

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 89238 / July 7, 2020

Admin. Proc. File No. 3-19481

In the Matter of the Application of  
  
STEPHEN ROBERT WILLIAMS  
  
For Review of Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Individual appealed FINRA’s decision to bar his association with its members for failing to respond to requests for information. *Held*, application for review is dismissed.

APPEARANCES:

Stephen Robert Williams, *pro se*.

*Alan Lawhead and Colleen Durbin* for the Financial Industry Regulatory Authority, Inc.

Appeal filed: Aug. 29, 2019  
Last brief received: Sept. 20, 2019

Stephen Robert Williams, formerly an associated person of a FINRA member firm, seeks review of FINRA action barring him from association with any FINRA member for failing to respond to its requests for information. FINRA moves to dismiss Williams's application for review because he failed to exhaust administrative remedies before FINRA and his application is untimely. Williams has not filed an opposition to FINRA's motion. For the reasons explained below, we grant FINRA's motion and dismiss Williams's application for review.

## I. Background

Williams joined the securities industry in January 2001. He was most recently registered with FINRA member LPL Financial, LLC ("LPL"), from May 2004 until LPL terminated him and filed with FINRA a Uniform Termination Notice for Securities Industry Regulation ("Form U5") in October 2017. The Form U5 indicated that Williams had been terminated for "exercising discretion without written authorization, in violation of the Firm's policy."

### A. FINRA requested information from Williams in connection with his termination.

FINRA began investigating Williams's termination to determine whether he had violated any federal securities laws or self-regulatory organization ("SRO") rules. On November 17, 2017, FINRA sent Williams a letter under FINRA Rule 8210 requesting that he provide specified documents and information to FINRA by December 1, 2017.<sup>1</sup> The letter reminded Williams of his obligation to respond and warned him about the consequences of not doing so.

FINRA sent the letter by certified and first-class mail to Williams's address of record in its Central Registration Depository ("CRD") system.<sup>2</sup> Williams received the letter and provided a written response. Over the next several months, Williams corresponded several times with a FINRA investigator via email to ask about the status of FINRA's investigation.

On March 6, 2018, Williams emailed the FINRA investigator seeking a status update. The next day, the investigator replied that "additional information is needed. Please provide a response to the attached letter no later than March, 21, 2018." That email attached a supplemental request for information and documents pursuant to FINRA Rule 8210. FINRA's supplemental request sought information and documentation concerning any bankruptcies,

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<sup>1</sup> See FINRA Rule 8210(a) (requiring persons subject to FINRA's jurisdiction to provide testimony, information, or documents in connection with FINRA investigations); *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 WL 489353, at \*1 n.1 (Feb. 8, 2016) ("Rule 8210 authorizes FINRA staff to require a person associated with a FINRA member to provide information with respect to any matter involved in an investigation, complaint, examination, or procedure."); *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at \*6 (Nov. 8, 2007) (stating FINRA lacks subpoena power so Rule 8210 is "vitaly important").

<sup>2</sup> "The Central Registration Depository (CRD) is a computerized database that contains information about most brokers, their representatives, and the firms they work for." Investor Publication, *Protect Your Money: Check Out Brokers and Investment Advisers.*, available at <http://www.sec.gov/investor/brokers.htm>.

judgments, liens, and compromises with creditors filed by or against Williams during his employment in the securities industry. The request reminded Williams of his obligation to respond and warned that “[a]ny failure . . . to satisfy these obligations could expose [him] to sanctions, including a permanent bar from the securities industry.” Williams did not respond to FINRA’s email, and he did not provide the requested information.

On March 29, 2018, FINRA sent Williams a second email reiterating the Rule 8210 request for information, warning that failure to comply “may subject you to disciplinary action,” and setting a new deadline of April 12, 2018. FINRA sent this second email to Williams’s email address by replying directly to an email Williams sent. Williams did not respond to the email, and he did not provide the requested information.

On June 12, 2018, FINRA sent Williams a letter reiterating the two previously emailed requests for information, warning that failure to comply “may subject you to disciplinary action,” and setting a new deadline of June 26, 2018. FINRA sent this letter both by certified mail to Williams’s CRD address and by email. The day after his responses to FINRA’s third request were due, Williams replied to the June 12 email and requested a two-week extension.<sup>3</sup> FINRA granted his request for an extension and set the new response deadline as July 11, 2018. Williams acknowledged the extension by email but did not provide the requested information.

On July 13, 2018, FINRA sent another letter reiterating the Rule 8210 request, warning that failure to comply “may subject you to disciplinary action,” and setting a new deadline of July 27, 2018. As with the previous month’s letter, FINRA sent this letter to Williams’s CRD address and to his email address. Williams received and signed a certified mail receipt on July 16, 2018, but he never responded to the request and never provided the requested information.

