRA given that I had signed the AWC with FINRA in early 2019. I asked to speak to him by phone.

20. On May 12, 2020, Mr. Dragos replied by email that my AWC would have no bearing on the statutory disqualification.

21. On May 18, 2020, I inquired to the Ombudsman of the SEC regarding my situation with respect to my statutory disqualification and whether there was any relief available from the SEC along with who to contact if so. On May 26, 2020, they suggested contacting the SEC Division of Trading and Markets.

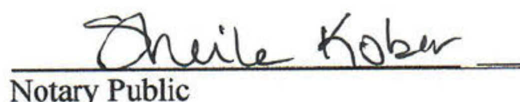
22. On June 4, 2020, I submitted a detailed letter asking for "any opportunity for relief via a waiver" of my Statutory Disqualification from the SEC to Trading and Markets.

23. Around June 24, 2020 I had a teleconference with two attorneys from Trading and Markets who directed me to submit my letter of June 4, 2020 to Secretarys-Office@sec.gov which I did a few weeks after that, which I understood triggered the subject appeal.

FURTHER AFFIANT SAYETH NOT.

ROBERT L. BRYANT, III

Sworn to and subscribed before me, a Notary Public, this 2 day of March 2021.



Notary Public