

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

In the Matter of the Application of
Ustocktrade Securities, Inc.
For Review of
FINRA Disciplinary Action
File No. 3-20946

**FINRA'S BRIEF IN OPPOSITION TO
THE MOTION FOR A STAY**

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August 3, 2022

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I. INTRODUCTION

Ustocktrade Securities, Inc. (“Ustocktrade” or “the Firm”) seeks to stay its July 12, 2022 suspension and potential expulsion, which a FINRA Hearing Panel imposed in an order entered in an expedited proceeding under FINRA Rule 9552. The FINRA Hearing Panel concluded that the Firm failed to file its 2021 audited annual report, in violation of Section 17(e) of the Securities Exchange Act of 1934 (“Exchange Act”), Exchange Act Rule 17a-5, and FINRA Rule 2010. The Hearing Panel acknowledged the importance of timely filing an audited annual report, ordered that the Firm be suspended immediately, and further ordered that if the Firm does not file its audited annual report within 30 days after the date of the Hearing Panel Decision, the Firm would be expelled. “HP Dec.,” attached as Exhibit A, at 5.

Ustocktrade filed an application for review with the Commission on July 29, 2022. In its application for review, Ustocktrade “requests for an appeal on the Decision until September 30, 2022 to allow the Firm to complete its 2021 Audit filings.” Application for Review at 1.¹

FINRA opposes Ustocktrade’s request for a stay because the Firm has not met its heavy burden of demonstrating that a stay to give the Firm additional time to comply with federal securities laws and FINRA rules is appropriate. Ustocktrade has not shown that the four factors considered by the Commission when evaluating a stay motion have been established. Indeed, the Firm does not address any of these factors. Ustocktrade has not demonstrated that it is likely to succeed on the merits of the application for review; that it will suffer irreparable harm without a stay; that there will be substantial harm to other parties if a stay were granted; and that the issuance of a stay will not serve the public interest.

Ustocktrade’s FINRA membership is currently suspended based on the Hearing Panel’s order. Unless the Firm files its audited annual report by August 11, 2022, FINRA will expel the Firm on that date. FINRA took these actions to protect the investing public and they should remain in effect during this appeal.

Ustocktrade had several opportunities to file its audited financial report (which is now more than five months late) but did not do so. Nor has the Firm articulated why a stay of the sanctions is warranted under the circumstances. Therefore, FINRA urges the Commission to deny Ustocktrade’s stay request.

¹ While the Firm did not explicitly file a motion to stay, we construe the above quoted text as the Firm’s request for a stay of the imposition of sanctions to allow it time to file the required audited report.

II. BACKGROUND

Ustocktrade has been a FINRA member since 1985. HP Dec. at 2. The Firm's president testified that the Firm has had difficulties maintaining its net capital requirements—failing to meet its minimum net capital requirement from February through March 2021, again from mid-September 2021 through the end of that month, and from the end of 2021 through the present.

Id. The Firm ceased its securities business on November 23, 2021, and in a move to protect its customers, Ustocktrade transferred all customer accounts to a clearing firm on January 21, 2022.

Id.

In March 2022, FINRA staff issued a notice under FINRA Rule 9552 because Ustocktrade failed to file its required 2021 audited annual report by the March 1, 2022 deadline.

Id. at 1. The notice warned that Ustocktrade's registration would be suspended, effective April 11, 2022, unless it submitted the required report by that date. In response to this notice, Ustocktrade filed a timely request for a hearing under FINRA Rule 9552(e), which stayed the effectiveness of the notice. *Id.* The parties subsequently participated in a videoconference hearing. *Id.*

At the hearing, the Firm conceded that its audited annual report was overdue, but asked that it not be suspended, and be given until July 30, 2022, to complete and file its 2021 audit report. *Id.* at 1-2.

In its decision, the Hearing Panel found that Ustocktrade did not file its annual report by the required deadline, that it has not yet filed the report, and that the Firm's request for additional time to file the report was unavailing. *Id.* at 2-3. The Hearing Panel suspended the Firm immediately and ordered that the suspension convert to a bar if the Firm did not file its audited report within 30 days. *Id.* at 4.

