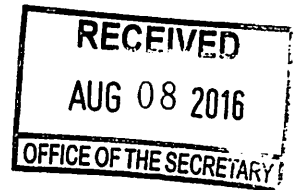


**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**



In the Matter of the Application of

Li-Lin Hsu

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-17344

**FINRA'S MOTION TO DISMISS HSU'S APPLICATION FOR REVIEW AND
TO STAY BRIEFING SCHEDULE**

Andrew Love
Associate General Counsel

Colleen Durbin
Assistant General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8816 Telephone
202-728-8264 Facsimile

August 8, 2016

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. PROCEDURAL AND FACTUAL BACKGROUND.....	2
A. FINRA’s Initial Rule 8210 Requests, Hsu’s Failures to Respond, and Her Initial Suspension	3
1. The April 9, 2015 Request for Information	3
2. The April 27, 2015 Request for Information	4
3. Hsu’s Communications with FINRA in May - June 2015.....	4
4. The July 31, 2015 Request for Information	5
5. The August 28, 2015 Pre-Suspension Notice	6
6. Hsu’s Car Accident, Suspension, and Termination of Suspension.....	7
B. The Current Outstanding FINRA Rule 8210 Requests, Hsu’s Failures to Respond, and Her Suspension, Bar, and Appeal	8
1. The December 22, 2015 Request for Information	8
2. The January 6, 2016 Request for Information	9
3. The January 14, 2016 Request for Information	9
4. The February 29, 2016 Pre-Suspension Notice	10
5. The March 24, 2016 Suspension Notice	11
6. June 1, 2016 Email from Hsu	11
7. Denial of Request for an Extension, The June 1, 2016 Bar Notice, and Appeal	12
III. ARGUMENT	12
A. Hsu Failed to Exhaust Her Administrative Remedies	13
B. Hsu’s Attempts to Excuse Her Failures to Respond Are Without Merit.....	15
IV. CONCLUSION.....	19

TABLE OF AUTHORITIES

	<u>Pages</u>
<u>Federal Decisions</u>	
<i>Lang v. French</i> , 154 F.3d 217 (5th Cir. 1998).....	14
<i>Swirsky v. NASD</i> , 124 F.3d 59 (1st Cir. 1997).....	14
<u>SEC Decisions and Releases</u>	
<i>Howard Brett Berger</i> , Exchange Act Release No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008)	17
<i>David I. Cassuto</i> , 56 S.E.C. 565 (2003).....	13, 15
<i>CMG Institutional Trading, LLC</i> , Exchange Act Release No. 59325, 2009 SEC LEXIS 215 (Jan. 30, 2009)	18
<i>Curtis Steven Culver</i> , Exchange Act Release No. 75774, 2015 SEC LEXIS 3541 (Aug. 27, 2015)	16
<i>Charles C. Fawcett</i> , Exchange Act Release No. 56770, 2007 SEC LEXIS 2598 (Nov. 8, 2007)	17
<i>Gary A. Fox</i> , 55 S.E.C. 1147 (2002).....	13
<i>Ashton Noshir Gowadia</i> , 53 S.E.C. 786 (1998).....	16
<i>Rogelio Guevara</i> , Exchange Act Release No. 78134, 2016 SEC LEXIS 2233 (June 22, 2016)	13
<i>Lee Gura</i> , 57 S.E.C. 972 (2004)	13, 16
<i>Nazmi C. Hassanieh</i> , 52 S.E.C. 87 (1994).....	15
<i>Jeffrey A. King</i> , 58 S.E.C. 839 (2005)	13, 16
<i>Richard J. Lanigan</i> , 52 S.E.C. 375 (1995)	16
<i>Caryl Trewyn Lenahan</i> , Exchange Act Release No. 73146, 2014 SEC LEXIS 3503 (Sept. 19, 2014)	13
<i>Gerald J. Lodovico</i> , Exchange Act Release No. 73748,..... 2014 SEC LEXIS 4732 (Dec. 4, 2014)	13

<i>Aliza A. Manzella</i> , Exchange Act Release No. 77084, 2016 SEC LEXIS 464 (Feb. 8, 2016)	13
<i>Warren B. Minton, Jr.</i> , 55 S.E.C. 1170 (2002).....	16
<i>Ricky D. Mullins</i> , Exchange Act Release No. 71926,..... 2014 SEC LEXIS 1268 (Apr. 10, 2014)	13
<i>Jay Alan Ochanpaugh</i> , Exchange Act Release No. 54363, 2006 SEC LEXIS 1926 (Aug. 25, 2006)	17
<i>Gregory S. Profeta</i> , Exchange Act Release No. 62055, 2010 SEC LEXIS 1563 (May 6, 2010)	13, 15
<i>Royal Sec. Corp.</i> , 36 S.E.C. 275 (1955)	14
<i>Mark Steven Steckler</i> , Exchange Act Release No. 71391,..... 2014 SEC LEXIS 283 (Jan. 24, 2014)	13
<i>Toni Valentino</i> , 57 S.E.C. 330 (2004).....	17

