

**HARD COPY**

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Attorneys for MICHAEL TURNER



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

In the Matter of the Application of  
Michael R. Turner  
For Review of Disciplinary Action Taken by  
Financial Industry Regulatory Authority  
(formerly NASD)

File No. 3-17995

**MICHAEL TURNER'S UNOPPOSED  
MOTION PURSUANT TO SEC RULE 161  
FOR AN EXTENSION TO OPPOSE  
FINRA'S MOTION TO DISMISS**

## I. INTRODUCTION

Petitioner Michael Turner (“Turner”) seeks a 16-day extension, until July 5, 2017, to oppose FINRA’s motion to dismiss pursuant to SEC Rule 161. This motion is unopposed; FINRA advised it consents to the motion. Good cause exists to grant this motion. FINRA previously requested an extension of time for filing the certified record. On May 22, 2017, Turner filed with the Commission an appeal of a NASD Rule 9552 bar imposed on Turner in April 2006 (“Appeal”).

On June 14, 2017, the SEC issued an Order which provides in part “FINRA has requested an extension of time for filing the certified record, stating that the NASD’s records pertaining to this matter were destroyed in 2016 in accordance with FINRA’s (formerly NASD) retention policy. FINRA requests a three-business day extension of time to locate relevant documents.” (Declaration of Tad A. Devlin “Devlin Decl.” at ¶ 2, Ex. A – Extension Order)

On June 14, 2017, FINRA, in addition to certifying its record, served an 18-page motion to dismiss setting forth detailed factual and legal arguments as to why Turner’s appeal should be dismissed. The motion to dismiss contains detailed factual and legal arguments, which requires additional time to adequately address.

Accordingly, Turner respectfully asks for a brief extension to allow adequate time to address the arguments raised in FINRA’s motion. He has not sought a prior extension, and FINRA will not be prejudiced by the delay. As noted above, FINRA consents to this motion.

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## II. LEGAL ARGUMENT

### A. Standard governing this motion

SEC Rule 161(a) provides “except as otherwise provided by law, the Commission, at any time, or the hearing officer, at any time prior to the filing of his or her initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers and may, consistent with paragraphs (b) and (c) of this rule, postpone or adjourn any hearing.

SEC Rule 161(b)(1) establishes when motions for extensions should be granted. It provides in relevant part:

In considering all motions or requests pursuant to paragraph (a) or (b) of this rule, the Commission or the hearing officer should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. In determining whether to grant any requests, the Commission or hearing officer shall consider, in addition to any other relevant factors:

- i. the length of the proceeding to date;
- ii. the number of postponements, adjournments or extensions already granted;
- iii. the stage of the proceedings at the time of the request;
- iv. the impact of the request on the hearing officer’s ability to complete the proceeding in the time specified by the Commission; and
- v. any other such matters as justice may require.

### B. Applying the SEC Rule 161(b)(1) factors, good cause exists to grant Turner’s request for a brief extension to oppose FINRA’s motion to dismiss

A decision by the SEC to deny Turner’s request for a brief, 16-day continuance would substantially prejudice his case given the issues that need to be addressed in FINRA’s motion to

dismiss, as the issue impacts his livelihood. Each of the factors addressed by SEC Rule 161 are set forth below.

**1. The length of the proceeding to date favors granting Turner's request**

As noted in the Extension Order, Turner initiated his Appeal on May 22, 2017. Only four weeks have passed since he initiated the Appeal. Given that this matter has just been initiated, there is no prejudice in granting Turner's request for a brief, 16-day continuance.

**2. Turner has not previously requested an extension**

Turner has made no prior requests for extensions. FINRA has been granted one extension to designate the record. During that time, it also filed its motion to dismiss. It would be unfair and prejudicial to Turner to allow FINRA additional time to designate the record, which it used in part to prepare and file a lengthy and detailed motion to dismiss, but not to grant him an extension to oppose the motion. Accordingly, this factor also warrants granting Turner's request for an extension.

**3. The stage of the proceedings at the time of the request**

Only four weeks have passed since Turner initiated his Appeal. FINRA will not be prejudiced by a brief extension to allow Turner to properly address its motion to dismiss. This factor also favors granting Turner's request.

**4. An extension will not impact the hearing officer's ability to complete the proceeding in the time specified by the Commission**

An extension will not impact the hearing officer's ability to complete the proceeding in the time specified by the Commission. There has been no briefing schedule set on the Appeal.

**5. Justice requires granting Turner's request for an extension to oppose FINRA's motion to dismiss**

FINRA has consented to Turner's request for an extension to oppose its motion to dismiss. (Devlin Decl. at ¶ 3) Justice will be served by granting Turner's request for an extension to oppose FINRA's motion to dismiss, as it will allow the parties to resolve the issues on their merits. Further, Turner would be severely prejudiced if his request for an extension is denied.

