

**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. 3-20634

**FINRA'S BRIEF IN OPPOSITION TO
APPLICATION FOR REVIEW**

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FINRA’S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

I. INTRODUCTION

In October 2021, Paul Giles belatedly appealed a May 6, 2021 FINRA notice (the “May 2021 Notice”) informing Giles’ employing firm that he was statutorily disqualified under the Securities Exchange Act of 1934 (“Exchange Act”) and FINRA’s By-Laws. FINRA based the May 2021 Notice on a January 2010 order, disclosed by Giles more than *11 years after* he was required to do so, entered by Kentucky’s Department of Insurance that revoked Giles’ two insurance licenses for failing to respond to requests for information. FINRA further based the May 2021 Notice on an August 2010 order, also belatedly disclosed by Giles, entered by the State of Washington that revoked Giles’ insurance license because he failed to respond to two letters requesting documentation concerning Kentucky’s revocation.

FINRA urges the Commission to dismiss Giles’ appeal. First, his appeal is untimely. Giles has failed to demonstrate that extraordinary circumstances warrant accepting this late-filed appeal. The Commission should reject Giles’ attempt to shoehorn his appeal of the May 2021 Notice into another appeal that he timely filed involving a different state’s revocation of Giles’

insurance licenses and FINRA's disqualification notice issued in connection with those revocations.¹

Second, although certain facts have changed since FINRA issued the May 2021 Notice, it is undisputed that the sanctions imposed by Kentucky when it revoked Giles' two insurance licenses currently remain in effect. Indeed, although Washington reinstated the single insurance license previously held by Giles in that state and Kentucky reinstated Giles' license as a non-resident agent for health and life insurance, Kentucky has *not* reinstated his variable life and variable annuity insurance license. Consequently, Giles is prohibited from engaging in any variable life and variable annuity insurance activities. Pursuant to Commission precedent, Kentucky's revocation order has the practical effect of barring him from engaging in these insurance activities and renders him statutorily disqualified under the Exchange Act and FINRA's By-Laws.

Giles does not dispute that he cannot engage in these insurance activities in Kentucky as a result of its 2010 revocation order. Instead, he makes several baseless arguments, which ignore that certain of Kentucky's sanctions from its 2010 revocation order remain in effect and that he is currently prohibited from engaging in insurance activities as a variable life and variable annuity insurance agent. Kentucky's order constitutes a bar because it has the practical effect of prohibiting him from engaging in insurance activities. The Commission should therefore reject Giles' arguments, find that he is statutorily disqualified, and dismiss this appeal.

¹ On April 21, 2021, Giles filed with the Commission an application for review of FINRA's March 24, 2021 determination that he is statutorily disqualified because California revoked two insurance licenses held by Giles for his failure to respond to its inquiries concerning several tax liens. *See* Admin. Proc. No. 3-20267. That appeal remains pending. FINRA discusses the facts underlying Giles' April 2021 appeal only to the extent that they are relevant to Giles' arguments in connection with the current appeal.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Giles

During the relevant time period, Giles was registered with Ameriprise Financial Services, LLC (“Ameriprise”) as a general securities representative. (RP 039.)² Giles’ association with Ameriprise ended on July 1, 2021, and he is currently not employed by a broker-dealer. *Id.*

As is relevant to this appeal, and in addition to Giles’ securities licenses, Giles held two insurance licenses issued by the Commonwealth of Kentucky: (1) a license as a non-resident agent for health and life insurance; and (2) a variable life and variable annuity insurance license. *See* RP 001. Giles also held a life and disability agent license issued by the State of Washington. *See* RP 021.

B. California Revokes Giles’ Insurance Licenses and Giles Appeals FINRA’s Disqualification Notice Based Upon California’s Revocation

In addition to the aforementioned insurance licenses, Giles held two insurance licenses issued by California. However, pursuant to a September 2009 order (the “California Order”), California’s Department of Insurance revoked Giles’ two insurance licenses because he failed to respond to two letters from California’s Insurance Commissioner asking about tax liens filed against him.

Giles did not promptly disclose the California Order on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”), as required by FINRA’s rules.³

² “RP ____” refers to the page numbers in the certified record filed by FINRA on November 4, 2021.

³ Article V, Section 2(c) of FINRA’s By-Laws requires an associated person to keep his Form U4 current at all times and to update information on Form U4 within 10 days if the

[Footnote cont’d on next page]

Instead, he waited more than 11 years to update his Form U4 to disclose the California Order. Giles finally did so on March 18, 2021. (RP 046.)

After receiving notice of the California Order, FINRA issued Ameriprise a notice dated March 24, 2021 (the “March 2021 Notice”).⁴ The March 2021 Notice informed Ameriprise that the California Order rendered Giles statutorily disqualified under the Exchange Act and FINRA’s By-Laws. It further stated that, as a result of Giles’ statutory disqualification, Ameriprise was required to seek and obtain FINRA’s approval to continue his association, or to provide proof that the sanctions imposed by the California Order were no longer in effect. The March 2021 Notice further provided that, if the firm declined to initiate an eligibility proceeding to obtain approval for Giles’ continued association, it must terminate him within 10 days.⁵

On April 21, 2021, Giles timely appealed the March 2021 Notice and FINRA’s determination that he is statutorily disqualified pursuant to the California Order and he sought to stay the effectiveness of the March 2021 Notice. The Commission denied Giles’ stay request on

[cont’d]

amendment involves a statutory disqualification. Further, FINRA Rule 1122 states that, “[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.”