Federal Statutes and Codes

17 C.F.R. § 201.161	2
---------------------------	---

FINRA Rules and Guidelines

FINRA Rule 8210	3
FINRA Rule 9552(a).....	6
FINRA Rule 9552(e).....	6, 10
FINRA Rule 9552(h)	12, 14

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

In the Matter of the Application of

Li-Lin Hsu

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-17344

**FINRA'S MOTION TO DISMISS HSU'S APPLICATION FOR REVIEW AND
TO STAY BRIEFING SCHEDULE**

I. INTRODUCTION

The Commission should dismiss Li-Lin Hsu's application for review for her failure to exhaust the administrative remedies available to her in FINRA's forum. This case involves Hsu's prolonged failure to respond to FINRA's requests for information and its subsequent notices of proceedings against her. When FINRA learned that Ameriprise Financial Services, Inc. ("Ameriprise" or "Firm") had terminated Hsu for allegedly violating company policies related to maintaining a beneficiary relationship with a client, complaint handling, commingling funds, and conducting business with a foreign client, FINRA opened an investigation to determine whether Hsu had violated securities laws and FINRA rules. FINRA served Hsu with several FINRA Rule 8210 requests for information. Hsu, however, failed to provide the requested information, notwithstanding FINRA's warnings that she could face disciplinary action if she refused to cooperate. FINRA then initiated an expedited proceeding against Hsu, informing her that she would be suspended if she did not take corrective action. Hsu again failed to respond and FINRA suspended her. FINRA notified Hsu that she could request termination of

the suspension on the ground that she complied fully with FINRA's requests. Hsu never provided the requested information, took no action, and FINRA barred her. Hsu then filed this appeal.

Hsu's appeal should be dismissed because she failed to follow FINRA's procedures. Hsu disregarded the directives in numerous notices from FINRA and did not take corrective action by providing the requested information. She was well-aware of the repercussions of failing to comply with FINRA's Rule 8210 requests, having previously been suspended for failing to respond to FINRA Rule 8210 requests. Thus, she failed to exhaust his administrative remedies.

Further, the record before the Commission contains no valid grounds for an appeal. While Hsu claims to have been unable to comply with FINRA requests because she was in a car accident approximately one year ago, and that an attorney allegedly representing her in a civil action against her former employer allegedly advised her not to respond to FINRA's request, such issues do not excuse Hsu's failure to take advantage of the multiple opportunities FINRA provided for her to respond to its requests. The Commission should follow its well-established precedent in this area, find that Hsu failed to avail herself of FINRA's procedures, and dismiss Hu's Application for Review.¹

II. PROCEDURAL AND FACTUAL BACKGROUND

From January 27, 2006 through March 27, 2015, Hsu was registered with Ameriprise, a FINRA member firm. The Firm filed a Uniform Termination Notice for Securities Industry

¹ Pursuant to Commission Rule of Practice 161, FINRA requests that the Commission stay issuance of a briefing schedule in this matter while this motion is pending. See 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive argument that Hsu's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

Registration (“Form U5”) reporting that Hsu was terminated for violating company policies related to maintaining a beneficiary relationship with a client, complaint handling, commingling funds, and conducting business with a foreign client. Upon learning of Hsu’s termination, FINRA initiated an investigation to determine whether Hsu violated FINRA rules.

A. FINRA’s Initial Rule 8210 Requests, Hsu’s Failures to Respond, and Her Initial Suspension

Prior to Hsu’s failures to respond to the FINRA Rule 8210 requests that led to the imposition of the bar and Hsu’s instant appeal to the Commission, FINRA made an initial round of FINRA Rule 8210 requests to Hsu. As discussed in greater detail below, Hsu engaged in a pattern of delay and obstruction from the outset of FINRA’s investigation. FINRA gave Hsu numerous extensions and opportunities to supplement her responses, and FINRA had to exert extensive regulatory pressure to get the information it sought. Hsu was finally deemed sufficiently compliant with these initial Rule 8210, but not before FINRA had suspended her. Hsu’s tactics of delay and 11th hour requests for relief continue with the FINRA Rule 8210 requests at issue in this appeal, and her total failures to respond or exhaust her administrative remedies should result in the dismissal of her appeal.

