

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 77452 / March 25, 2016

Admin. Proc. File No. 3-17109

In the Matter of

JOHN VINCENT BALLARD

ORDER DISMISSING UNTIMELY  
APPLICATION FOR REVIEW

Appeal filed: February 9, 2016  
Last brief received: February 24, 2016

FINRA requests that we dismiss as untimely an application for review filed by John Vincent Ballard (“Ballard”), an individual formerly associated with a FINRA member. Ballard failed to comply with the filing deadline established by Section 19(d) of the Securities Exchange Act of 1934 and our Rule of Practice 420(b) because he filed his application more than 30 days after he received FINRA’s decision.<sup>1</sup> And Ballard has failed to establish extraordinary circumstances sufficient to support an extension of the deadline for filing an application for review. Therefore, we dismiss Ballard’s application.

### Background

On December 17, 2015, FINRA issued a decision finding that Ballard had engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010, and failed to provide documents or testimony in response to FINRA’s requests, in violation of FINRA Rules 8210 and 2010.<sup>2</sup> FINRA found that Ballard violated Rule 3270 because, although Ballard “disclosed to his supervisor that he might have to seek new employment, he never provided written notice—or, indeed any notice—to the Firm that he had become employed” with a third party. With regard to the Rule 8210 violations, FINRA concluded that, although it “repeatedly attempted to obtain documents and testimony from Ballard as part of an investigation of his

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<sup>1</sup> 15 U.S.C. § 78s(d) (requiring application for review to be filed “within thirty days after the date [that] notice [of the challenged decision] was filed with [the Commission] and received by such aggrieved person, or within such longer period as [the Commission] may determine”); 17 C.F.R. § 201.420(b) (providing that such period will not be extended “absent a showing of extraordinary circumstances”).

<sup>2</sup> *Dep’t of Enf. v. John Vincent Ballard*, Complaint No. 2010025181001 (Dec. 17, 2015), available at [https://www.finra.org/sites/default/files/NAC\\_2010025181001\\_Ballard\\_121715.pdf](https://www.finra.org/sites/default/files/NAC_2010025181001_Ballard_121715.pdf).

activities,” Ballard “never produced any documents, never appeared for his on-the-record testimony, and never provided FINRA with any explanation for his repeated failures to cooperate with the investigation.” FINRA also found that “Ballard’s actions throughout the[] disciplinary proceedings suggest[ed] that his failure to comply with FINRA’s requests [wa]s indicative of a broader pattern of conduct aimed at stalling FINRA’s investigation and disciplinary process in perpetuity.” For example, Ballard “delayed briefing, missed filing deadlines, and sought to postpone oral argument on several occasions.” FINRA barred Ballard for his failure to provide documents and testimony and imposed costs on him. In light of the bar, FINRA assessed but did not impose sanctions for Ballard’s failure to disclose his outside employment.

FINRA filed notice of its decision with the Commission and sent the decision to Ballard by certified mail, first-class mail, and email on December 17, 2015. FINRA sent the certified and first-class mail to each of two addresses: Ballard’s address of record in the Central Registration Depository (“CRD”) and an additional address that he provided to FINRA during the course of the disciplinary proceedings, which he later identified as his address of record in this proceeding. FINRA emailed the decision to Ballard at an address he used when corresponding with FINRA during the disciplinary proceedings. In the cover letter that accompanied the decision, FINRA stated that if Ballard wished to appeal its decision to the Commission, he would need to “file an application with the [Commission] within 30 days of receipt.”

On January 6, 2016, Ballard responded to FINRA’s December 17 email and requested that FINRA direct him to the appropriate FINRA or Commission office that could provide information regarding appeal of the decision to the Commission. FINRA responded that day by email and provided Ballard with information regarding the form and service of an application for review and referred him to the Commission’s Office of the Secretary for questions regarding the appeal process. Ballard did not ask about, nor did FINRA address, the filing deadline.

On February 9, 2016, Ballard filed an application for review of FINRA’s decision with the Commission. In his application, Ballard stated that he “was first in receipt, readable receipt of the [FINRA] decision on or about January 6,” and explained that he had corresponded with FINRA about it on the same date. Ballard also requested an additional 60 days to “fully state [the] basis” for his appeal because he was a pro se filer and because the Commission might conclude that his appeal was complex.