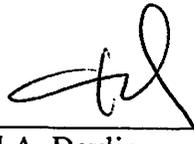
**III. CONCLUSION**

Based on the foregoing, Turner respectfully asks for an extension, until July 5, 2017, to oppose FINRA's motion to dismiss. FINRA advised that it consents to this Request, and all of the factors set forth in SEC Rule 161(b)(1) are met.

DATED: June 19, 2017

**KAUFMAN DOLOWICH & VOLUCK, LLP**

By: \_\_\_\_\_



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Aaron M. Cargain  
Attorneys for MICHAEL TURNER

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

In the Matter of the Application of  
Michael R. Turner  
For Review of Disciplinary Action Taken by  
Financial Industry Regulatory Authority  
(formerly NASD)

File No. 3-17995

**DECLARATION OF TAD A. DEVLIN IN  
SUPPORT OF MICHAEL TURNER'S  
MOTION PURSUANT TO SEC RULE 161  
FOR AN EXTENSION TO OPPOSE  
FINRA'S MOTION TO DISMISS**

I, Tad A. Devlin, declare as follows:

1. I am a partner at Kaufman Dolowich & Voluck, LLP and duly licensed to practice before the Securities and Exchange Commission. I make this declaration to provide factual information relating to the contents of Michael Turner's motion for an extension to oppose FINRA's motion to dismiss.

2. Attached hereto as Exhibit "A" is a true and correct copy the SEC's Extension Order granting FINRA's request for an extension of time for filing the certified record.

3. On June 19, 2017, Aaron M. Cargain of our office spoke with FINRA's counsel Michael Garawski, Associate General Counsel for FINRA, regarding Turner's filing of the instant for an extension until July 5, 2017, to respond to FINRA's motion to dismiss. Mr. Garawski advised FINRA consents to the instant motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct. This declaration was executed on June 19, 2017, in San Francisco, California.



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Tad A. Devlin

Exhibit "A"

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 80897 / June 9, 2017

ADMINISTRATIVE PROCEEDING  
File No. 3-17995

In the Matter of the Application of

Michael R. Turner

For Review of Disciplinary Action Taken By

Financial Industry Regulatory Authority  
(formerly NASD)

EXTENSION ORDER

On May 22, 2017, counsel for applicant Michael R. Turner ("Turner") filed with the Commission an appeal of a NASD Rule 9552 bar imposed on Turner in April 2006. FINRA has requested an extension of time for filing the certified record, stating that the NASD's records pertaining to this matter were destroyed in 2016 in accordance with FINRA's (formerly NASD) record retention policy. FINRA requests a three-business day extension of time to locate relevant documents.

Extensions of time are disfavored. However, it appears appropriate, in light of the circumstances, to grant the requested extension. Therefore,

It is ORDERED that the time for FINRA to file its certified record is extended to June 14, 2017.

For the Commission, by its Secretary, pursuant to delegated authority.<sup>1</sup>

  
Jill M. Peterson  
Assistant Secretary

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<sup>1</sup> 17 C.F.R. §§ 200.30-7(a)(4), 200.30-14(g)(1)(vii).

**CERTIFICATE OF SERVICE**

**In the Matter of the Application for Review of Michael R. Turner**

**Administrative Proceeding No. 3-17995**

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 425 California Street, Suite 2100, San Francisco, California 94104. On the execution date below and in the manner stated herein, I served the following documents:

**MICHAEL TURNER'S UNOPPOSED MOTION PURSUANT TO SEC RULE 161 FOR AN EXTENSION TO OPPOSE FINRA'S MOTION TO DISMISS; DECLARATION OF TAD A. DEVLIN**

on all interested parties in this action by placing  the original or  a true copy of the original thereof enclosed in sealed envelopes addressed as follows:

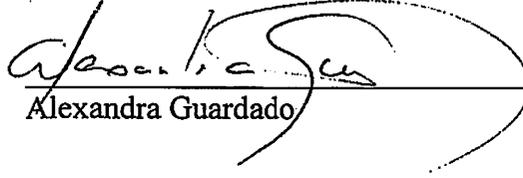
Attention: Donna Willingham  
Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE, Mail Stop 1090  
Washington, DC 20549  
Telephone: (800) 732-0330  
Facsimile: (202) 772-9295

Michael Garawski  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
Telephone: (202) 728-8835  
Facsimile: (202) 728-8264

BY FED EX I caused such envelope(s) to be placed for FedEx collection and delivery at San Francisco, California. I am readily familiar with the firm's practice of collection and processing correspondence for FedEx mailing. Under that practice it would be deposited with the FedEx office on that same day with instructions for overnight delivery, fully prepaid, at San Francisco, California in the ordinary course of business.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 19, 2017, at San Francisco, California.

  
Alexandra Guardado

4835-0480-4426, v. 1