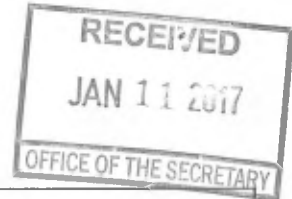


**HARD COPY**

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



---

In the Matter of the Application of

Jonathan Roth Ellis

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-17741

---

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

Alan Lawhead  
Vice President and  
Director – Appellate Group

Celia L. Passaro  
Counsel

FINRA  
Office of General Counsel  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8985

January 10, 2017

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	2
A. FINRA’s Rule 8210 Requests for Information.....	3
B. The August 19, 2016 Pre-Suspension Notice .....	4
C. The September 14, 2016 Suspension Notice .....	6
D. The November 22, 2016 Bar Notice.....	7
III. ARGUMENT .....	7
A. FINRA Has Jurisdiction Over Ellis .....	8
B. Ellis Failed to Exhaust His Administrative Remedies.....	9
C. FINRA Provided Ellis with Proper Notice of These Proceedings.....	10
1. FINRA Properly Served All Its Notices .....	11
2. Ellis’s Failure to Update His CRD Address Does Not Excuse His Failure to Respond to FINRA’s Notices.....	12
IV. CONCLUSION.....	14

## TABLE OF AUTHORITIES

<u>Federal Court Decisions</u>	<u>Page</u>
<i>MFS Sec. Corp. v. SEC</i> , 380 F.3d 611 (2d Cir. 1998).....	9
 <b><u>SEC Releases and Decisions</u></b>	
<i>Howard Brett Berger</i> , Exchange Act Release No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008) .....	3
<i>Norman Chen</i> , Exchange Act Release No. 65345, 2011 SEC LEXIS 3224 (Sept. 16, 2011) .....	10
<i>David Kristian Evansen</i> , Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).....	11, 12
<i>Ashton Noshir Gowadia</i> , 53 S.E.C. 786 (1998).....	12
<i>Rogelio Guevara</i> , Exchange Act Release No. 78134, 2016 SEC LEXIS 2233 (June 22, 2016).....	9, 13
<i>Nazmi Hassanieh</i> , 52 S.E.C. 87 (1994) .....	14
<i>Caryl Trewyn Lenahan</i> , Exchange Act Release No. 73146, 2014 SEC LEXIS 3503 (Sept. 19, 2014) .....	9
<i>Gerald J. Lodovico</i> , Exchange Act Release No. 73748, 2014 SEC LEXIS 4732 (Dec. 4, 2014).....	9
<i>Gilbert Torres Martinez</i> , Exchange Act Release No. 69405, 2013 SEC LEXIS 1147 (Apr. 18, 2013).....	9, 12, 13,
<i>Ricky D. Mullins</i> , Exchange Act Release No. 71926, 2014 SEC LEXIS 1268 (Apr. 10, 2014) .....	9, 10
<i>Gregory S. Profeta</i> , Exchange Act Release No. 62055, 2010 SEC LEXIS 1563 (May 6, 2010).....	10
<i>Mark Steven Steckler</i> , Exchange Act Release No. 71391, 2014 SEC LEXIS 283 (Jan. 24, 2014).....	11-12

**Commission Rules**

Commission Rule of Practice 161, 17 C.F.R. §201.161 .....2  
Commission Rule of Practice 452, 17 C.F.R. §201.452 .....5

**FINRA By-Laws, Rules and Notices**

FINRA By-Laws, Art. V, Sec. 2.....12  
FINRA By-Laws, Art. V, Sec. 4.....8  
FINRA Rule 8210 .....3, 11  
FINRA Rule 9134 .....11  
FINRA Rule 9552 .....4, 5, 6, 11  
*NASD Notice to Members 92-19*, 1992 NASD LEXIS 50 (Apr. 1992).....8  
*NASD Notice to Members 97-31*, 1997 NASD LEXIS 35 (May 1997).....12

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

In the Matter of the Application of

Jonathan Roth Ellis

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-17741

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

**I. INTRODUCTION**

This case involves Jonathan Ross Ellis's failure to respond to FINRA's requests for documents and information and its subsequent bar of Ellis through an expedited proceeding. Ross did not respond to FINRA's warnings about being suspended and did not ask for a hearing. The Commission should dismiss Ellis's application for review (the "Application for Review") for his failure to exhaust the administrative remedies available to him in FINRA's forum.