1. The April 9, 2015 Request for Information

On April 9, 2015, Marissa Conde, a FINRA investigator, sent Hsu a letter requesting information pursuant to FINRA Rule 8210.² (RP 1-2.) The Rule 8210 request sought information concerning the Firm’s allegations of wrongdoing related to Hsu’s termination, and

² FINRA Rule 8210 provides that FINRA staff has the right to require members, persons associated with a member, and other persons subject to FINRA’s jurisdiction “to provide information orally, in writing, or electronically . . . with respect to any matter involved” in an investigation, complaint, examination or proceeding. FINRA Rule 8210(a)(1).

asked her to provide copies of her bank statements, a signed statement responding to the allegations, and copies of correspondence and memoranda related to the matter. The Rule 8210 request further asked Hsu to confirm whether there were any complaints regarding her employment at the Firm that were open or resolved within the previous three years of the date of her termination, and if so, to provide additional documentation. (RP 1-2.) The letter requested Hsu to provide a written response to FINRA by April 23, 2015. (*Id.*) The Rule 8210 request informed Hsu that, among other things, she was obligated to respond “fully, promptly, and without qualification” to FINRA’s request, and warned that “any failure on [her] part to satisfy these obligations could expose [her] to sanctions, including a permanent bar from the securities industry.” (*Id.*) Hsu did not respond to FINRA’s Rule 8210 request.³

2. The April 27, 2015 Request for Information

On April 27, 2015, Conde made a second written request pursuant to FINRA Rule 8210 for the information. The second request included a copy of the April 9, 2015 Rule 8210 request letter, asked for additional information concerning Hsu’s relationships with certain Firm customers, and set a response deadline of May 11, 2015. (RP 3-4.) Again, Hsu did not respond to FINRA’s April 27, 2015 Rule 8210 request.

3. Hsu’s Communications with FINRA in May – June 2015

Hsu’s preferred method of response to FINRA’s communications over the course of FINRA’s entire investigation was via email. On May 19, 2015, Hsu emailed Conde and told her that she had moved, which delayed her receipt of FINRA’s Rule 8210 requests. (RP 5-6.)

³ FINRA sent its Rule 8210 requests to Hsu in each instance to Hsu’s address of record as contained in the Central Registration Depository (“CRD”[®]), 873 Terrace Ln W, Unit 2, Diamond Bar, CA 91765 (the “CRD Address”). (RP 1.) Hsu does not contest that she received any of the requests or other correspondence from FINRA.

Conde asked Hsu to provide her responses to FINRA's Rule 8210 requests by May 22, 2015.

(RP 5.) On May 22, 2015, Hsu responded that she was having problems scanning the supporting documents and would do so by the following Tuesday. (RP 7.) She did however, email Conde an unsigned copy of her statement to FINRA on that day. (RP 7-11.)

On June 3, 2015, Conde emailed Hsu and detailed the deficiencies in Hsu's responses to FINRA's April 9 and April 27 Rule 8210 requests. (RP 13.) Conde asked that Hsu provide a full response to FINRA by June 5, 2015. (*Id.*) Hsu responded that she had been travelling and just returned to California, but that she would "restructure" her responses in her previously submitted statement to respond to FINRA's requests. (*Id.*) On June 10, 2015, Hsu emailed Conde a copy of her immigration papers and birth certificate. (RP 17-26.) Then, on June 22, 2015, Hsu emailed copies of some of her bank statements. (RP 35-82.)

4. The July 31, 2015 Request for Information

On July 31, 2015, Conde sent Hsu yet another letter requesting additional information pursuant to FINRA Rule 8210. (RP 83-83.) The Rule 8210 request sought information concerning Hsu's involvement with an entity called American Capital Trading LLC and whether any Ameriprise customers had invested or provided money to American Capital. In addition, the letter requested additional bank and brokerage account statements from Hsu, and asked whether Hsu had misappropriated funds from any individual, including Firm customers. (RP 84-86.) Conde set a response deadline of August 10, 2015. (*Id.*)

On August 11, 2015 Hsu responded via email stating that she was travelling in Japan and asked for an extension to sometime after August 20, 2015. (RP 87.) Conde gave Hsu until August 20, 2015 to respond to FINRA's July 31, 2015 Rule 8210 request. (RP 89-94.) Hsu did not respond to FINRA's request.

