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August 4, 2020

**BY ELECTRONIC MAIL**

Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Room 10915  
Washington, DC 20549-1090

**RE: In the Matter of the Application for Review of Shlomo Sharbat  
Administrative Proceeding No. 3-19870**

Dear Ms. Countryman:

For filing in the above-referenced matter, enclosed please find FINRA's Motion to Dismiss Application for Review and to Stay Briefing Schedule. Please contact me directly should you have any questions or concerns.

Sincerely,

/s/Megan Rauch

Megan Rauch

Enclosures

cc: Hadar Israeli, Esq.  
Eran Elharar, Esq.  
Cathy Bardenstein, Esq.  
Zvi Gabbay, Esq.

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

In the Matter of the Application of  
Shlomo Sharbat  
For Review of Action Taken by FINRA  
File No. 3-19870

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

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Dated: August 4, 2020

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

**I. INTRODUCTION**

Pursuant to Commission Rule of Practice 154, the Financial Industry Regulatory Authority (“FINRA”) moves the Commission to dismiss this late-filed application for review of a FINRA default disciplinary decision. More than seven years ago, on November 8, 2012, a FINRA Hearing Officer issued a default decision against applicant Shlomo Sharbat. That decision barred Sharbat from associating with any member firm in any capacity for failing to provide testimony to FINRA pursuant to FINRA Rule 8210. RP 131-46.<sup>1</sup> Sharbat never appealed to FINRA’s National Adjudicatory Council (“NAC”), as FINRA rules permitted him to do. Instead, Sharbat waited more than seven years and seven months after the default decision became final, before he improperly bypassed the NAC and filed this application directly with the Commission. RP 147-49. The Commission should dismiss this application because Sharbat failed to exhaust his administrative remedies before FINRA. Alternatively, it should dismiss this

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<sup>1</sup> “RP \_\_\_\_\_” refers to the page numbers in the amended certified record, which FINRA filed on July 31, 2020.

appeal because it comes more than seven years after the 30-day appeal deadline and is untimely. Sharbat has not shown the extraordinary circumstances necessary for the Commission to consider this otherwise untimely application for review.<sup>2</sup>

## **II. PROCEDURAL AND FACTUAL BACKGROUND**

### **A. Background**

Sharbat entered the securities industry in 1993. RP 65. From February 2008 to June 2008, Sharbat was associated with vFinance Investments, Inc. (“vFinance”). RP 65. The firm permitted Sharbat to resign for “apparent violation of firm policies.” RP 65. Sharbat associated with Brookville Capital Partners (“Brookville”) two years later, and the firm filed a Form U4 on his behalf on July 6, 2010. Less than one month later, on August 4, 2010, Brookville terminated Sharbat’s association without registration. RP 65. Sharbat has not since been associated with a FINRA member. RP 64.

### **B. Complaint and First Notice of Complaint**

On July 11, 2012, FINRA’s Department of Enforcement (“Enforcement”) filed the underlying complaint against Sharbat. RP 1-12. In its complaint, Enforcement alleged that, in May and June 2008, Sharbat violated Regulation M under the Securities Exchange Act of 1934 (the “Exchange Act”) by inducing or attempting to induce customers to purchase a security while his firm was participating in an offering of convertible debentures on behalf of the same issuer. RP 8-11. In addition, Enforcement alleged that Sharbat twice failed to appear for testimony pursuant to FINRA Rule 8210. RP 11-12. Enforcement issued an initial notice of complaint that

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<sup>2</sup> FINRA requests, pursuant to Commission Rule of Practice 161, that the Commission stay briefing in this matter while this motion is pending. *See* 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive argument that Sharbat’s appeal should be dismissed for failure to exhaust administrative remedies and untimeliness before it reaches the underlying substance of this appeal.

informed Sharbat that he was “required . . . by no later than August 8, 2012, to answer this Complaint.” RP 1-2.