When FINRA learned that Pruco Securities, LLC ("Pruco") had terminated Ellis for submitting false information to the firm and misrepresenting volunteer hours, FINRA opened an investigation to determine whether Ellis had violated FINRA or other rules. FINRA served Ellis with FINRA Rule 8210 requests for documents and information. Ellis, however, failed to respond to the requests. Pursuant to FINRA Rule 9552, FINRA then initiated an expedited proceeding against Ellis, informing him that he would be suspended if he did not either request a hearing or respond fully to the information requests. Ellis again failed to respond and did not request a hearing, and FINRA suspended him. FINRA notified Ellis of the suspension and

explained that he could request termination of the suspension on the ground that he complied fully with FINRA's requests. FINRA also warned Ellis that the suspension would convert to a bar three months from the date of the issuance of the original notice of suspension if Ellis failed to request termination of the suspension. Ellis took no action, never provided the requested information, and FINRA barred him.

Ellis's Application for Review should be dismissed because he failed to follow FINRA's procedures. The Commission should follow its long-standing precedent and dismiss the Application for Review.<sup>1</sup>

## II. FACTUAL BACKGROUND

Ellis joined the industry when he registered with Pruco in August 2015. (RP 94.)<sup>2</sup> On April 26, 2016, Ellis was discharged by Pruco, which filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"). (*Id.*) The Form U5 indicated that Pruco terminated Ellis because he "allowed another [registered representative] to submit on his behalf (i) false information and a matching gift receipt to [Pruco], which matches qualifying charitable donations by employees for a charitable donation he did not make and (ii) false information to [Pruco] regarding volunteer hours." (*Id.*)

---

<sup>1</sup> 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 Ellis's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

<sup>2</sup> "RP \_\_\_\_" refers to the page numbers in the certified record filed by FINRA on January 4, 2016.

#### A. FINRA's Rule 8210 Requests for Information

Prompted by Pruco's Form U5 filing, on May 26, 2016, FINRA sent a FINRA Rule 8210 request for documents and information to Ellis (the "First Request").<sup>3</sup> (RP 1-2.) The First Request asked Ellis to provide FINRA with a signed statement explaining the circumstances and events that led to his termination. (*Id.*) The First Request also asked Ellis to identify other employees of Pruco who participated in the activity for which he was terminated, copies of any related documents, and whether there were any other complaints regarding his employment with Pruco. (*Id.*) The First Request reminded Ellis of his obligation to provide the information and documents requested, and warned that "[a]ny failure ... to satisfy these obligations could expose [Ellis] to sanctions, including a permanent bar from the securities industry." (RP 2.) The First Request also reminded Ellis of his obligation to update FINRA's CRD with any change in his residential address. (*Id.*)

FINRA sent the First Request by certified and first-class mail to Ellis's address of record as contained in CRD, 80-23 Surrey Place, Jamaica, NY (the "CRD Address"), and requested a response from Ellis no later than June 9, 2016. (RP 1, 93.) The certified mailing to the CRD Address was not successfully delivered and Ellis did not respond.<sup>4</sup> (RP 5-8.)

---

<sup>3</sup> FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide documents and written information to FINRA, upon the request of FINRA staff, with respect to any matter involved in an investigation. The rule "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations." *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at \*13 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009) (internal quotation marks omitted). The Commission has made clear that a person who fails to respond to a request issued under FINRA Rule 8210 impedes FINRA's ability to detect misconduct and protect the investing public. *Id.* at \*13-14.

