UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92177 / June 14, 2021

Admin. Proc. File No. 3-20267

In the Matter of the Application of

PAUL H. GILES

For Review of Action Taken by

FINRA

Appeal filed: April 21, 2021
Motion for stay filed: April 21, 2021
Last brief received: May 7, 2021

ORDER DENYING STAY

Paul H. Giles, a registered representative of FINRA member firm Ameriprise Financial Services, LLC, appeals from and moves to stay FINRA's determination that he is subject to a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934.[1] FINRA filed an opposition to the stay motion, and Giles filed a reply. Because Giles has not met his burden of showing that a stay is warranted, the motion is denied.

I. Background

Prior to 2009, Giles held an insurance license issued by the Insurance Commissioner of the State of California (the "Commissioner"). In July 2009, the Commissioner served Giles with an Accusation alleging that he had failed to respond to an inquiry by the Commissioner. The parties agree that the Commissioner's inquiry concerned then-outstanding tax liens, which Giles represents have "since been resolved." The Accusation alleged that Giles had "failed to perform a duty expressly enjoined upon him by a provision of [the California Insurance Code] or [had]

[1] 15 U.S.C. § 78c(a)(39).

committed an act expressly forbidden by such a provision," and that there were "grounds for the Insurance Commissioner to suspend or revoke [his] licenses and licensing rights."

According to Giles's application for review, he "chose not to file a Notice of Defense" in response to the Accusation because, "[a]t the time, [he] no longer needed his insurance license in California." By contrast, in his stay motion accompanying his application for review, Giles states that "he inadvertently failed to respond to allegations regarding outstanding tax liens."

In September 2009, the Commissioner issued a Default Decision and Order of Revocation (the "Order") against Giles. Because Giles had failed to timely respond to the Accusation, the Commissioner found "[t]he facts alleged in the Accusation . . . to be true" and that Giles had "violated the provisions of the [California] Insurance Code as alleged in [the] Accusation." Accordingly, the Commissioner revoked Giles's "licenses and licensing rights."[2]

Giles represents that he reported the Order to FINRA "as soon as he became aware of it earlier this year," and FINRA states that Giles disclosed it in mid-March of 2021. On March 24, 2021, FINRA sent Ameriprise a notice (the "Notice") that, due to the Order, Giles is subject to a statutory disqualification under Exchange Act Section 3(a)(39). The Notice informed Ameriprise that, unless it provided FINRA with proof that Giles had complied with the Order's sanctions and the sanctions were no longer in effect, Ameriprise "must, by April 12, 2021, either initiate the Membership Continuance process in order to obtain approval for the association [with Giles], or terminate the association." On Ameriprise's request, FINRA extended this deadline to May 3, 2021.[3] Giles now represents that Ameriprise "has indicated it will not" file a membership continuance application on his behalf.

On April 21, 2021, Giles filed the instant application for review of the Notice. Giles also moved to stay the statutory disqualification determination pending the Commission's review. The parties subsequently stipulated to a stay of the Notice until Giles's stay motion is resolved.

II. Analysis

A stay is an "extraordinary remedy," and the movant bears the burden of showing that it is warranted.[4] When considering a stay motion, we review only the record and arguments that

---

[2] The revocation was "effective thirty (30) days from the date of [the] order."

[3] Giles represents that FINRA extended the deadline to May 5, 2021, but the record reflects that FINRA extended the deadline to May 3, 2021.

[4] *Nken v. Holder*, 556 U.S. 418, 432-34 (2009); *accord, e.g., Potomac Cap. Markets, LLC*, Exchange Act Release No. 91172, 2021 WL 666510, at *2 (Feb. 19, 2021); *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018).

are before us.[5] When determining whether to grant a stay, we consider whether: (i) there is a strong likelihood that the movant will eventually succeed on the merits of the appeal; (ii) the movant will suffer irreparable harm without a stay; (iii) no other person will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest.[6] Although the first two factors are the most critical, our decision depends on balancing all four factors.[7] Thus, a stay may be warranted even if the movant has not shown a strong likelihood of success, as long as the movant raises a "serious legal question on the merits" and shows that the other factors weigh decidedly in his favor.[8] "Because the moving party must not only show that there are serious questions going to the merits, but must additionally establish that the balance of hardships tips *decidedly* in its favor, its overall burden is no lighter than the one it bears under the likelihood of success standard."[9] Giles has not met his burden under this standard.