⁴ See FINRA Rule 9522(a)(1) (providing that “[i]f FINRA staff has reason to believe that a disqualification exists . . . , FINRA staff shall issue a written notice to the member or applicant for membership under Rule 1013”). FINRA Rule 9522(a) further provides that if FINRA staff concludes that an individual is statutorily disqualified, it shall notify the individual’s employing firm so that the firm can initiate an eligibility proceeding or terminate its association with the individual within 10 days (unless FINRA staff extends such 10-day period). See FINRA Rule 9522(a)(3).

⁵ The parties agreed to extend the deadline set forth in the March 2021 Notice several times, and ultimately FINRA agreed to extend the deadline until the Commission ruled upon Giles’ motion to stay the effectiveness of the March 2021 Notice.

June 14, 2021, and Giles' association with his employing firm ended shortly thereafter. (RP 039.) From late June 2021 until late October 2021, the parties filed various briefs in connection with the March 2021 Notice. *See* Admin. Proc. No. 3-20267.

C. Washington and Kentucky Revoke Giles' Insurance Licenses

In addition to the California Order, in January 2010, Kentucky's Department of Insurance entered an order revoking Giles' insurance licenses (the "Kentucky Order"). (RP 001-3.) The Kentucky Order stated that Giles failed to answer or respond to requests for information from its Department of Insurance concerning the California Order. *Id.* The Kentucky Order revoked Giles' insurance licenses on three statutory grounds: (1) for using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business; (2) for violating any insurance laws or regulations or an order of the insurance commissioner; and (3) for having his insurance license revoked by California. (RP 002.)

Further, in August 2010, the State of Washington revoked Giles' insurance license because he failed to respond to two letters requesting documentation concerning Kentucky's revocation. (RP 005-6.) Similar to Giles' failure to timely disclose the California Order, Giles waited approximately 11 years to disclose to FINRA the Kentucky Order and Washington's revocation order. Giles finally updated his Form U4 to disclose these regulatory matters on April 22, 2021. *See* RP 051-54.

D. FINRA Issues a Disqualification Notice Based Upon Washington's and Kentucky's Revocations

Promptly after FINRA learned of the Kentucky Order and Washington's revocation order, on May 6, 2021, FINRA issued Ameriprise the May 2021 Notice. (RP 009.) The May 2021 Notice stated that, "[i]n addition to our [March 2021 Notice,] FINRA has determined that

Paul Giles is subject to two additional disqualifying events[.]” *Id.* The May 2021 Notice stated that Giles was disqualified based upon the Kentucky Order and Washington’s revocation order. It further stated that, as a result of Giles’ statutory disqualification, Ameriprise was required to seek and obtain FINRA’s approval to continue his association, and if the firm declined to initiate an eligibility proceeding to obtain approval for Giles’ continued association, it must terminate him. The May 2021 Notice provided that the deadline for the Firm to initiate an eligibility proceeding or to terminate Giles was no later than 13 days after the Commission’s ruling on Giles’ motion to stay the March 2021 Notice filed in that appeal, which was pending before the Commission when FINRA issued the May 2021 Notice.

E. Giles Reacquires Some—But Not All—of His Revoked Licenses

Several months after FINRA issued the May 2021 Notice, Giles reacquired two of the three insurance licenses revoked by Washington and Kentucky.⁶ Specifically, in August 2021, Washington granted Giles the license that it had previously revoked, and Kentucky reinstated Giles’ license as a non-resident agent for health and life insurance. *See* RP 019, 021, 027. Kentucky, however, has not reinstated his variable life and variable annuity insurance license. *See* RP 019, 033-34. Thus, Giles does not currently hold all of the licenses that Kentucky revoked pursuant to the Kentucky Order and he remains prohibited from engaging in any insurance activities as a variable life and variable annuity insurance agent.

F. Giles Appeals the May 2021 Notice

On October 21, 2021, Giles filed a belated appeal with the Commission seeking review of the May 2021 Notice. Giles subsequently sought to consolidate his timely appeal of the March

⁶ August 2021, California also reissued one of Giles’ two revoked licenses. California, however, has not reissued Giles’ second revoked insurance license.

2021 Notice with his untimely appeal of the May 2021 Notice. FINRA opposed Giles' motion to consolidate, which remains pending.

On appeal, Giles makes four arguments. First, Giles argues that Kentucky's revocation of his variable life and variable annuity insurance license is not the equivalent of a bar, and thus does not render him disqualified, because he was permitted to reapply for his insurance licenses and he obtained one of his two revoked licenses. Giles asserts that the possibility that Kentucky may grant a hypothetical application to reacquire his variable life and variable annuity insurance license shows that the sanction imposed by Kentucky was not "lasting" or permanent and somehow nullifies the fact that the Kentucky Order currently prohibits him from engaging in insurance business. *See Giles' Brief in Support of Application for Review ("Giles' Br."),* at 5-6.

Second, notwithstanding that Giles failed to timely disclose to FINRA the Kentucky Order and only disclosed it in April 2021 (a delay of more than 11 years), he argues that it is unfair to find that he is disqualified because FINRA allegedly waited too long to issue the May 2021 Notice (despite only receiving notice of the Kentucky Order in April 2021). Giles also argues that FINRA purportedly chose to disqualify Giles based upon the Kentucky Order but not similarly situated brokers. *See Giles' Br.,* at 8-10.

Third, Giles argues that because he does not have a business need for his revoked Kentucky license, the Kentucky Order cannot serve as a disqualifying bar order under the Exchange Act and FINRA's By-Laws, even though the Kentucky Order's sanctions are still in effect and it prohibits Giles from engaging in activities as a variable life and variable annuity insurance agent. *See Giles' Br.,* at 7.

Fourth, Giles argues that FINRA's "insistence" that he obtain all of his previously revoked licenses amounts to a "catch-22" situation because he asserts that Kentucky will not

reissue Giles his revoked variable life and variable annuity insurance license unless he is actively registered with a broker-dealer. Giles posits that because FINRA will not permit Giles to register with a broker-dealer until he re-obtains from Kentucky his revoked variable life and variable annuity insurance license, he is therefore prevented “from removing the statutory disqualification.” *See Giles’ Br.*, at 7.