<sup>4</sup> Tracking documents for the certified mailing indicate "undelivered" and "delivery status not updated." There is no evidence in the record indicating that the first class mailing was returned.

On June 17, 2016, FINRA sent Ellis a second FINRA Rule 8210 request for information (the “Second Request”), which enclosed the First Request. (RP 9.) The Second Request reminded Ellis of his obligation to provide documents and information to FINRA under FINRA Rule 8210, and directed him to respond by June 29, 2016. (*Id.*) The Second Request was sent by certified and first-class mail to Ellis’s CRD Address. (*Id.*) The certified mailing was returned to FINRA and Ellis did not respond.<sup>5</sup> (RP 12-16, 87.)

**B. The August 19, 2016 Pre-Suspension Notice**

After Ellis failed to respond to the requests for documents and information, FINRA’s Department of Enforcement (“Enforcement”) sought to suspend Ellis from associating with any FINRA member firm pursuant to FINRA Rule 9552.<sup>6</sup> (RP 17-18.) On August 19, 2016, Jasmine Shergill, a senior Enforcement attorney, sent Ellis a letter (the “Pre-Suspension Notice”) notifying him that FINRA planned to suspend him on September 12, 2016, for his failure to respond to the First and Second Requests. (*Id.*) Enforcement included copies of the First and Second Requests with the Pre-Suspension Notice. (RP 17-21.)

---

<sup>5</sup> Tracking information for the certified mailing indicates that there was “no authorized recipient available” and that the mailing was “unclaimed.” The first class mailing was not returned to FINRA.

<sup>6</sup> 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.



The Pre-Suspension Notice stated that Ellis could avoid imposition of the suspension if he complied with the information requests before the suspension date of September 12, 2016. (RP 17-18.) The Pre-Suspension Notice further explained that Ellis had the opportunity to request a hearing before the suspension date, to contest the imposition of the suspension, and that such a request would stay the effectiveness of the suspension. (*Id.*) The Pre-Suspension Notice also explained that Ellis could seek termination of the suspension on the ground of full compliance with the notice, and that failure to request termination of the suspension within three months of the issuance of the Pre-Suspension Notice would result in bar on November 22, 2016. (*Id.*); *see also* FINRA Rule 9552(h).<sup>7</sup>

FINRA sent the Pre-Suspension Notice to Ellis's CRD Address by certified and first-class mail. (RP 17.) Prior to the sending the Pre-Suspension Notice, FINRA staff conducted a search of the Lexis Public Records database, and also sent the Pre-Suspension Notice to two other addresses identified by the search, including the address Ellis now claims is his current address, [REDACTED] San Antonio, Texas (the "San Antonio Address").<sup>8</sup> (RP 17; *see also* Declaration of Jasmine Shergill, attached as Exhibit A).<sup>9</sup> The certified mailing to the CRD

---

<sup>7</sup> FINRA 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>8</sup> The Pre-Suspension Notice was also sent to another address in Indiana identified through the Lexis search. This address, however, does not appear to be connected to the applicant.

<sup>9</sup> FINRA believes that the Commission's review of this motion will be aided by an explanation of how FINRA staff identified additional addresses for Ellis. Accordingly, FINRA moves to adduce as additional evidence the Declaration of Jasmine Shergill, a senior attorney in FINRA Enforcement, pursuant to SEC Rule of Practice 452. 17 C.F.R. §201.452. The Declaration is material to understanding why the various notices to Ellis were sent to particular addresses.

Address appears not to have been successfully delivered.<sup>10</sup> (RP 26.) The certified mailing to the San Antonio address, however, was accepted for delivery by an individual at the address. (RP 27-28.) Ellis neither responded to the Pre-Suspension Notice, nor answered FINRA's outstanding requests for documents and information.

