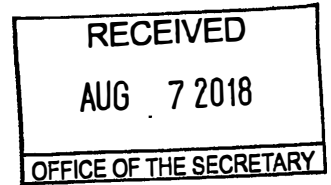


**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**



In the Matter of the Application of
Michael Patrick Nanto
For Review of Action Taken by
Financial Industry Regulatory Authority
File No. 3-18553

**FINRA'S MOTION TO DISMISS MICHAEL PATRICK NANTO'S
APPLICATION FOR REVIEW AND TO STAY BRIEFING SCHEDULE**

Alan Lawhead
Vice President and
Director – Appellate Group

Gary Dernelle
Associate General Counsel

FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255

August 7, 2018

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTS	3
A. FINRA Investigates Nanto and Requests that He Provide Documents and Information	3
B. FINRA Issues a Second Request For Documents and Information.....	5
C. FINRA Determines that Nanto’s Response Is Incomplete	6
D. FINRA Issues a Third Request for Nanto’s Missing Documents and Information.....	7
E. FINRA Takes Expedited Action Against Nanto for His Failure to Respond to FINRA’s January 5, 2018 Request for Documents and Information.....	8
F. Nanto Does Not Take Corrective Action or Request a Hearing, and FINRA Suspends Him	9
G. Nanto Provides Partial But Incomplete Responses.....	10
H. FINRA Bars Nanto in Accordance with FINRA Rule 9552(h).....	12
III. ARGUMENT	12
IV. CONCLUSION.....	16

TABLE OF AUTHORITIES

Page

Federal Court Decision

Hedley v. United States, 594 F.2d 1043 (5th Cir. 1979).....12

SEC Decisions

Howard Brett Berger, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141
(Nov. 14, 2008)15

Patrick H. Dowd, Exchange Act Release No. 83710, 2018 SEC LEXIS 1875
(July 25, 2018)15

Jonathan Roth Ellis, Exchange Act Release No. 80312, 2017 SEC LEXIS 970
(Mar. 24, 2017)15, 16

Lin-Lin Hsu, Exchange Act Release No. 78899, 2016 SEC LEXIS 3585
(Sept. 21, 2016).....14

Rani T. Jarkas, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285
(Apr. 1, 2016).....15

Christine D. Memet, Exchange Act Release No. 83711, 2018 SEC LEXIS 1876
(July 25, 2018).....14, 16

Ricky D. Mullins, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268
(Apr. 10, 2014).....12

Christopher A. Parris, Exchange Act Release No. 78669, 2016 SEC LEXIS 3075
(Aug. 24, 2016).....9, 14

Gregory S. Profeta, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563
(May 6, 2010).....13

Darren M. Smith, Exchange Act Release No. 75705, 2015 SEC LEXIS 3368
(Aug. 14, 2015).....15

Federal Statutes and Codes

Commission Rule of Practice 161, 17 C.F.R. §201.1613

FINRA Rules

FINRA Rule 8210(a).....4

FINRA Rule 8210(d)	13
FINRA Rule 9134(b)(1).....	13
FINRA Rule 9552(a).....	8
FINRA Rule 9552(e).....	2, 3, 9, 13
FINRA Rule 9552(f).....	2, 9, 13
FINRA Rule 9552(h)	<i>passim</i>

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

In the Matter of the Application of

Michael Patrick Nanto

For Review of Action Taken by

Financial Industry Regulatory Authority

File No. 3-18553

**FINRA'S MOTION TO DISMISS MICHAEL PATRICK NANTO'S
APPLICATION FOR REVIEW AND TO STAY BRIEFING SCHEDULE**

I. INTRODUCTION

On May 24, 2018, after conducting an expedited proceeding that comported fully with the requirements of FINRA Rule 9552, FINRA barred Michael Patrick Nanto ("Nanto") from associating in any capacity with any FINRA member for his failure to comply completely with a January 5, 2018 request for documents and information that FINRA issued under FINRA Rule 8210. On June 19, 2018, Nanto filed with the Commission an application seeking review of FINRA's action.

