

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Paul H. Giles for Review of

FINRA Action

File No. 3-20267

FINRA'S SUPPLEMENTAL BRIEF CONCERNING MOOTNESS

Alan Lawhead
Vice President and
Director – Appellate Group

Andrew J. Love
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8281 – Telephone
202-728-8264 – Facsimile
andrew.love@finra.org
nac.casefilings@finra.org

October 12, 2021

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND.....	2
A. California Revokes Giles’ Insurance Licenses	2
B. The First SD Notice	3
C. Giles Appeals the First SD Notice	4
D. Kentucky and Washington Revoke Giles’ Insurance Licenses and the Second SD Notice	5
E. The Commission Requests Additional Briefing	7
III. ARGUMENT	7
A. The Standard for Determining Whether an Appeal is Moot.....	9
B. Giles’ Appeal of the First SD Notice is Not Moot.....	9
IV. CONCLUSION.....	14

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>FEDERAL RULES AND STATUTES</u>	
15 U.S.C. § 78c.....	9, 11
15 U.S.C. § 78o	9, 10, 12
15 U.S.C. § 78s.....	8
Sarbanes-Oxley Act of 2002.....	11
<u>COMMISSION DECISIONS AND ORDERS</u>	
<i>Jeffrey Roy Brooks</i> , 52 S.E.C. 138 (1995).....	11
<i>Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings</i> , Securities Act Release No. 9414, 2013 SEC LEXIS 2000 (July 10, 2013).....	10
<i>Marshall Fin., Inc.</i> , Exchange Act Release No. 48917, 2003 SEC LEXIS 2956 (1998)	9
<i>Marshall Fin., Inc.</i> , 57 S.E.C. 869 (2004).....	8
<i>Meyers Assocs., L.P.</i> , Exchange Act Release No. 81778, 2017 SEC LEXIS 3096 (Sept. 29, 2017)	9, 10
<i>Eric David Wanger</i> , Exchange Act Release No. 79008, 2016 SEC LEXIS 3770 (Sept. 20, 2016).....	8
<i>Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes</i> , Exchange Act Rel. No. 56145, 2007 SEC LEXIS 1640 (July 26, 2007).....	11
<i>Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes to Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.</i> , Exchange Act Rel. No. 56145A, 2008 SEC LEXIS 1270 (May 30, 2008)	11
<i>Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications</i> , Exchange Act Release No. 59586, 2009 SEC LEXIS 744 (Mar. 17, 2009).....	12

COMMISSION DECISIONS AND ORDERS – continued

SEC No-Action Letter, 2009 SEC No-Act. LEXIS 349 (Mar. 17, 2009)12

FINRA BY-LAWS, MANUAL, NOTICES AND RULES

FINRA By-Laws, Art. III, Sec. 4.....9

FINRA Regulatory Notice 09-19, 2009 FINRA LEXIS 52 (Apr. 2009)12

FINRA Rule 9520 Series11

OTHER AUTHORITIES

Cal. Ins. Code § 1631 (Deering 2002)10, 11

Cal. Ins. Code § 1633 (Deering 1959)10

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Paul H. Giles for Review of

FINRA Action

File No. 3-20267

FINRA'S SUPPLEMENTAL BRIEF CONCERNING MOOTNESS

I. INTRODUCTION

Pursuant to the Commission's order dated August 27, 2021, FINRA files this supplemental brief to address whether Paul Giles' application for review is moot. FINRA urges the Commission to find that Giles' appeal is not moot. Giles is statutorily disqualified based upon a state regulator's order revoking two insurance licenses that he held, which permitted him to engage in specified insurance business. Although the state regulator recently granted Giles' application for one of the two revoked licenses, it has not granted Giles permission to engage in the activities covered by the second revoked license. Thus, the sanctions imposed by the state revocation order are still in effect, Giles is prohibited from engaging in any insurance activities covered by the second revoked license, and he is thus subject to a state regulator's order barring him from engaging in insurance activities. Consequently, Giles is currently statutorily disqualified and will remain so unless and until he is granted permission to engage in the insurance activities that he was authorized to conduct before his licenses were revoked.