## **B. FINRA barred Williams for his failure to respond on November 5, 2018.**

After Williams failed to respond to FINRA’s repeated requests for information and documents, FINRA initiated proceedings under FINRA Rule 9552 to suspend Williams from association with any FINRA member.<sup>4</sup> In a letter dated August 2, 2018 (the “Pre-Suspension Notice”), FINRA notified Williams that his continued failure to respond would subject him to a suspension on August 27, 2018. The Pre-Suspension Notice enclosed copies of the June 12,

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<sup>3</sup> While the CRD address listed in the heading of the third request was correct, the certified mail receipt was not accurate. Although the street address, city, and zip code were correct, the address reflected an incorrect state. Regardless of the error, Williams received the request. *See Michael Ross Turner*, Exchange Act Release No. 81693, 2017 WL 4222468, at \*4 (Sept. 22, 2017) (reiterating that “[a]n applicant’s email response to FINRA’s . . . email attaching the decision demonstrates that he received actual notice”).

<sup>4</sup> *See* FINRA Rule 9552(a) (providing that “[i]f a . . . person . . . subject to FINRA’s jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, . . . FINRA staff may provide written notice to such . . . person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of [the] membership or of association of the person with any member”).

2018 and July 13, 2018 requests that FINRA had sent by mail and by email. It also explained that “the suspension will not take effect” if Williams complied fully with the earlier requests for information by August 27, 2018; that he could request a hearing to contest the suspension by August 27, 2018, which would “stay the effective date of any suspension”;<sup>5</sup> and that if suspended he could file a written request to terminate the suspension “on the ground of full compliance.”<sup>6</sup> The Pre-Suspension Notice further explained that if FINRA suspended Williams and he “fail[ed] to request termination of the suspension within three . . . months” of August 2, 2018, he would be barred from association with any FINRA member as of November 5, 2018.<sup>7</sup>

FINRA sent the Pre-Suspension Notice to Williams by certified and first-class mail to his CRD address and by email to Williams’s email address. U.S. Postal Service records show that it delivered the Pre-Suspension Notice “to an individual at the address . . . on August 6, 2018.”<sup>8</sup> Several weeks later, FINRA conducted a public records search for Williams, which confirmed that the CRD address was his “current” address. Williams did not respond to the Pre-Suspension Notice and failed to provide the requested information.

On August 27, 2018, FINRA notified Williams in a letter (the “Suspension Notice”) that he was suspended, effective immediately, from association with any FINRA member in any capacity. The Suspension Notice advised that Williams could file a written request to terminate the suspension based on full compliance with the Pre-Suspension Notice, but reiterated that if Williams did not do so by November 5, 2018, FINRA would automatically bar him from the securities industry under FINRA Rule 9552(h). FINRA sent the Suspension Notice to Williams by certified and first-class mail to his CRD address and by email. The certified mail receipt reflects that the U.S. Postal Service delivered the mailing on September 1, 2018, to Williams’s address and obtained a signature that appears similar to the one on Williams’s application for review. Williams did not respond to the Suspension Notice, seek to terminate his suspension, or comply with FINRA’s requests for information.

On November 5, 2018, FINRA notified Williams in a letter (the “Bar Notice”) that he was barred from association with any FINRA member effective immediately. The Bar Notice informed Williams that he could appeal FINRA’s action by filing an application for review with

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<sup>5</sup> See FINRA Rule 9552(e) (stating that a “request for a hearing shall be made before the effective date of the notice,” which is 21 days after service of the notice).

<sup>6</sup> See FINRA Rule 9552(f) (stating that the person “may file a written request for termination of the suspension on the ground of full compliance with the notice”).

<sup>7</sup> See FINRA Rule 9552(h) (stating that a “member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred”).

<sup>8</sup> The August 2 letter identifies a U.S. Postal Service tracking number. Where, as here, the record contains the tracking numbers for the letters that FINRA sent by certified mail, we take official notice of the “tracking information provided . . . on USPS’s website.” *Kevin M. Murphy*, Exchange Act Release No. 79016, 2016 WL 5571633, at \*1 n.3 (Sept. 30, 2016); see Rule of Practice 323, 17 C.F.R. § 201.323 (providing that “[o]fficial notice may be taken of any material fact which might be judicially noticed by a district court of the United States”).

the Commission within 30 days of receipt of the notice. After conducting a public records search to confirm that the CRD address was still his current address, FINRA sent the Bar Notice by certified and first-class mail to Williams's CRD address and by email. The certified mailing was returned "unclaimed/unable to forward," and tracking information reflected "no authorized recipient available." FINRA asserts that the first class mail was not returned. Williams did not file an appeal within 30 days, and he did not move to extend the deadline.