III. ARGUMENT

The Commission should dismiss this appeal and reject Giles’ arguments, which are without legal or factual support. First, the Commission should dismiss Giles’ appeal of the May 2021 Notice because it is unquestionably untimely and he has not demonstrated that extraordinary circumstances warrant accepting his late-filed appeal.

Second, if the Commission reaches the substance of Giles’ appeal, it should still dismiss it because the Kentucky Order is a final order of a state insurance regulator that prohibits Giles from engaging in specified insurance activities. As such, the Kentucky Order renders Giles statutorily disqualified as a bar order under the Exchange Act and FINRA’s By-Laws, and Giles will remain disqualified because of the Kentucky Order unless and until Kentucky grants him permission to engage in insurance business as a variable life and variable annuity insurance agent. Giles’ arguments to the contrary are unavailing, and the Commission should reject them.

A. Giles’ Appeal is Untimely and Extraordinary Circumstances Do Not Warrant Accepting His Late-Filed Appeal

Under Exchange Act Section 19(d), a party must file an application for review of an action by a self-regulatory organization within 30 days of notice of the action. *See* 15 U.S.C. § 78s(d)(2); *see also* 17 C.F.R. § 201.420(b). The Commission has “long held that [it] will not extend the thirty-day period for seeking review absent extraordinary circumstances.” *Eric David*

Wanger, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *9 (Sept. 30, 2016) (quotation omitted). The extraordinary circumstances exception to timely filing an appeal is “narrowly construed and applied only in limited circumstances.” *Michael Ross Turner*, Exchange Act Release No. 81693, 2017 SEC LEXIS 2974, at *16 (Sept. 22, 2017). “In applying the exception, we consider whether the failure timely to file was beyond the control of the applicant.” *Alpine Secs. Corp.*, Exchange Act Release No. 87599, 2019 SEC LEXIS 4757, at *27 (Nov. 22, 2019) (Order Denying Stay) (quotation omitted).

Here, there is no dispute that Giles’ appeal falls well outside of the 30-day statutory deadline. FINRA issued the May 2021 Notice on May 6, 2021, yet Giles did not file his application for review until October 21, 2021—more than four months after the deadline to do so. Thus, unless Giles can demonstrate extraordinary circumstances for his late filing, the Commission should dismiss this appeal. The Commission has consistently dismissed late appeals that failed to show extraordinary circumstances. *Compare John Vincent Ballard*, Exchange Act Release No. 77452, 2016 SEC LEXIS 1151, at *6 (Mar. 15, 2016) (dismissing appeal as untimely where applicant filed application for review 21 days after appeal period expired); *Lance E. Van Alstyne*, 53 S.E.C. 1093, 1099 (1998) (dismissing application for review filed four months after deadline); *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 SEC LEXIS 641, at *11-12 (Mar. 1, 2013) (rejecting applicant’s appeal as untimely where he did not file application for review until six months after deadline); *with Brendan D. Feitelberg*, Exchange Act Release No. 89365, 2020 SEC LEXIS 2746, at *9-12 (July 21, 2020) (finding that applicant’s appeal filed six months after deadline was untimely but holding that he demonstrated extraordinary circumstances for his delay because he was suffering from a serious illness that

prevented timely appealing the action and applicant promptly appealed as soon as reasonably practicable after recovery).

Giles has failed to show that extraordinary circumstances exist to justify accepting his late-filed appeal. The Commission should reject Giles' contention that his appeal of the March 2021 Notice encompasses the May 2021 Notice because he reasonably believed that a second appeal was not necessary because he "requests that the Commission overturn FINRA's statutory disqualification decision once, not twice." *See Reply in Support of Motion to Consolidate Application for Review of Statutory Disqualification*, at 4. Giles ignores the fact that the March 2021 Notice was a separate and distinct action by FINRA from the May 2021 Notice, that each notice was based on different state regulator's orders, that the consequences stemming from each notice were independent of one another, and that the May 2021 Notice expressly stated that the disqualification resulting from the Kentucky Order and Washington's revocation order was in addition to the disqualification referenced in the March 2021 Notice. *See RP 009*.

Giles also argues that because he and FINRA referenced the Kentucky Order and the May 2021 Notice in briefs filed in connection with his appeal of the March 2021 Notice, his late filing should be excused. *See Reply in Support of Motion to Consolidate*, at 5. An applicant's reference in one appeal to facts and issues in a second potential appeal, however, cannot serve as a substitute for a timely application for review of a final action by FINRA. This is especially true here. Although FINRA discussed the Kentucky Order and the May 2021 Notice in its July 26, 2021 opposition brief filed in connection with Giles' appeal of the March 2021 Notice, FINRA stressed that its May 2021 Notice was for different events and was not part of Giles' appeal of the March 2021 Notice:

In addition to the California Order, and contrary to Giles' statement that he has never shown an unwillingness to comply with rules or regulations, several other

regulators have taken actions against Giles. . . . In January 2010, Kentucky’s Department of Insurance entered an order revoking Giles’ insurance licenses. . . . Further, in 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. . . . **Although not the subject of this appeal**, FINRA notified Ameriprise that Giles was subject to statutory disqualification based upon these two orders.

See FINRA’s Brief in Opposition to Application for Review, dated July 26, 2021, at 6, filed in Admin. Proc. No. 3-20267 (emphasis added).