**C. The September 14, 2016 Suspension Notice**

On September 14, 2016, Shergill notified Ellis in a letter (the "Suspension Notice") that he was suspended, effective immediately, from association with any FINRA member firm in any capacity, in accordance with the Pre-Suspension Notice. (RP 73.) The Suspension Notice advised Ellis that he could file a written request to terminate the suspension based on full compliance with the Pre-Suspension Notice. (*Id.*) The Suspension Notice reiterated the warning that Ellis's failure to request termination of the suspension by November 22, 2016, would result in an automatic bar pursuant to FINRA Rule 9552(h). (*Id.*)

FINRA sent the Suspension Notice by certified and first-class mail to the CRD Address and the San Antonio Address. (*Id.*) Once again, prior to mailing the Suspension Notice, FINRA staff searched the LEXIS Public Records database, which continued to list the San Antonio Address as Ellis's current address. (RP 29-72.) The certified mailings to both the CRD Address and the San Antonio Address were returned to FINRA. (RP 74-6, 89.) The mailing to the San Antonio Address was marked "unclaimed" and the tracking information indicated there was "no authorized recipient available." (RP 74, 76, 89.) The first class mailings were not returned to FINRA.

---

<sup>10</sup> The mailing to the Indiana address was returned. (RP 23-25, 88.)

**D. The November 22, 2016 Bar Notice**

In the three months following the Pre-Suspension Notice, Ellis did not request termination of his suspension. Accordingly, on November 22, 2016, David Camuzo, a Director in Enforcement, notified Ellis that, effective immediately, he was barred from associating with any FINRA member in any capacity (the “Bar Notice”). (RP 79-80.)

FINRA sent the Bar Notice by certified and first-class mail to Ellis’s CRD Address and the San Antonio Address. (RP 79.) Prior to sending the Bar Notice, FINRA staff again conducted a search for Ellis on the LEXIS Public Records database. (RP 77.) The search once again indicated that the San Antonio address was Ellis’s current address. (*Id.*) Ellis acknowledges in his Application for Review that he received the Bar Notice. (RP 91.)

On December 20, 2016, approximately one month after FINRA mailed the Bar Notice, Ellis submitted his Application for Review to the Commission. (RP 91.)

**III. ARGUMENT**

The Commission should dismiss Ellis’s Application for Review because he failed to exhaust his administrative remedies by either providing the requested documents and information, requesting a hearing, or requesting the termination of his suspension. Ellis claims that he did not receive any notice prior to the Bar Notice because they were sent to an “outdated address.” Ellis’s claim is both factually incorrect and not a valid defense even if it were correct. First, it was Ellis’s unequivocal obligation to update his records with FINRA, including the residential address listed in CRD, something he has not done to this day. (RP 93.) Moreover, even though service to the CRD address is sufficient, FINRA identified Ellis’s new address and sent all the notices and copies of the Rule 8210 requests to that address. FINRA followed the applicable rules, sending the required notices to Ellis’s CRD Address and voluntarily taking

steps to identify additional addresses to reach Ellis. Ellis's failure to comply with his regulatory obligations is no excuse for his failure to exhaust his administrative remedies. The Commission should dismiss this appeal.

**A. FINRA Has Jurisdiction Over Ellis**

Ellis is subject to FINRA's jurisdiction because he was a person associated with a FINRA member firm, Pruco, and FINRA served its First and Second Requests and the FINRA Rule 9552 notices within two years of Ellis's termination by Pruco. FINRA Rules 8210 and 9552 apply to persons subject to FINRA's jurisdiction. Under Article IV, Section 1(a)(1) of the FINRA By-Laws, when Ellis applied for registration with FINRA, he agreed to comply with FINRA's By-Laws and rules. Article V, Section 4(a)(iii) of FINRA's By-Laws provides that FINRA retains jurisdiction over an associated person for at least two years after the effective date of termination of the associated person's registration, based upon, among other types of conduct, such person's failure, while subject to FINRA's jurisdiction, to provide information requested by FINRA. *See also NASD Notice to Members 92-19*, 1992 NASD LEXIS 50 (Apr. 1992) (noting that FINRA retains jurisdiction over associated persons for two years after termination and associated persons are required to provide information to FINRA as long as it retains jurisdiction).