Enforcement served the complaint and notice of complaint on Sharbat by sending it (1) via certified and first-class mail to [REDACTED], Forest Hills, NY, [REDACTED] (“the CRD address”), which was Sharbat’s residential address as reflected in the Central Registration Depository (“CRD®”); and (2) via FedEx to [REDACTED], Tel Aviv, Israel, [REDACTED] (“the Tel Aviv address”), which was an address Sharbat had provided to FINRA staff in February 2012 and at which address Sharbat primarily resided. RP 54 (¶¶4, 5, 6, 8, 9), 59-60, 87. The certified mailing to the CRD address was returned unclaimed after three delivery attempts. RP 54 (¶8), 91. The first-class mailing to the CRD address was not returned. RP 54 (¶8). The FedEx mailing to the Tel Aviv address was delivered and signed for by “Shlomo” on July 15, 2012. RP 55 (¶9), 92-93. That same day, Enforcement also emailed a copy of the complaint and notice of complaint to [REDACTED], an email address from which Sharbat communicated with Enforcement staff. RP 55 (¶10). Enforcement also sent via first-class mail and email a copy of the complaint and notice of complaint to Sharbat’s counsel, Irv Einhorn. RP 55 (¶10).

On July 13, 2012, Enforcement served a corrected notice of complaint<sup>3</sup> and a copy of the complaint on Sharbat by sending it (1) via certified and first-class mail to the CRD address; and (2) via FedEx to the Tel Aviv address. RP 55 (¶¶11, 12), 94-96. The certified mailing was returned as “refused.” RP 55 (¶11), 94. The first-class mailing was not returned. RP 55 (¶11). The FedEx mailing to the Tel Aviv address was delivered and signed for by “Shlomo” on July 17, 2012. RP 55 (¶12), 95-96. That same day, Enforcement also sent a copy of the corrected

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<sup>3</sup> The initial notice of complaint had the incorrect date. The corrected notice of complaint corrected this error. RP 1, 15, 133.



notice of complaint and the complaint to Sharbat via email at [REDACTED] and to Einhorn via first-class mail and email. RP 55 (¶13).

On August 2, 2012, Sharbat requested via email an extension of a “few months” to file an answer. RP 56 (¶14), 99-100. Enforcement forwarded Sharbat’s request to Sharbat’s counsel, Einhorn, and asked whether Einhorn still represented him. RP 100. Einhorn initially responded to Enforcement staff that he was unsure whether he continued to be engaged as Sharbat’s counsel, but Sharbat later confirmed to both Einhorn and Enforcement staff that his counsel represented him. RP 99-100. On August 3, 2012, Enforcement staff denied Sharbat’s extension request and notified both Sharbat and Einhorn that Enforcement would send a second notice of complaint on or about August 13, 2012. RP 99.

### **C. Second Notice of Complaint**

Despite receiving the complaint and the notice of the complaint, Sharbat did not file an answer. RP 56 (¶14). Accordingly, on August 14, 2012, Enforcement issued to Sharbat a second notice of complaint. RP 27-40. That second notice required Sharbat to file an answer by August 28, 2012. RP 27. It also informed Sharbat that his failure to do so would allow the Hearing Officer, in the exercise of his or her discretion and pursuant to FINRA Rule 9269, to: (1) treat the allegations in the complaint as admitted; and (2) issue a default decision against Sharbat. RP 27. Finally, the second notice cautioned Sharbat that “[t]he case may be decided on that basis and sanctions may be assessed against you without further notice.” RP 27.

Enforcement served the second notice by sending it (1) via certified and first-class mail to the CRD address; and (2) via FedEx to the Tel Aviv address. RP 56 (¶¶15, 16), 105-107. The certified mailing to the CRD address was returned as unclaimed, and the first-class mailing was not returned. RP 56 (¶15), 105. The FedEx mailing to the Tel Aviv address was delivered and

signed for by “Shlomo Sharbat” on August 19, 2012. RP 56 (¶16), 106-07. Enforcement also sent a copy of the second notice of complaint and the complaint to Sharbat via email at [REDACTED] and to Einhorn via first-class mail and email. RP 56 (¶17).