There is no factual dispute that Giles is not currently permitted to engage in all pre-revocation insurance activities. Giles, however, challenges FINRA's determination that he

remains disqualified. Although Giles' position ultimately does not withstand scrutiny because he continues to be prohibited from engaging in any insurance activities related to his license that remains revoked and is thus barred from engaging in these activities pursuant to Commission precedent and guidance, his appeal continues to present a live issue to the Commission for which it may—but should not—grant Giles favorable relief. FINRA requests that the Commission find that this appeal is not moot, affirm FINRA's determination that Giles is statutorily disqualified, and dismiss Giles' appeal on the merits.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. California Revokes Giles' Insurance Licenses

On September 8, 2009, pursuant to a Default Decision and Order of Revocation (the "California Order"), California's Department of Insurance revoked two insurance licenses held by Giles that permitted him to engage in specified insurance activities. (RP 005.) Specifically, the California Order revoked Giles' licenses: (1) as a life-only agent; and (2) as an accident-and-health agent. *Id.* The California Order revoked Giles' insurance licenses because he failed to respond to two requests for information concerning unpaid tax liens. (RP 001, 005.) Each license that Giles possessed granted him permission to engage in specific insurance activities.¹

¹ Giles originally held a life agent insurance license issued by California's Insurance Commissioner from September 21, 1993, through September 30, 1995, and again from May 17, 2006, through December 31, 2007. *See* RP 001, 005. Giles' life agent license was converted to life-only agent and an accident-and-health agent licenses on January 1, 2008. *Id.* This appears to have occurred as a result of amendments made in 2007 to the California Insurance Code, which made "significant changes to the Life Agent license. Specifically, this law requires the California Department of Insurance to divide the Life Agent license into a Life-Only Agent license and an Accident and Health Agent license. In addition, this law established prelicensing and continuing education requirements for these license types." *See* Life-Only Agent and Accident and Health Frequently Asked Questions, <http://www.insurance.ca.gov/0200-industry/0090-faq/lo-ahfaq.cfm>. The California Department of Insurance describes the

[Footnote cont'd on next page]

B. The First SD Notice

Giles did not promptly disclose the California Order after it was entered, as required by FINRA's rules. Instead, he waited more than eleven years to disclose the California Order on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). (RP 045.) Once FINRA became aware of the California Order after Giles belatedly disclosed it, FINRA issued Giles' employing firm a notice dated March 24, 2021 (the "First SD Notice"). (RP 013.) The First SD Notice informed Giles' firm that the California Order rendered him statutorily disqualified and it was therefore required to seek FINRA's approval for Giles to continue to associate with the firm.² *Id.*

FINRA based its disqualification determination on the undisputed fact that, as a result of California's license revocations, Giles was prohibited from transacting insurance business in the

[cont'd]

differences between the licenses, and the type of insurance business a holder of each license may conduct, as follows:

The Life-Only Agent is entitled to transact insurance for the following risks: human lives, benefits of endowment and annuities, death benefits or dismemberment by accident and benefits for disability income (life policies offer riders for death or dismemberment by accident and benefits for disability income; therefore, the Life-Only Agent may sell these products).

The Accident and Health Agent may transact coverage for sickness, bodily injury, accidental death and benefits for disability income.

See id.

² The First SD Notice further provided that, if the firm declined to initiate an eligibility proceeding to obtain approval for Giles' continued association, it must terminate him on or before April 12, 2021. FINRA staff extended the time for Giles' firm to initiate an eligibility proceeding until May 3, 2021. (RP 29.) The parties subsequently agreed to again extend this deadline until the Commission ruled upon Giles' request to stay the effectiveness of the First SD Notice. *See infra* Part II.C.

state and California's revocation order had the practical effect of barring him from acting in the capacities for which he was previously licensed. Consequently, FINRA determined that the California order rendered Giles statutorily disqualified under the Securities Exchange Act of 1934 ("Exchange Act") and FINRA's By-Laws.

C. Giles Appeals the First SD Notice

On April 21, 2021, Giles appealed the First SD Notice and FINRA's determination that he is statutorily disqualified pursuant to the California Order, and sought to stay the effectiveness of the First SD Notice. On June 14, 2021, the Commission denied Giles' request to stay the First SD Notice. Giles' association with his employing firm ended shortly thereafter.

In Giles' opening brief dated June 25, 2021, he initially argued that California's revocation of his two insurance licenses, which admittedly prohibited him from engaging in insurance business in the state, nonetheless did not bar him from engaging in insurance business because Giles could reapply for his insurance licenses and California might reinstate his insurance licenses.