FINRA's action stems from an investigation into an investor's allegations that Nanto stole more than \$6,000 from him. To further its investigation, FINRA issued two requests, on June 27, 2017, and October 10, 2017, for documents and information under FINRA Rule 8210. Nanto, however, responded to each of these requests late, and then only partially.

On January 5, 2018, FINRA issued a third request under FINRA Rule 8210 directing Nanto to produce the documents and information that were missing from his earlier responses.

Nanto did not respond in any manner to this request by the date he was due to produce the omitted materials.

Consequently, on February 21, 2018, FINRA commenced an expedited proceeding under FINRA Rule 9552 to compel Nanto's response. FINRA notified Nanto that it intended to suspend him from associating with a FINRA member unless he timely took corrective action to comply fully with FINRA's January 5, 2018 request for documents and information, or demanded a hearing under FINRA Rule 9552(e).

On March 19, 2018, after Nanto did neither of these things, FINRA suspended him. On this occasion, FINRA advised Nanto that, absent his timely filing a written request to terminate his suspension under 9552(f), and without his full compliance with FINRA's January 5, 2018 request for documents and information, FINRA would bar him on May 24, 2018, in accordance with FINRA Rule 9552(h).

Nanto thereafter twice wrote to FINRA, but he did not request on either occasion that FINRA terminate his suspension. Nor did he provide the complete compliance with FINRA's open request for documents and information that was necessary for him to justify the termination of his suspension. Among other things, Nanto failed to produce fully to FINRA bank, brokerage, and credit card statements for numerous accounts he controlled, as well as electronic communications with the complaining investor, which would permit FINRA to examine methodically the purpose and Nanto's use of the investor's funds. Accordingly, after evaluating thoroughly his responses, and articulating the deficiencies in them in writing, FINRA deemed Nanto in default and barred him from associating with any FINRA member in any capacity in accordance with FINRA Rule 9552(h).

Given these unassailable facts, FINRA moves to dismiss Nanto's application for review.¹ The Commission has held consistently that a party is required to exhaust his administrative remedies before resorting to an appeal. Nanto failed to avail himself of FINRA's procedures. He did not take corrective action in response to FINRA's notice that it intended to suspend him, he did not request a hearing under FINRA Rule 9552(e), and he did not request termination of his suspension and comply fully with FINRA's outstanding request for documents and information. Nanto, who received actual notice of FINRA's Rule 8210 requests, and all notices FINRA issued under FINRA Rule 9552, thus failed to exhaust his administrative remedies.

II. FACTS

A. **FINRA Investigates Nanto and Requests that He Provide Documents and Information**

FINRA began investigating Nanto after it received an investor complaint that alleged Nanto stole \$6,946.27 while registered with FINRA member Mutual of Omaha Investor Services, Inc.² RP 1-28.³ The investor asserted that he gave Nanto the funds to open an Individual Retirement Account, but Nanto never opened an account in the investor's name and apparently converted the funds for his own use. RP 2, 17-20.

¹ FINRA also moves, under Rule 161 of the Commission's Rules of Practice, that the Commission stay the briefing schedule that the Commission issued in this matter on July 24, 2018, while it considers FINRA's motion to dismiss Nanto's application for review. *See* 17 C.F.R. § 201.161. The Commission should evaluate first FINRA's dispositive motion before it considers the substance of Nanto's appeal.

² Nanto was associated with Mutual of Omaha Investor Services, Inc., from April 2014 to March 2017. He was associated with FINRA member J.P. Morgan Securities, LLC, from February 2017 to September 2017. RP 659. He is not currently associated with any FINRA member.

³ "RP ___" refers to the page numbers in the certified record that FINRA filed with the Commission on July 3, 2018.