5. The August 28, 2015 Pre-Suspension Notice

After Hsu failed to respond to the requests for information, FINRA's Department of Enforcement ("Enforcement") sought to suspend Hsu from associating with any FINRA firm in an expedited proceeding. *See* FINRA Rule 9552(a).⁴ On August 28, 2015, Sandra J. Harris, Senior Director, Policy & Expedited Proceedings for Enforcement, warned Hsu in a letter ("Pre-Suspension Notice") that FINRA intended to suspend her on September 21, 2015, for her failure to respond to FINRA's numerous requests for information. (RP 96-97.)

The Pre-Suspension Notice stated that Hsu could avoid imposition of the suspension if she took corrective action by complying with the information requests before the suspension date. (*Id.*) The Pre-Suspension Notice also explained that Hsu had the opportunity to request a hearing pursuant to FINRA Rule 9552(e), which, if made before the suspension date, would stay the effective date of any suspension. (*Id.*) The Pre-Suspension Notice further explained that Hsu could seek reinstatement during her suspension, and stressed that if she failed to request termination of the suspension within three months, she would be automatically barred on December 1, 2015. (RP 97.) Hsu did not respond in writing to the Pre-Suspension Notice, did not request a hearing, and she did not answer FINRA's outstanding requests for information.

⁴ FINRA Rule 9552(a) states that "[i]f a member, person associated with a member or 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, or fails to keep its membership application or supporting documents current, FINRA staff may provide written notice to such member or 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 membership or of association of the person with any member."

6. Hsu's Car Accident, Suspension, and Termination of Suspension

On September 21, 2015, the date the suspension took effect, Hsu emailed Conde to inform her that Hsu had been injured in a car accident in California in early August 2015 and had been staying overseas to receive medical treatment. (RP 107.) Harris replied to Hsu's email explaining that unless she provided FINRA with complete responses to its Rule 8210 requests, Hsu would be suspended. (RP 109.) The following day, Hsu emailed FINRA her responses to FINRA's requests. (RP 113-187.)

On September 23, 2015, Harris acknowledged receipt of Hsu's responses, but noted several deficiencies. (RP 189.) Harris informed Hsu that she would be suspended as of September 24 if she failed to provide all the requested information. (*Id.*) Hsu responded on September 25, informing Harris that she was having difficulty with her wireless and that she was waiting on certain bank statements. (RP 193.) Harris responded that if FINRA did not have all requested information by that afternoon FINRA would issue the suspension notice. (RP 207.)

On September 25, 2015, Harris notified Hsu in a letter ("Suspension Notice") that she was suspended, effective immediately, from association with any FINRA firm in any capacity. (RP 236-237.) The Suspension Notice advised Hsu that she could file a written request for termination of the suspension on grounds of fully complying with the information requests. (*Id.*) It also reiterated the warning that if Hsu failed to seek relief from the suspension she would be automatically barred on December 1, 2015. (*Id.*)

On the eve of the bar's effectiveness, on November 30, 2015, Hsu provided FINRA with some of her outstanding financial records previously requested by FINRA. (RP 239-527.) Harris immediately informed Hsu that her production remained deficient and Harris asked for her to provide the additional outstanding documents by 3:30 p.m. on December 1, 2015, or else

she would be barred. (RP 529.) Hsu provided the outstanding statements. (RP 533-695.) On December 2, 2015, FINRA sent a letter to Hsu informing her that her suspension had been terminated. (RP 712-713.) The letter also cautioned Hsu that FINRA reserved “the right to ask you questions, request information, and pursue an action against you.” The letter was sent to Hsu by email, as well as by certified and first-class mail to the CRD Address. (*Id.*)

B. The Current Outstanding FINRA Rule 8210 Requests, Hsu’s Failures to Respond, and Her Suspension, Bar, and Appeal

The investigation into Hsu’s alleged misconduct was transferred to FINRA’s Department of Enforcement for further review to determine whether Hsu had violated federal securities laws or FINRA Rules. (RP 717 -718.) As a result, FINRA issued a new series of FINRA Rule 8210 requests (those currently at issue in the instant appeal), and again, as discussed in greater detail below, Hsu has failed to comply or to request the relief available in FINRA’s forum.

1. The December 22, 2015 Request for Information

On December 22, 2015, Elizabeth Da Silva, an investigator with Enforcement, sent Hsu a letter requesting information pursuant to FINRA Rule 8210. (RP 717-21.) The letter requested that Hsu provide a written response to FINRA by December 30, 2015. The Rule 8210 request sought information concerning Hsu’s various business ventures and financial statements related to those entities, as well as copies of additional bank statements, tax returns, consumer credit reports, and documents related to a \$200,000 loan Hsu received in September 2014. In addition, FINRA sought information concerning her August 3, 2015 automobile accident, and documents that verified all Hsu’s international travel from January 2014 to the present. (*Id.*) This letter was sent to Hsu via email as well as federal express mail and first-class mail to Hsu’s CRD address. (*Id.*) As stated in FINRA’s previous Rule 8210 requests to Hsu, FINRA informed Hsu that, among other things, she was obligated to respond “fully, promptly, and without qualification” to

FINRA's request, and warned that "any failure on [her] part to satisfy these obligations could expose [her] to sanctions, including a permanent bar from the securities industry." (*Id.*)

On December 30, 2015, Hsu emailed Da Silva with a response to FINRA's document requests, but noted that "due to the holiday season," she was still in the process of getting copies of some of the requested documents. (RP 729-900.)