A. Giles has raised a serious legal question on the merits, but he has not made a strong showing of a likelihood of success on the merits of his appeal.

Our current analysis on the merits is necessarily preliminary.[10] At this stage, Giles has raised a serious legal question on the merits, but he has failed to make a strong showing of a likelihood of success on the merits of his appeal.

Under Exchange Act Section 3(a)(39)(F), a person is subject to a statutory disqualification if he or she is subject to an order enumerated in Exchange Act Section 15(b)(4)(H)(i), which in turn describes "any final order of a . . . State insurance commission . . . that . . . bars such person . . . from engaging in the business of . . . insurance."[11] Giles does not contest that the Order constitutes a "final order" issued by a "State insurance commission." Thus, the question is whether the order revoking Giles's insurance license constitutes a bar.

---

5 *Robbi J. Jones*, Exchange Act Release No. 91045, 2021 WL 396767, at *2 (Feb. 2, 2021).

6 *Potomac Cap.*, 2021 WL 666510, at *2.

7 *Id.*; *Bloomberg*, 2018 WL 3640780, at *7; *Michael Earl McCune*, Exchange Act Release No. 77921, 2016 WL 2997935, at *1 (May 25, 2016).

8 *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *6 (Nov. 27, 2017) (quoting *Sherley v. Sebelius*, 644 F.3d 388, 398 (D.C. Cir. 2011)).

9 *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (emphasis in original) (cleaned up); *accord Zipper*, 2017 WL 5712555, at *6.

10 *E.g., Se. Investments, N.C., Inc.*, Exchange Act Release No. 86097, 2019 WL 2448245, *2 (June 12, 2019).

11 15 U.S.C. §§ 78c(a)(39)(F), 78*o*(b)(4)(H)(i).

Giles argues that the Order did not bar him from engaging in the business of insurance in California. He argues that the Order did not use the word "bar" and that a revocation is not the same as a bar. He argues further that we did not treat a similar order as a bar in *Gregory Acosta*.[12] At least preliminarily, we do not find that he raises a serious legal question as to these arguments. However, Giles also argues that the Order is not a bar because he could have reapplied for his license at any time. We find that this argument raises a serious legal question.

First, an order need not use the word "bar" to constitute a bar for purposes of Exchange Act Section 15(b)(4)(H)(i). The Commission has held that an order bars a person for purposes of Exchange Act Section 15(b)(4)(H)(i) if it has the practical effect of a bar, regardless of whether the order uses the word "bar."[13] Specifically, in *Meyers Associates*, the Commission held that an order requiring a person to withdraw his broker-dealer agent registration in Connecticut and not reapply for three years constituted a bar from engaging in the business of securities within the meaning of Section 15(b)(4)(H)(i).[14] As we have held, a state order may indicate that the order is a bar, and therefore that the person is disqualified, even if it fails to include the word "bar."[15] We therefore, at this stage, reject Giles's contention that the Order is not a bar for purposes a statutory disqualification because the Order uses the word revocation and not bar.

Giles argues that the Exchange Act and FINRA forms use the words "bar" and "revocation" in distinct situations. We acknowledge that the words are not identical, and the Exchange Act and FINRA forms therefore use the words in different contexts.[16] But the words

---

12 Exchange Act Release No. 89121, 2020 WL 3428890 (June 22, 2020).

13 *Meyers Assocs., L.P.*, Exchange Act Release No. 81778, 2017 WL 4335044, at *4-5 (Sept. 29, 2017).

14 *Id.* at *5.

15 *Id.*; *see also Crowdfunding*, Exchange Act Release No. 70741 (Oct. 23, 2013), 78 Fed. Reg. 66,428, 66,502 (Nov. 5, 2013) (proposed rules) (stating, in proposing rules regarding statutory language that is "substantively identical" to Exchange Act Section 15(b)(4)(H), that "bars are orders issued by one of the specified regulators that have the effect of barring a person from . . . engaging in the business of . . . insurance . . . , regardless of whether it uses the term 'bar'"); *Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings*, Exchange Act Release No. 9414 (July 10, 2013), 78 Fed. Reg. 44,730, 44,740-41 (final rule) (making similar statement in final rule regarding "essentially identical" statutory language).

