

UNITED STATES OF AMERICA
before the
SECURITIES EXCHANGE COMMISSION

In the Matter of the Application of

PAUL H. GILES, CRD# 2041288

In Support of Application for Review
Of FINRA's Statutory Disqualification

REPLY IN SUPPORT OF APPLICATION FOR REVIEW

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INTRODUCTION

FINRA's decision to statutorily disqualify Mr. Giles is primarily based on a Decision and Order of Revocation filed by the California Department of Insurance 11+ years ago that revoked Mr. Giles' insurance license in California for not responding to the state regarding tax liens (the "Default Order"). Mr. Giles inadvertently failed to respond to the tax lien inquiry and was unaware that his insurance license was revoked until early 2021. Mr. Giles became aware of the revocation when he applied for an insurance license in Ohio in January 2021. Shortly thereafter, Mr. Giles reapplied for an insurance license in California and, on or about August 4, 2021, the California Department of Insurance approved Mr. Giles' insurance license application. Mr. Giles is now permitted to conduct insurance business in California. The fact that Mr. Giles was able to reapply for an insurance license in California and was approved for such license proves that he was never barred and should not be statutorily disqualified.

After California revoked Mr. Giles' insurance license, other states followed suit as a matter of course. In 2010, the Kentucky Department of Insurance and Washington Office of Insurance Commissioner revoked Mr. Giles' insurance licenses in their respective states based primarily on California's revocation and a failure to respond to an inquiry. Mr. Giles did not become aware of the California, Kentucky, or Washington license revocations until more than a decade later. On August 5, 2021, Mr. Giles applied for an insurance license in Kentucky and the Kentucky Department of Insurance approved his license on August 9, 2021. Like in California, Mr. Giles is now permitted to conduct insurance business in Kentucky. Mr. Giles applied for an insurance license in Washington on August 9, 2021, the application is currently pending and he is fully anticipating approval. The revocations from California, Kentucky, and Washington do not prevent Mr. Giles from reapplying for his licenses in those states and, therefore, the revocations do not

impose any lasting sanctions as evidenced by the fact that Mr. Giles is already re-licensed in both California and Kentucky. Mr. Giles does not need insurance licenses in California, Kentucky, or Washington and should not be forced to reapply for licenses simply to prove to FINRA that the revocations do not have the practical effect of a bar.

ARGUMENT

I. Mr. Giles is not barred from any state insurance department because he has the right to reapply for licenses.

Under the Exchange Act, a person is statutorily disqualified if, among other things, he is subject to a final order of a state insurance regulator that *bars* him from engaging in the insurance business. 15 U.S.C. §§ 78(a)(39)(F), 78o(b)(4)(H)(i) (emphasis added). The Commission found that there is a “serious legal question” regarding whether a state order that revokes a license but permits the individual to reapply is equivalent to a practical bar.¹ The Commission has not rendered an opinion regarding this question and explicitly refrained from rendering an opinion regarding this question in previous decisions. *See Meyers Assocs., L.P.*, Exchange Act Release No. 81778, at *8 n. 44 2017 SEC LEXIS 3096 (Sept. 29, 2017). FINRA continues to mischaracterize this matter as a settled question of law by citing previous Commission decisions and guidance that are not applicable to this matter.² Mr. Giles is now licensed to conduct insurance in both California and Kentucky and presently has the right to apply for an insurance license in Washington. If the insurance commissioners in those states wanted to bar Mr. Giles from conducting insurance in their states they could have issued a permanent sanction that actually had the practical effect of

¹ The Commission issued an Order Denying Stay in this matter on June 14, 2021. Despite denying the Stay, the Order acknowledged that there is a serious legal question regarding whether the Order revoking Mr. Giles’ license is a bar for purposes of the Exchange Act.

² FINRA continues to rely on *Meyers Assocs.*, 2017 SEC LEXIS 3096 for the proposition that the revocations have the practical effect of a bar, despite the fact that the Commission acknowledged that “Giles’s ability to reapply for a California license at any time distinguishes his case from *Meyers Associates*.” *See* SEC Release No. 92177

barring Mr. Giles from becoming licensed in the future. They did not. This case gives the Commission the opportunity to decide for the first time that an insurance license revocation that does not prevent an individual from reapplying for a license is not a bar that triggers statutory disqualification.

Mr. Giles should not be required to apply for insurance licenses that he does not need in order to avoid a statutory disqualification. FINRA argues that the Default Order bars Mr. Giles from conducting insurance business in California. However, rather than citing the Default Order for this proposition, FINRA cites to the California Insurance Code section that states “a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1...unless the person holds a valid license from the commissioner authorizing the person to act in that capacity.” Cal. Ins. Code § 1631. The parties of course agree that individuals who do not currently hold a California insurance license cannot conduct insurance business in California. But the Default Order does not contain a similar statement or any statement that prevents Mr. Giles from becoming licensed in the future. If the absence of a current insurance license has the practical effect of a bar, professionals would be “barred” from every state where they chose not to apply for or hold a license.