**D. Default Decision**

Sharbat failed to answer the second notice of complaint. RP 56 (¶18). On September 12, 2012, Enforcement filed a motion for entry of default decision. RP 39-108. In the motion, Enforcement argued that Sharbat violated Regulation M of the Exchange Act, NASD Rule 2110, and FINRA Rules 8210 and 2010. RP 47. In support of its motion, Enforcement filed a declaration executed by Jonathan Golomb, which attached several exhibits, including excerpts from Sharbat’s CRD record, and copies of the complaint, the notices of complaint, and the relevant mailing records. RP 53-108. Enforcement served its motion on Sharbat (1) by sending it via first-class mail to the CRD address and Tel Aviv address; (2) by emailing it to Sharbat at [REDACTED]; and (3) by sending it via first-class mail and email to Einhorn, Sharbat’s counsel. RP 46.

On September 28, 2012, the Hearing Officer directed Enforcement to supplement the record with factual support sufficient to establish that the offering of convertible debentures described in the complaint qualified as a distribution for purposes of Regulation M and that Sharbat is a person who falls within the ambit of the proscriptions of Rule 101 of Regulation M. RP 111-12. After requesting and receiving an extension of time, Enforcement filed its supplemental filing in support of its motion for entry of default judgment on October 12, 2012. RP 113-126. Enforcement served both its supplemental filing and its request for an extension on Sharbat (1) by sending it via first-class mail to the CRD Address and Tel Aviv address; (2) by

emailing it to Sharbat at [REDACTED]; and (3) by sending it via first-class mail and email to Einhorn. RP 121.

On November 8, 2012, the Hearing Officer granted Enforcement's motion and issued a default decision. RP 131-146. In the decision, the Hearing Officer agreed that FINRA had retained jurisdiction over Sharbat and that Sharbat had defaulted. RP 132-33. As to the merits, the Hearing Officer found that the alleged facts established that Sharbat twice failed to provide FINRA with on-the-record testimony, in violation of FINRA Rule 8210 and 2010. RP 137-138. The Hearing Officer also found that the alleged facts and Enforcement's supplemental materials failed to show that Sharbat was a distribution participant and thus did not establish a prima facie violation of Regulation M. RP 137. Accordingly, the Hearing Officer dismissed the first cause of action. RP 137. For his failure to appear for testimony, the Hearing Officer barred Sharbat from associating with any FINRA member. RP 139.

The Hearing Officer also issued a notice of default decision. RP 127-29. The notice informed Sharbat that "[t]his Decision will become the final decision of [FINRA] unless either you or . . . Enforcement appeals to the [NAC], or the NAC calls the Decision for review." RP 127. The notice further informed Sharbat that, in order to appeal the decision, he must file a notice of appeal "within 25 calendar days after service of the Decision upon you." RP 127. The Hearing Officer served both the default decision and notice of default decision by sending them to the CRD address via FedEx and first-class mail and to the Tel Aviv address via FedEx. RP 129, 140, 146A-B.

Sharbat never filed an appeal with the NAC, and NAC did not call the case for review. By operation of law, the default decision became FINRA's final disciplinary action on December

3, 2012 (25 days after service of the decision), and Sharbat's bar became effective on that date. *See* FINRA Rule 9311(a).

Seven and one-half years later, on July 2, 2020, Sharbat filed this application for review. RP 147-49.

### **III. ARGUMENT**

Pursuant to well-established precedent, the Commission should dismiss Sharbat's application for review because he did not properly exhaust his administrative remedies before FINRA by first appealing to the NAC. Alternatively, the Commission should dismiss Sharbat's application for review because it is untimely. Sharbat has not shown that extraordinary circumstances exist to warrant extending the long-past appeal deadline.

