

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 ADDITIONAL BRIEF CONCERNING MOOTNESS

TABLE OF CONTENTS

REPLY ARGUMENT.....4

 I. The pending application for review is not moot because FINRA refuses to remove Mr. Giles’ statutory disqualification despite his active insurance licenses in California, Kentucky, and Washington.....4

 II. Mr. Giles’ pending application for review will not be moot even if FINRA removes the statutory disqualification because the bar has a lasting impact.....5

 III. The Pending Application encompasses FINRA’s Additional Disqualifying Notice...6

CONCLUSION.....9

TABLE OF AUTHORITIES

COMMISSION DECISIONS AND ORDERS

Eric David Wanger, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770
(Sept. 30, 2016).....5

Marshall Fin., Inc. Exchange Act Release No. 50343, 2004 SEC LEXIS 2035
(Sept. 10, 2004).....4

FEDERAL RULES AND STATUTES

15 U.S.C. § 78s.....5

OTHER AUTHORITIES

FINRA Regulatory Notice 09-19, 2009 FINRA LEXIS 52 (Apr. 2009).....4

SEC No-Action Letter, 2009 SEC No-Act. LEXIS 349 (Mar. 17, 2009).....5

REPLY ARGUMENT

I. The pending application for review is not moot because FINRA refuses to remove Mr. Giles' statutory disqualification despite his active insurance licenses in California, Kentucky, and Washington.

The parties agree that the application for review Mr. Giles filed on April 21, 2021 (the “Pending Application”) is not moot because, despite Mr. Giles obtaining active insurance licenses in California, Kentucky, and Washington, FINRA refuses with remove the statutory disqualification. In its Supplemental Brief Concerning Mootness, FINRA argues for the first time that Mr. Giles must obtain every line of authority he previously held in each state. This argument is contrary to FINRA’s espoused position that the revocations of Mr. Giles’ state insurance licenses have the practical effect of a bar based on a “functional approach” to determining whether a state regulator’s order was disqualifying in accordance with Commission guidance. Suddenly, FINRA is employing a new approach that ignores the functionality of Mr. Giles’ active insurance licenses in every state where his licenses were previously revoked.

The Pending Application asks the Commission to determine that a state insurance revocation order is not a bar where the individual has a right to reapply for the revoked license. FINRA provides further argument in its Supplemental Brief Concerning Mootness on whether the revocations of Mr. Giles’ insurance license are equivalent to a bar. In support, FINRA references its own 2009 regulatory notice. *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, 14, n.12 (Apr. 2009). But the footnote FINRA cites for the proposition that license revocations subject Mr. Giles to a bar specifically refers to persons who were subject to a bar as of March 17, 2009. The Decision and Order of Revocation filed by the California Department of Insurance that revoked Mr. Giles’ insurance license in California (the “California Order”) was not entered until August 2009. The other state revocation orders were entered even later. FINRA also references an SEC

No-Action Letter that does not answer the serious legal issue pending in this matter but rather refers to a specific situation where the Commission agreed not to take action. *SEC No-Action Letter*, 2009 SEC No-Act. LEXIS 349, at *3 (Mar. 17, 2009). Lastly, both the regulatory notice and the no-action letter indicate that where “application for reentry has been granted,” as it has been here, the individual is no longer subject to statutory disqualification. *Id.*

II. Mr. Giles’ pending application for review will not be moot even if FINRA removes the statutory disqualification because the bar has a lasting impact.

Section 19(d)(2) of the Exchange Act provides that the SEC may review any self-regulatory organization action that “bars any person from becoming associated with a member.” Even if FINRA removes Mr. Giles’ statutory disqualification, FINRA will continue to categorize the state insurance regulator revocations as bars. The “bars” will remain on Mr. Giles’ Form U4, which is visible to prospective employers and potentially clients. Only an opinion from the Commission recognizing that the insurance license revocations are not equivalent to a bar will remove the “bars” from Mr. Giles Form U4 and correctly recharacterize them as revocations. Accordingly, Mr. Giles situation is different from the situation considered by the Commission in *Marshall Fin., Inc.* Exchange Act Release No. 50343, 2004 SEC LEXIS 2035, at *16 (Sept. 10, 2004) (dismissing appeals as moot because “[w]e perceive no relief that is available here”). The relief Mr. Giles is a removal of the “bars” from his Form U4.

FINRA refers to an unrelated SEC decision to support its argument that any future characterization of the California Order is not an appealable issue under Exchange Act Section 19(d). *Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *10-17 (Sept. 30, 2016). In *Wanger*, the applicant consented to a bar from the securities industry as part of a settlement agreement and thereafter filed an application for review when FINRA disclosed the bar on BrokerCheck. In contrast, Mr. Giles filed the Pending Application based on revocations

that FINRA unilaterally transformed into “bars.” Mr. Giles requests that the “bars” be vacated entirely so that his Form U4 accurately reflects the insurance license revocations to prospective employers and clients.

III. The Pending Application encompasses FINRA’s Additional Disqualifying Notice.

On May 6, 2021, FINRA notified Ameriprise Financial that Mr. Giles was subject to “additional disqualifying events” (the “Additional Disqualifying Notice”). The Additional Disqualifying Notice referenced an Order Revoking License filed by the Commonwealth of Kentucky Department of Insurance dated January 11, 2010 (the “Kentucky Order”). Mr. Giles maintains that the Pending Application encompasses FINRA’s Additional Disqualifying Notice and therefore includes the Kentucky Order.¹ Mr. Giles reasonably relied on the opening sentence of the Additional Disqualifying Notice that states: “In addition to our letter dated on March 24, 2021, FINRA has determined that Paul Giles is subject to two additional disqualifying events, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.” FINRA also essentially acknowledged that the Additional Disqualifying Notice was part of the Pending Application when it made Ameriprise Financial’s deadline to respond to the Additional Disqualifying Notice the same as Mr. Giles’ deadline to respond to his Motion to Stay the effect of the statutory disqualification. Mr. Giles and FINRA both included the Additional Disqualifying Notice in their briefing for the Pending Application. In fact, FINRA attached both the Kentucky Order and the Washington Order Revoking License to its opposition brief filed on July 26, 2021. Moreover, the legal question and arguments regarding the California Order and Kentucky Order are the same; whether the revocation of an insurance license is a bar when the individual has a right to reapply for such license (and has in fact obtained a license).

¹ In an abundance of caution, Mr. Giles recently filed a new Application for Review specific to the Kentucky Order.

IV. Conclusion

For the foregoing reasons, Mr. Giles respectfully requests that the Commission proceed with rendering an opinion on the Pending Application, including a review of the current status of such statutory disqualification where Mr. Giles has been approved to engage in insurance business in all states where his licenses were previously revoked.

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October 26, 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 26th day of October 2021:

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