FINRA’s argument that Mr. Giles must hold a current license in the states where his license was revoked to prove he is not barred is illogical. Mr. Giles no longer has any insurance clients in California, Kentucky, or Washington and has not had any clients in those states for the last 10 years. Mr. Giles made the decision to reapply for his insurance license in these states solely to prove that he is not subject to a statutory disqualification. Requiring individuals to reapply for licenses they do not need puts an unnecessary burden on individuals like Mr. Giles and creates unnecessary work for state insurance departments. Simply put, the fact that Mr. Giles has the right

and ability to reapply for a license puts him in the same situation as any other broker who does not currently hold an insurance license in a particular state.

II. It is fundamentally unfair for FINRA to provide misleading guidance to professionals in the industry.

FINRA is tasked with the responsibility of evaluating whether individuals are statutorily disqualified and, if it determines they are, sending notification of that determination to the broker's employing broker dealer. *See* FINRA Rule 9522(a)(1). FINRA contends that guidelines drafted and provided by FINRA are not pertinent to its determination of what constitutes a "bar" that subjects an individual to statutory disqualification. While the parties agree that a statutory disqualification is not a sanction or disciplinary action created by FINRA, the parties also agree that FINRA reviews various orders from state regulators and interprets the language at its own discretion. FINRA contends that its interpretation of state orders is not based on its own definition of what a "bar" is and does not consider state regulators' intent. In other words, FINRA's position is that it can unilaterally interpret state insurance commission orders in ways that are inconsistent with FINRA's own rules and guidelines and without regard to the intent and practical effect of the orders. This approach is fundamentally unfair and misleading to securities industry professionals.

FINRA defines a "bar" in its own guidelines as a "**permanent** expulsion of an individual from associating with a firm in any and all capacities." (emphasis added).³ FINRA should not be allowed to take the exact opposite position with respect to Mr. Giles and impose a statutory disqualification where no permanent expulsion exists.

In its briefing, FINRA explains that the only guidance it purports to follow is the language provided in an SEC decision from 2017 stating that the pertinent inquiry is whether the order at issue prohibits an individual from engaging in an activity. *See Meyers Assocs., L.P.*, Exchange Act

³ *See* FINRA Sanction Guidelines (https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf)

Release No. 81778, at *8 n. 44 2017 SEC LEXIS 3096 (Sept. 29, 2017). FINRA mischaracterizes this standard by quoting the California Insurance Code, which prohibits non-licensed individuals from engaging in insurance business. FINRA does not and cannot refer to any language in the Default Order that prohibits Mr. Giles from seeking an insurance license. That is because Mr. Giles is not prohibited from becoming licensed in any of the states where his license was revoked. He has the right and ability to reapply for those licenses at any time, just like he has the right and ability to apply for licenses in any of the other 50 states where he is not currently licensed.

Meyers is also inapplicable as the Commission already acknowledged that a serious legal question exists as to whether Mr. Giles' ability to reapply for an insurance license shows that the Default Order was not a bar. *Meyers* may stand for the proposition that, for unambiguous orders, the Commission "need not look beyond the four corners of the [disqualifying order] to discern the parties' intent because that provision of the consent order had the effect of barring him from the securities business in that state"). Given the lack of any reference in the Default Order to a "bar" or "permanent expulsion," the Default Order is at best ambiguous so the California Department of Insurance's intent should be considered.

On April 6, 2021, a telephone conference took place between Mr. Giles' employing broker dealer Ameriprise Financial Services, LLC, undersigned counsel, and FINRA. FINRA advised during the meeting that it does not consider all insurance license revocations to be "bars" and that its determination is based on factors that FINRA considers internally but has never disclosed to brokers like Mr. Giles. In its briefing, FINRA conveniently ignores the telephone discussion. Instead, FINRA takes the position in its briefing that FINRA is not bound by its own internal guidelines when interpreting state orders and does not have to consider the state regulators' intent behind such orders. It is patently unfair for FINRA to take such an inconsistent approach. The

Commission has the opportunity to render an opinion in this matter that settles an important question of law. An order that revokes a professional's insurance license, gives the professional the option and right to reapply for a license, and is not permanent or lasting, does not have the practical effect of a bar and therefore should not subject the individual to statutory disqualification.

III. Conclusion

For the foregoing reasons, Mr. Giles respectfully requests that the Commission nullify FINRA's statutory disqualification and allow him to continue his 30-year career as a financial professional.

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August 9, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following via the email and the SEC portal this 9th day of August 2021:

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