III. ARGUMENT

A. The Standard for Considering a Request to Stay

“[T]he imposition of a stay is an extraordinary and drastic remedy,” and the moving party has the burden of establishing that a stay is appropriate. *William Timpinaro*, Exchange Act Release No. 29927, 1991 SEC LEXIS 2544, at *6 (Nov. 12, 1991). In balancing the harms that would result from the grant or denial of a stay, the Commission generally considers four factors: (1) a strong likelihood that the movant will prevail on the merits; (2) whether the movant will suffer irreparable harm without a stay; (3) whether there would be substantial harm to other parties if a stay were granted; and (4) whether the issuance of a stay would serve the public interest. *John Montelbano*, Exchange Act Release No. 45107, 2001 SEC LEXIS 2490, at *12 & n.17 (Nov. 27, 2001). “The first two factors are the most critical, but a stay decision rests on the balancing of all four factors.” *Se. Invs., N.C., Inc.*, Exchange Act Release No. 86097, 2019 SEC LEXIS 1370, *4-5 (Jun. 12, 2019); *see also Bruce Zipper*, Exchange Act Release No. 82158, 2017 SEC LEXIS 3706, at *19 (Nov. 27, 2017) (stating that the D.C. Circuit has suggested that a movant cannot obtain a stay unless he shows both a likelihood of success and irreparable harm).

The Commission has observed that certain courts utilize a somewhat different standard in considering whether to grant a stay. If a movant does not establish that it is likely to succeed on the merits of its appeal, this alternate standard requires that the movant must at least raise “a serious legal question on the merits” *and* show that the other three factors weigh *heavily* in its favor. *See Zipper*, 2017 SEC LEXIS 3706, at *19-21. The Commission emphasized that the overall burden on a movant under this standard “is no lighter than the one it bears under the ‘likelihood of success’ standard.” *Zipper*, 2017 SEC LEXIS 3706, at *21.

For the reasons discussed below, Ustocktrade has not demonstrated that the relevant factors weigh in favor of the extraordinary relief it seeks.

B. Ustocktrade Has Not Shown a Strong Likelihood of Success and Has Not Raised a Serious Legal Question

Ustocktrade has not shown a strong likelihood that it will succeed on the merits of its application. *See Montelbano*, 2001 SEC LEXIS 2490, at *12 & n.17. Indeed, it has not even raised a “serious legal question on the merits.” *See Zipper*, 2017 SEC LEXIS 3706, at *19-21.

Under Section 17(e) of the Exchange Act and Exchange Act Rule 17a-5, registered broker-dealers are required to file an annual financial report audited by an independent public accountant. The Firm admits that it was required to file its audited annual report for 2021 by March 1, 2022, and that it failed to do so.² The Hearing Panel thus concluded that Ustocktrade violated Section 17(e) of the Exchange Act and Exchange Act Rule 17a-5, and FINRA Rule 2010, and the Firm does not dispute this finding in its application for review. For this reason alone, the Commission should deny Ustocktrade’s request. *See Zipper*, 2017 SEC LEXIS 3706, at *19.

C. Ustocktrade Has Not Demonstrated That a Denial of the Stay Request Will Result in Irreparable Harm

Ustocktrade has also failed to satisfy another essential element for a stay—a showing that, absent a stay, it will suffer irreparable harm. *See Zipper*, 2017 SEC LEXIS 3706, at *19. To establish irreparable harm, an applicant “must show an injury that is ‘both certain and great’ and ‘actual and not theoretical.’” *Id.* at *13; *see also Whitehall Wellington Invs., Inc.*, Exchange

² Prior to filing the Application for Review, the Firm asserted that it was seeking funding from its parent company to pay an auditor to complete the delinquent annual report and needed until July 30, 2022, to file the report. HP Dec. at 2, 3. The Firm now asserts that it has obtained from its parent funding to pay an auditor, and has retained an auditor, but requires until September 30, 2022, to file the report. Application for Review at 1. The Firm, however, has not provided any explanation why it cannot file the delinquent report before the suspension imposed by the Hearing Panel converts to an expulsion.

Act Release No. 43051, 2000 SEC LEXIS 1481, at *5 (July 18, 2000) (holding that the movant must show that FINRA’s decision will impose injury that is “irreparable as well as certain and great”); *Timpinaro*, 1991 SEC LEXIS 2544, at *8 (stating that “[t]he key word in this consideration is irreparable”). The Firm has not met this burden because it has not asserted any harm.

At the hearing, the Firm testified that it ceased its securities business on November 23, 2021. HP Dec. at 2. In addition, it transferred all customer accounts to a clearing firm. *Id.* The Firm makes no arguments that it will suffer irreparable harm, and it is difficult to conceive how it could, given that it has no customers and is not currently conducting business.