In Giles' reply brief filed on August 9, 2021, Giles then informed the Commission that "the California Department of Insurance approved Mr. Giles' insurance license application. Mr. Giles is now permitted to conduct insurance business in California."³ *See* Giles' Reply Brief, at

³ When Giles filed his reply, he did not submit to the Commission any documentation to support this claim. He has since attached a document to his supplemental brief indicating that on August 4, 2021, California granted him a life-only agent license and a variable contracts agent license. *See* Exhibit E to Giles' Additional Brief in Support to Application for Review filed on September 27, 2021 ("Giles' Supplemental Brief"). The California Department of Insurance has explained that, with respect to the variable contracts agent license, "variable contract authority will be listed on the Life-Only license when it is printed." *See* Life-Only Agent and Accident and Health Frequently Asked Questions, <http://www.insurance.ca.gov/0200-industry/0090-faq/lo-ahfaq.cfm>.

4. In his supplemental brief, Giles now clarifies that although California has reinstated his life-only agent license, it has *not* reinstated his license as an accident-and-health agent. *See* Giles' Supplemental Brief, at 7. Thus, Giles does not currently hold all of the licenses that California revoked pursuant to the California Order and he remains prohibited from engaging in any insurance activities as an accident-and-health agent pursuant to the California Order.

D. Kentucky and Washington Revoke Giles' Insurance Licenses and the Second SD Notice

Although not the subject of this appeal, two other regulators revoked licenses held by Giles after California revoked his two insurance licenses held in that state. These two revocations, by Kentucky and Washington regulators, served as the basis for a second disqualification notice issued by FINRA on May 6, 2021 (the "Second SD Notice").⁴

In January 2010, Kentucky's Department of Insurance entered an order revoking Giles' insurance licenses. Kentucky's order stated that Giles failed to answer or respond to requests for information from its Department of Insurance concerning the California Order. Further, in

⁴ In its order scheduling additional briefing, the Commission stated that the Second SD Notice is not currently before it on appeal. Similarly, FINRA's Opposition Brief filed on July 26, 2021, stated that, "[a]lthough not the subject of this appeal, FINRA notified Ameriprise that Giles was subject to statutory disqualification based upon" the Kentucky and Washington revocations (which FINRA referenced in its opposition brief to refute Giles' statement that he has never shown an unwillingness to comply with rules or regulations). *See* Opposition Brief, at 6. And, contrary to Giles' assertions in his supplemental brief, FINRA's agreement to extend the deadline for Giles' firm to act in connection with the Second SD Notice until resolution of the stay request concerning the First SD Notice does not make it clear that this current appeal encompasses all three states' revocations and the Second SD Notice. This agreement simply stayed the effective date of the Second SD Notice (and thus the Firm's deadline to initiate an eligibility proceeding or terminate Giles), and did not toll any deadline to appeal the Second SD Notice. Once the Commission denied the stay motion, the Second SD Notice became effective within 13 days pursuant to the terms of the Second SD Notice. For all of these reasons, the arguments in this brief focus exclusively on California's revocation of Giles' insurance licenses and the First SD Notice.

August 2010, the State of Washington revoked Giles' insurance licenses because Giles failed to respond to two letters it sent to him requesting documentation concerning Kentucky's revocation.⁵ Similar to the California Order, Giles did not promptly disclose these revocations as required by FINRA's rules. Instead, he waited until April 2021 to do so.

On May 6, 2021, after Giles had appealed the First SD Notice, FINRA sent Giles' firm the Second SD Notice, which notified it that, in addition to his disqualification as a result of the California Order, Giles was subject to statutory disqualification based upon the Kentucky and Washington revocation orders. The Second SD Notice provided that the deadline for Giles' firm to either initiate a FINRA eligibility proceeding on Giles' behalf or terminate him was extended until no later than 13 days after the Commission ruled upon Giles' request to stay the First SD Notice.

Giles never appealed the Second SD Notice, although he referenced the revocations covered by this notice in his opening brief. Further, in Giles' reply brief filed on August 9, 2021 in connection with his appeal of the First SD Notice, he stated that Kentucky had approved his application for an insurance license and he had applied for an insurance license in Washington, which was pending. In his supplemental brief, Giles now clarifies that although Washington has reinstated the insurance license he previously held, Kentucky has only reinstated his license as a non-resident agent for health and life insurance, and has not reinstated his variable life and variable annuity insurance license (and will not do so unless and until Giles is employed as a registered representative). *See* Giles' Supplemental Brief, at 4, 7-8. Thus, Giles does not currently hold all of the licenses that Kentucky revoked pursuant to its revocation order and he

⁵ FINRA attached copies of the Kentucky and Washington revocation orders to its opposition brief filed on July 26, 2021.

remains prohibited from engaging in any insurance activities in Kentucky that require a variable life and variable annuity insurance license.⁶