Thus, even assuming that Giles thought that the Kentucky Order and May 2021 Notice were somehow included in his appeal of the March 2021 Notice, FINRA’s July 2021 statement put him on notice that it did not share this view. Moreover, the Commission underscored that Giles’ view was erroneous in late August 2021, when it stated that the May 2021 Notice was *not* before it on appeal. *See* Commission’s Order Requesting Additional Briefing, dated August 27, 2021, at 1 n.1, issued in Admin. Pro. No. 3-20267 (“FINRA attached to its opposition brief a separate May 6, 2021 determination that Giles is statutorily disqualified based on two other states’ orders revoking his insurance licenses. But Giles has not filed an application for review as to this second determination, and it is therefore not before us.”).

Notwithstanding this clear statement by the Commission that the May 2021 Notice was not part of his appeal of the March 2021 Notice, Giles waited another eight weeks to file an application for review of the May 2021 Notice. *See PennMont Secs.*, Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at *18-19 (Apr. 23, 2010) (“Even when circumstances beyond the applicant’s control give rise to the delay, however, an applicant must also demonstrate that he or she promptly arranged for the filing of the appeal as soon as reasonably practicable thereafter. An applicant whose application is delayed as a result of extraordinary circumstances remains under an obligation to proceed promptly in pursuing appellate recourse.”); *Kenneth Edward Kolquist*, Exchange Act Release No. 82202, 2017 SEC LEXIS 3749, at *14 (Dec. 1, 2017)

(finding that under the standard set forth in *PennMont Securities*, applicant did not proceed promptly when he waited more than two months to file an appeal). Even if Giles demonstrated that extraordinary circumstances outside of his control prevented him from timely appealing the May 2021 Notice (he has not), he cannot demonstrate that he acted promptly when he waited eight weeks to file his appeal after the Commission's statement squarely put him on notice that his appeal of the March 2021 Notice did not encompass the May 2021 Notice.⁷

Finally, the Commission should reject Giles' argument that FINRA "suggested" that the Kentucky Order was included in his appeal of the March 2021 Notice because it tied the deadline to respond to the May 2021 Notice to the Commission's ruling on his motion to stay the March 2021 Notice. *See* Giles' Reply in Support of Motion to Consolidate, at 4. The May 2021 Notice does not state that the Kentucky Order was included in Giles' appeal of the March 2021 Notice. To the contrary, the May 2021 Notice stated that the Washington and Kentucky revocation orders were *additional* disqualifying events, separate and apart from the California Order referenced in the March 2021 Notice. *See* RP 009. Moreover, because FINRA's rules required that Ameriprise either initiate an eligibility proceeding if it wanted to continue to employ Giles or terminate him within 10 days of the May 2021 Notice's issuance, it made sense to postpone that requirement in connection with the Kentucky Order and Washington's revocation order until

⁷ Although the record shows that Giles, through counsel, communicated with FINRA staff concerning the Kentucky Order beginning in September 2021, this did not obviate his need to promptly file an application for review of the May 2021 Notice. *See Ceballos*, 2013 SEC LEXIS 641, at *11-12 (dismissing appeal as untimely and stating that, instead of filing an appeal with the Commission as set forth in FINRA's letter accompanying its decision, applicant belatedly called FINRA and still waited to file an appeal); *see also Bruce Zipper*, Exchange Act Release No. 81788, 2017 SEC LEXIS 3107, at *15 (Sept. 29, 2017) (dismissing applicant's appeal as untimely and emphasizing that attempting to withdraw from agreed upon consent order with FINRA "does not change the fact that he did not file his application for review [of the consent order] with the Commission within thirty days").

the Commission ruled upon his pending motion to stay the effectiveness of the March 2021 Notice (where Ameriprise would have had to make the same exact choice concerning whether to proceed with an eligibility proceeding or to fire Giles). In the interest of economy, FINRA agreed to a short postponement of this deadline rather than force Ameriprise to initiate an eligibility proceeding for an employee that may have been terminated if the stay request related to the March 2021 Notice had been denied (which it was).⁸

For all of these reasons, the Commission should dismiss Giles' appeal as untimely.

B. The Kentucky Order is a Disqualifying Bar Order

Should the Commission find that Giles has demonstrated extraordinary circumstances for his late-filed appeal and that he promptly filed his appeal after being put on notice in July and August 2021 that he had to file with the Commission an application for review of the May 2021 Notice, FINRA urges the Commission to find that the Kentucky Order is a disqualifying bar order under the Exchange Act and FINRA's By-Laws.

Exchange Act Section 19(f) sets forth the applicable standard of review. *See Gregory Acosta*, Exchange Act Release No. 89121, 2020 SEC LEXIS 3470, at *20-21 (June 22, 2020); *see also* 15 U.S.C. § 78s(f). That section provides that if the Commission finds that: (1) the "specific grounds" upon which FINRA based its action "exist in fact"; (2) such action is in accordance with FINRA's rules; and (3) such rules are, and were applied in a manner consistent with the purposes of the Exchange Act, it "shall dismiss the proceeding," unless it finds that such action "imposes any burden on competition not necessary or appropriate in furtherance of the

⁸ Even assuming that Giles' characterization of the significance of the deadline for Ameriprise to act with respect to the May 2021 Notice was correct, as stated above FINRA put Giles on notice in late July 2021 that the May 2021 Notice was *not* included in his appeal of the March 2021 Notice. The Commission affirmed this view one month later in August 2021.

purposes” of the Exchange Act. *See* 15 U.S.C. § 78s(f); *Acosta*, 2020 SEC LEXIS 3470, at *20-21; *William J. Haberman*, 53 S.E.C. 1024, 1027 (1998), *aff’d*, 205 F.3d 1345 (8th Cir. 2000) (table).⁹ Applying the standard set forth in Exchange Act Section 19(f), the Commission should dismiss Giles’ appeal.

