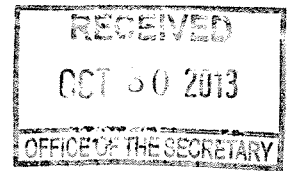


**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**



In the Matter of the Application of  
Mark Steven Steckler  
For Review of Disciplinary Action Taken by  
Financial Industry Regulatory Authority  
File No. 3-15466

**FINRA'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS STECKLER'S  
APPLICATION FOR REVIEW AND TO STAY BRIEFING SCHEDULE**

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October 29, 2013

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Steckler's application for review should be dismissed because he failed to avail himself of FINRA procedures by providing the requested information or requesting a hearing. Despite receiving actual notice of these proceedings in accordance with FINRA rules, Steckler did not respond to numerous letters and notices from FINRA, failed to follow FINRA procedures to challenge his suspension, and defaulted. Thus, Steckler failed to exhaust his administrative remedies, and the Commission should dismiss this appeal.

In his letter opposing FINRA's Motion to Dismiss Steckler's Application for Review, Steckler raises arguments regarding the underlying investigation that prompted the FINRA Rule 8210 requests for information and his purported failure to receive notices from FINRA.<sup>1</sup> For the following reasons, and as addressed more fully in FINRA's Motion to Dismiss Steckler's

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<sup>1</sup> Although the letter is dated October 1, 2013, FINRA did not receive a copy until October 16, 2013. The letter is defined hereinafter as the "Opposition." ("Opp.")

Application for Review and to Stay Briefing Schedule, these arguments are unavailing and irrelevant to Steckler's failure to exhaust his administrative remedies.

**A. Steckler Is Deemed to Have Received Notice of These Proceedings**

In his Opposition, Steckler argues he did not receive correspondence from FINRA until June 2013 because of his rehabilitation center's policy regarding incoming mail. (Opp. 1.) Even if this were true, the argument is unavailing because Steckler is deemed to have received such correspondence. Moreover, Steckler had actual notice of his impending suspension, but he nonetheless did not respond.

As explained in detail in FINRA's Motion to Dismiss Steckler's Application for Review, FINRA properly served Steckler with the two Rule 8210 requests, the Pre-Suspension Notice, the Suspension Notice, and the Bar Notice, all of which were mailed, at the very least, to his address as reflected in the Central Registration Depository ("CRD"). (RP 1-4, 5-9, 11-17, 21-26, 29-34, 37.) Steckler is deemed to have received all FINRA correspondence sent to the "last known residential address," as reflected in FINRA records. *See* FINRA Rule 8210(d) (providing that any request for information "shall be deemed received" when it is transmitted to the "last known residential address as reflected in the Central Registration Depository"). Similarly, Rule 9134(b)(1) provides that, "Papers served on a natural person may be served at the natural person's residential address, as reflected in the [CRD], if applicable." The record demonstrates that FINRA complied with these rules and sent all correspondence to the CRD Address. (RP 1-4, 5-9, 11-17, 21-26, 29-34, 37.). Thus, Steckler's inability to receive correspondence sent to his CRD address during his rehabilitation center stay does not excuse his failure to exhaust his administrative remedies. *See, e.g., Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at \*15 (Apr. 18, 2013) (dismissing application for review and rejecting

applicant's argument that his failure to challenge FINRA's disciplinary sanction through FINRA appeal procedures was excused because FINRA sent correspondence to an old address).

Moreover, Steckler had actual notice of his suspension. Opp. 1. According to Steckler, he "never viewed the correspondence from FINRA or the SEC until June of 2013. After receiving said correspondence, [he] immediately phoned Sandra J. Harris...."<sup>2</sup> (Opp. 1-2.) Indeed, on June 4, 2013, after receiving the Pre-Suspension Notice and prior to receiving the Suspension Notice, Steckler spoke to Sandra J. Harris, FINRA Senior Director of Policy and Expedited Proceedings. *See* Declaration of Sandra J. Harris ("Dec.") ¶¶ 6-9, attached hereto as Exhibit A. Steckler wanted to know how he could prevent the suspension from going into effect. (Dec. ¶ 6.) Harris explained to Steckler that he could prevent the suspension from going into effect by sending to Harris a signed statement answering the Rule 8210 requests for information no later than June 10, 2013. (Dec. ¶8.) Steckler did not do so or otherwise respond. (Dec. ¶9.)