2. The January 6, 2016 Request for Information

On January 6, 2016, Da Silva sent another letter requesting information pursuant to FINRA Rule 8210. (RP 904-907.) The Rule 8210 request sought information and documents that were originally requested in the December 22 letter (but not provided by Hsu), as well as explanations concerning the sources of some of the deposits into Hsu's Chase Bank account. (*Id.*) The letter requested that Hsu provide a written response to FINRA by January 13, 2016. Da Silva sent the letter to Hsu by email, as well as by federal express and first-class mail to the CRD Address. Da Silva's email to Hsu attaching the January 6, 2016 Rule 8210 request also informed Hsu that Da Silva wanted to arrange a time to speak with Hsu, and asked if Hsu was available on January 7 or 8. (RP 903.)

Hsu did not respond to FINRA's January 6, 2016 Rule 8210 request, and did not respond to Da Silva's email. From January 8 through January 13, 2016, Da Silva attempted numerous times to contact Hsu by phone and email, but was unsuccessful. (RP 919-923.)

3. The January 14, 2016 Request for Information

On January 14, 2016, Da Silva made a third written request pursuant to FINRA Rule 8210 for the information. (RP 928.) The third request included copies of the December 22, 2015 and January 6, 2016 Rule 8210 request letters. (RP 929-936.) Da Silva sent the Rule 8210

request to Hsu by email as well as by federal express and first-class mail to the CRD Address, and set a response deadline of January 22, 2016. (RP 928.) Again, Hsu did not respond.

From January 15 through January 29, Da Silva and another Enforcement staff member, Robert Butani, left voicemails and sent numerous emails to Hsu to determine whether or not she intended to respond to FINRA's Rule 8210 requests. (RP 945-949.)⁵ Hsu did not respond to these emails and voicemails, nor did she ever respond to the January 14, 2016 Rule 8210 request.

4. The February 29, 2016 Pre-Suspension Notice

After Hsu failed to respond to the three requests for information, and the multiple voicemails and emails, Enforcement sought, for the second time in six months, to suspend Hsu from associating with any FINRA firm in an expedited proceeding. On February 29, 2016, Da Silva warned Hsu in a letter ("Second Pre-Suspension Notice") that FINRA intended to suspend her on March 24, 2016, for her failure to respond to the requests for information. (RP 980-981.)

The Second Pre-Suspension Notice stated that Hsu could avoid imposition of the suspension if she took corrective action by complying with the information requests before the suspension date. (*Id.*) The Second Pre-Suspension Notice explained that Hsu had the opportunity to request a hearing pursuant to FINRA Rule 9552(e), which, if made before the suspension date, would stay the effective date of any suspension. (*Id.*) The Second Pre-Suspension Notice further explained that Hsu could seek reinstatement during her suspension,

⁵ On February 9, 2016, Da Silva sent Hsu an email informing Hsu that in light of the fact that Hsu had not, and apparently would not, respond to Enforcement's multiple Rule 8210 requests, Hsu was in violation of FINRA rules and subject to possible disciplinary action. Da Silva informed Hsu that she could enter into an Acceptance, Waiver, and Consent with FINRA agreeing to a bar for her violations of FINRA Rule 8210. (RP 955-976.) Hsu did not respond to this email.

and stressed that if she failed to request termination of the suspension within three months, she would be automatically barred on June 1, 2016. (*Id.*)

FINRA sent the Second Pre-Suspension Notice to Hsu's CRD Address by certified and first-class mail, as well as by email. (*Id.*) The certified mail receipt indicates the letter was returned as "unclaimed." (RP 1032.) Hsu did not respond in writing to the Second Pre-Suspension Notice, and she did not answer FINRA's outstanding requests for information.