E. The Commission Requests Additional Briefing

Based upon Giles' statement in his reply brief that California had granted him permission to engage in insurance business, on August 27, 2021, the Commission requested that the parties file briefs addressing whether it should dismiss Giles' appeal as moot. Giles argues that his appeal is not moot for two reasons. First, he states that because FINRA will require Giles to update his Form U4 to disclose the California Order and the other revocations as "bars," his Form U4 will purportedly be inaccurate, will mislead current and potential employers, and he "has a concrete interest in whether he is required to disclose (and mischaracterize) the insurance license revocations" as bars. *See* Supplemental Brief, at 3-4, 6-7. Second, Giles argues that because FINRA has taken the erroneous position that he must obtain each license that he held prior to the revocation, such that he is no longer prohibited from engaging in an insurance activity pursuant to the California Order, this issue remains a live controversy because he does not currently have all such licenses and the Commission may rule in his favor and find that he is no longer disqualified. *Id.*

III. ARGUMENT

Giles' appeal currently presents an issue for which the Commission, if it rules in his favor, can grant relief. Specifically, Giles challenges FINRA's position that unless and until California

⁶ Kentucky has indicated that it will not reissue Giles this license until he is actively registered with a broker-dealer. As set forth above, the Commission has stated that the Second SD Notice (and thus the Kentucky and Washington revocation orders) are not the subject of this appeal.

grants Giles an insurance license as an accident-and-health agent, which activities he is currently prohibited from engaging in because the California Order revoked this license, Giles remains statutorily disqualified pursuant to a state regulator's bar order under the Exchange Act and FINRA's By-Laws (and thus must undergo a FINRA eligibility proceeding before he may associate with a firm). Consequently, FINRA urges the Commission to decide this appeal on the merits. FINRA further urges that the Commission reject Giles' arguments that he is not disqualified because of the California Order.⁷

A. The Standard for Determining Whether an Appeal is Moot

It is well settled that an application for review is moot when "even a favorable decision by the Commission would entitle [the applicant] to no relief." *Marshall Fin., Inc.*, 57 S.E.C. 869, 877 (2004) (dismissing an appeal as moot). The Commission has explained that a matter will be dismissed "as moot unless the complaining party has 'suffered some actual injury that can be redressed by a favorable judicial decision.'" *Id.* at 875 (citing *Marshall Fin., Inc.*, Exchange Act Release No. 48917, 2003 SEC LEXIS 2956 (Dec. 12, 2003)).

⁷ The Commission should reject Giles' argument that the characterization of the revocations on his Form U4 presents a reviewable issue on appeal because FINRA will require Giles to inaccurately disclose these revocations as bars. *See* Giles' Supplemental Brief, at 6. It does not. First, Giles' BrokerCheck report lists the California Order as a revocation order and not as a bar. *See* <https://brokercheck.finra.org/individual/summary/2041288>. Second, even if BrokerCheck characterized the sanction imposed by the California Order as a bar, as set forth herein there is nothing inaccurate about this characterization because the impact of the revocation order is to prohibit him from engaging in a specific insurance activity, which the California Order indisputably does. Third, any future characterization of the California Order on Giles' Form U4 (and thus the reporting of these orders in FINRA's BrokerCheck system) is not an appealable issue under Exchange Act Section 19(d). *Cf. Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *10-17 (Sept. 30, 2016) (holding that none of the bases for Commission review of an SRO action under Exchange Act Section 19(d) were satisfied where an applicant appealed FINRA's characterization of a Commission order in BrokerCheck).

B. Giles' Appeal of the First SD Notice is Not Moot

Giles' appeal presents an issue for which the Commission may grant him favorable relief. Accordingly, at this time the Commission should not dismiss this appeal as moot. However, for the reasons set forth herein and in FINRA's opposition brief, the Commission should dismiss Giles' appeal on the merits and find that he is statutorily disqualified because of the California Order.

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 business of . . . insurance." *See* 15 U.S.C. §§ 78c(a)(39)(F), 78o(b)(4)(H)(i); *see also* FINRA By-Laws, Art. III, Sec. 4 (incorporating the definition of statutory disqualification set forth in the Exchange Act).