**C. Williams filed an application for review with the Commission on August 29, 2019.**

On August 29, 2019, more than nine months after FINRA sent the Bar Notice, Williams sent the Commission a letter seeking to appeal the bar. In the letter, Williams attempted to respond to FINRA's Rule 8120 requests by discussing issues surrounding his 2011 Indiana tax return. Williams also explained that he was "going through boxes to try and find all documentation" and that he was "attempting to get the emails between [him] and LPL regarding the situation." The letter bore Williams's CRD address as the return address. On September 20, 2019, FINRA moved the Commission to dismiss Williams's application for review.

**II. Analysis**

We dismiss Williams's application for review because he failed to exhaust his administrative remedies before FINRA and because it is untimely.

**A. Williams failed to exhaust his administrative remedies.**

"Exhaustion of administrative remedies is a general prerequisite to judicial review of any administrative action."<sup>9</sup> The requirement that administrative remedies be exhausted applies "with equal if not greater force" to SROs such as FINRA.<sup>10</sup> An exhaustion requirement "promotes the efficient resolution of disciplinary disputes between SROs and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations."<sup>11</sup> "Were SRO members, or former SRO members, free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised."<sup>12</sup> Accordingly, we have repeatedly

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<sup>9</sup> *Hedley v. United States*, 594 F.2d 1043, 1044 (5th Cir. 1979).

<sup>10</sup> *Christine D. Memet*, Exchange Act Release No. 83711, 2018 WL 3584178, at \*3 (July 25, 2018) (quoting *Freeman Sports Car Club of Am.*, 51 F.3d 1358, 1375 (7th Cir. 1995)); see also, e.g., *Lang v. French*, 154 F.3d 217, 220 (5th Cir. 1998) ("[NASD] disciplinary orders are reviewable by the [Commission] after administrative remedies within the NASD are exhausted").

<sup>11</sup> *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 622 (2d Cir. 2004); see also *id.* at 621 (finding "valid" the Commission's frequent application of "an exhaustion requirement in its review of disciplinary actions by SROs") (citing *Gary A. Fox*, Exchange Act Release No. 46511, 2002 WL 31084725, at \*2 (Sept. 18, 2002) (dismissing application for review of bar imposed for failing to comply with Rule 8210 for failing to exhaust administrative remedies)).

<sup>12</sup> *Id.* at 621.

held that we will not consider an application for review of FINRA action ““if [the] applicant failed to exhaust FINRA’s procedures for contesting the sanction.””<sup>13</sup>

We find, and Williams does not dispute, that he failed to exhaust his administrative remedies for challenging FINRA’s actions before appealing to the Commission. FINRA’s initial requests for information repeatedly warned Williams that a failure to respond could result in disciplinary action. Then, before imposing sanctions, FINRA sent Williams notices describing FINRA’s administrative process for avoiding such sanctions by: (1) “taking corrective action” by producing the information FINRA requested in a timely manner; (2) “requesting a hearing in response to the notice of suspension”; or (3) “filing for termination of the suspension” on the ground of full compliance with the requests for information. We have previously said that applicants who do not avail themselves of FINRA’s administrative processes thereby forfeit any future challenge to FINRA’s actions before the Commission.<sup>14</sup>

Here, Williams had actual notice of FINRA’s requests for information and of the proceeding against him. Williams appears to have signed several certified mail receipts, including those for the first and fourth FINRA Rule 8210 requests and the Suspension Notice, using a signature that is similar to that on his application for review. FINRA also sent several requests—as well as the Pre-Suspension Notice, Suspension Notice, and Bar Notice—to an email address Williams repeatedly used to correspond with FINRA. Only one certified mailing—the Bar Notice—was returned, and only because it was “unclaimed/unable to forward.” FINRA confirmed from public records that the CRD address was Williams’s “current address,” and he used it as the return address on his application for review. For his part, Williams does not deny that he had actual notice of the requests or the proceeding against him. Despite having actual knowledge of FINRA’s proceedings and of the consequences for not responding to its requests or seeking relief through its administrative process, Williams did not timely respond to all of FINRA’s requests or take other steps to avoid being barred.<sup>15</sup>

In his application for review, Williams argues that he should not be barred because of some factual confusion about the underlying tax lien that was the subject of FINRA’s requests, his belief that this did not “need[] to be reported to LPL,” and his attempts to “find all the documentation.” We do not consider these arguments because they go to the merits of the bar

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<sup>13</sup> *Memet*, 2018 WL 3584178, at \*3 (quoting *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at \*2 n.5 (Sept. 19, 2014)).

<sup>14</sup> *See, e.g., Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at \*3 (Apr. 18, 2013) (relying on “well-established precedent” and dismissing application for review in a FINRA Rule 9552 proceeding where applicant failed to request a hearing or take corrective action by complying with FINRA Rule 8210 requests).