16 *See Revoke*, *Black's Law Dictionary* (11th ed. 2019) ("To annul or make void by taking back or recalling; to cancel, rescind, repeal, or reverse."); *Bar*, *Black's Law Dictionary* (11th ed. 2019) ("To prevent or prohibit, esp. by legal objection . . . .").

"withdraw" and "bar" are also different,[17] yet an order requiring withdrawal constitutes a bar for purposes of Exchange Act Section 15(b)(4)(H)(i) if it has the same practical effect as a bar.[18]

Second, Giles argues that the Order does not constitute a bar because we did not treat a similar California order as a bar in *Acosta*.[19] But in *Acosta* we had no reason to determine whether the California order constituted a bar. FINRA had based its determination that Acosta was subject to a statutory disqualification on a different statutory provision. Specifically, FINRA found Acosta statutory disqualified not because it determined he was subject to a bar from engaging in the business of insurance but because it determined that the California order was "based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct."[20] The California order in *Acosta* is also distinguishable because it issued Acosta a restricted license in lieu of revocation, rather than revoking his license outright as California did to Giles's license here.[21] Thus, we find that Giles has not raised a serious legal question on the merits regarding these first two arguments.

We nevertheless find that Giles has raised a serious legal question regarding his argument that the Order does not constitute a bar because it did not prevent him from reapplying for his revoked license.[22] In *Meyers Associates*, the Commission expressly declined to determine whether the applicant would still be subject to a bar under Section 15(b)(4)(H)(i) beyond the three-year period in which he was prohibited from reapplying for registration, as that question

---

17 *See Withdraw*, *Black's Law Dictionary* (11th ed. 2019) ("To take back (something presented, granted, enjoyed, possessed, or allowed) . . . .").

18 *See Meyers Assocs.*, 2017 WL 4335044, at *4-5.

19 2020 WL 3428890.

20 *Id*. at *9 (quoting 15 U.S.C. § 78o(b)(4)(H)(ii)).

21 *See id*. at *3.

22 *See Background Review FAQs*, *Cal. Dep't of Ins.*, http://www.insurance.ca.gov/0200-industry/0035-background-info/background-faq.cfm (question 28) (providing that an individual "can reapply at any time" after a license is revoked, although the California Department of Insurance "can summarily deny an applicant previously revoked within 5 years of the prior revocation"); *see also* Cal. Ins. Code § 1669(c) (providing that "[t]he commissioner may, without hearing, deny an application if the applicant has . . . [h]ad a previously issued professional, occupational, or vocational license suspended or revoked for cause by [a] licensing authority, within five years of the date of the filing of the application to be acted upon, on grounds that should preclude the granting of a license by the commissioner under this chapter").

was not necessary for the Commission's opinion.[23] Giles's appeal raises the question of whether the Order has the practical effect of a bar even though he may reapply for his revoked license.[24]

While the Order did not preclude Giles from reapplying for a license for a period of time as did the order in *Meyers Associates*, Giles has not, however, made a strong showing of a likelihood of success on the merits. Under California law, unless an exemption applies, a person without an insurance license "shall not solicit, negotiate, or effect contracts of insurance" and may not "act in [certain] capacities defined in" the California Insurance Code.[25] Thus, because the Order has revoked Giles's license, he cannot engage in many critical aspects of the business of insurance in California. Arguably, then, unless and until Giles's license is reinstated, he remains subject to an order that has the practical effect of barring him from engaging in the business of insurance in California, regardless of whether he can reapply for a license.

Accordingly, we find that Giles has not made a strong showing of a likelihood of success regarding his argument that the Order is not a bar. But we do find that he has raised a serious legal question regarding this argument, given that Giles's ability to reapply for a California license at any time distinguishes his case from *Meyers Associates*.[26]

As a result, we will grant a stay only if the balance of the hardships tips decidedly in Giles's favor.[27] As discussed below, we find that it does not.