On February 10, 2016, the Commission issued an order directing the parties to submit briefs on the question of whether Ballard’s appeal should be dismissed as untimely.<sup>3</sup> FINRA filed a brief requesting dismissal on February 24, 2016.<sup>4</sup> Although Ballard was ordered to file an

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<sup>3</sup> *John Vincent Ballard*, Exchange Act Release No. 77107 (Feb. 10, 2016), *available at* <https://www.sec.gov/litigation/opinions/2016/34-77107.pdf>. The Office of the Secretary served the briefing order on the parties by certified mail at their addresses of record. Although Ballard received notice of the mailing, he did not collect it.

<sup>4</sup> In the opening sentence of its brief, FINRA recognized that “[t]he Commission has requested that the parties submit briefs to address whether John Vincent Ballard’s appeal should  
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opening brief by the same date, he failed to do so, and he has not otherwise responded to the briefing order or FINRA’s request to dismiss this proceeding.

### Analysis

Under Exchange Act Section 19(d), a person who wishes to appeal a FINRA decision imposing a “final disciplinary sanction” must file an application for review with the Commission “within thirty days after the date” notice of the decision “was filed with [the Commission] and received by such aggrieved person.”<sup>5</sup> Although Section 19(d)(2) permits us to entertain applications that are filed “within such longer period as [we] may determine,”<sup>6</sup> our Rule of Practice 420(b), which is “the exclusive remedy for seeking an extension of the 30-day period,”<sup>7</sup> provides that we will not grant an extension “absent a showing of extraordinary circumstances.”<sup>7</sup> We dismiss Ballard’s application for review because (1) he filed it more than 30 days after receiving notice of the decision, and (2) he has not made a showing of extraordinary circumstances that would justify an extension of the filing deadline.

Ballard’s application for review was untimely because he failed to file it by January 19, 2016. FINRA served notice of its decision on Ballard at his CRD and alternate address on December 17, 2015, by certified and first-class mail, and emailed him a copy on the same date. This service “started the running of the appeal period.”<sup>8</sup> Because FINRA served Ballard by mail, we add an additional three days to the 30-day appeal period.<sup>9</sup> Therefore, Ballard had until

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be dismissed as untimely.” FINRA sent its brief to Ballard at his address of record via overnight delivery and also emailed it to him at the address he used in the disciplinary proceedings.

<sup>5</sup> Exchange Act Section 19(d), 15 U.S.C. § 78s(d); *accord* Rule of Practice 420(b), 17 C.F.R. § 201.420(b) (“[A]n applicant must file an application for review with the Commission within 30 days after the notice of the determination is filed with the Commission and received by the aggrieved person applying for review.”).

<sup>6</sup> 15 U.S.C. § 78s(d)(2).

<sup>7</sup> 17 C.F.R. § 201.420(b); *see also* *Lance E. Van Alstyne*, Exchange Act Release No. 40738, 53 SEC 1093, 1998 WL 830817, at \*4 (Dec. 2, 1998) (“In the interests of finality, only under extraordinary circumstances will we authorize the filing of a late appeal from an SRO action that is subject to the Section 19(d)(1) filing requirement.”).

<sup>8</sup> *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 WL 489353, at \*4 (Feb. 8, 2016); *accord* *Pennmont Sec.*, Exchange Act Release No. 61967, 2010 WL 1638720, at \*3 (Apr. 23, 2010) (finding that applicants had “thirty days from when [self-regulatory organization] filed with the Commission and served on [them]” notice of the challenged action to file their application for review), *petition denied*, 414 F. App’x 465 (3d Cir. 2011).

<sup>9</sup> Rule of Practice 160(b), 17 C.F.R. § 201.160(b) (generally providing that “[i]f service is made by mail, three days shall be added to the prescribed period for response”); *Manzella*, 2016 WL 489353, at \*2 n.10, \*4 n.21 (applying Rule of Practice 160(b) to calculation of due date for application for review under Rule 420(b)); *see also* *BDO China Dahua CPA Co., Ltd.*, Exchange Act Release No. 77084, 2016 WL 489353, at \*4 n.21 (applying Rule of Practice 160(b) to calculation of due date for application for review under Rule 420(b)).

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January 19, 2016, to file his application for review. Ballard filed his application for review on February 9, 2016—21 days after the appeal period expired.