#### **A. Sharbat Failed to Exhaust His Administrative Remedies.**

FINRA properly served Sharbat with the default decision and notice of default decision at the CRD address and the Tel Aviv address. RP 129, 140, 146A-B. Once the Hearing Officer issued the default decision against Sharbat, FINRA rules afforded Sharbat only two administrative remedies. Pursuant to FINRA Rule 9269(c), Sharbat could have filed a motion with FINRA's Office of Hearing Officers to set aside the default. Alternatively, pursuant to FINRA Rule 9311(a), Sharbat could have filed "a written notice of appeal [to the NAC] within 25 days after service" of the default decision. Sharbat chose neither of these two options. Instead, he ignored FINRA procedural rules, bypassed the NAC, and appealed the default decision straight to the Commission.

The Commission does "not consider an application for review if the applicant failed to follow [FINRA] procedures." *Edward J. Jakubik*, Exchange Act Release No. 61541, 2010 SEC LEXIS 1014, at \*13; (Feb. 18, 2010) (dismissing application for review of a default decision

barring the applicant based on applicant's failure to exhaust administrative remedies); *see also Stephen Robert Williams*, Exchange Act Release 89238, 2020 SEC LEXIS 2045, at \*11 (July 7, 2020) (dismissing application for review of expedited proceedings barring the applicant based on applicant's failure to exhaust administrative remedies); *Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 SEC LEXIS 1875, at \*9 (July 25, 2018) (same).

The "policy of requiring people to exhaust the full administrative process" at FINRA is "long-settled and well-justified." *Florence Sarah Pollard*, Exchange Act Release No. 55978, 2007 SEC LEXIS 1430, at \*7 (June 28, 2007). As the Commission stated in *Pollard*, "[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 the review." *Id.* at \*3 (citing *Royal Secs. Corp.*, 36 S.E.C. 275, 277 (1955)). Moreover, FINRA rules do not permit an aggrieved respondent to appeal directly to the Commission from a Hearing Officer decision that has become FINRA's "final disciplinary action" only as a result of the respondent's failure to appeal it to the NAC. *Jakubik*, 2010 SEC LEXIS 1014, at \*13. To permit an aggrieved respondent to use such a basis to bypass the NAC "would fly in the face of the long-standing Commission precedent" that requires the exhaustion of administrative remedies. *Id.* at \*6-7.

Sharbat contends that he never received a copy of default decision. RP 148. As an initial matter, FINRA properly served the default decision and notice of default decision at Sharbat's CRD address and Tel Aviv address.<sup>4</sup> RP 146A-B. FINRA's service of the default decision and notice of default decision by mail and FedEx to Sharbat's CRD address and by FedEx to

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<sup>4</sup> Sharbat previously provided the Tel Aviv address to Enforcement as his current mailing address. RP 87. Sharbat also had actual notice of the complaint, corrected notice of complaint, and second notice of complaint, having signed for the deliveries at the Tel Aviv address. RP 92-93, 95-96, 106-07. The second notice of complaint explicitly told Sharbat that the Hearing Officer, in his or her discretion, could issue a default judgment against Sharbat if he failed to file an answer. RP 27.

Sharbat's Tel Aviv address provided him with constructive notice of the action. *See* FINRA Rule 9269(d) (providing that FINRA must serve a default decision on respondent by courier or other means reasonably likely to obtain prompt service when the sanction is a bar).<sup>5</sup> Moreover, and as acknowledged in his application for review, Sharbat had actual notice of Enforcement's motion for entry of default judgment and knew that Enforcement was seeking a default judgment against him. RP 147. Nonetheless, Sharbat chose to default by "allow[ing] the action to take place without responding." RP 147. Sharbat cannot now try to bypass the NAC's review process based on a change of heart about his litigation strategy and file this application for review with the Commission. *Cf. Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at \*62 (Dec. 10, 2009) ("[W]e have held that an applicant's unsuccessful litigation strategy 'does not warrant reopening the record.'") (quoting *Russo Sec., Inc.*, 55 S.E.C. 58, 78 (2001)).