The record establishes that Ellis became associated with Pruco in August, 2015. (RP 94.) At that point, Ellis was subject to FINRA's jurisdiction and obligated to follow its rules, including the obligation to provide documents and information under FINRA Rule 8210 and the obligation to follow the procedures set out in FINRA Rule 9552. Moreover, FINRA retained jurisdiction over Ellis for two years after the termination of his registration with FINRA on May 25, 2016—i.e., through May 25, 2018—a period which covers the requests and proceedings at issue in this case. (*Id.*)

**B. Ellis Failed to Exhaust His Administrative Remedies**

The Commission is precluded from considering Ellis's Application for Review because he failed to follow FINRA procedures, and consequently, failed to exhaust his administrative remedies. As the Commission recently emphasized, "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review." *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at \*9 (Apr. 10, 2014) (internal quotation marks omitted). The Commission has repeatedly held that requiring respondents to exhaust their administrative remedies before FINRA is necessary to FINRA's important regulatory functions, promotes development of the record, allows FINRA the opportunity to correct any error in its earlier decisions, and promotes the efficient resolution of disputes between FINRA and its members. *See, e.g., Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at \*6-7 (Sept. 19, 2014) (*quoting MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004)); *Mullins*, 2014 SEC LEXIS 1268, at \*10 (same); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at \*12 (Apr. 18, 2013) (same);

The precedent with respect to FINRA Rule 9552 expedited proceedings is well-settled, and the Commission has consistently dismissed respondents' applications for review where respondents failed to exhaust their administrative remedies under Rule 9552. *See, e.g., Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, \*9-11 (June 22, 2016) (dismissing applicant's appeal for failure to exhaust administrative remedies where FINRA barred applicant under Rule 9552 for failing to respond to Rule 8210 requests); *Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 SEC LEXIS 4732, at \*7-8 (Dec. 4, 2014)

(same); *Norman Chen*, Exchange Act Release No. 65345, 2011 SEC LEXIS 3224, at \*6, 11 (Sept. 16, 2011) (same).

The record establishes that Ellis did not respond to any of FINRA's notices until filing his Application for Review with the Commission. These notices included two requests for documents and information pursuant to FINRA Rule 8210, and three notices required under FINRA Rule 9552. By repeatedly failing to respond to FINRA's requests for information and disregarding the directions set forth in the Pre-Suspension and Suspension Notices, Ellis is precluded from challenging FINRA's action before the Commission. *See, e.g., Mullins*, 2014 SEC LEXIS 1268, at \*13-14 (relying on "well-established precedent" when dismissing an application for review in a FINRA Rule 9552 proceeding where applicant failed to request a hearing or take corrective action in FINRA's forum); *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] rules set forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action"). The Commission, accordingly, should dismiss the application for review.

**C. FINRA Provided Ellis with Proper Notice of These Proceedings**

Ellis's claim that he didn't receive any of the notices prior to the Bar Notice is unavailing. FINRA properly sent all the notices to Ellis's CRD Address as required by FINRA rules. Ellis cannot rely on his own failure to update his CRD Address to excuse his failure to exhaust his administrative remedies here. Moreover, FINRA, through its own efforts, identified and sent all the required notices and copies of the Rule 8210 requests to Ellis's current address, and Ellis's claim that he did not receive these notices is contradicted by the evidence.

## 1. FINRA Properly Served All Its Notices

FINRA Rule 8210(d) provides that a notice under Rule 8210 “shall be deemed received” by a “currently or formerly registered person to whom it is directed by mailing . . . [to the] last known residential address of the person as reflected in the Central Registration Depository.” Here, the First and Second Requests were sent to Ellis’s CRD Address. (RP 1, 9). Accordingly, FINRA properly served the First and Second Requests and Ellis is deemed to have received them. *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at \*29 (July 27, 2015) (stating that applicant was deemed to have received FINRA’s Rule 8210 requests where they had been mailed to his CRD address); *Ashton Noshir Gowadia*, 53 S.E.C. 786, 789 (1998) (stating that under NASD rules an individual is deemed to have received any notice to which he is entitled if it is mailed to the last known address reflected in CRD).