Ballard has failed to identify extraordinary circumstances sufficient to extend the deadline for his filing.<sup>10</sup> Because “strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief,” the extraordinary circumstances exception to the 30-day filing deadline “is to be narrowly construed and applied only in limited circumstances.”<sup>11</sup>

In his application, Ballard claims that he did not have “readable receipt” of FINRA’s decision until January 6, 2016, when he responded to FINRA’s email sending him the decision. He offers no explanation for this statement and provides no evidence that the decision he received was unreadable. A decision served on Ballard at the addresses he provided is deemed received as of the date of service.<sup>12</sup> In any event, Ballard’s email response to FINRA’s December 17, 2015 email attaching the decision demonstrates that he received actual notice on December 17, 2015.

Ballard also sought additional time because of his pro se status and the possible complexity of his case. Neither of these reasons qualifies as extraordinary circumstances.

Ballard’s pro se status does not justify an extension of time.<sup>13</sup> “[W]e expect even unrepresented parties to comply with our rules,” and “[p]arties, including those appearing pro se,

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Act Release No. 72753, 2014 WL 3827605, at \*1 n.2 (Aug. 4, 2014) (clarifying application of Rule of Practice 160).

<sup>10</sup> See *Pennmont Sec.*, 2010 WL 1638720, at \*4 (“[A]n extraordinary circumstance under Rule of Practice 420(b) may be shown where the reason for the failure timely to file was beyond the control of the applicant that causes the delay.”), *petition denied*, 414 F. App’x 465 (3d Cir. 2011); see also *id.* at \*6 (contemplating that a “critical legal issue . . . could potentially rise to the level of an extraordinary circumstance”); *MFS Sec. Corp.*, Exchange Act Release No. 47626, 56 SEC 380, 2003 WL 1751581, at \*3 & n.17 (Apr. 3, 2003) (accepting untimely application for review where “Court of Appeals . . . asked for the Commission’s views as to whether the NYSE’s actions” comported with relevant statute and rules and the application “present[ed] novel facts and legal issues”), *aff’d*, 380 F.3d 611 (2d Cir. 2004).

<sup>11</sup> *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515, at \*3 (Mar. 1, 2013).

<sup>12</sup> See *Manzella*, 2016 WL 489353, at \*4 & n.20 (“FINRA’s service by mail to Manzella’s CRD address provided her with constructive notice of the action, which started the running of the appeal period.”).

<sup>13</sup> See generally *Ceballos*, 2013 WL 772515 (dismissing untimely application for review brought by pro se litigant).

are obligated to familiarize themselves with the Rules of Practice.”<sup>14</sup> The filing deadline is clearly set forth in our rules,<sup>15</sup> and FINRA advised Ballard that he needed to file his brief within 30 days of receipt of the decision. Moreover, an applicant need not identify every contention or argument in an application for review appealing an SRO decision.<sup>16</sup> Ballard suggests no reason why he could not have filed a two-page application within 30 days of receiving FINRA’s decision.

Ballard’s unexplained assertion and speculation that we might find this case complex also does not constitute grounds for extending the deadline to file his appeal.<sup>17</sup>

Ballard was directed, after his untimely filing, to submit a brief addressing the timeliness of his application, and he could have identified any extraordinary circumstances that would justify an extension of the deadline to file. He has submitted no such brief.

Accordingly, and for the reasons set forth above, IT IS ORDERED that John Vincent Ballard’s application for review is DISMISSED.

By the Commission.

Brent J. Fields  
Secretary

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<sup>14</sup> *BDO China Dahua CPA Co.*, Exchange Act Release No. 72134, 2014 WL 1871077, at \*3 (May 9, 2014) (internal quotation omitted).

<sup>15</sup> Rule of Practice 420(b), 17 C.F.R. § 201.420(b).

<sup>16</sup> *Compare* Rule of Practice 411(d), 17 C.F.R. § 201.411(d) (providing that, unless the Commission otherwise provides notice, “[r]eview by the Commission of an [appeal from a law judge’s] initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order”) *with* Rule 421, 17 C.F.R. § 201.421 (governing Commission consideration of SRO appeals and containing no such provision).

<sup>17</sup> *See Pennmont Sec.*, 2010 WL 1638720, at \*5 (“We believe that the measure of whether an untimely application presents an extraordinary circumstance is not simply the relative weight of the arguments presented on appeal—otherwise, the ‘extraordinary circumstances’ requirement would be read out of Commission Rule of Practice 420.”).