---

[23] *See* 2017 WL 4335044, at *8 n.44.

[24] Giles represents that he "is currently in the process of reapplying for a new California insurance license." But the status of that reapplication is ambiguous, and Giles provides no likely timeline for a decision. Moreover, Giles has not explained how Commission rules and relevant precedent would support issuing a stay pending California's decision on his reapplication. Giles may file a motion for appropriate relief if his reapplication is successful.

[25] Cal. Ins. Code § 1631.

[26] *See* 2017 WL 4335044, at *5. In his reply brief, Giles alleges that during a meeting, FINRA staff stated that FINRA "does not consider all insurance license revocations to be 'bars' and that its determination is based on factors that FINRA staff considers internally but has never disclosed to brokers like Mr. Giles," such as the "egregious[ness]" of the underlying conduct that led to the revocation. We note that an email exchange between FINRA staff and Ameriprise's counsel that is contained in the record does not seem to reflect this alleged statement by FINRA staff. Regardless, Giles has not explained why FINRA's allegedly "contradictory positions regarding whether revocations are bars" create a likelihood that he will succeed on the merits or even raise a serious legal question. The 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.

[27] *Se. Investments*, 2019 WL 2448245, at *4.

B. Giles has not demonstrated irreparable harm.

To demonstrate irreparable harm, a movant must show a great injury that is certain and actual, rather than theoretical, and that the alleged injury will directly result from the action the movant seeks to stay.[28] Although the destruction of a business may rise to the level of irreparable injury,[29] Giles has not shown that Ameriprise would be destroyed absent a stay. Instead, his motion argues that, absent a stay, "the very existence of his business will be in jeopardy." But harm to an individual's economic interests is distinct from the potential destruction of an entire business entity.[30] And Giles's claim of harm to his business "is unspecific, speculative, and unsupported," so it is insufficient to establish irreparable harm.[31]

Giles states that he would be "deprived of his livelihood" absent a stay and that he "has spent 30 years building his business and reputation in this industry." But Giles has not demonstrated that he will have to end his association with his current firm absent a stay, let alone leave the industry. Although Giles's stay motion alleges that Ameriprise "has indicated it will not file" a membership continuance application on his behalf, he does not present a declaration from Ameriprise or any other evidence supporting this allegation. And even if Ameriprise—which successfully requested an extension of FINRA's deadline for terminating Giles—declines to file a membership continuance application on his behalf, he could potentially find another firm to do so. Also, Giles does not seem to seriously dispute that he could find another member firm to sponsor him, stating in his reply brief that, "[e]ven if Mr. Giles could find another member firm willing to sponsor a membership application, he cannot be required to do so." Giles does not argue that FINRA or the Commission would likely deny such a membership continuation application, or that the membership continuation process itself would cause great harm to him. Thus, because the Notice may not even cause Giles to leave the industry, he has not shown that he would be subject to a "certain" or "great" injury, absent a stay.[32]

---

28 *Potomac Cap.*, 2021 WL 666510, at *4.

29 *Scottsdale Cap. Advisors Corp.*, Exchange Act Release No. 83783, 2018 WL 3738189, at *3 (Aug. 6, 2018).

30 *See Se. Investments*, 2019 WL 2448245, at *4-5 (distinguishing between possible irrevocable destruction of FINRA member firm and economic harm to associated person). In his reply brief, Giles asserts that he "currently services ~80 accounts" and that the group where he works at Ameriprise "would lose assets under management of ~$40 million" if a stay is not granted and he loses his association with the firm. This argument is waived because Giles raised it for the first time in his reply brief. *See, e.g.*, *Jones*, 2021 WL 396767, at *3 n.17. In any case, this argument does not amount to evidence that Ameriprise could be destroyed absent a stay or otherwise establish irreparable harm sufficient to justify a stay of the action taken against Giles.

31 *Se. Investments*, 2019 WL 2448245, at *4.