FINRA Rule 9134 governs service of notices of suspension in FINRA Rule 9552 expedited proceedings. *See* FINRA Rule 9552(b). FINRA Rule 9134(b)(1) provides that, “[p]apers served on a natural person may be served at the natural person’s residential address, as reflected in the [CRD], if applicable.” FINRA Rule 9134(a)(2) provides that service may be accomplished by “mailing the papers through the U.S. Postal Service by using first class mail [or] first class certified mail.”

The record reflects that FINRA sent the Pre-Suspension Notice, the Suspension Notice, and the Bar Notice to Ellis’s CRD Address by first-class and certified mail, as required by Rule 9134(b)(1).<sup>11</sup> (RP 17, 73, 79.) Therefore, the record demonstrates that FINRA properly served Ellis. *See, e.g., Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 SEC LEXIS 283,

---

<sup>11</sup> As of the filing of this motion, CRD still reflects that the CRD Address is Ellis’s current address. (RP 121-22.)

at \*10-11 (Jan. 24, 2014) (finding FINRA's communications were deemed to have been received by applicant, regardless of whether he had actual receipt, when FINRA properly served him at his CRD address); *Martinez*, 2013 SEC LEXIS 1147, at \*7 (noting that Rule 9552 provides for service of notice by mail at an individual's CRD address).

**2. Ellis's Failure to Update His CRD Address Does Not Excuse His Failure to Respond to FINRA's Notices**

Article V, Sec. 2(c) of the FINRA By-Laws requires registered representatives and associated persons to keep their application for registration "current at all times" by filing supplementary amendments. It is well settled that this requirement obligates registered persons and associated persons to notify FINRA when the residential address in their application for registration changes, and that this obligation continues for the period of time over which FINRA retains jurisdiction after a person terminates registration or ceases to be associated with a member. *See, e.g., Evansen*, 2015 SEC LEXIS 3080, at \*29 (explaining that applicant was required to update and receive mail at his CRD address on record for the period after his termination from registration for which he was subject to FINRA's continuing jurisdiction); *Martinez*, 2013 SEC LEXIS 1147, at \*4 (stating that as part of the registration process, associated persons obligate themselves to keep a current address on file with FINRA at all times, and for at least two years after the filing of a Form U5); *see also NASD Notice to Members 97-31*, 1997 NASD LEXIS 35, at \*1 (May 1997) (reminding registered persons of their obligation to notify NASD of their current mailing address and that this obligation continues for as long as NASD retains jurisdiction even after registration is terminated). Indeed, the Form U5 contains a prominent notice to the individual who is the subject of the Form U5 that "you must forward any residential address changes for two years following your termination date or last Form U5 amendment" to CRD. *See* <http://www.finra.org/sites/default/files/form-u5.pdf>. FINRA's



website contains a similar notice. See [www.finra.org/industry/web-crd/crd-residential-change-address-former-finra-registered-representatives](http://www.finra.org/industry/web-crd/crd-residential-change-address-former-finra-registered-representatives).

The Commission has repeatedly held that a respondent's failure to update the CRD address does not excuse a failure to timely respond to notices sent to the CRD address. See, e.g., *Guevara*, 2016 SEC LEXIS 2233, at \*8 (finding that "because [applicant] failed to keep his CRD address current as FINRA's by-laws require, his belated collection of FINRA's bar notice [under FINRA Rule 9552]" did not excuse his failure to timely appeal); *Martinez*, 2013 SEC LEXIS 1147, at \*15 (rejecting applicant's claim that his failure to respond was excused by FINRA's use of an old mailing address where applicant failed to update his CRD address).