Accordingly, on June 10, 2013, Harris, via the Suspension Notice, notified Steckler that he was suspended, effective immediately, from association with any FINRA member firm in any capacity. (RP 21-26, Dec. ¶10.) The Suspension Notice advised Steckler that he could file a written request to terminate the suspension based on fully providing the information and documents FINRA requested, and reiterated the warning that Steckler's failure to seek relief from the suspension by August 20, 2013 would result in a default and an automatic bar pursuant

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<sup>2</sup> This argument ignores the fact that Steckler had actual notice of the second Rule 8210 request because the certified mail return receipt was signed by "Mark Steckler" on December 12, 2012. (RP 9.) The first Rule 8210 request certified mail receipt was signed by "Karen Steckler" on November 27, 2012. (RP 4.)

to FINRA Rule 9552. (RP 21); *see also* FINRA Rule 9552(h).<sup>3</sup> But during June, July and August 2013, Steckler did not file a request to terminate the suspension. (Dec. ¶12.) Thus, despite having received *actual* notice of these proceedings and his ability to terminate the suspension, Steckler did not respond.<sup>4</sup>

**B. Steckler’s Argument Concerning His Underlying Misconduct and Subsequent Termination Is Irrelevant**

In his Opposition, Steckler seeks to justify his underlying misconduct—borrowing \$800 from his firm’s customer—which prompted his termination and led to the FINRA’s investigation to determine whether he violated federal securities laws or FINRA rules. (Opp. 1.) These details, however, are irrelevant for purposes of the Commission’s consideration of his application for review.

The issue before the Commission is not Steckler’s underlying misconduct. Instead, the issue before the Commission is whether Steckler failed to follow FINRA procedures to challenge his suspension, and consequently, failed to exhaust his administrative remedies. An aggrieved party—such as Steckler—is required to exhaust his administrative remedies before resorting to an appeal, and those who fail to exercise their rights to administrative review cannot claim that they have exhausted their administrative remedies. *Royal Secs. Corp.*, 36 S.E.C. 275, 277 n.3

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<sup>3</sup> Rule 9552(h) states, “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>4</sup> FINRA’s Motion to Dismiss Steckler’s Application for Review and to Stay Briefing Schedule provided that Steckler’s request for an appeal to the Commission was his first communication with FINRA regarding FINRA’s investigation and expedited proceeding to bar him from associating with any FINRA member firm. Motion 1. As explained in the Harris Declaration attached hereto as Exhibit A, Steckler communicated via telephone to FINRA on June 4, 2013 but otherwise did not respond to the two Rule 8210 requests, the Pre-Suspension Notice, the Suspension Notice, and the Bar Notice. Dec. ¶¶6-9, 12, 15.

(1955). This doctrine applies with equal force to FINRA proceedings. *See Lang v. French*, 154 F.3d 217, 220 (5th Cir. 1998) (holding that “[NASD] disciplinary orders are reviewable by the [Commission] after administrative remedies within the NASD are exhausted”).

Here, the record is undisputed that Steckler did not follow the required procedural steps as a condition of applying for review and, consequently, failed to exhaust his administrative remedies. (RP 1-4, 5-9, 11-17, 21-26, 29-34, 37.) By failing to take any action in accordance with FINRA rules and as directed by the Pre-Suspension and Suspension Notices, Steckler defaulted, and forfeited his ability to challenge the actions of FINRA before the Commission. *See Martinez*, 2013 SEC LEXIS 1147, at \*15 (relying on “well-established precedent” and dismissing application for review in a Rule 9552 proceeding where applicant failed to request a hearing or take corrective action by complying with Rule 8210 requests); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at \*6 (May 6, 2010) (finding in a Rule 9552 proceeding that “FINRA’s actions were in accordance with its rules and the purposes of the Exchange Act [when] FINRA’s rules set forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action”). Steckler’s failure to participate in FINRA procedures means that he does not qualify for appellate review by the Commission. *See, e.g., David I. Cassuto*, Exchange Act Release No. 48087, 2003 SEC LEXIS 1496, at \*10-14 (June 25, 2003).