On June 27, 2017, FINRA sent Nanto a written request, issued pursuant to FINRA Rule 8210, that Nanto produce to FINRA documents and information in connection with its investigation of the investor's complaint and Nanto's possible failure to disclose a civil judgment against him on his Form U4.⁴ RP 29-31. FINRA's request asked that Nanto provide the requested documents and information by July 11, 2017, and it warned Nanto that his failure to satisfy the request could subject him to sanctions, including a bar from the securities industry. RP 30.

Nanto did not submit a response to FINRA's June 27, 2017 request for documents and information by the stated due date. RP 43. Consequently, on July 13, 2017, FINRA sent a follow-up request for the documents and information that included a copy of the June 27, 2017 request. RP 43-46. This request established a due date of July 27, 2017, for the requested documents and information. RP 43. The request reminded Nanto that FINRA was asking for the information pursuant to Rule 8210. RP 43.

On July 24, 2017, Nanto submitted, by email, a short response to FINRA's June 27, 2017 request for documents and information. RP 49-50. Nanto admitted that he received funds from the complaining investor and deposited them in an account, but he claimed that the funds were reimbursement for "cases, leads, as well as commissions," and also that he returned \$1,000 to the investor. RP 50. Nanto, however, did not provide, as FINRA requested, any information concerning the financial institution and bank or brokerage account in which he deposited the funds, or any meaningful details about his use of the investor's funds. RP 29, 50. Indeed,

⁴ FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide documents and information to FINRA with respect to any matter involved in an investigation. *See* FINRA Rule 8210(a).

although Nanto's written response stated that he would send to FINRA "documentation" responsive to the June 27, 2017 request, he did not do so.⁵ RP 49-50.

B. FINRA Issues a Second Request For Documents and Information

On October 10, 2017, after reviewing Nanto's response to FINRA's June 27, 2017 request for documents and information, FINRA sent Nanto a second, more detailed, request under FINRA Rule 8210. RP 55-59. This second request directed Nanto to respond, no later than October 24, 2017, to requests for 15 categories of documents and information. *Id.* Importantly, FINRA directed Nanto to provide copies of all statements for any bank, brokerage, or credit card accounts that he controlled from August 1, 2015, to May 31, 2017, and a copy of any cashed check or money order, deposit slip, and documents concerning the funds Nanto admitted receiving from the complaining investor. RP 55. FINRA also requested that Nanto provide copies of all electronic communications, including emails and text messages, between him and the investor during the relevant period.⁶ RP 57.

Nanto did not respond to FINRA's October 10, 2017 request for documents and information by October 24, 2017. RP 67. Therefore, on October 26, 2017, FINRA issued an additional request for the documents and information that included a copy of FINRA's October 10, 2017 request. *Id.* This request advised Nanto that his failure to produce the documents and information FINRA requested by November 9, 2017, could subject him to an expedited or formal disciplinary proceeding leading to sanctions, including a bar from the securities industry. *Id.*

⁵ FINRA requested that Nanto provide copies of all "correspondence or memoranda" relating to the subjects of its investigation, including his interactions with the complaining investor. RP 30. Nanto did not provide any such documentation. RP 49-50.

⁶ FINRA's request provided Nanto detailed instructions about the format in which he should produce any electronic correspondence to FINRA, which made clear that paper copies or similar reproductions were not acceptable. RP 57.

C. FINRA Determines that Nanto's Response Is Incomplete

On November 17, 2017, FINRA received from Nanto an undated, written response to FINRA's October 10, 2017 request for documents and information. RP 85-403. FINRA reviewed the response and determined that it was incomplete in several, material ways. RP 405-09. First, Nanto did not provide copies of all monthly statements for the bank, brokerage, or credit card accounts he controlled during the period August 1, 2015, to May 31, 2017, the period during which the complaining investor gave funds to Nanto to invest and later sought to redeem from the account he understood Nanto had opened on his behalf. RP 405. Although Nanto provided some bank account statements with his response, they were incomplete, he did not provide statements for any brokerage or credit card accounts that he controlled, and he admittedly did not provide any documents that, according to Nanto, were not available online.⁷ RP 85, 266-403, 405.

