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Cc: Love, Andrew; Scott Matasar
Subject: Re: In the Matter of the Application for Review of Robert L. Bryant, III, ADMIN. FILE NO. 3-19892

Dear Ms. Countryman:

Attached please find Mr. Bryant's Additional Reply Briefing In Support of Application For Review of Action Taken By FINRA And To Set Aside Statutory Disqualification for filing in the above-referenced matter.

Thank you for your assistance.

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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	)	**ROBERT L. BRYANT'S ADDITIONAL 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	)	

Pursuant to the Commission's Order of May 26, 2021, this brief addresses how "the deadline for filing an application for review of a FINRA action is affected by the date that FINRA files notice of the action with the Commission under Exchange Act Section 19(d)(1) and whether the failure to file such notice (as apparently is the case here) prevents the filing deadline from beginning to run." As noted by the Commission, "FINRA cites *Orbixa Technologies, Inc*. for the proposition that a self-regulatory organization's 'failure to file notice with the Commission does not extend the 30-day deadline to appeal.'" (May 26, 2021 Order at 2). The *Orbixa* decision, and the decisions cited therein, however are highly distinguishable from the facts applicable to Mr. Bryant and should not excuse FINRA's failure to act. To hold otherwise, would thwart the requirements of notice to an aggrieved person and the plain meaning of Exchange Act Section 19(d)(2) and Commission Rule of Practice 420(b).

At the outset, it is important to note that nothing in FINRA's September 29, 2017 letter indicating that Mr. Bryant was subject to statutory disqualification (the "SD Notice")(Record at

00019) ever provided any notice to Mr. Bryant of a right to appeal. Indeed, the SD Notice *was not even directed to Mr. Bryant* but, rather, was directed to his then-employer, Chelsea Financial Services. The SD Notice only notified Chelsea Financial that it could file an MC-400 Application in order to continue its association with Mr. Bryant or, if the firm declined to file an MC-400 application, that it should immediately terminate its association with Mr. Bryant. There was no description, or even mention, of any right to seek further review by Mr. Bryant. Mr. Bryant was a mere carbon copy on the letter.

In the *Orbixa* decision, and the decisions cited therein that found an appeal to be untimely and/or that permitted the appeal period to run despite the failure of an SRO to file the required notice with the Commission, the aggrieved party was *otherwise fully put on notice* of his/its rights to file an appeal. For example, in the *Celballos* decision, cited in *Orbixa,* an appeal after 30 days was deemed to be untimely but the Commission specifically noted that FINRA "repeatedly sought specific information, warned Ceballos of the consequences of his failure to respond, and informed him of the options he had to challenge the sanctions." *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515 (Mar. 1, 2013). Further, in *Penmount Sec.,* Exchange Act Release No. 61967, 2010 WL 167820 at *3 &*6 (April 23, 2010), although the Commission found that the SRO's failure to file the subject notice with the Commission did not toll the thirty-day appeal period, it reached this result after noting that a "substantially similar" notice had already been filed by the SRO with the Commission (even if an amended notice was not) thereby providing the requisite notice.

Here, no SD Notice (amended or otherwise) was ever filed with the Commission such that Mr. Bryant's appeal time should begin to run. Significantly, Mr. Bryant was never given any notice that he had any right to appeal the SD Notice. To the contrary, and at every turn, FINRA

repeatedly told Mr. Bryant that he had no right to any relief whatsoever other than having an employer file an MC-400 application on his behalf, which Mr. Bryant attempted but was unable to secure. (See Supplemental Affidavit of Robert Bryant, III, submitted on March 2, 2021).

A plain reading of Exchange Act Section 19(d)(2) requires that the appeal time not run unless and until the subject notice of determination is received by the aggrieved person and filed with the Commission:

> Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by [the Commission] … upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with [the Commission] and received by such aggrieved person."

(emphasis added). Similarly, Commission Rule 420(b) also provides that the 30 days for appeal does not commence until "after notice of the determination was filed with the Commission:"

> Procedure: An application for review may be filed with the Commission pursuant to Rule 151 within 30 days after notice of the determination was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), and received by the aggrieved person applying for review.

(emphasis added).

The requirement of having an SRO file the notice with the Commission is not mere surplusage. Here, had FINRA filed the SD Notice with the Commission as it was required to do, Mr. Bryant, arguably, would have received at least some modicum of notice that the SD Notice could be deemed to trigger the need for immediate appeal. Instead, the SD Notice he was copied on was utterly silent and FINRA repeatedly told him that he had no rights to relief until and unless an MC-400 application was submitted on his behalf, and subsequently denied. In fact, FINRA's belief (and position) that there was no right of appeal is surely why it didn't file the SD Notice

with the Commission in the first instance.[1] To allow FINRA to now claim, retroactively, that Mr. Bryant should have appealed within 30 days when FINRA itself maintained for years that there was no right to appeal, repeatedly advised Mr. Bryant of the same, *and* failed to file the SD Notice with the Commission as required by law in order to trigger the appeal deadline should not be countenanced. For all these reasons, Mr. Bryant respectfully submits that FINRA's failure to have filed the SD Notice with the Commission should prevent Mr. Bryant's filing deadline from beginning to run.[2]

Respectfully submitted,

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[1] As previously briefed, prior to the *Acosta* decision being rendered by the Commission, 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). Accordingly, according to FINRA, Mr. Bryant's appeal deadline would be indefinitely delayed unless and until any MC-400 process concluded. *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). Once the *Acosta* decision was rendered, 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.

[2] Alternatively, and even if the Commission were to find that that the filing deadline has run despite FINRA's conduct and omissions, Mr. Bryant respectfully submits that extraordinary circumstances should be found to exist on the record herein that warrant Commission review.

CERTIFICATE OF SERVICE

I, Jennifer A. Lesny Fleming, certify that on this 9th day of June, 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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