5. The March 24, 2016 Suspension Notice

On March 24, 2014, David Camuzo, on behalf of Enforcement, notified Hsu in a letter ("Second Suspension Notice") that she was suspended, effective immediately, from association with any FINRA firm in any capacity. (RP 1035.) The Second Suspension Notice advised Hsu that she could file a written request for termination of the suspension on grounds of fully complying with the information requests. (*Id.*) It also reiterated the warning that if Hsu failed to seek relief from the suspension she would be automatically barred on June 1, 2016. (*Id.*)

FINRA sent the Second Suspension Notice to the CRD Address by certified and first-class mail.⁶ The certified mail receipt indicates the letter was returned as "unclaimed." (RP 1039.) Hsu did not respond to the Second Suspension Notice.

6. June 1, 2016 Email from Hsu

On the date her bar took effect, June 1, 2016, Hsu emailed Da Silva seeking yet another extension of time to respond to FINRA's requests. (RP 1043.) Hsu stated that she had been out of the country receiving medical treatments for injuries resulting from the August 2015

⁶ Due to the misspelling of Hsu's email address, the email courtesy copy of the Second Suspension Notice was not delivered to Hsu's email account.

automobile accident. She also claimed to have an attorney in her litigation with Ameriprise and that he told her not to share any more information with FINRA. (*Id.*)⁷

7. Denial of Request for an Extension, The June 1, 2016 Bar Notice, and Appeal

On June 1, 2016, Da Silva denied Hsu's request for an extension. (RP 1045.) Da Silva memorialized the opportunities FINRA had provided over the preceding months to comply with FINRA requests, and noted that no attorney had entered an appearance on behalf of Hsu in conjunction with the FINRA investigation.⁸

On that same day, Camuzo also notified Hsu by letter that she was barred from association with any FINRA member in any capacity in accordance with FINRA Rule 9552(h) ("Bar Notice"). (RP 1047-1048.) The Bar Notice informed Hsu that she could appeal FINRA's action by filing an application for review with the Commission within 30 days of her receipt of the letter. (RP 25.) Exactly 30 days later, Hsu filed her appeal with Commission.

III. ARGUMENT

The Commission should dismiss Hsu's application for review because Hsu failed to exhaust her administrative remedies by providing FINRA the requested information or requesting a hearing. Hsu engaged in a pattern of obstruction and delay, ignored numerous

⁷ Hsu appears to be claiming that her counsel in the civil litigation with Ameriprise also represented her in the FINRA investigation, and that she informed FINRA of that fact. However, the only mention of an attorney made by Hsu in her correspondence with FINRA does not indicate that he represented her in the investigation. Rather, Hsu merely stated that some of the documents that FINRA was seeking pursuant to its Rule 8210 requests were in the possession of her attorney, that she could not reach him, and that once she was able to get copies of those documents from him, she (not her attorney) would provide them to FINRA. (RP 729.)

⁸ To date, no attorney has entered an appearance before FINRA on behalf of Hsu, nor is there an attorney representing Hsu before the Commission.

letters and notices from FINRA, failed to follow FINRA procedures to challenge her suspension, and did nothing to stop the suspension from turning into a bar. Hsu thus failed to exhaust her administrative remedies. The Commission should dismiss the appeal.

A. Hsu Failed to Exhaust Her Administrative Remedies

The Commission should not consider Hsu's application for review because she failed to follow FINRA procedures, and consequently, failed to exhaust her administrative remedies. As the Commission has held previously, it "will not consider an application for review if the applicant failed to exhaust FINRA's procedures for contesting the sanction at issue." *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at *10 (Apr. 10, 2014) (dismissing application for review where respondent failed to avail himself of administrative remedies and FINRA barred him for failure to respond to FINRA's Rule 8210 request). The precedent in this area is well-settled. *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, at *9-10 (June 22, 2016) (dismissing appeal because respondent failed to exhaust FINRA's administrative remedies); *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 SEC LEXIS 464 (Feb. 8, 2016) (same); *Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 SEC LEXIS 4732, at *7 (Dec. 4, 2014); *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at *6 (Sept. 19, 2014) (same); *Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 SEC LEXIS 283, at *8 (Jan. 24, 2014) (same); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5, 8 (May 6, 2010) (same); *Jeffrey A. King*, 58 S.E.C. 839, 843-45 (2005) (same); *Lee Gura*, 57 S.E.C. 972, 976-77 (2004) (same); *David I. Cassuto*, 56 S.E.C. 565, 570 (2003) (dismissing appeal because "applicant failed to follow NASD procedures"); *Gary A. Fox*, 55 S.E.C. 1147, 1149 (2002) (same).