In addition, the Firm requested that the FINRA Hearing Panel give it until July 30, 2022, to file its audited report before imposing any sanctions. Although the Hearing Panel decision denied Ustocktrade’s request for an extension, the Firm’s 30-day suspension began on July 12, 2022, which effectively allows the Firm to still avoid expulsion if it files its annual report before August 11. *See* HP Dec. at 5. The Commission consistently has held that when an applicant has the power to end its suspension, there is no irreparable harm. In *Keith Patrick Sequeira*, the Commission rejected the respondent’s argument that a suspension caused irreparable harm when he could “terminate that suspension at any time by paying the [arbitration award] or otherwise establishing a valid defense to it.” Exchange Act Release No. 85231, 2019 SEC LEXIS 286, at *31 (Mar. 1, 2019) (rejecting the applicant’s challenges to his suspension under FINRA Rule 9554), *aff’d*, 816 F. App’x 703 (3d Cir. 2020); *see also Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 SEC LEXIS 552, at *22 (Feb. 11, 2013) (Order Denying Stay) (rejecting applicant’s claim that he would suffer irreparable harm without a stay of his bar when

applicant “could end the suspension—and asserted harm—any time . . . by complying with FINRA’s requests”).

For these reasons, Ustocktrade has not met its burden to demonstrate irreparable harm, and the Commission should deny the stay request. *See Zipper*, 2017 SEC LEXIS 3706, at *19.

D. Denial of the Stay Request Will Avoid Potential Harm to Others and Will Serve the Public Interest

Turning to the third and fourth criteria in deciding whether to grant a stay, the balance of equities weighs against staying Ustocktrade’s sanctions. The Firm failed to timely file its 2021 audited report. This delinquency is not a mere technical violation, as the obligation to file an annual audited report is “important to monitor the financial status of broker-dealers and to protect investors.” *Gremo Invs., Inc.*, Exchange Act Release No. 64481, 2011 SEC LEXIS 1695, at *14-15 (May 12, 2011). Ustocktrade’s repeated failure to file its 2021 annual audited report impeded FINRA’s ability to monitor the Firm’s financial status. *See id.* That impediment raises a significant public concern, particularly considering the Firm’s repeated net capital deficiencies.

In balancing the possibility of injury to Ustocktrade against the possibility of harm to the investing public, the interest in protecting the public outweighs any potential injury to the Firm or any other parties. *See Montelbano*, 2001 SEC LEXIS 2490, at *12-13. Accordingly, the Commission would further the public interest by denying the stay.

IV. CONCLUSION

For all these reasons, the Commission should deny Ustocktrade's request to stay its suspension and possible expulsion pending the outcome of its application for review.

Respectfully submitted,

/s/ Colleen Durbin

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August 3, 2022

CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that:

- (1) FINRA's Opposition to the Motion for a Stay complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information; and
- (2) FINRA's Opposition to the Motion for a Stay complies with the 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 2,036 words.

Respectfully submitted,

/s/ Colleen Durbin

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CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this 3rd day of August 2022, I caused a copy of the foregoing FINRA’s Brief in Opposition to the Motion for a Stay, in the matter of the Application for Review of Ustocktrade Securities, Inc., Administrative Proceeding File No. 3-20946, to be filed through the SEC’s eFAP system and served by electronic mail on:

Davina Anderson
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Respectfully submitted,

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FINRA'S INDEX TO EXHIBITS

Exhibit

Description

A

Expedited Hearing Panel Decision

EXHIBIT A

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

USTOCKTRADE SECURITIES, INC.
(CRD No. 16208),

Respondent.

Expedited Proceeding
No. FPI220001

STAR No. 20220746511

Hearing Officer–BEK

**EXPEDITED HEARING
PANEL DECISION**

July 12, 2022

For failing to file its audited annual report, Respondent is suspended and ordered to pay costs. The suspension will convert to an expulsion if Respondent does not file the required report within 30 days of this decision.

Appearances

For the Complainant: Michael Manning, Esq., and Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Davina Anderson, President of Ustocktrade Securities, Inc.

DECISION

I. Background

This expedited proceeding stems from FINRA’s issuance of a Notice of Suspension (“Notice”) to broker-dealer Ustocktrade Securities, Inc. for failing to file its 2021 audited annual report as required by the Securities Exchange Act of 1934 (“Exchange Act”) and FINRA Rules. When Respondent missed its March 1, 2022, filing deadline, FINRA issued the Notice which informed Respondent that if the audited annual report was not filed by April 11, 2022, it would be suspended from FINRA membership and later expelled. The Notice also assessed a \$1,000 late fee. In response to the Notice, Respondent requested a hearing with the Office of Hearing Officers, which stayed the effectiveness of the Notice pending the outcome of the hearing.