32 *Zipper*, 2017 WL 5712555, at *4 ("To establish irreparable harm, [a movant] must show an injury that is 'both certain and great' and 'actual and not theoretical.'" (quoting *Wis. Gas Co.*

Even if Giles would lose his employment in the industry absent a stay, "the loss of employment income does not necessarily establish irreparable harm—even when the loss is unrecoverable."[33] For example, unrecoverable loss of income does not rise to the level of irreparable harm if an individual could obtain another job during the pendency of the appeal.[34] Similarly, loss of income does not rise to the level of irreparable harm if an individual fails to show that he or she would be in financial distress absent a stay.[35] Here, Giles has not shown that, absent a stay, he would be unable to obtain another job or be in financial distress. Indeed, he has put on no evidence of his likely financial situation absent a stay. And even his allegations about his likely financial situation lack sufficient detail to demonstrate that he would be unable to find another job or be in financial distress absent a stay.[36]

---

v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985)); *see also Colley v. James*, 254 F. Supp. 3d 45, 69 (D.D.C. 2017) (finding "the anticipated loss of the teaching certifications" was not an irreparable injury because the plaintiffs failed to show that they could not ultimately be reinstated).

[33] *Se. Investments*, 2019 WL 2448245, at *5 (quoting *Colley*, 254 F. Supp. 3d at 69).

[34] *See Campbell v. Schmidt*, No. 1:20-cv-1785 (CRC), 2020 WL 6445874, at *12-13 (D.D.C. Nov. 3, 2020) (finding no irreparable harm, despite alleged unrecoverable loss of employment income, partly because plaintiff failed to demonstrate diligence in seeking other employment); *Colley*, 254 F. Supp. 3d at 69-70 (finding no irreparable harm, despite potentially unrecoverable loss of employment income, because "Plaintiffs are retired military officers who appear able to seek other employment"); *Davis v. Billington*, 76 F. Supp. 3d 59, 65-66 (D.D.C. 2014) (finding no irreparable harm, despite potentially unrecoverable loss of employment income, because the plaintiff had another job and a military pension, and he "has not once even hinted that he has fallen victim to any financial distress" since his termination).

[35] *See Davis*, 76 F. Supp. 3d at 65-66. Similarly, the Supreme Court stated, in a case where back pay could ultimately be awarded, that "an insufficiency of savings or difficulties in immediately obtaining other employment—external factors common to most discharged employees and not attributable to any unusual actions relating to the discharge itself—will not support a finding of irreparable injury, however severely they may affect a particular individual." *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974). The Court also cited a district court case holding that the plaintiffs failed to show irreparable harm, even though they would "not be fully compensated" if they were ultimately reinstated and awarded back pay because attorney's fees and interest may be unavailable. *Wettre v. Hague*, 74 F. Supp. 396, 401 (D. Mass. 1947), *vacated and remanded on other grounds*, 168 F.2d 825 (1st Cir. 1948).

[36] *See Se. Investments*, 2019 WL 2448245, at *4 (finding that "unspecific, speculative, and unsupported" claim is insufficient to establish irreparable harm); *cf. Bedrossian v. Nw. Memorial Hosp.*, 409 F.3d 840, 845-46 & n.3 (7th Cir. 2005) (holding, in a wrongful termination case where backpay was available, that "inability to find another job . . . is not irreparable harm," but "[e]ven if unemployability could be considered an irreparable injury, [Plaintiff] has not presented adequate facts to make this more than a 'speculative' harm").

Giles also argues that he has had some of his clients "for almost 30 years" and that, absent a stay, they "may suffer substantial harm." But, even assuming that the irreparable harm factor could be satisfied by showing harm to a non-movant, Giles's assertions that his clients could be harmed in some unspecified way are insufficient to meet his burden of demonstrating irreparable harm.[37] Among other things, Giles has not produced any evidence or even alleged that his clients would be unable to find another comparable broker pending this appeal.

Giles further argues that his appeal may take a substantial amount of time to resolve, particularly because of the pandemic, which will increase the hardship caused by FINRA's action in the absence of a stay. But such speculation about the potential lengthiness of his appeal does not demonstrate that the harm to him is either certain or great enough to rise to the level of irreparable harm, and he cites no authority suggesting the contrary.