Second, Nanto's response did not include any information or documents responsive to FINRA's request that he provide any cashed check or money order, deposit slip, and other documents relating to funds he received from the complaining investor and that Nanto admits he deposited into an account he controlled.⁸ RP 85, 405.

Third, FINRA's October 10, 2017 request directed that Nanto provide copies of all income tax returns he filed for the years 2015 and 2016. Nanto provided copies of his 2015 income tax returns, but he failed to provide his 2016 returns or explain why they had not been filed. RP 85, 406.

⁷ Nanto admitted to having at least one credit card account, but he claimed to "no longer have records" for the account. RP 85.

⁸ Nanto's written response stated, "Please see attached," but he included no documents related to FINRA's request with his response. RP 85-403.

Fourth, FINRA's October 10, 2017 request asked that Nanto state whether he had ever been arrested, charged, prosecuted, or convicted of any misdemeanor or felony offense and provide the details of the any such offense, including any documents in his possession, custody, or control relating to the offense.⁹ Nanto's November 17, 2017 response stated, simply, "N/A" in response to these requests. RP 86, 406.

Fifth, FINRA's October 10, 2017 request directed Nanto to produce copies of all documents relating to a \$4,770 civil judgment filed against him on November 9, 2011. Nanto's November 17, 2017 response stated only that he was "[a]waiting copies." RP 86, 407.

Finally, Nanto failed to comply with FINRA's request that Nanto provide FINRA with copies of all electronic communications, including emails and text messages, between him and the complaining investor that Nanto had in his possession, custody, or control. Nanto's November 17, 2017 response simply ignored FINRA's request. RP 86. He provided no statement as to why he was unable to comply with FINRA's request, and he provided no documents or information in response to this specific request. RP 86, 407.

D. FINRA Issues a Third Request for Nanto's Missing Documents and Information

After determining that Nanto's November 17, 2017 response was incomplete and essentially nonresponsive, FINRA sent Nanto, on January 5, 2015, a third written request for documents and information that focused on the several categories of documents and information that FINRA requested in its October 10, 2017 request, and that Nanto failed to produce. RP 405-09. FINRA issued the January 5, 2018 request under FINRA Rule 8210, and it stated that Nanto should respond no later than January 19, 2018. RP 405. FINRA reminded Nanto that his failure

⁹ FINRA possessed information indicating that Nanto was the subject of a felony arrest warrant issued in the State of California for theft. RP 53, 531-32.

to satisfy FINRA's request fully and promptly could expose him to sanctions, including a bar from the securities industry. RP 408.

E. FINRA Takes Expedited Action Against Nanto for His Failure to Respond to FINRA's January 5, 2018 Request for Documents and Information

Nanto did not respond to FINRA's January 5, 2018 request by January 19, 2018. RP 445. Consequently, on January 29, 2018, and pursuant to FINRA Rule 8210, FINRA sent Nanto an additional request for the documents and information, which included a copy of FINRA's January 5, 2018 request. RP 445-65. This additional request directed Nanto to provide the documents and information requested by February 12, 2018, or face expedited or formal disciplinary action by FINRA. RP 445.

Nanto failed to comply in any manner with FINRA's January 5, 2018 request for documents and information by the due date stated in FINRA's January 29, 2018 follow-up request. RP 467. FINRA therefore commenced an expedited action against him under FINRA Rule 9552.¹⁰ RP 467-501. On February 21, 2018, FINRA provided Nanto written notice (the "Pre-Suspension Notice") of its intention to suspend him from associating with any FINRA member in any capacity for failing to respond to FINRA's January 5, 2018 request for documents and information. RP 467-91. The Pre-Suspension Notice informed Nanto that FINRA would suspend him on March 19, 2018, unless he took corrective action to comply fully

¹⁰ FINRA Rule 9552(a) provides:

If 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 FINRA By-Laws or FINRA rules, . . . 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.