The parties participated in a videoconference hearing before a FINRA hearing panel. At the hearing, Respondent conceded that its audited annual report was overdue, but asked

that it (1) not be suspended; and (2) be given until July 30, 2022, to complete and file its 2021 audit report.

For the reasons explained below, the Hearing Panel immediately suspends Ustocktrade's FINRA membership. If Respondent does not file the required report within 30 days of the date of this decision, the suspension will automatically convert to an expulsion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Financial Difficulties

Respondent has been a FINRA member since 1985.¹ Its main office is in Newton, MA. Davina Anderson has served as Respondent's President since July 2020; she was Respondent's representative at the hearing and provided testimony on its behalf.² Anderson testified that Respondent has had some difficulties with maintaining its net capital requirements. Respondent failed to meet its minimum net capital requirement from February through March 2021, again from mid-September 2021 through the end of that month, and from the end of 2021 through the present.³ It ceased its securities business on November 23, 2021. And in a move to protect its customers, Respondent transferred all customer accounts to a clearing firm on January 21, 2022.⁴ At this time, Respondent has only two registered principals, Anderson being one of them.⁵

B. Respondent Failed to File Its Audited Annual Report

Respondent admits that it has not filed its 2021 audited annual report which was due on March 1, 2022.⁶ Anderson testified that Respondent retained an auditor who began the audit; however, it was unable to pay the auditor to complete the report.⁷ Anderson also testified that Respondent expects to secure funding from its parent company by June 30, 2022, and complete its audit by the end of July 2022, but she could not assure the Panel that funding would be secured and the audited annual report completed by those dates.⁸ Anderson stated that it was her understanding that there was "some kind of commitment" to provide the required funding, but nothing was in writing.⁹

¹ Stipulations ("Stip.") ¶ 1; Joint Exhibits ("JX-") 1, at 5.

² Transcript ("Tr.") 20; JX-1, at 1.

³ Tr. 36-37; Stip. ¶ 10.

⁴ Tr. 12.

⁵ Tr. 13.

⁶ Stip. ¶¶ 4-5.

⁷ Tr. 11-14, 19, 60.

⁸ Tr. 12, 14-15, 19, 27-28, 62-63.

⁹ Tr. 27-28.

C. By Failing to File an Audited Annual Report, Respondent Violated Section 17(e) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010

Under Section 17(e) of the Exchange Act and Exchange Act Rule 17a-5, registered broker-dealers are required to file an annual financial report audited by an independent public accountant.¹⁰ Respondent admits that it was required to file its audited annual report for 2021 by March 1, 2022, and that it failed to do so. We therefore conclude that Respondent violated Section 17(e) of the Exchange Act and Exchange Act Rule 17a-5. As a result, Respondent also violated FINRA Rule 2010.¹¹

III. Sanctions

The Hearing Panel has discretion to determine appropriate sanctions in expedited proceedings. Under FINRA Rule 9559(n), it “may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.”

Enforcement seeks immediate reinstatement of the suspension with an automatic expulsion if Respondent fails to file its audited annual report within 30 days of the Panel’s decision. Enforcement also recommends a waiver of the \$1,000 late fee imposed in the Notice.¹² Respondent, however, seeks an extension of time until July 30, 2022, to permit it to secure funding by June 30, 2022, and complete and submit its audited annual report by July 30, 2022.¹³

In determining the appropriate sanction, we considered not only the arguments of the parties, but the importance of timely filing an audited annual report. To that point, the Securities and Exchange Commission (“SEC”) has described the reporting provisions as important in monitoring the financial status of broker-dealers and protecting investors.¹⁴ According to the SEC, the provisions “involve fundamental safeguards imposed for the protection of the investing

¹⁰ See, e.g., *Regulatory Operations v. TMR Bayhead Sec., LLC*, Expedited Proceeding No. FPI180002, 2018 FINRA Discip. LEXIS 27, at *4 (OHO Sept. 10, 2018) (“Section 17(e) of the Securities Exchange Act of 1934 ... and Rule 17a-5(d) thereunder require every registered broker-dealer to file annually a report audited by an independent public accountant.”), *modified*, Exchange Act Release No. 88006, 2020 SEC LEXIS 3103 (Jan. 17, 2020); *Regulatory Operations v. Fairbridge Capital Mkts.*, Expedited Proceeding No. FPI160004, 2016 FINRA Discip. LEXIS 44, at *8 (OHO July 11, 2016) (same).