We emphasize that it was Giles's burden to show that he would be irreparably harmed absent a stay, and he had to do more than "simply show[] some possibility of irreparable injury."[38] Here, we conclude that Giles has failed to meet this burden. But, even if we found that Giles showed some amount of irreparable harm, he has not demonstrated such a high degree of irreparable harm that the balance of the hardships tips decidedly in his favor, particularly given that the third and fourth factors weigh against a stay.[39]

C. The risk of harm to others and the public interest weigh against a stay.

We view the third and fourth factors—the risk of harm to others from a stay and the public interest—as supporting the denial of a stay. Giles does not contest that he failed to respond to inquiries from the Commissioner. And his application for review states that "he chose not to" respond to the Commissioner's Accusation.[40] Giles explains his failure to respond

---

[37] *See Dratel Grp.*, Exchange Act Release No. 72293, 2014 WL 2448896, at *5 (June 2, 2014) (holding that applicant's "vague reference to his customers' lost access to applicants' services is not enough to demonstrate irreparable harm").

[38] *Nken*, 556 U.S. at 434-35 (internal quotation marks omitted); *accord Wis. Gas Co.*, 758 F.2d at 674 ("[T]he movant [must] substantiate the claim that irreparable injury is 'likely' to occur.")); *Jones*, 2021 WL 396767, at *4 (same).

[39] *See Se. Investments*, 2019 WL 2448245, at *4-5 (assuming irreparable harm where movant "raise[d] a serious legal question" and finding it "outweighed by the other factors"); *see also Nken*, 556 U.S. at 435 (suggesting that a stay is not automatically granted even if an applicant "satisfies the first two factors"); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23-24 (2008) (denying preliminary injunction based on the last two factors).

[40] As previously mentioned, Giles's stay motion states that "he inadvertently failed to respond to allegations regarding outstanding tax liens." But his motion does not reconcile this statement with the assertion in his application that he "chose not to" respond to the Accusation.

by saying that he no longer needed his California insurance license. But his obligations under the California Insurance Code did not terminate simply because he no longer needed his license.

Giles also does not contest that he failed to report the 2009 revocation to FINRA for over a decade, even though FINRA rules required him to report license revocations.[41] Giles explains the delay in reporting the revocation by stating that "he was unaware that his insurance license was revoked until recently." But his application for review suggests that he at least knew about the Accusation, which Giles was also required to report to FINRA.[42] In addition, the Accusation informed Giles that his license could be revoked, suggesting that he should have monitored the proceeding to see if he had to report an eventual revocation to FINRA. Also, Giles does not provide details about why he failed to receive the order, such as whether he conformed to his obligation under California law to keep his address with the Commissioner updated.[43]

On the record before us, Giles seemingly fails to appreciate the significance of his conduct.[44] He does not seem to recognize that his failure to respond to the Commissioner's inquiries, failure to respond to the Commissioner's Accusation, and failure to report the Accusation or Order to FINRA suggest a concerning disregard for regulatory oversight. And associated persons' respect for regulatory oversight is critical to FINRA's ability to protect investors, particularly given that FINRA relies upon the cooperation of associated persons and their compliance with reporting obligations when carrying out its self-regulatory functions.[45]

---

41 *See* FINRA By-Laws Article V, Sec. 2(c) (providing that "[e]very application for registration filed with the Corporation shall be kept current at all times by supplementary amendments" filed at most "30 days after learning of the facts or circumstances giving rise to the amendment"); *Form U4, FINRA*, https://www.finra.org/sites/default/files/form-u4.pdf (Question 14D(1)(e)) (asking if "any state regulatory agency" has ever "revoked your registration or license or otherwise, by order, prevented you from associating with an investment-related business or restricted your activities" (emphases omitted)); *Form U4 Explanation of Terms, FINRA*, https://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf (defining "[i]nvestment-[r]elated" as, among other things, "[p]ertain[ing] to . . . insurance").

42 *See Form U4*, https://www.finra.org/sites/default/files/form-u4.pdf (Question 14G(1)) (asking if "you [have] been notified, in writing, that you are now the subject of any regulatory complaint or proceeding that could result in a 'yes' answer to any part of" 14D (emphasis omitted)).

43 *See* Cal. Ins. Code § 1729.

44 *See Potomac Cap. Markets*, 2021 WL 666510, at *5.