In sum, Sharbat failed to exhaust his administrative remedies and the Commission should dismiss this appeal. In doing so, the Commission should refrain from addressing any of the numerous merits-based arguments that Sharbat advances. *See Jakubik*, 2010 SEC LEXIS 1014, at \*16-17 (rejecting applicant's challenges to the decision in the underlying proceeding when dismissing the application for review for failure to exhaust administrative remedies); *Lance E. Van Alstyne*, 53 S.E.C. 1093, 1100 n.20 (1998) ("Because we lack jurisdiction to review Van Alstyne's application for review, we do not consider the merits of the allegations concerning rule violations.").

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<sup>5</sup> Sharbat incorrectly asserts that he was required to received written notice of the default decision pursuant FINRA Rule 9552. RP 148. The underlying action in this matter was a default proceeding pursuant to FINRA Rule 9269, not an expedited proceeding for the failure to provide information pursuant to FINRA Rule 9552. And FINRA properly served the default decision and notice of default decision in accordance with FINRA Rule 9269.

**B. Sharbat's Application for Review Is Untimely.**

Even if Sharbat had exhausted his administrative remedies, the Commission should nonetheless dismiss this appeal on the separate ground that it is untimely.

Under Section 19(d)(2) of the Exchange Act, a person aggrieved by a FINRA action reviewable by the Commission may file an appeal "within 30 days" after the date the notice of the action "was filed with [the Commission] and received by such aggrieved person, or within such longer period as [the Commission] may determine." 15 U.S.C. § 78s(d)(2). Commission Rule of Practice 420(b) provides that an applicant "must" file an application for review "within 30 days after the notice of the determination is filed with the Commission and received by the aggrieved person applying for review." 17 C.F.R. § 201.420(b). Rule 420(b), which "is the exclusive remedy for seeking an extension of the 30-day period," further provides that the Commission "will not extend this 30-day [filing] period, absent a showing of extraordinary circumstances." *Id.*

Here, Sharbat filed his appeal with the Commission on July 2, 2020, more than seven and one-half years after FINRA properly served the default decision and notice of default decision in accordance with FINRA rules on November 8, 2012. RP 129, 140, 146A-B; *see* FINRA Rule 9269. The default decision became FINRA's final disciplinary action on December 3, 2012, 25 days after service of the decision. *See* FINRA Rule 9311(a). As a result, the deadline for Sharbat to file an appeal with the Commission was January 3, 2013. *See* 17 C.F.R. § 201.420(b). Sharbat did not file his application for review until seven and one-half years later. RP 147-79. Accordingly, his application is untimely.

Sharbat asserts that he did not receive a copy of the default decision nor notice of default decision. RP 148. But as explained earlier, FINRA properly served the default decision and

notice of default decision at Sharbat's CRD address and Tel Aviv address. *See* FINRA Rule 9268(d). Besides receiving constructive notice, at the very least, Sharbat also acknowledges that he received Enforcement's motion for entry of default judgment. RP 147. He, thus, was aware that Enforcement was seeking to bar him in all capacities for his failure to testify. Despite knowing that FINRA could enter a default judgment against him and being on notice that FINRA might bar him for his failure to provide testimony, Sharbat nonetheless made the choice to default and not to appeal. RP 147. Under such circumstances, Sharbat should not now be allowed to claim that his purported lack of receipt of the default decision somehow justifies his appeal more than seven and one-half years later.

Sharbat does not dispute that his application is untimely, but rather argues that "the receipt of threats against [him] should he fail [sic] to cooperate with the investigation constitute exceptional circumstances that justify his failure to appeal" within the 30-day deadline under Commission Rule of Practice 420. RP 148. Sharbat's arguments lack merit and he fails to demonstrate extraordinary circumstances exist that would justify the Commission's exercise of discretion to consider his untimely application for review.