1. The Specific Grounds of the May 2021 Notice Exist in Fact

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 insurance business. *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).

a. The Kentucky Order Is a Final Order That Prohibits Giles From Engaging in an Insurance Business

The Kentucky Order is a disqualifying state bar order. First, Giles does not dispute that the Kentucky Order is a “final order” of a state insurance regulator. The Kentucky Order is the final disposition of Kentucky’s Department of Insurance, issued pursuant to its statutory authority, that provided Giles with notice and an opportunity for a hearing pursuant to Kentucky law. *See* RP 001-003; *see also* Ky. Rev. Stat. Ann. § 304.9-440(4) (LexisNexis 2021) (providing that a licensee may request a hearing in connection with a license revocation); *Nicolas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 5100, at *25 (Jun. 26, 2014) (holding that a final order means a written directive from a state regulator pursuant to its statutory authority that provides for notice, opportunity for a hearing, and constitutes a final disposition by the regulator).

⁹ Giles does not assert, and the record does not demonstrate, that the May 2021 Notice imposes an unnecessary or inappropriate burden on competition.

Second, 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.

The Kentucky 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 activities as a variable life and variable annuity insurance agent pursuant to the sanctions imposed by the Kentucky Order. 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 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 *Meyers Assocs.*, 2017 SEC LEXIS 3096, at *20-21.

Pursuant to this precedent, the Kentucky Order was a disqualifying bar order when it was entered, and it remains a disqualifying bar order today. The Kentucky Order revoked Giles' licenses to engage in insurance business in Kentucky and, without a license, Giles cannot conduct such business. *See* Ky. Rev. Stat. Ann. § 304.9-080(1) (LexisNexis 2021) (providing that “an individual or business entity shall not sell, solicit, or negotiate insurance in this state unless duly licensed as the appropriate insurance producer for that line of authority”). The Kentucky Order prohibited Giles from engaging in all insurance transactions because it revoked all of the licenses he held to conduct such business. The Kentucky 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 Kentucky Order remains a disqualifying bar order, despite the fact that Giles has reobtained one of his two revoked Kentucky insurance licenses. Pursuant to the Kentucky Order, Giles is still prohibited from engaging in any insurance activity as a variable life and variable annuity agent. While Giles recently reapplied for, and Kentucky granted, his license for a non-resident agent for health and life insurance, there is no dispute that it has *not* granted Giles a license as a variable life and variable annuity agent and the prohibition on those activities remains in effect. Thus, Giles cannot act or conduct any business in this capacity unless and until Kentucky grants him a license to do so. *See* Ky. Rev. Stat. Ann. § 304.9-080(1). Consequently, Giles remains statutorily disqualified because certain sanctions imposed by the Kentucky Order—the revocation of Giles' variable life and variable annuity insurance 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).

b. *FINRA's Determination Is Consistent With the Commission's Guidance*

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 Kentucky Order.¹⁰ 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 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).

¹⁰ 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 to Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.*, Exchange Act Release No. 56145, 2007 SEC LEXIS 1640 (July 26, 2007), as amended by Exchange Act Release No. 56145A, 2008 SEC LEXIS 1270 (May 30, 2008).

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 Kentucky Order. The license revocations contained in that order had no expiration, and Giles does not dispute that an application is required to re-acquire his revoked variable life and variable annuity insurance license and to engage in insurance activities covered by this license. Moreover, the revocation of Giles' variable life and variable annuity insurance license remains in effect until Kentucky grants an application for Giles to engage in the activities covered by that license. Giles admits that has not happened. As a result, Giles remains disqualified.

c. *Giles' Contentions That the Kentucky Order Is Not Disqualifying Have No Merit*

Giles nevertheless argues that because he can reapply to Kentucky for his variable life and variable annuity insurance license, and successfully reapplied for his license as a non-resident agent for health and life insurance, the Kentucky Order is not a disqualifying bar order because it does not impose any “lasting sanctions.” *See Giles' Br.*, at 5-6. Giles is mistaken. In determining whether a state order is a disqualifying bar order, the Commission has never based its analysis on whether the sanction at issue is “lasting” or permanent.¹¹ Indeed, in *Meyers Associates* the Commission found that a state regulator’s order was disqualifying even though the order permitted the disqualified individual to apply for a securities license after three years. *See* 2017 SEC LEXIS 3096, at *3, 14-17. The Commission focused instead on the practical impact of the order at issue and whether the order prohibited the individual from engaging in an activity. *Id.* at *14-17.

Currently, and pursuant to the Commission’s analysis in *Meyers Associates*, Giles’ license to conduct variable life and variable annuity insurance business in Kentucky is revoked and he remains unable to legally conduct such insurance business in the state. Unless and until Kentucky reinstates this line of authority and thereby permits Giles to engage in these insurance

¹¹ The Commission should reject Giles’ argument that because he purportedly has no need for a variable life and variable annuity insurance license in Kentucky, the Kentucky Order is not disqualifying. *See Giles' Br.*, at 4, 7, 9. Setting aside the feasibility of using a “business need” test to determine whether a state order prohibiting an applicant from engaging in activities is a disqualifying bar order, the Commission has never focused on whether an applicant has a business need for a license that has been revoked by a state regulator in determining whether a state regulator’s order is a disqualifying bar order. Instead, it has focused on whether the state order at issue has the practical effect of barring an applicant because it prohibits him from engaging in specified activities. The Kentucky Order is such an order, regardless of whether Giles has any need for his revoked variable life and variable annuity license.

activities, the prohibition imposed by the Kentucky Order remains in effect and Giles remains statutorily disqualified.¹² *Cf. SEC No-Action Letter*, 2009 SEC No-Act. LEXIS 349, at *3 (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”); *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52 (Apr. 2009) (providing that for state bar orders, an MC-400 application to initiate an eligibility proceeding is required if the sanctions are still in effect).