with FINRA's January 5, 2018 request for documents and information by the suspension date. RP 467. The Pre-Suspension Notice further explained that Nanto could make a written request for a hearing under FINRA Rule 9552(e) prior to the suspension date, which would stay the effective date of the suspension.¹¹ RP 467-68. Finally, the Pre-Suspension Notice advised Nanto that, if suspended, he could request that FINRA terminate the suspension under FINRA Rule 9552(f) on the ground that he fully complied with FINRA's outstanding request for documents and information.¹² RP 468. Failure to comply with the requirements of FINRA Rule 9552(f) within three months of the suspension date, FINRA warned Nanto, would result in his automatic bar from the securities industry on May 24, 2018, under FINRA Rule 9552(h).¹³ *Id.*

F. Nanto Does Not Take Corrective Action or Request a Hearing, and FINRA Suspends Him

Nanto did not request a hearing or comply with FINRA's January 5, 2018 request for documents and information by the suspension date. RP 535. Accordingly, on March 19, 2018, FINRA sent Nanto written notice (the "Suspension Notice") that he was suspended from associating with any FINRA member in any capacity. RP 535-45. The Suspension Notice advised Nanto that he could file, under FINRA Rule 9552(f), a written request that FINRA

¹¹ A member or person served with a notice of suspension under FINRA Rule 9552 may file with FINRA's Office of Hearing Officers a written request for a hearing. *See* FINRA Rule 9552(e). Such request, however, must be made before the effective date of the notice. *Id.*

¹² FINRA Rule 9552(f) states, in relevant part, "[a] member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision." Other than by settlement, FINRA Rule 9552(f) provides the *only* means by which a suspended person may request that a suspension be terminated. *See Christopher A. Parris*, Exchange Act Release No. 78669, 2016 SEC LEXIS 3075, at *6 (Aug. 24, 2016).

¹³ FINRA Rule 9552(h) provides that a member or person suspended under Rule 9552 who "fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred."

terminate his suspension because he complied fully with FINRA's January 5, 2018 request for documents and information. RP 535. Failure to do so by May 24, 2018, the Suspension Notice warned, would result in his default and automatic bar from the securities industry under FINRA Rule 9552(h). RP 535.

G. Nanto Provides Partial But Incomplete Responses

On March 28, 2018, Nanto provided FINRA a brief, written response to FINRA's January 5, 2018 request for documents and information.¹⁴ RP 577-79. Nanto's response, however, did not request that FINRA terminate his suspension, did not include any documents, did not respond fully to FINRA's outstanding Rule 8210 request, and several of his assertions concerning his production of documents and information were inaccurate. RP 585. He did not provide any valid reasons for the deficiencies in his response, and he instead attempted to place on FINRA the burden of informing him the extent to which his response remained incomplete. RP 577-79.

After thoroughly reviewing Nanto's March 28, 2018 response, FINRA notified him, by letter dated April 23, 2018, that his response was incomplete, because he did not provide all of the documents and information necessary to respond in full to FINRA's January 5, 2018 request. RP 585-89. To avoid FINRA barring him on May 24, 2018, FINRA warned Nanto, he was required to provide all documents and information identified, in detail, in FINRA's letter. The documents and information that were missing from Nanto's response continued to include: 1) statements for several bank accounts that Nanto had either only partially produced, or failed to produce completely for the relevant period, as well as statements for any credit card or brokerage accounts that he controlled; 2) a copy of any cashed check or money order, deposit slip, or other

¹⁴ FINRA received Nanto's March 28, 2018 response on April 3, 2018. RP 577.

documents relating to the funds Nanto received from the complaining investor, and which Nanto admitted to have deposited; and 3) electronic communications between Nanto and the complaining investor that Nanto had in his possession, custody, or control.¹⁵ RP 585-87. All of these documents were critical to FINRA's investigation of Nanto's possible conversion of funds, including the purpose and use of those funds, Nanto's self-serving claim that the funds were to reimburse him for brokerage-related expenses, and Nanto's undocumented assertion that he had returned to the complaining investor some of the more than \$6,000 that Nanto deposited in his accounts.