The California Order was a disqualifying state bar order when it was entered, and it remains a disqualifying bar order because Giles is still prohibited from engaging in insurance activities as an accident-and-health agent pursuant to the sanctions imposed by the order.⁸ The Commission has stated that if a state regulator's order prohibits a person from engaging in an activity, it has the practical effect of a bar regardless of the nomenclature used in the order, and thus is disqualifying under Exchange Act Section 15(b)(4)(H)(i). *See Meyers Assocs., L.P.*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096, at *15-16 (Sept. 29, 2017) (stating that in interpreting language nearly identical to Exchange Act section 15(b)(4)(H), "[w]e concluded that an order should be treated as a 'bar' if it had the 'practical effect of a bar' by 'prohibit[ing] a person from engaging in a particular activity'") (citing *Disqualification of Felons*

⁸ As stated in FINRA's opposition brief, there is no dispute that the California Order is a "final order" under Exchange Act Section 15(b)(4)(H)(i).

and Other “Bad Actors” from Rule 506 Offerings, Securities Act Release No. 9414, 2013 SEC LEXIS 2000, at *75 (July 10, 2013)). In *Meyers Associates*, the Commission held that the state order at issue was disqualifying under Exchange Act Section 15(b)(4)(H)(i) because it had the practical effect of a bar by prohibiting Meyers from engaging in securities business, and observed that FINRA had previously and appropriately employed a similar “functional approach” to determining whether a state regulator’s order was disqualifying in accordance with Commission guidance. *See id.* at *20-21.

Pursuant to this precedent, the California Order was a disqualifying bar order when it was entered, and—although Giles did not disclose it for years—it remains a disqualifying bar order. The California Order revoked Giles’ licenses to engage in insurance business in California and, without a license, Giles cannot conduct such business. *See* Cal. Ins. Code § 1631 (Deering 2002) (providing that “a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1 (commencing with Section 1621) unless the person holds a valid license from the commissioner authorizing the person to act in that capacity”); *see also* Cal. Ins. Code § 1633 (Deering 1959) (stating that engaging in an insurance transaction without a license is a misdemeanor). The California Order prohibited Giles from engaging in all insurance transactions because it revoked all of the licenses he held to conduct such business. The California Order therefore had the practical effect of a bar and rendered him statutorily disqualified under Exchange Act Section 15(b)(4)(H)(i).

Moreover, the California Order remains a disqualifying bar order. Pursuant to the California Order, Giles is still prohibited from engaging in any insurance activity as an accident-and-health agent. While California granted Giles his life-only agent license, there is no dispute that it has *not* granted Giles a license as an accident-and-health agent and the prohibition on

those activities remains in effect. Thus, Giles cannot act in this capacity and cannot conduct any business as an accident-and-health agent unless and until California grants him a license to do so. *See* Cal. Ins. Code § 1631. Consequently, Giles remains statutorily disqualified because certain sanctions imposed by the California Order—the revocation of Giles’ accident-and-health agent license—are still in effect. *Cf.* 15 U.S.C. § 78c(a)(39)(A) & (B) (providing that a person is disqualified if they are subject to an order by FINRA or the Commission suspending them for the duration of that suspension); *Jeffrey Roy Brooks*, 52 S.E.C. 138, 139 n.3 (1995) (stating that a Commission suspension operates as a statutory disqualification during the pendency of the suspension).

Indeed, the Commission’s approval in 2009 of FINRA rule changes to require that only certain individuals statutorily disqualified as a result of the Sarbanes-Oxley Act of 2002 file with FINRA applications seeking relief from their ineligibility demonstrates that Giles remains disqualified pursuant to the California Order.⁹ In approving FINRA’s rule changes, the Commission stated that, “[a]bsent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed Regulatory Notice that outlines in detail the applicable

⁹ The harmonization of FINRA’s and the Exchange Act’s definition of statutory disqualification caused all individuals subject to statutory disqualification under the Exchange Act—including those disqualified as a result of the Sarbanes-Oxley Act of 2002—to be subject to FINRA’s then-existing procedures governing eligibility proceedings. *See Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes*, Exchange Act Rel. No. 56145, 2007 SEC LEXIS 1640 (July 26, 2007), as amended by Exchange Act Rel. No. 56145A, 2008 SEC LEXIS 1270 (May 30, 2008).

eligibility procedures.” *See Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications*, Exchange Act Release No. 59586, 2009 SEC LEXIS 744, at *4 (Mar. 17, 2009).