As the Commission stated in *PennMont Securities*, "an extraordinary circumstance under Rule of Practice 420(b) may be shown where the reason for the failure timely to file was beyond the control of the applicant." Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at \*18 (Apr. 23, 2010); *see also* *Brendan D. Feitelberg*, Exchange Act Release No. 89365, 2020 SEC LEXIS 2227, at \*11 (July 21, 2020) (same). The Commission has explained that, "[e]ven when circumstances beyond the applicant's control give rise to the delay . . . an applicant must also demonstrate that he or she promptly arranged for the filing of the appeal as soon as reasonably practicable thereafter." *PennMont Sec.*, 2010 SEC LEXIS 1353, at \*18-19. Thus, "[a]n



applicant whose application is delayed as a result of an extraordinary circumstance remains under an obligation to proceed promptly in pursuing appellate recourse.” *Id.* at \*19.

*PennMont*’s standard has not been met in this case. First, the failure to file timely was within Sharbat’s control. Indeed, Sharbat choose, based on purported advice of counsel, to allow the default proceeding to proceed against him and the resulting sanction to be imposed. RP 147-48. As Sharbat acknowledged in his application for review, “[b]ased upon his understanding that this suspension was only for a short time, and in light of the threats he received, [Sharbat] thought the safer course was neither testify or appeal.” RP 147.

Further, the language in Enforcement’s motion for entry of default judgment is plain and unambiguous on its face. Enforcement wrote, “Enforcement seeks a bar in this matter,” and “[Enforcement] respectfully requests that the Hearing Office enter a Default Order barring [Sharbat] for violating FINRA Rules 8210 and 2010, and suspending him for six months and fining him \$25,000 for violating Regulation M and NASD Rule 2110.” RP 48, 50. Enforcement continued, “if Sharbat is barred for his failure to testify, the fine and suspension for violating Regulation M need not be imposed.” RP 50. Taken together, Sharbat’s story about any ambiguity in the motion’s text is unfounded and his purported reliance on his counsel’s interpretation is not reasonable.<sup>6</sup> Regardless, it is the Hearing Officer’s decision, not Enforcement’s, to determine the appropriate sanction. *See* FINRA Rules 9268(b)(6), 9269.

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<sup>6</sup> Moreover, Sharbat offers no evidence to support his claim that he reasonably relied on such advice, other than his self-serving statements now made by different counsel who was not representing him at the time. Under these circumstances, Sharbat cannot establish an advice of counsel defense. *See Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at \*40 (Nov. 14, 2008) (“We believe that the respondent asserting such reliance must provide sufficient evidence... that the respondent made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice.”).

Second, even if the Commission were to accept Sharbat's tale of purported threats against him constituted an extraordinary circumstance, Sharbat did not promptly arrange for the filing of his appeal as soon as reasonably practicably thereafter. Sharbat, who moved to Israel in 2012 allegedly because of threats by Samuel DelPresto and Barry Honing, nonetheless waited seven and one-half years to file this application for review. He attempts to justify the long passage of time by noting that the Commission recently entered final administrative judgments against DelPresto and Honing in November 2019 and March 2020, respectively. Sharbat does not explain why these administrative judgments would provide him with a "sense of security required to dare seek reversal of FINRA's judgment and penalties." RP 148. Nor does he provide any documentation or evidence of any purported threats prior to the entry of these judgments.

Even if these administrative actions did, in fact, comfort Sharbat, he still did not act promptly. After the final judgments against DelPresto and Honing, Sharbat waited an additional seven months and nearly four months, respectively, before filing this application for review.<sup>7</sup> *See Williams*, 2020 SEC LEXIS 2045, at \*11-13 (dismissing applicant's application for review because application was untimely when it was sent "more than eight months after the deadline lapsed" and applicant failed to demonstrate any extraordinary circumstances justifying his untimely application); *Dowd*, 2018 SEC LEXIS 1875, at \*9 (dismissing applicant's application for review because application was untimely when it was sent "about six months after the deadline lapsed" and applicant failed to demonstrate any extraordinary circumstances justifying his untimely application).