On May 24, 2018, the day on which FINRA warned Nanto that he would be barred in accordance with FINRA Rule 9552(h), Nanto emailed FINRA staff to "clarify" his prior response. RP 641. With respect to the missing account statements, Nanto admitted that he had not provided all statements for accounts he controlled. RP 641. Without providing FINRA with any missing statements, he merely stated that he had provided statements "of what I am able to" or "what I am able to access."¹⁶ RP 641. As to the missing electronic communications, Nanto stated that he had engaged the company that previously printed out text messages and "I have sent what messages I have received." RP 641. Undoubtedly, his production of electronic communications was incomplete, and although FINRA had advised him as to the format he should produce responsive electronic communications to FINRA, Nanto included only three

¹⁵ Although Nanto's March 28, 2018 letter claimed that he had included a printout of text messages, he did not provide such documents to FINRA. RP 587.

¹⁶ Contradicting an earlier representation to FINRA that such documents were unavailable, Nanto at last provided FINRA with a copy of the investor's check that was deposited in Nanto's account. RP 577, 646. He nevertheless did not provide any other documents, for example a deposit slip, in response to FINRA's request.

printed pages of undated text messages in which neither the sender or receiver is identified.¹⁷ RP 641, 643-45.

FINRA reviewed Nanto's May 24, 2018 email thoroughly and determined that he had not produced all documents and information responsive to FINRA's January 5, 2018 request. RP 647. FINRA therefore notified Nanto by email that it would proceed to bar him in accordance with FINRA's Pre-Suspension Notice and Suspension Notice.¹⁸ RP 647.

H. FINRA Bars Nanto in Accordance with FINRA Rule 9552(h)

On May 24, 2018, FINRA sent Nanto written notification under FINRA Rule 9552(h) (the "Bar Notice") that it had barred him, effectively immediately, from associating in any capacity with any FINRA member. RP 625-26. He appealed FINRA's action to the Commission on June 13, 2018. RP 651-52.

III. ARGUMENT

"Exhaustion of administrative remedies is a general prerequisite to judicial review of any administrative action." *Hedley v. United States*, 594 F.2d 1043, 1044 (5th Cir. 1979). "It 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 *10 (Apr. 10, 2014)

¹⁷ Two pages of text messages implied, suspiciously, that the recipient had loaned Nanto money, despite Nanto previously stating to FINRA that he had not borrowed any money from the complaining investor. RP 50, 643-44. The remaining page of text messages represented a small fraction of the text messages that the complaining investor provided to FINRA, and they falsely suggested that Nanto had opened an account for the complaining investor at Mutual of Omaha, although Nanto admitted to FINRA that he never did so. RP 22-27, 50, 645.

¹⁸ FINRA staff informed Nanto that, if he were able to send quickly the remaining missing documents, including missing text messages and bank statements, FINRA would consider lifting the bar. RP 647-48. Nanto never provided to FINRA the remaining documents and information.

(citing *Royal Sec. Corp.*, 36 S.E.C. 275 (1955)). The Commission has therefore held that it “will not consider an application for review if the applicant failed to exhaust FINRA’s procedures for contesting the sanction at issue.” *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5 (May 6, 2010).

It is clear that Nanto failed to respond in any manner to FINRA’s January 5, 2018 request for information and documents, a request that FINRA issued under FINRA Rule 8210.¹⁹ Consequently, on February 21, 2018, FINRA initiated expedited proceedings against Nanto under FINRA Rule 9552. On that date, FINRA issued a Pre-Suspension notice that advised Nanto that FINRA would suspend him on March 19, 2018, unless he took corrective action to comply fully with FINRA’s January 5, 2018 request for documents and information, or requested a hearing under FINRA Rule 9552(e), by the suspension date.