45 *See, e.g., Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 WL 4258143, at *13-14 (Aug. 12, 2016) (finding that applicants' failure to file required forms accurately and timely with FINRA limited its ability to monitor or evaluate the industry professionals' fitness and the public's ability to choose professionals with whom to do business); *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at *13 (Apr. 1, 2016) (holding that it is

Giles points out that he "has continued servicing securities clients for over a decade since the [Order]." But we do not find that fact to weigh in favor of a stay since the record before us suggests that during that decade Giles failed to report the Accusation or Order to FINRA.

In addition, given that Giles has not shown a likelihood of success on the merits, he may well be subject to a statutory disqualification.[46] If Giles is subject to a statutory disqualification, a stay would allow him to continue to associate with Ameriprise "without the protections provided by FINRA's membership continuance application process, which considers the public interest when weighing whether to allow a proposed association that is otherwise prohibited."[47] And regardless of how we ultimately resolve the question of whether Giles is subject to a statutory disqualification, Giles's conduct suggests a concerning disregard for regulatory oversight that indicates a stay is not warranted while we consider that question.

Giles suggests in his reply brief that it was unfair for FINRA to make a statutory disqualification determination based on the Order, given that it was issued in 2009, and it would be unfair to subject him to a statutory disqualification going forward because he is now reapplying for a California insurance license. But he could have raised these fairness arguments in his motion for stay, so he has waived them.[48] Regardless, the only case Giles cites in support of his fairness argument is inapposite,[49] and Giles fails to establish that fairness would require us to stay this action due to Giles's reapplication for a California insurance license.

"critically important to the self-regulatory system that members and associated persons cooperate with [FINRA] investigations," since FINRA lacks subpoena power (alteration in original) (quoting *Erenstein v. SEC*, 316 F. App'x 865, 871 (11th Cir. 2008) (per curiam) (unpublished))).

46 *See Se. Investments*, 2019 WL 2448245, at *5 (considering movant's alleged "dishonest acts" when assessing the public interest, given that the movant had not shown a likelihood that the allegations would "be disproven during this proceeding").

47 *Zipper*, 2017 WL 5712555, at *5 (quoting *Richard Allen Riemer, Jr.*, Exchange Act Release No. 82014, 2017 WL 5067462, at *3 (Nov. 3, 2017)).

48 *See, e.g.*, *Jones*, 2021 WL 396767, at *3 n.17 (collecting cases and finding waiver where stay movant raised new arguments and evidence in reply brief).

49 Giles cites *Jeffrey Ainley Hayden*, Exchange Act Release No. 42772, 2000 WL 649146 (May 11, 2000). In *Hayden*, a self-regulatory organization failed to bring disciplinary charges against the applicant until "approximately fourteen years after the first act of misconduct and over six years after the last incident," even though it received notice of the misconduct about five years before it brought charges. *Id.* at *2. Here, Giles does not allege that FINRA was aware of the Order but declined to act upon it. Indeed, he does not dispute that he failed to report the Order to FINRA until recently. He points out that the Order "has been publicly available since it was issued in 2009," but he does not explain how FINRA could have learned about it. Also, unlike in *Hayden*, FINRA has not brought disciplinary proceedings here. Instead, FINRA has determined that Giles is and has been subject to a statutory disqualification since the issuance of

Finally, we reject Giles's argument that a stay would be in the public interest because FINRA granted Ameriprise's request for a temporary extension of the Notice's deadline to either file a membership continuance application or terminate Giles. FINRA's willingness to agree to a brief extension of this deadline does not imply that a much longer stay pending appeal of the determination that Giles is subject to a statutory disqualification would be in the public interest.

Thus, the balance of the hardships does not decidedly tip in Giles's favor.

* * *

Giles has not satisfied his burden of establishing that a stay is warranted. Although he has shown that his appeal raises a serious legal question, he has not established a likelihood of success on the merits or that the balance of hardships tip decidedly in his favor. Accordingly, it is ORDERED that Giles's motion for a stay is denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

---

the Order in 2009. If anything, FINRA's delay in discovering the Order seems to have benefited rather than prejudiced Giles, as he has been able to continue associating with a FINRA member firm for many years since he allegedly became subject to a statutory disqualification.