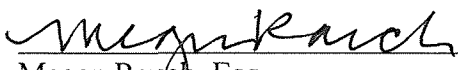
\* \* \* \* \*

It is undisputed that FINRA properly served Steckler with the two Rule 8210 requests, the Pre-Suspension Notice, the Suspension Notice, and the Bar Notice. Now, Steckler concedes that, despite receiving actual notice of these proceedings, he failed to respond and to avail himself of the remedies available to him to contest his suspension and bar. Accordingly, the



Commission should dismiss Steckler's application for review for failure to exhaust his administrative remedies.

Respectfully submitted,

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October 29, 2013

# **EXHIBIT A**

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

In the Matter of the Application of

Mark Steven Steckler

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-15466

**DECLARATION OF SANDRA J. HARRIS IN SUPPORT OF  
FINRA'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS STECKLER'S  
APPLICATION FOR REVIEW AND TO STAY BRIEFING SCHEDULE**

I, Sandra J. Harris, declare as follows:

1. This declaration was executed on October 29, 2013, in Los Angeles, California.
2. I am employed by FINRA as Senior Director, Policy & Expedited Proceedings, in the Department of Enforcement.
3. The statements contained in this declaration are based upon personal knowledge and my review of the information contained in FINRA's investigative file of this matter.

**The May 17, 2013 Pre-Suspension Notice**

4. On May 17, 2013, I warned Mark Steven Steckler in a letter (the "Pre-Suspension Notice") that FINRA planned to suspend him on June 10, 2013 for his failure to respond to FINRA Rule 8210 requests for information.
5. I caused the Pre-Suspension Notice to be sent by Federal Express Overnight Delivery and first-class mail to Steckler's address of record contained in the Central Registration Depository ("CRD"), [REDACTED] (the "CRD Address").

**The June 4, 2013 Telephone Call from Steckler**

6. On June 4, 2013, I received a voicemail message from Steckler regarding the Pre-Suspension Notice. Steckler wanted to know how he could prevent the suspension from going into effect.

7. I called Steckler back that same day and spoke to him. Steckler acknowledged that the CRD Address was his current residential address. Steckler also informed me he had been in a rehabilitation center on November 20, 2012 and December 6, 2012, the dates that the Rule 8210 requests for information were mailed to him.

8. I explained to Steckler that he could prevent the suspension from going into effect by sending me a signed statement no later than June 10, 2013, answering the Rule 8210 requests for information regarding the underlying misconduct.

9. Steckler did not send me a signed statement or otherwise respond.

**The June 10, 2013 Suspension Notice**

10. Because Steckler failed to send me a signed statement, on June 10, 2013, I notified Steckler in a letter that he was suspended, effective immediately, from association with any FINRA member firm in any capacity.

11. I caused the Suspension Notice to be sent by Federal Express Overnight Delivery and first-class mail to the CRD Address and an additional address which the public records database listed as his current address.

12. Steckler did not respond to the Suspension Notice.

**The August 20, 2013 Bar Notice**

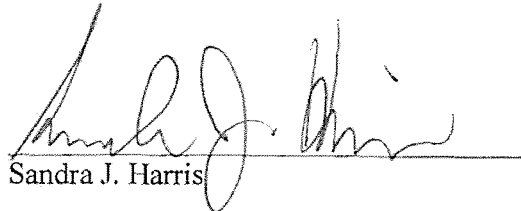
13. Because Steckler failed to take any action in response to the Suspension Notice, on August 20, 2013, I notified Steckler in a letter that he was in default, and barred, effective immediately (the "Bar Notice").

14. I caused the Bar Notice to be sent by Federal Express Overnight Delivery and first-class mail to the CRD Address and an additional address which the public records database listed as his current address.

15. Steckler did not respond to the Bar Notice. On or about September 9, 2013, Steckler submitted an application for review of this matter to the Commission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 29, 2013

  
Sandra J. Harris