Nanto took no corrective action and did not request a hearing. Accordingly, in accordance with the Pre-Suspension Notice and FINRA Rule 9552, FINRA suspended Nanto on March 19, 2018. FINRA’s Suspension Notice plainly advised Nanto of his right, under FINRA Rule 9552(f), to request that FINRA terminate his suspension based on his full compliance with FINRA’s January 5, 2018 request for documents and information.

Nanto, however, neither requested the termination of his suspension nor provided the complete compliance with FINRA’s Rule 8210 request that would support lifting his suspension.

¹⁹ FINRA complied fully with its rules for sending the Rule 8210 requests and Rule 9552 notices at issue in this case. See FINRA Rule 8210(d); FINRA Rule 9134(b)(1). FINRA sent the documents by certified mail to two residential addresses Nanto provided in CRD[®] or to FINRA staff. RP 29-32, 43-47, 55-65, 67-72, 85, 405- 16, 427-36, 445-51, 467-501, 535-64, 585-601, 625-35, 655. FINRA also sent them by email to three email addresses that he provided during the course of FINRA’s investigation. 73-79, 85, 417-422, 437-43, 453-66, 503-29, 565-76, 603-21, 637-39. The record establishes that Nanto had actual notice of FINRA’s requests for documents and information, and its expedited action. RP 49-50, 73, 85-403, 423, 577-79, 641-42, 651.

Although Nanto ostensibly attempted to comply with FINRA's outstanding document and information request by twice writing to FINRA while he was suspended, he did not comply in full with the requests. His responses were materially incomplete, and he failed to explain plausibly why he was unable to comply fully with FINRA's request. Critically, Nanto failed to produce those documents and information necessary for FINRA to evaluate thoroughly the investor's complaint that Nanto stole from him. Consequently, FINRA deemed Nanto in default and, in accordance with FINRA Rule 9552(h), barred him from associating with any FINRA member in any capacity.

The proper exhaustion of administrative remedies requires a firm or individual to use all the procedural steps available under FINRA's rules, and to do so properly so that FINRA can address the issues on the merits. *See Christine D. Memet*, Exchange Act Release No. 83711, 2018 SEC LEXIS 1876, at *9 (July 25, 2018) (citing *Woodford v. Ngo*, 548 U.S. 81, 90 (2006)). FINRA's procedures for challenging a suspension and avoiding a bar imposed under FINRA Rule 9552 provide several options. A person must: 1) take corrective action by producing the documents or information requested under FINRA Rule 8210 by the suspension date; 2) make a written request for a hearing prior to the suspension date; or 3) file a written request for termination of a suspension and provide full compliance with any outstanding request for documents or information prior to the date a bar is set to take effect. *See Lin-Lin Hsu*, Exchange Act Release No. 78899, 2016 SEC LEXIS 3585, at *7 (Sept. 21, 2016). Nanto did none of these things, and he thus failed to exhaust the administrative remedies. *See id.* His March 28, 2018, and May 24, 2018 communications, which provided only his partial compliance with FINRA's January 5, 2018 document and information request, and failed to offer a meaningful explanation for his failure to respond completely, did not satisfy the procedural requirements for terminating

his suspension or preserve his right to appeal FINRA's action in this case. *See Darren M. Smith*, Exchange Act Release No. 75705, 2015 SEC LEXIS 3368, at *13 (Aug. 14, 2015) ("One of the procedural requirements for such a request is 'full compliance'—*i.e.*, providing all the information and documents demanded in the underlying Rule 8210 request." (citing *Marcos A. Santana*, Exchange Act Release No. 74138, 2015 SEC LEXIS 312, at *11 n.13 (Jan. 26, 2015)); *see also Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 SEC LEXIS 1875, at *15 (July 25, 2018) ("Dowd's purported difficulties in securing Pruco files do not explain or excuse his complete failure to respond to FINRA's other requests"). Consequently, the Commission should dismiss Nanto's application for review.