¹¹ FINRA Rule 2010 requires FINRA members to observe “high standards of commercial honor and just and equitable principles of trade.” “Failure to comply with Exchange Act Rule 17a-5 violates FINRA Rule 2010.” *TMR Bayhead Sec.*, 2018 FINRA Discip. LEXIS 27, at *4.

¹² Tr. 23-24, 69-70.

¹³ Tr. 12, 14, 61, 63-64.

¹⁴ *Gremo Invs., Inc.*, Exchange Act Release No. 64481, 2011 SEC LEXIS 1695, at *14-15 (May 12, 2011).

public on those who wish to engage in the securities business.”¹⁵ “Reporting violations are therefore serious.”¹⁶

We also considered the likelihood of Respondent securing the funding necessary to meet capital requirements and pay the auditor to complete its audited annual report. Respondent admittedly has had financial difficulties, including the failure to meet net capital requirements several times in 2021 and currently.¹⁷

Respondent has ceased its securities business and has been operating on a limited budget since the end of 2021. Although Respondent had sufficient funds to retain an auditor in February 2022 and the auditor began work on the audited annual report, it currently lacks the funds to pay the auditor to complete the audited annual report. Moreover, Respondent has been seeking financing for several months, and it has been unsuccessful to date. Although Anderson asserts a belief that financing can be secured by the end of June 2022, she offers no guarantee or assurance that Respondent will succeed by that date or ever. And Respondent’s ability to submit an audited annual report is conditioned on its ability to secure funding.

Finally, we note that after Respondent ceased its securities business on November 23, 2021, it transferred all customer accounts to a clearing firm on January 21, 2022, to protect its customers.

Based on these considerations, we find it appropriate to immediately reinstate the suspension imposed by the Notice. In light of Respondent’s ongoing financial difficulties and its efforts to protect its customers, however, we do not believe the \$1,000 fine imposed by the Notice is necessary for remediation and customer protection. We therefore waive the \$1,000 fine imposed by the Notice. The suspension will convert to an automatic expulsion if Respondent does not file its audited annual report within 30 days after the date of this decision. These sanctions are appropriately remedial and designed to impress upon Respondent and others the importance of timely filing their audited annual reports and to protect the investing public by reducing the likelihood of recurrent violations.¹⁸

¹⁵ *Id.* at *15 (quoting *Fox & Co. Inv., Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822, at *26-27 & n.50 (Oct. 28, 2005)).

¹⁶ *Id.* (citing *Troy A. Wetter*, Exchange Act Release No. 33086, 1993 SEC LEXIS 2870, at *12 (Oct. 21, 1993) (finding applicant’s failure to timely file an audited annual report to be a serious reporting violation).

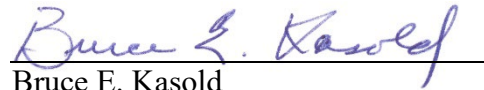
¹⁷ Tr. 36-37; Stip. ¶ 10.

¹⁸ *Cf. Gremo Invs., Inc.*, 2011 SEC LEXIS 1695, at *15 (upholding sanctions imposed by the FINRA hearing panel for failure to file an annual report by a PCAOB-registered firm “because they will impress upon the Firm and others the importance of filing annual reports that are audited by PCAOB-registered firms in compliance with the federal securities laws and protect the investing public by reducing the likelihood of any recurrence of a violation.”).

IV. Order

For failing to file its 2021 audited annual report, in violation of Section 17(e) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010, Ustocktrade Securities, Inc. is suspended from FINRA membership. The suspension will be effective upon the issuance of this Decision.¹⁹

The suspension will convert to an expulsion 30 days following the date of this Decision if Ustocktrade has not filed its 2021 audited annual report. If Ustocktrade files its audited annual report before it is expelled, then, pursuant to FINRA Rule 9552(f), it may file a written request for termination of the suspension on the grounds of full compliance with this Decision. We waive the \$1,000 fine imposed by the Notice. Finally, Ustocktrade is ordered to pay costs of \$1,503.56, which includes an administrative fee of \$750 and the cost of the hearing transcript. The costs shall be due as of a date established by FINRA.



Bruce E. Kasold
Hearing Officer
For the Hearing Panel

Copies to:

Ustocktrade Securities, Inc. c/o Davina Anderson (via email, overnight courier, and first-class mail)
Lloyd Gattis, Esq. (via email)
Michael Manning, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

¹⁹ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.