In analogous circumstances, the Commission has focused on the current status of a disqualifying order—not what the future status of the order could be. For example, the Commission has repeatedly held that a pending appeal of a disqualifying injunction does not

¹² Giles states that “whether an advisor has a right to reapply for his license should impact issues involving statutory disqualification” and cites to *May Capital Group, LLC*, Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *17 (May 12, 2006) in support. *See Giles’ Br.*, at 5. That case, which involved a FINRA suspension for an individual’s willful failure to disclose matters on his Form U4 and FINRA’s subsequent denial of the firm’s application to continue to employ the disqualified individual, is inapposite to the facts here and has no bearing on whether the Kentucky Order renders Giles disqualified (and thus requires him to undergo a FINRA eligibility proceeding) because it is a state bar order. Rather, *May Capital* discussed what factors should be considered in determining whether to approve a statutory disqualification application in the context of an eligibility proceeding. Moreover, the Commission should reject Giles’ argument that *Savva* demonstrates that he is not disqualified because he can reapply for his variable life and variable annuity license and has successfully reapplied for his license as a non-resident agent for health and life insurance. *Savva* provides no support for Giles’ position. *Savva* was disqualified because of a state securities regulator’s order that was based upon findings that he violated laws that prohibit fraudulent, manipulative, or deceptive conduct. *See* 2014 SEC LEXIS 5100, at *11-12, *24-36. *Savva* agreed not to register in the state as a broker-dealer or investment adviser representative. *Id.* at *13. The Commission noted that *Savva*’s sanctions were still in effect because the state had not granted him permission to engage in these activities, which is precisely the situation that Giles currently faces with respect to his inability to conduct business as a variable life and variable annuity agent. *See id.*

impact its status as a statutorily disqualifying event. *See, e.g., Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512, at *15 (June 22, 2018) (“we have stated previously [that] an injunction is the action of a court of competent jurisdiction, and the fact that an appeal is taken does not affect the injunction’s status as a statutory disqualification”); *Robert J. Sayegh*, 52 S.E.C. 1110, 1112 (1996) (holding that the pendency of an appeal of a permanent injunction “would not alter the ‘factual’ existence of the injunction ‘and its public interest implications’”); *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (rejecting argument that excluding individual from the securities business where he was disqualified as a result of a preliminary injunction that was still awaiting final determination is unfair).

In such situations, the Commission has observed that if an individual is successful on appeal, he may seek to have FINRA’s action related to the disqualification vacated. *See Tannenbaum*, 50 S.E.C. at 1140 (stating that, “[s]hould a respondent ultimately prevail, the justification for any regulatory action based on a preliminary order would disappear and such action would be vacated”). Similarly, if Giles successfully obtains his remaining revoked insurance license from Kentucky, he would no longer be prohibited from conducting variable life and variable annuity insurance business, the Kentucky Order’s sanctions would no longer be in effect, and he would no longer be disqualified pursuant to the Kentucky Order.¹³ These potential future events, however, have no bearing on Giles’ current status as a disqualified individual because the Kentucky Order continues to prohibit him from engaging in specified insurance business in Kentucky.

¹³ Giles would still be statutorily disqualified, however, by virtue of the California Order, unless and until it grants him permission to again conduct all insurance business that he was authorized to engage in prior to California’s revocation of his insurance licenses.

The Commission should also reject Giles’ assertion that although he may apply to Kentucky to reacquire his variable life and variable annuity insurance license, doing so presents a “catch-22” because: (1) Kentucky has informed him that it will not consider any such application unless he is actively registered with a broker-dealer; and (2) “FINRA will not allow Mr. Giles to have an active broker registration until he holds a Variable Annuity line of authority in Kentucky.” *See* Giles’ Br., at 7-8, Exhibit A. Setting aside the ambiguity of what holding a “current, active registration with a broker-dealer” means, Giles’ second point concerning what FINRA will or will not allow is inaccurate. Giles may register with a broker-dealer without re-obtaining his revoked insurance license from Kentucky. Indeed, this is exactly what a FINRA eligibility proceeding is designed for—to permit individuals to associate with broker-dealers notwithstanding their statutory disqualifications.¹⁴

Moreover, what Kentucky may require for Giles to reacquire his Kentucky insurance license has no bearing on whether the Kentucky Order prohibits him from engaging in variable life and variable annuity insurance activities, and thus renders him statutorily disqualified (which it does). Neither the Exchange Act nor Commission precedent contain an exception for disqualifying state bar orders based upon what a state might require for an applicant to reacquire

¹⁴ In *Acosta*, the Commission held that it had jurisdiction to review an applicant’s appeal of a statutory disqualification notice notwithstanding the possibility of the applicant finding a firm to sponsor him in a FINRA eligibility proceeding and the potential approval of an application to associate with the sponsoring firm. *See* 2020 SEC LEXIS 3586, at *15-16. In so ruling, the Commission rejected FINRA’s argument that the availability to applicant of a FINRA eligibility proceeding shows that its disqualification determination is not a bar and stated that, “[a]ccepting FINRA’s argument would mean that individuals who could not persuade a member firm to file an MC-400 application on their behalf would be unable to appeal FINRA’s determination that they are subject to a statutory disqualification.” *Id.* at *15. Similar concerns are inapplicable here. Giles was able to obtain Commission review of FINRA’s determination that the Kentucky Order is disqualifying, without having to find a firm to sponsor him in an eligibility proceeding.

a previously revoked license to conduct business. Rather, the Commission has appropriately focused on the practical impact of a state regulator's order on an applicant's current ability to conduct business in the state—not what an applicant must do to reengage in any prohibited activity. Further, Giles' argument ignores that the California Order serves as an independent basis for disqualification, which would still require him to go through a FINRA eligibility proceeding regardless of the Kentucky Order if he wishes to associate with a broker-dealer, and that Kentucky could reject an application filed by Giles to reobtain his revoked license for reasons other than not being actively registered with a broker-dealer. *See, e.g.,* Ky. Rev. Stat. Ann. § 304.9-105 (LexisNexis 2021) (providing that before approving an application for an insurance license the insurance commissioner shall find, among other things, that the applicant “[i]s trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the commissioner,” has not committed any act that is grounds for denial under Kentucky law, and is competent and financially responsible to exercise the license).