An aggrieved party—such as Hsu—is required to exhaust her administrative remedies before resorting to an appeal. Those who fail to exercise their rights to administrative review cannot claim that they have exhausted their administrative remedies. *Royal Sec. Corp.*, 36 S.E.C. 275, 277 n.3 (1955). Federal courts, as well as the Commission, have applied the exhaustion doctrine 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”); *Swirsky v. NASD*, 124 F.3d 59, 62 (1st Cir. 1997) (same).

Hsu failed repeatedly to pursue her administrative remedies to prevent or challenge her suspension. She chose not to respond to three Rule 8210 requests, in which FINRA informed her that the failure to respond could result in serious sanctions, including a bar. After the issuance of the Second Pre-Suspension Notice, Hsu had the opportunity to take corrective action by complying with the Rule 8210 requests or, alternatively, to request a hearing and set forth the reasons why she believed her suspension should be set aside. Hsu received actual notice of the corrective action she needed to take from the Second Pre-Suspension Notice, but Hsu did not take corrective action or request a hearing.

After issuance of the Second Suspension Notice, Hsu had the opportunity to move for reinstatement on the grounds that she had fully complied with the Second Pre-Suspension Notice. Indeed, Hsu was well-aware that if she in fact decided to comply with FINRA’s Rule 8210 requests, her suspension could be terminated, as FINRA had done previously in December 2015. Yet Hsu did nothing. Accordingly, pursuant to FINRA Rule 9552(h), Hsu was barred.

By failing to take action in accordance with FINRA rules and as directed by the Second Pre-Suspension Notice and Second Suspension Notice, Hsu forfeited her ability to challenge the actions of FINRA before the Commission. *See Profeta*, 2010 SEC LEXIS 1563, at *6 (finding in a Rule 9552 proceeding that “FINRA’s actions were in accordance with its rules and the purposes of the Exchange Act [when] rules set forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action”); *Cassuto*, 56 S.E.C. at 570-72 (dismissing application for review because of applicant’s failure to ask for a hearing or to move for reinstatement after suspension in NASD action stemming from failure to respond to Rule 8210 requests for information).

Hsu could have prevented the suspension and subsequent bar by: (1) providing the information at issue, (2) requesting a hearing timely, or (3) contesting the suspension during the three-month suspension period, as detailed in the Second Pre-Suspension Notice. She took none of these steps. Thus, Hsu’s application for review should be dismissed.

B. Hsu’s Attempts to Excuse Her Failures to Respond Are Without Merit

Hsu makes several arguments to excuse her failures to comply and to have the bar eliminated. Her arguments lack merit. Hsu maintains that she was unable to comply with the Rule 8210 requests on time because she had been overseas seeking medical treatment for an automobile accident that occurred in August of 2015.⁹ (RP 1055.) Assuming the veracity of this

⁹ Since Hsu was travelling extensively overseas in the midst of a FINRA investigation into her alleged misconduct, Hsu should have informed FINRA of this fact. The responsibility to keep FINRA apprised of her whereabouts and extended stays overseas falls squarely with Hsu, and her excuse that she was out of the country provides no cover for her FINRA Rule 8210 violations. It is well settled that all registered representatives are required to sign and file a Form U4, “which obligates them to keep a current address on file with the NASD at all times.” *Nazmi C. Hassanieh*, 52 S.E.C. 87, 90 (1994). Because registered persons are subject to FINRA jurisdiction for at least two years after leaving the securities industry, they are obliged to keep

[Footnote continued on next page]

statement, this is no defense. When an applicant contends that personal problems such as health issues should excuse or mitigate violations of FINRA rules, the applicant must demonstrate with reliable evidence both that the health issues were present and that they caused the applicant to violate FINRA's rules. *See, e.g., King*, 58 S.E.C. at 844 (finding that applicant had "not provided any evidence substantiating his claims that his divorce [or the stress it caused] prevented him from responding to NASD's request for information, or from requesting a hearing as authorized under NASD's rules"); *Gura*, 57 S.E.C. at 976-77 (finding that applicant "has not provided any evidence substantiating his claims of depression so severe that he could not respond in any manner to NASD's multiple requests for information").