Indeed, to this day Ellis has failed to update his CRD Address with FINRA.<sup>12</sup> That Ellis failed to meet this well-established obligation does not excuse his failure to exhaust his administrative remedies during FINRA Rule 9552 proceeding.<sup>13</sup>

While service to the CRD address is sufficient under FINRA rules and it was Ellis's obligation to keep his CRD address current, FINRA took the additional step of searching a public database for a current address for Ellis and successfully identified that address. (RP 29, 77); see also Shergill Declaration. According to Ellis's representations in the Application for Review, he moved to Texas after leaving Pruco in March 2016 and prior to his next contact with Pruco at the

---

<sup>12</sup> As explained on FINRA's website, Ellis could have updated his address by completing a CRD Change of Address Form and submitting it to FINRA or by submitting his new address online through FINRA's Individual Snapshot website. See [www.finra.org/industry/web-crd/crd-residential-change-address-former-finra-registered-representatives](http://www.finra.org/industry/web-crd/crd-residential-change-address-former-finra-registered-representatives).

<sup>13</sup> Ellis also claims that Rule 9552(b) gives FINRA the option to contact him by email and cites his email communications with another unrelated regulator. Ellis is mistaken. Nothing in Rule 9552 mentions or requires email communications and there is nothing in the record which indicates that FINRA staff had an email address for Ellis. His communications with another regulator, moreover, are irrelevant to the proceedings here.


end of April 2016. (RP 91.) FINRA sent the Rule 9552 notices to Ellis's new San Antonio Address in August, September, and November, 2016. (RP 17, 73, 79.) The Pre-Suspension Notice, with the First and Second Requests enclosed, were accepted and signed for by an individual at the San Antonio Address. Moreover, the first class mailings to the San Antonio Address were not returned to FINRA. Accordingly, the evidence regarding mailings to Ellis defeats his claim of no notice.

As the Commission has stated, FINRA "must be able to rely on its records" and applicants cannot shift the responsibility to keep current information on file with FINRA to others. *See Nazmi Hassanieh*, 52 S.E.C. 87, 90 (1994).

#### **IV. CONCLUSION**

Ellis failed to respond to FINRA's requests for information, failed to take corrective action or request a hearing, and failed to request termination of his suspension. Consequently, Ellis was barred in accordance with FINRA's rules. Ellis failed to exhaust his administrative remedies and, accordingly, the Commission should dismiss Ellis's Application for Review.

Respectfully submitted,



Celia L. Passaro  
Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8985

January 10, 2017

**CERTIFICATE OF SERVICE**

I, Celia L. Passaro, certify that on this 10th day of January 2017, I caused a copy of FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule, in the matter of Application for Review of Jonathan Roth Ellis, Administrative Proceeding No. 3-17741, to be served by messenger and fax on:

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, DC 20549-1090  
Fax: (202) 772-9324

and via FedEx and certified mail on:

Jonathan Ross Ellis  
[REDACTED]  
San Antonio, TX [REDACTED]

Service was made on the Commission by messenger and fax and on Applicant by FedEx and certified mail due to the distance between the office of FINRA and Applicant.

Celia L. Passaro/JS  
Celia L. Passaro  
Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8985

**DECLARATION OF JASMINE SHERGILL**

I, Jasmine Shergill, declare as follows:

1. I am employed by the Financial Industry Regulatory Authority (“FINRA”), Department of Enforcement (“Enforcement”), as a senior attorney. I am over the age of 18 and have personal knowledge of the matters contained in this Declaration.

2. I have supervised and reviewed dozens of cases in which Enforcement initiates an expedited proceeding under FINRA Rule 9552. I am thoroughly familiar with FINRA’s procedures for initiating and pursuing expedited proceedings against associated persons who have failed to respond to FINRA’s requests for information.

