

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

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**BRIEF IN SUPPORT OF APPLICATION FOR REVIEW**

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## INTRODUCTION

FINRA's decision to statutorily disqualify Mr. Giles was initially based on a Decision and Order of Revocation filed by the California Department of Insurance in 2009 that revoked Mr. Giles' insurance license in California for not responding to the state regarding tax liens (the "California Order"). After California revoked Mr. Giles' insurance license, the Kentucky Department of Insurance took similar action. In 2010, the Kentucky Department of Insurance revoked Mr. Giles' insurance license based solely on California's revocation and a failure to respond to an inquiry (the "Kentucky Order"). Mr. Giles did not become aware of the California Order or Kentucky Order until more than a decade later, in early 2021. The revocations from California and Kentucky did not prevent Mr. Giles from reapplying for insurance licenses in those states and, therefore, the revocations do not impose any lasting sanctions. In fact, Mr. Giles recently reapplied for insurance licenses in California and Kentucky and is currently licensed to conduct insurance business in both states.

FINRA recently informed counsel for Mr. Giles that his statutory disqualification will not be removed, even though Mr. Giles is currently licensed to conduct insurance business in California and Kentucky. FINRA has now taken the position that Mr. Giles's statutory disqualification will remain in effect because Mr. Giles's new California and Kentucky insurance licenses do not include all the lines of authority that Mr. Giles was authorized to conduct prior to the California and Kentucky Orders. FINRA contends that Mr. Giles must be approved for every line of authority that he previously held regardless whether he intends to use such lines. This position is completely absurd and contrary to the language of the Exchange Act.

Mr. Giles has long since satisfied the tax liens at issue. Mr. Giles has never shown an unwillingness to comply with securities rules and regulations and he has served the profession for

over 30 years without any serious allegations of wrongdoing. The California and Kentucky Orders did not have lasting sanctions and are not equivalent to a practical bar. Therefore, Mr. Giles submits this application to request the SEC to review and retract FINRA's decision to statutorily disqualify him.

## ARGUMENT

### **I. The revocation of Mr. Giles' Kentucky insurance license is not equivalent to a bar.**

The Commission should set aside Mr. Giles' statutory disqualification because the Exchange Act, prior Commission decisions, and FINRA's own action all indicate that an insurance license revocation with no lasting sanctions is not the equivalent of a bar.

The Commission has found that a revocation may be the equivalent of a bar where the revocation has the same practical effect of a bar. *Meyers Assocs., L.P.*, Exchange Act Release No. 81778, 2017 WL 4335044, at \*4-5 (Sept. 29, 2017). In *Meyers*, the Commission found that the order had the practical effect of a bar because the financial professional was prohibited from engaging in a particular activity. However, Orders revoking insurance licenses do not have the same practical effect as a bar if the impacted advisor is not prohibited from reapplying for licensure. Mr. Giles had the option to reapply for his licenses in California and Kentucky -- there is no order prohibiting him from doing so -- he has reapplied for licenses in California and Kentucky, and those licenses have been approved.

The Commission recognizes that whether an advisor has a right to reapply for his license should impact issues involving statutory disqualification. *May Capital Group, LLC and Melvin Rokeach*, Exchange Release Act No. 53796, at \*17 (May 12, 2006) ("where the Commission previously imposed a bar with the right to reapply, it was unfair, in the absence of new information, to deny a membership continuance application, once the right to reapply commenced, on the sole

basis of the underlying misconduct.”). The Commission’s decision in *Saava* recognizes the importance of considering whether sanctions exist beyond just a revocation. *Nicolas S. Saava*, Exchange Act Release No. 72485, 2014 SEC LEXIS 5100, at 5 (June 26, 2014). In *Saava*, the Commission considered a final order from the Vermont State Department of Banking, Insurance, Securities, and Health Care Administration that revoked the advisor’s securities license in Vermont. Critically, the final order also prevented the advisor from seeking re-registration as a broker in Vermont. The Commission determined that, because the final order prevented the advisor from seeking re-registration, the sanctions from the final order were “still in effect” after the order revoked the advisor’s license.

More recently, the Commission expressly declined to determine whether an applicant would still be subject to a bar under Section 15(b)(4)(H)(i) beyond the three-year period in which the applicant was prohibited from reapplying for registration. *Meyers Assocs., L.P.*, Exchange Act Release No. 81778, at \*8 n.44 (Sept. 29, 2017). The Commission has the opportunity to consider this serious legal issue in the instant case and find that the temporary and non-final revocation of an insurance license should not bar a financial professional from the securities industry for life, an extreme sanction not befitting the conduct involved.