FINRA Rule 9552 provides FINRA an important procedural mechanism to address violations of FINRA Rule 8210 expeditiously.²⁰ *See Christopher A. Parris*, 2016 SEC LEXIS 3075, at *4. "Imposing 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.'" *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 SEC LEXIS 970, at *10 (Mar. 24, 2017) (quoting *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 622 (2d Cir. 2004)). Permitting Nanto to bring an appeal to the Commission without first exhausting FINRA's procedures would undermine the efficient resolution of proceedings against a respondent who repeatedly did not provide information or provides far less than what FINRA had requested. *See*

²⁰ FINRA Rule 8210 "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). Failure to respond to FINRA Rule 8210 requests completely impedes FINRA's ability to detect misconduct that threatens the investing public. *See Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285, at *46 (Apr. 1, 2016).

id. When Nanto failed to request a hearing, and he neither requested termination of his suspension nor provided all of the documents and information requested of him by FINRA, he forfeited his ability to have the Commission review this action. *See Christine D. Memet*, 2018 SEC LEXIS 1876, at *12-13 (“We have held repeatedly that applicants who fail to avail themselves of any of these options before FINRA thereby forfeit any future challenge to FINRA’s actions before the Commission.”).

IV. CONCLUSION

FINRA commenced an expedited proceeding under FINRA Rule 9552 to compel Nanto’s compliance with a FINRA Rule 8210 request that he provide documents and information necessary for FINRA to investigate an investor’s complaint that Nanto stole from him. During that FINRA proceeding, Nanto did not take corrective action by producing the information requested under FINRA Rule 8210 prior to his suspension. He also did not request a hearing to contest FINRA’s action on the merits. Finally, he did not file a written request to terminate his suspension on the ground that he complied fully with FINRA’s action. As a result, Nanto defaulted, and FINRA barred him. Because Nanto failed to exhaust FINRA’s procedures, he failed to exhaust his administrative remedies. The Commission should therefore dismiss Nanto’s application for review.

Respectfully submitted,



Gary Dornelle
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255

Date: August 7, 2018

CERTIFICATE OF SERVICE

I, Gary J. Dernelle, certify that on this 7th day of August 2018, I caused the original and three (3) copies of FINRA's Motion to Dismiss Michael Patrick Nanto's Application for Review and to Stay Briefing Schedule, in the matter of the Application for Review of Michael Patrick Nanto, Administrative Proceeding No. 3-18553, 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

On this date, I also caused one copy to be served via overnight FedEx, first-class mail, and electronic mail on:

Michael Patrick Nanto
[REDACTED]
Valley Center, CA [REDACTED]

and

Michael Patrick Nanto
[REDACTED]
Rapid City, SD [REDACTED]
Mike.nanto@mnanto.com

Service was made on the Commission by messenger and the Applicant by FedEx, first-class mail, and electronic mail due to the distance between the offices of FINRA and Applicant.

Respectfully submitted,



Gary Dernelle
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255

CERTIFICATE OF COMPLIANCE

I, Gary Dernelle, certify that FINRA's Motion to Dismiss Michael Patrick Nanto's Application for Review and to Stay Briefing Schedule, in the Matter of the Application of Michael Patrick Nanto, Administrative Proceeding No. 3-18553, complies with the length limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,972 words.



Gary Dernelle
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, DC 20006
(202) 728-8255



Financial Industry Regulatory Authority

RECEIVED
AUG 7 2018
OFFICE OF THE SECRETARY

Gary Dernelle
Associate General Counsel

Direct: (202) 728-8255
Fax: (202) 728-8264

August 7, 2018

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 Michael Patrick Nanto
Administrative Proceeding No. 3-18553.

Dear Mr. Fields:

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

Please contact me at (202) 728-8255 if you have any questions.

Very truly yours,

Gary Demelle

Enclosures

cc: Michael Patrick Nanto
[Redacted]
Valley Center, CA [Redacted]

Michael Patrick Nanto
[Redacted]
Rapid City, SD [Redacted]
Mike.nanto@mnanto.com