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<sup>7</sup> Sharbat also asserts that the threats against him justified his failure to cooperate with FINRA's investigation. This argument, which is a defense to the underlying default decision and Sharbat's failure to provide testimony to FINRA, go to the merits of an appeal, which the Commission should not reach.

The Commission should reject Sharbat's plea that an extension is warranted because he "has now been denied of his freedom to earn livelihood as a broker for good." RP 148. Aside from the fact that Sharbat can seek to re-enter the securities industry through FINRA's eligibility proceedings for statutorily disqualified individuals, Sharbat essentially is making another merits argument by disputing the appropriateness of the sanction for his misconduct. *See Larry A. Saylor*, Exchange Act Release No. 51949, 2005 SEC LEXIS 1536, at \*13-14 (June 30, 2005) (rejecting arguments that purported "substantial harm" caused by a principal bar amounted to extraordinary circumstances to permit a decades-late appeal). The notion that the mere existence of a bar imposed in a default decision permits a years-late appeal would transform the "extraordinary circumstances" standard from a narrow exception into an easily-met exception that would open the floodgates of late appeals from barred respondents who previously opted not to pursue all their appellate options.<sup>8</sup> *See Jakubik*, 2010 SEC LEXIS 1014, at \*10 n.14. (declining to consider applicant's arguments that the bar imposed by FINRA was excessive and exceeded the sanctions sought by Enforcement in light of finding that applicant failed to exhaust his administrative remedies and that his appeal was untimely). It would also severely frustrate the interests of finality served by the appeal deadline. *See Van Alosty*, 53 S.E.C. at 1098 ("Parties to administrative proceedings have an interest in knowing when decisions are final and on which decisions their reliance can be placed.").

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<sup>8</sup> Unlike the underlying expedited proceedings in *Brendan D. Feitelberg* and *Destina Mantar*, in which the Commission permitted late appeals due to extraordinary circumstances, FINRA brought a disciplinary proceeding against Sharbat and sought a default after his failure to answer. *Cf. Feitelberg*, 2020 SEC LEXIS 2227, at \*13; *Destina Mantar*, Exchange Act Release No. 79851, 2017 SEC LEXIS 194, at \*9-11 (Jan. 19, 2017). Further, while both Mantar and Feitelberg provided FINRA with the requested information from the underlying requests before filing their applications for review with the Commission, Sharbat still has not offered to provide FINRA with the requested testimony. *See Feitelberg*, 2020 SEC LEXIS 2227, at 14; *Mantar*, 2017 SEC LEXIS 194, at 13.

For all the reasons explained above, Sharbat's application for review should be dismissed because it is untimely, and he failed demonstrate that extraordinary circumstances exist to justify permitting the appeal. *See Jakubik*, 2010 SEC LEXIS 1014, at \*15-17 (refusing to accept an application for review filed five years after the final NASD action); *Van Alstyne*, 53 S.E.C. at 1099 (refusing to accept an application for review filed five months after notice of NASD decision).

#### **IV. CONCLUSION**

Sharbat's application for review should be dismissed because he chose not to exhaust FINRA's administrative remedies available to him. In addition, Sharbat's appeal is untimely. While the Commission resolves the preliminary issues raised by this motion, it should stay the briefing schedule.

Respectfully submitted,

/s/Megan Rauch

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Dated: August 4, 2020

**CERTIFICATE OF SERVICE**

I, Megan Rauch, certify that on this 4th day of August 2020, I caused a copy of the foregoing Motion to Dismiss Application for Review and to Stay Briefing Schedule in the matter of *Application for Review of Shlomo Sharbat*, Administrative Proceeding No. 3-19870, with attachments, to be served via email on:

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
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Due to office closures related to COVID-19, the parties agreed to accept service from each other via electronic mail.

/s/Megan Rauch

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