The Kentucky Order in this matter does not include sanctions beyond a revocation and does not prohibit Mr. Giles from re-applying for a Kentucky insurance license. In fact, Mr. Giles reapplied for his Kentucky insurance license, purely to prove that he was not barred, and his application was approved. **Mr. Giles is currently licensed to conduct insurance business in Kentucky**, and yet FINRA still refuses to retract the statutory disqualification based on the inaccurate interpretation that the Kentucky Order operates as a “bar.”

**II. FINRA’s insistence on Mr. Giles obtaining all previously issued insurance lines of authority in Kentucky forces Mr. Giles into the ultimate Catch-22.**

After FINRA identified the Kentucky Order as a basis for Mr. Giles' statutory disqualification, Mr. Giles reapplied and was approved for a Kentucky insurance license to prove to FINRA that he was not barred from receiving such a license. Despite the overwhelming evidence that the Kentucky Order was not a bar – Mr. Giles currently has a Kentucky insurance license – FINRA is now insisting that Mr. Giles jump through yet another hoop before it will remove the Kentucky Order as a basis for Mr. Giles' statutory disqualification. FINRA advised that the Kentucky Order will continue to serve as a basis for Mr. Giles' statutory disqualification unless Mr. Giles obtains a Variable Annuity insurance line of authority in Kentucky.

FINRA's stated rationale for its new 'line of authority' requirement is that Mr. Giles held a Variable Annuity line of authority prior to the Kentucky Order so he must re-obtain the same line of authority now despite not actually needing it. Setting aside the absurdity of FINRA's logic, that Mr. Giles' current Kentucky insurance license is not sufficient to prove he was not barred from obtaining a Kentucky insurance license, Mr. Giles cannot obtain a Variable Annuity line of authority because FINRA will not withdraw the statutory disqualification. The Kentucky Department of Insurance advised Mr. Giles that it will not issue a Variable Annuity line of authority until Mr. Giles is associated with a broker dealer. This presents the ultimate Catch-22 for Mr. Giles. Mr. Giles is unable to obtain a Variable Annuity line of authority in Kentucky until he has an active broker registration. Yet FINRA will not allow Mr. Giles to have an active broker registration until he holds a Variable Annuity line of authority in Kentucky.

FINRA is holding Mr. Giles hostage in the ultimate "catch 22," a circular argument that prevents Mr. Giles from removing the statutory disqualification, despite his clear ability to engage in the business of insurance in Kentucky. Counsel for Mr. Giles even received written confirmation from the Kentucky Department of Insurance Division of Licensing that once Mr. Giles holds an

active broker registration, “he would simply need to apply with application and appropriate fees, and also hold that line of authority in his home state.”<sup>1</sup> There is no statutory or practical reason for FINRA to require Mr. Giles to apply for a line of authority that he does not need, particularly when he already has the ability to engage in insurance business in the state of Kentucky.<sup>2</sup>

### **III. The Exchange Act’s fairness requirement supports setting aside Mr. Giles’ statutory disqualification.**

“[A] fundamental principle governing all SRO disciplinary proceedings is fairness.” *Jeffrey Ainley Hayden*, Exchange Release Act No. 42772, 2000 WL 649146 (May 11, 2000). A delay in the underlying proceedings may be “inherently unfair” which can result in setting aside sanctions. *Id.* Waiting 11+ years after the Kentucky Order to statutorily disqualify Mr. Giles for failure to respond to an inquiry about tax liens does not comport with principles of fairness. When applying the fairness test, the FINRA National Adjudicatory Council acknowledges that “we do not believe that the SEC intended to create a mechanical test based solely on those time periods, irrespective of other factors.” *Morgan Stanley DW Inc. et al.*, Disciplinary Proceeding No. CAF000045, at 10 (July 29, 2002).

A fairness analysis should consider the facts and circumstances of each case. *Morgan Stanley DW Inc. et al.*, Disciplinary Proceeding No. CAF000045, at \*23 (July 29, 2002) (Courts have consistently noted that “**fairness**” concepts--whether in the context of constitutional, statutory or common law claims or defenses--are rooted in equity and require consideration of the facts and circumstances of each case.) It is inherently unfair for FINRA to (1) provide guidance

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<sup>1</sup> The correspondence from the Kentucky Department of Insurance Division of Licensing is attached as **Exhibit A**.

<sup>2</sup> The correspondence from the Kentucky Department of Insurance Division of Licensing also included, “I think it is also important to note, that if he is not selling, soliciting or negotiating variable life and variable annuities in Kentucky, a license would not be needed.”



indicating that license revocations are not the equivalent of bars and (2) selectively choose to statutorily disqualify certain brokers whose insurance licenses are revoked but not others.