For all these reasons, the specific grounds for Giles' statutory disqualification exist in fact, and the Commission should reject Giles' arguments to the contrary.

2. FINRA Issued the May 2021 Notice in Accordance With Its Rules

Turning to the second prong of Exchange Act Section 19(f), there is no dispute that FINRA issued the May 2021 Notice in accordance with its rules.

After reviewing the Kentucky Order and Washington's revocation order, FINRA staff had reason to believe that Giles was statutorily disqualified. Consequently, and pursuant to FINRA Rule 9522(a)(1), FINRA staff issued Ameriprise the May 2021 Notice (and copied Giles). *See* RP 009-10. The May 2021 Notice notified Ameriprise that the Kentucky Order and Washington's revocation order rendered Giles statutorily disqualified under the Exchange Act,

and that if Ameriprise wished to continue Giles' association, it must initiate an eligibility proceeding on Giles' behalf or terminate him. (RP 009.) FINRA followed its rules when it issued the May 2021 Notice.

3. FINRA Rule 9522 is in Accord and Consistent With the Exchange Act's Purposes

Finally, FINRA Rule 9522's requirement that FINRA staff send a notification if it determines that an individual is statutorily disqualified, and FINRA's issuance of the May 2021 Notice here, is in accord and consistent with the purposes of the Exchange Act. A central purpose of the Exchange Act is to promote market integrity and enhance investor protection. *See, e.g., United States v. O'Hagan*, 521 U.S. 642, 658 (1997) (stating that in passing the Exchange Act, one of Congress's animating objectives was "to insure honest securities markets and thereby promote investor confidence"). In this vein, FINRA was formed to "adopt, administer, and enforce rules of fair practice," "[t]o promote . . . high standards of commercial honor," and "to promote just and equitable principles of trade for the protection of investors." FINRA Manual, Restated Certificate of Incorporation of Financial Industry Regulatory Authority, Inc., Objects or Purposes (Third) (1) and (3) (July 2, 2010). Within the structure created by the Exchange Act, FINRA promulgates and enforces rules to protect investors and the public interest.

Under the Exchange Act, individuals subject to state bar orders are statutorily disqualified and must seek and obtain FINRA's approval to continue to associate with a broker-dealer. *See* 15 U.S.C. §§ 78c(a)(39)(F), 78o(b)(4)(H)(i); FINRA By-Laws, Art. III, Sec. 4; FINRA Rule 9522. The Exchange Act and its rules establish the framework within which FINRA evaluates whether to allow an individual who is subject to a statutory disqualification to associate with a broker-dealer. *See* 15 U.S.C. § 78o-3(g)(2) ("A registered securities association

may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification.”); *see also* 17 C.F.R. § 240.19h-1. The FINRA Rule 9520 Series sets forth the process pursuant to which a disqualified individual may associate, or continue to associate, with a member firm notwithstanding his statutory disqualification. *See Savva*, 2014 SEC LEXIS 5100, at *6 (stating that the Exchange Act’s statutory disqualification provisions “are not self-executing” and must be implemented by a self-regulatory organization).

The first step that FINRA takes in connection with the statutory disqualification process is to evaluate whether individuals are disqualified and, if it determines that they are, to send notification of that determination. *See* FINRA Rule 9522(a)(1). In doing so here, and promptly after receiving notice of the Kentucky Order and Washington’s revocation order, FINRA evaluated the orders and whether they prohibited Giles from engaging in insurance business pursuant to Commission precedent. FINRA staff concluded that Giles was statutorily disqualified and issued the May 2021 Notice to further the purposes of the Exchange Act’s statutory disqualification provisions and to ensure that Giles’ continued participation in the industry was in the public interest and did not create an unreasonable risk of harm to the markets or investors. *See Acosta*, 2020 SEC LEXIS 3470, at *17 (“we reiterate the important role that disqualification plays in ensuring that persons who come within the statutory parameters for disqualification are monitored effectively and prevented from returning to the industry absent a finding that such association would be in the public interest”); *Savva*, 2014 SEC LEXIS 5100 (holding that FINRA appropriately denied membership continuance application based upon its determination that Savva’s continued association with his firm was not in the public interest and

would create an unreasonable risk of harm to the markets or investors). FINRA Rule 9522(a)(1), and FINRA's issuance of the May 2021 Notice in accordance with that rule, is entirely consistent with the purposes of the Exchange Act. *See Meyers Assocs.*, 2017 SEC LEXIS 3096, at *31-33 (holding that FINRA's determination that individual was statutorily disqualified and denial of membership continuance application was consistent with the Exchange Act and its purposes and rejecting applicants' argument that FINRA's interpretation of what constitutes a disqualifying state securities regulator's bar order was against public policy).

Giles argues that it is fundamentally unfair for FINRA to issue the May 2021 Notice because FINRA purportedly waited for more than 11 years after Kentucky and Washington issued their orders to send the May 2021 Notice. The Commission should reject Giles' specious argument. Giles conveniently ignores that FINRA issued the May 2021 Notice on May 6, 2021, because he failed to timely disclose the Kentucky Order and Washington's revocation order and only did so on April 22, 2021—more than 11 years after Kentucky entered its order and nearly 11 years after Washington entered its order.¹⁵ Any delay here was entirely of Giles' making, and he benefited enormously by his failure to timely disclose these orders. Indeed, Giles was able to continue working at Ameriprise for the entire time of his disclosure failures despite being statutorily disqualified and without going through an eligibility proceeding or Ameriprise terminating him when these states entered their orders in 2010.