3. On August 19, 2016, Enforcement initiated a FINRA Rule 9552 proceeding against Jonathan Roth Ellis. On that date, Enforcement sent a Notice of Suspension letter to Mr. Ellis. The Notice of Suspension letter informed Mr. Ellis that he could request a hearing and contest whether he should be suspended. The Notice of Suspension was sent to Mr. Ellis by first class and certified mail to his residential address as listed in FINRA’s Central Registration Depository (“CRD”). I also caused a LEXIS Public Records search to be conducted to learn if Mr. Ellis was identified as living at an address different from his CRD address of 80-23 Surrey Place, Jamaica, NY 11432. The search indicated that Mr. Ellis had an address of [REDACTED] San Antonio, Texas 78218 and an address in Indiana (the “LEXIS addresses”). As a result of this search, the Notice of Suspension was sent to the CRD address and the LEXIS addresses. The record does not include a copy of this LEXIS search because the file was corrupted and, accordingly, we were unable to reproduce it. The certified mailing to the San

Antonio, Texas address was signed for and accepted by an individual at that address. It is my understanding that the first class mailing was not returned.

4. Mr. Ellis did not contact Enforcement to request a hearing.

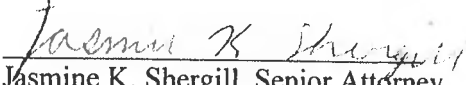
5. On September 14, 2016, Enforcement sent a letter to Mr. Ellis notifying him that he was suspended from associating with any FINRA member in accordance with the August 19, 2016 Notice of Suspension. This September 14, 2016 letter was sent to Mr. Ellis by first class and certified mail to his residential address as listed in CRD and to the address in San Antonio, Texas. Prior to this letter being sent, I again caused a search of the LEXIS Public Records database to be conducted. A copy of this search is included in the record at RP 29-72. The search indicated that Mr. Ellis had an address of [REDACTED], San Antonio, Texas 78218. The certified mailing to the San Antonio, Texas address was unclaimed and returned to FINRA. It is my understanding that the first class mailing to the San Antonio, Texas address was not returned.

6. Mr. Ellis did not contact Enforcement to request a termination of his suspension.

7. On November 22, 2016, Enforcement sent a Notice of Bar letter to Mr. Ellis. Prior to this notice being sent, I again caused a search of the LEXIS Public Records database to be conducted. The result is included in the record at RP 77. The search indicated that Mr. Ellis had an address of [REDACTED], San Antonio, Texas [REDACTED]. The Notice of Bar was sent by first class mail and certified mail to Mr. Ellis's residential address as listed in CRD and to the address in San Antonio, Texas.

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

Executed on January 9, 2017, in New York, New York.

  
Jasmine K. Shergill, Senior Attorney  
FINRA Department of Enforcement  
Brookfield Place  
200 Liberty Street  
New York, NY 10281  
Phone: (212) 858-4161  
Fax: (301) 527-4770  
jasmine.shergill@finra.org  
(Member Maryland Bar Only)

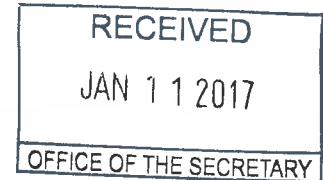


Financial Industry Regulatory Authority

Celia L. Passaro  
Counsel

Direct: (202) 728-8985  
Fax: (202) 728-8264

**HARD COPY**



January 10, 2017

**VIA MESSENGER AND FACSIMILE**

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Room 10915  
Washington, DC 20549-1090  
Fax: (202) 772-9324

RE: In the Matter of the Application for Review of Jonathan Ross Ellis  
Administrative Proceeding No. 3-17741

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule in the above-captioned matter.

Please contact me at (202) 728-8985 if you have any questions.

Very truly yours,

Celia L. Passaro

Enclosures

cc: Jonathan Ross Ellis (via FedEx, certified mail, and email)

[REDACTED]  
San Antonio, TX [REDACTED]  
[REDACTED]