As is relevant here, the Regulatory Notice referenced in the Commission’s approval order further provides that if a person is subject to a state regulator’s order that includes as a sanction a license revocation, the person is disqualified—and must seek FINRA’s approval to associate or continue to associate with a firm notwithstanding his disqualification—if the sanctions related to that order are still in effect. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52 (Apr. 2009). FINRA’s Regulatory Notice further explains that, with respect to a state bar order under Exchange Act Section 15(b)(4)(H)(i):

A person would no longer be subject to a statutory disqualification when the time limitation of a bar or license revocation has expired, provided that (1) application for reentry is not required or has been granted; (2) the bar or revocation has no continuing effect; and (3) the bar was not issued in connection with a final order based on violations of laws or regulations prohibiting fraudulent, manipulative or deceptive conduct, as described in Exchange Act Section 15(b)(4)(H)(ii).

Id. at *14, n.12; *see also SEC No-Action Letter*, 2009 SEC No-Act. LEXIS 349, at *3 (Mar. 17, 2009) (stating view “that a person is no longer subject to a statutory disqualification when the time limitation of a bar or license revocation has expired provided that (i) application for reentry is not required or has been granted; (ii) the bar or revocation has no continuing effect; and (iii) the bar was not issued in connection with a final order based on violations of laws or regulations prohibiting fraudulent, manipulative, or deceptive conduct”).

Pursuant to this guidance, Giles is statutorily disqualified based upon the California Order. First, the license revocations contained in that order had no expiration, and Giles concedes that an application is required to re-acquire his revoked accident-and-health agent

license and to engage in insurance activities covered by this license. Second, the revocation of Giles' accident-and-health agent license (i.e., one of the sanctions imposed by the California Order) remains *in effect* until California grants Giles' application to engage in the activities covered by that license. That has not happened and may never happen. As a result, Giles remains disqualified.

Giles' argument that he has no need for an accident-and-health agent license is irrelevant. The California Order currently prohibits him from engaging in insurance activities related to his formerly held accident-and-health agent license, and this revoked license has not been reinstated. Such prohibition falls within the parameters of a bar order under the Exchange Act and Commission precedent holding that a state regulator's order is disqualifying so long as it prohibits an individual from engaging in securities, insurance, or banking activities. Giles' argument seeks to ignore the terms of the California Order and the entirety of the sanctions it imposed that limited his insurance activities in the state.

Further, notwithstanding Giles' assertions to the contrary, there is nothing inconsistent with FINRA's previous statements that the California Order was a disqualifying bar order because it prohibited him from engaging in any insurance activity in the state and its current position that he remains disqualified until all prior prohibitions on his insurance activities have been lifted. At the time FINRA made the more general statement, Giles did not hold any license to conduct insurance in the state, and it was undisputed that he was prohibited from all insurance activities. Indeed, this was true until the parties' briefs were nearly completed in August 2021, when California granted Giles' reapplication for one of the two insurance licenses that had been previously revoked. After California granted Giles one of his two previously revoked licenses, and continuing to the present, Giles still cannot conduct any insurance activities that require an

accident-and-health agent license. The California Order thus has the practical effect of prohibiting him from engaging in these activities, which makes it a disqualifying bar order. Contrary to Giles' claim, there is nothing "absurd" about recognizing that the sanctions imposed upon Giles by California revoking his ability to engage in activities as an accident-and-health agent are still in place and accordingly, have the consequence of rendering him statutorily disqualified.

IV. CONCLUSION

FINRA urges the Commission to find that Giles' appeal is not moot, as his appeal presents an issue for which the Commission may grant him favorable relief. FINRA further urges that the Commission find that Giles is disqualified because the California Order's sanctions remain in effect and Giles continues to be prohibited from engaging in any insurance activities as an accident-and-health agent.

Respectfully submitted,

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org
nac.casefilings@finra.org

October 12, 2021

CERTIFICATE OF COMPLIANCE

I, Andrew Love, certify that this brief complies with the Commission's Rules of Practice by filing a brief that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

I, Andrew Love, further certify that this Supplemental Brief Concerning Mootness complies with the limitation set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,329 words.

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org
nac.casefilings@finra.org

Dated: October 12, 2021

CERTIFICATE OF SERVICE

I, Andrew Love, certify that on this 12th day of October 2021, I caused a copy of the foregoing Supplemental Brief Concerning Mootness, Administrative Proceeding File No. 3-20267, to be filed through the SEC's eFAP system and to be served by electronic mail on:

Niels P. Murphy, Esq.
Lawton R. Graves, Esq.
Murphy & Anderson, P.A.
1501 San Marco Blvd.
Jacksonville, Florida 32207
904-598-9282 (phone)
nmurphy@murphyandersonlaw.com
lgraves@murphyandersonlaw.com

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org
nac.casefilings@finra.org