Here, Hsu has failed on both points. She submitted no evidence at all of her physical injuries, let alone that those injuries caused her to be unable to respond to FINRA's requests. *See Curtis Steven Culver*, Exchange Act Release No. 75774, 2015 SEC LEXIS 3541, at *11 (Aug. 27, 2015) ("[w]ithout medical records or other proof that medical or personal problems prevented Culver from responding to the Rule 8210 requests, there is no basis for excusing his failure to exhaust available administrative remedies and no reason to deny FINRA's motion to dismiss"). Moreover, if Hsu was unable to meet the FINRA's deadline to respond because of her health issues, she was obligated to contact FINRA staff and explain why she was unable to

[cont'd]

their addresses current with FINRA, even after they leave the industry. *Warren B. Minton, Jr.*, 55 S.E.C. 1170, 1178 (2002). Ignorance of this requirement does not excuse a registered person's noncompliance. *Id.* (citing *Richard J. Lanigan*, 52 S.E.C. 375, 378 (1995) (rejecting claim that applicant was unaware of duty to update Form U4)). This requirement prevents registered persons from thwarting FINRA's disciplinary process, and evading regulatory liability and oversight, by not giving FINRA a current address or leaving a forwarding address. *Ashton Noshir Gowadia*, 53 S.E.C. 786, 789 (1998).

respond. *See Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *18 (Nov. 8, 2007) (“As we have often noted, recipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot.”). Therefore, Hsu’s attempts to excuse her violation of FINRA Rule 8210 based on travel and injury must fail.¹⁰

Next, Hsu maintains that her attorney in a civil action involving Ameriprise advised her not to provide FINRA with any information for fear that FINRA would share it with Ameriprise. (RP 1055.) This argument also lacks merit. Reliance of counsel not a defense to a violation of FINRA Rule 8210. *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *39 (Nov. 14, 2008), *pet. denied*, 347 F. App’x 692 (2d Cir. 2009), *cert. denied*, 559 U.S. 1102 (2010) (because there is no state of mind requirement for a Rule 8210 violation, reliance on advice of counsel does not excuse a failure to respond to Rule 8210 requests). And, in any event, an advice of counsel claim is not mitigating if it is premised on a strategy to avoid full compliance with applicable regulatory requirements, including FINRA Rule 8210. *Id.* at *49. Hsu was obligated to respond to FINRA’s requests notwithstanding any alleged advice of counsel because FINRA’s “authority to request documents pursuant to [FINRA] Rule 8210 stems from the contractual relationship entered into voluntarily by [FINRA] members and associated persons with [FINRA members].” *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 SEC LEXIS 1926, at *20 (Aug. 25, 2006). *See Toni Valentino*, 57 S.E.C. 330, 338 (2004) (finding that respondent could not claim that she relied in good faith on advice of counsel

¹⁰ We note that, conflicting with Hsu’s contention that she was unable to comply with FINRA’s January 6, 2016 Rule 8210 requests because of her injuries, Hsu provided documents to FINRA on several occasions after her August 2015 car accident. For example Hsu provided documents and responses to FINRA on September 22, 2015, November 30, 2015, and December 30 and 31, 2015.

not to attend an OTR because when she “registered with NASD, she agreed that she understood and consented to abide by its rules, including the requirement to provide information requested by NASD for its investigations” and NASD warned her in Rule 8210 letters “that failure to appear could result in disciplinary action against her.”).

Finally, Hsu maintains that FINRA was somehow unfair for not extending the deadline to respond to FINRA’s Rule 8210 requests until after the resolution of her civil action against Ameriprise. Hsu does not have the right to dictate the terms of her compliance with FINRA’s Rule 8210 requests, particularly when FINRA had given her multiple opportunities and extensions to respond to its requests over the course of the past year and a half. Moreover, Hsu could have reached out to FINRA to request an extension before the bar took effect.¹¹ She chose not to. If Hsu had legitimate concerns about responding to FINRA’s investigation requests, she should have raised, discussed, and resolved these issues with FINRA staff in the cooperative spirit and prompt manner contemplated by FINRA Rule 8210. *See CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *23-24 (Jan. 30, 2009). Instead, she engaged in gamesmanship for an extended period, ultimately refused to comply with FINRA’s Rule 8210 requests, and flouted FINRA’s administrative procedures.

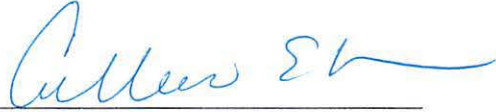
¹¹ It is clear that Hsu had been back in the country since before May 26, 2016, when she admittedly appeared for an interview with the Commission in California. (RP 1056.)

IV. CONCLUSION

Hsu's failure to follow FINRA's procedures means that she does not qualify for appellate review by the Commission. Hsu repeatedly failed to respond to FINRA's requests for information, and consequently, FINRA suspended her. She then disregarded the directives set forth in FINRA's notices and failed to follow FINRA's administrative procedures to terminate the suspension. As a result, FINRA barred Hsu. The Commission should dismiss Hsu's application for review because she failed to exhaust her administrative remedies.

Respectfully submitted,

By:



Colleen Durbin
Assistant General Counsel
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006
(202) 728-8816 Direct Dial
(202) 728-8264 Facsimile

August 8, 2016