The FINRA Sanction Guidelines developed by the FINRA National Adjudicatory Council and made available to advisors like Mr. Giles explains that a “bar” is a “**permanent** expulsion of an individual from associating with a firm in any and all capacities.” (emphasis added).<sup>3</sup> Yet FINRA has taken the exact opposite position with respect to Mr. Giles. There is nothing permanent about the revocation of Mr. Giles’ Kentucky insurance license. He had the right to reapply and rejoin the Kentucky insurance industry, and he did in fact reapply despite not having a need for the license (he only reapplied to prove that he was not barred). That right to reapply alone shows the Kentucky Insurance Department did not intend to permanently bar Mr. Giles from the industry. It would be an extreme and disproportionate sanction to statutorily disqualify Mr. Giles from the securities industry based on the revocation of an insurance license Mr. Giles was able to reapply for, did reapply for, and was subsequently approved for.

It is also unfair for FINRA to selectively pick and choose which license revocations should be treated as bars subject to statutorily disqualification and which should not. Before initiating the instant appeal, Mr. Giles’ employing broker dealer Ameriprise Financial Services, LLC and undersigned counsel met with FINRA on April 6, 2021, to discuss FINRA’s decision to statutorily disqualify Mr. Giles. 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. For example, FINRA explained that insurance license revocations based on a failure to pay required fees are not bars from FINRA’s perspective and that brokers whose licenses are revoked for this reason would not be subject to

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<sup>3</sup> See FINRA Sanction Guidelines ([https://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf))

statutory disqualification. FINRA explained that revocations based on more egregious conduct could be considered bars. It is patently unfair for FINRA to take such an inconsistent approach, particularly when that approach is inconsistent with its own Sanction Guidelines.

#### **IV. Conclusion**

For the foregoing reasons, Mr. Giles respectfully requests that the Commission retract FINRA's statutory disqualification and allow him to continue his 30-year career as a financial professional. Mr. Giles understands and appreciates the importance of prompt disclosure, he has suffered consequences as a result of his inadvertent failure to disclose, and he regained his insurance licenses to prove he is not barred from practicing insurance in any state.

**MURPHY & ANDERSON, P.A.**

BY: s/ Lawton R. Graves  
**NIELS P. MURPHY, ESQ.**  
Florida Bar No.: 0065552  
[nmurphy@murphyandersonlaw.com](mailto:nmurphy@murphyandersonlaw.com)  
**LAWTON R. GRAVES, ESQ.**  
Florida Bar No.: 0086935  
[lgraves@murphyandersonlaw.com](mailto:lgraves@murphyandersonlaw.com)  
Murphy & Anderson, P.A.  
1501 San Marco Blvd.  
Jacksonville, Florida 32207  
904-598-9282 (phone)  
904-598-9283 (fax)  
*Attorneys for Paul Giles*

December 27, 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 27<sup>th</sup> day of December, 2021:

Vanessa Countryman, Secretary  
Securities Exchange Commission  
Via Email: [apfilings@sec.gov](mailto:apfilings@sec.gov)  
Via eFAP

Andrew Love  
Associate General Counsel  
FINRA  
Via Email: [Andrew.love@finra.org](mailto:Andrew.love@finra.org)  
Via eFAP  
*Attorneys for FINRA*

s/ Lawton R. Graves \_\_\_\_\_  
Attorney

UNITED STATES OF AMERICA  
Before the  
SECURITIES EXCHANGE COMMISSION

In the Matter of the Application of

PAUL H. GILES, CRD# 2041288

For Review of Action Taken by Self-  
Regulatory Organization,

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PAUL H. GILES' BRIEF IN SUPPORT OF APPLICATION FOR SEC REVIEW

Attachment

Description

A

KY email dated September 23, 2021

# Exhibit A

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**From:** Webb, Lee Ellen (PPC) <[LeeEllen.Webb@ky.gov](mailto:LeeEllen.Webb@ky.gov)>  
**Sent:** Thursday, September 23, 2021 11:13 AM  
**To:** Lawton Graves <[LGraves@murphyandersonlaw.com](mailto:LGraves@murphyandersonlaw.com)>  
**Cc:** DOI Licensing Mail <[DOI.LicensingMail@ky.gov](mailto:DOI.LicensingMail@ky.gov)>  
**Subject:** RE: Paul Giles (CRD 2041288)

Good morning,

Kentucky requires a current, active broker registration for approval of a variable life & variable annuity insurance license. For approval of this insurance license, he would simply need to apply with application and appropriate fees, and also hold that line of authority in his home state.

I think it is also important to note, that if he is not selling, soliciting or negotiating variable life and variable annuities in Kentucky, a license would not be needed.

If you have any other questions, please let us know.

*Thanks,  
Lee*

*Lee Ellen Webb, Director  
Division of Licensing  
KY Department of Insurance  
Division # 502-564-6004  
Direct # 502-782-5409*

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