<sup>15</sup> *See Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 WL 1862331, at \*4 (May 9, 2017) (granting FINRA’s motion to dismiss for failing to exhaust administrative remedies where applicant did not take the necessary steps to avoid being barred despite having actual notice of the requests for information and proceedings against him because he “signed the certified mail receipts for the Pre-Suspension Notice,” none “of the first class mailings were returned,” and he “put his CRD address as the return address on his application for review”).

FINRA imposed.<sup>16</sup> Williams cannot argue about the merits of the bar since he did not timely raise these issues in the first instance to FINRA through its administrative process.

Although we have “remanded to FINRA in certain circumstances where it was unclear from the record if the applicant had received any of FINRA’s requests for information or notices of sanctions, this is not such a case.”<sup>17</sup> As discussed above, Williams had actual notice of FINRA’s letters and notices. Accordingly, we find that Williams forfeited his right to challenge the bar by failing to pursue the administrative remedies that FINRA made available.

**B. Williams’s application for review is untimely.**

Williams’s untimely filing of his application for review provides an independent basis for dismissing Williams’s appeal.<sup>18</sup> Section 19(d)(2) of the Securities Exchange Act of 1934 provides that appeals from SRO actions must be filed by the aggrieved person “within thirty days after the date such notice was . . . received by [the] aggrieved person, or within such longer period as [the Commission] may determine.”<sup>19</sup> Rule of Practice 420(b) provides that the Commission “will not extend this 30-day period, absent a showing of extraordinary circumstances.”<sup>20</sup> Here, FINRA properly served the Bar Notice on Williams at his CRD address, and even sent him a courtesy copy by email.<sup>21</sup> FINRA’s service of the Bar Notice by mail to Williams’s CRD address “provided [him] with constructive notice of the action, which started the running of the appeal period.”<sup>22</sup> Yet Williams filed his application for review with the Commission on August 29, 2019, well more than eight months after the deadline lapsed.

Williams never sought an extension of the filing deadline and fails to demonstrate any extraordinary circumstances justifying his untimely application. The Bar Notice stated explicitly that Williams could appeal FINRA’s action by filing an application for review with the Commission within 30 days of receipt of the notice. As we have repeatedly observed, “strict compliance with filing deadlines facilitates finality and encourages parties to act timely in

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<sup>16</sup> See *Jones*, 2017 WL 1862331, at \*5 (“Jones cannot argue about the merits of the bar since he did not timely raise this issue in the first instance to FINRA through its administrative process.”).

<sup>17</sup> *Memet*, 2018 WL 3584178, at \*4 (citing *Destina M. Mantar*, Exchange Act Release No. 79851, 2017 WL 221653, at \*4-5 (Jan. 9, 2017)).

<sup>18</sup> See *Jones*, 2017 WL 1862331, at \*5 (granting FINRA’s motion to dismiss because the application was untimely filed, as well as for the “independent” reason that the applicant failed to exhaust administrative remedies before FINRA).

<sup>19</sup> 15 U.S.C. § 78s(d)(2).

<sup>20</sup> 17 C.F.R. § 201.420(b).

<sup>21</sup> See FINRA Rule 9552(b) (providing that notice of suspension under Rule 9552 may be served in accordance with Rule 9134); FINRA Rule 9134(a)(2) (providing for service by mail by U.S. Postal Service), 9134(b)(1) (providing for service on a natural person at the residential address reflected in the CRD), 9134(c) (“Service by mail is completed upon mailing.”).

<sup>22</sup> *Manzella*, 2016 WL 489353, at \*4.

seeking relief.’ Unmet deadlines may cut off substantive rights to review, but this is their function.”<sup>23</sup> Accordingly, the untimeliness of his application warrants dismissal.<sup>24</sup>

An appropriate order will issue.<sup>25</sup>

By the Commission (Chairman CLAYTON and Commissioners PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman  
Secretary

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<sup>23</sup> *Id.* (quoting *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at \*2 (May 8, 2014) (citation omitted)).

<sup>24</sup> *See, e.g., Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 WL 3584177, at \*6-7 (July 25, 2018) (dismissing applicant’s application for review because application was untimely when it was sent “about six months after the deadline lapsed” and because the Commission found “no extraordinary circumstances justifying [the] untimely application for review”).

<sup>25</sup> We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.



UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 89238 / July 7, 2020

Admin. Proc. File No. 3-19481

In the Matter of the Application of  
STEPHEN ROBERT WILLIAMS  
For Review of Action Taken by  
FINRA

ORDER DISMISSING APPEAL OF ACTION TAKEN BY REGISTERED SECURITIES  
ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the appeal filed by Stephen Robert Williams be, and it hereby is,  
dismissed.

By the Commission.

Vanessa A. Countryman  
Secretary