¹⁵ The Commission should reject as unproven Giles' claim in his brief that he did not become aware of the Kentucky Order or Washington's revocation order until early 2021. *See Giles' Br.*, at 1. First, the record shows that the Kentucky Order was sent to two addresses in Michigan, one of which was Giles' business address. *See* RP 003, 043. The second address appears to have been Giles' residence, as Washington's revocation order lists the same address and states that its complaint was signed for by someone sharing Giles' surname on July 16, 2010. *See* RP 001, 003, 005. Second, no fact finder has listened to sworn testimony from Giles that supports his convenient claim that he learned of these matters for the first time in 2021.

Finally, Giles argues that it is fundamentally unfair for FINRA “to (1) provide guidance 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.” Giles’ Br., at 8-9. In support, Giles points to a statement contained in FINRA’s Sanction Guidelines describing a bar as a “permanent expulsion of an individual from associating with a firm in any and all capacities” and states that it has taken the opposite position regarding Giles. Giles’ Br., at 9 (citing FINRA Sanction Guidelines, at 2 (2021) (General Principles Applicable to All Sanction Determinations, No. 3) (Adjudicators should tailor sanctions to respond to the misconduct at issue.), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf). He further asserts that FINRA staff informed Ameriprise and Giles’ attorney that it does not consider all insurance license revocations to be bars and bases its disqualification determinations on undisclosed factors. *See* Giles’ Br., at 9.

The Commission should reject these arguments. FINRA’s Sanction Guidelines, which address misconduct in a disciplinary setting, are not pertinent to FINRA’s determination whether the Kentucky Order renders Giles statutorily disqualified under the Exchange Act because it prohibits Giles from engaging in specified insurance business. The Guidelines explain the effect of a FINRA bar—not a sanction imposed by a state insurance regulator.¹⁶ And, pursuant to

¹⁶ Giles’ argument is also flawed because a statutory disqualification determination is not a sanction. *See Escobio*, 2018 SEC LEXIS 1512, at *31 (stating that “FINRA does not subject a person to statutory disqualification as a penalty or remedial sanction. Instead, a person is subject to statutory disqualification by operation of Exchange Act Section 3(a)(39)(F).”). Further, the Commission should reject Giles’ argument that his ability to reapply for his insurance licenses demonstrates that Kentucky did not intend to permanently bar Giles. Even if a permanent, everlasting sanction is required to show that a state regulator’s order is a disqualifying bar order under the Exchange Act (which it is not), Kentucky’s intent has no bearing on the determination whether Giles is statutorily disqualified because the Kentucky Order continues to prohibit Giles from engaging in insurance business as a variable life and variable annuity insurance agent. *See*

[Footnote cont’d on next page]

Meyers Associates, the pertinent inquiry is whether the order at issue prohibits an individual from engaging in an activity—not whether the sanction imposed by a state is “permanent.” *See Meyers Assocs.*, 2017 SEC LEXIS 3096, at *14-17.

Moreover, the record in this appeal does not support Giles’ assertion that FINRA staff informed him that FINRA determines whether a state order is a disqualifying bar order based upon undisclosed and non-public factors. *See Giles’ Br.*, at 9-10. Indeed, the record is silent on this matter. The record in Giles’ appeal of the March 2021 Notice, however, contains communications from FINRA staff (sent prior to Giles’ disclosure of the Kentucky Order and Washington’s revocation order) where they informed Giles and Ameriprise that FINRA relies upon *Meyers Associates* and other publicly available precedent and guidance and examines whether the state order at issue had the practical effect of prohibiting an individual from engaging in an activity. FINRA did not “selectively choose” to disqualify Giles; rather, it properly applied this precedent and guidance to the facts and circumstances of the Kentucky Order when it issued the May 2021 Notice.¹⁷

[cont’d]

Meyers Assocs., 2017 SEC LEXIS 3096, at *22-23 (stating that for unambiguous orders, “[w]e 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”).

¹⁷ Further, “[t]he question of whether Giles is subject to a statutory disqualification depends on the language of the Exchange Act and not the views of FINRA staff.” *See Order Denying Stay*, dated June 14, 2021, at 6 n.26, entered in Admin. Pro. No. 3-20267.

IV. CONCLUSION

The Commission should dismiss Giles' appeal. Giles' filed his appeal well after the deadline and he has not shown extraordinary circumstances to excuse his late filing. Nor has Giles shown that he acted promptly to file his appeal. Moreover, FINRA relied upon well-reasoned Commission precedent when it determined that the Kentucky Order and Washington's revocation order had the practical effect of prohibiting Giles from engaging in insurance business. Giles may have reacquired his insurance license in Washington and one of his two revoked insurance licenses in Kentucky, but because he has not reacquired from Kentucky his variable life and variable annuity insurance license he is still prohibited from engaging in such activities. The sanctions imposed by Kentucky remain in effect and its order is a disqualifying bar order. For these reasons, FINRA urges the Commission to dismiss this appeal.

Respectfully submitted,

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January 26, 2022

CERTIFICATE OF COMPLIANCE

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

I, Andrew Love, further certify that this Brief of FINRA in Opposition to Application for Review 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 9,276 words.

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CERTIFICATE OF SERVICE

I, Andrew Love, certify that on this 26th day of January 2022, I caused a copy of the foregoing Brief in Opposition, Administrative Proceeding File No. 3-20634, to be filed through the SEC's eFAP system and to be served by electronic mail on:

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