

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

In the Matter of the Application of
The Transportation Group (Securities) Limited
For Review of Action Taken by
Financial Industry Regulatory Authority
File No. 3-21582

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

Alan Lawhead
Vice President and
Director – Appellate Group

Andrew Love
Associate General Counsel

Lisa Jones Toms
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
(202) 728-8044
lisa.toms@finra.org
nac.casefilings@finra.org

September 8, 2023

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTS	2
A. TTG Fails to File Its Audited Annual Report by the Required Deadline	2
B. FINRA Commences an Expedited Proceeding and Suspends TTG for Its Delinquent Reporting	4
C. TTG Fails to Request a Hearing or Termination of Its Suspension and is Expelled from FINRA Membership	6
D. TTG Files Its Audited Annual Report Several Weeks After Its Expulsion and Later Applies for Commission Review.....	6
III. ARGUMENT	7
A. TTG Failed to Exhaust Its Administrative Remedies	8
B. TTG’s Application for Review Should be Dismissed as Untimely	13
IV. CONCLUSION.....	16

TABLE OF AUTHORITIES

<u>SEC Decisions and Releases</u>	<u>Page</u>
<i>Shad Nhebi Clayton</i> , Exchange Act Release No. 93760,8, 11 2021 SEC LEXIS 3657 (Dec. 13, 2021)	
<i>Curtis Steven Culver</i> , Exchange Act Release No. 75774,12 2015 SEC LEXIS 3541 (Aug. 27, 2015).	
<i>Patrick H. Dowd</i> , Exchange Act Release No. 83710,8 2018 SEC LEXIS 1875 (Jul. 25, 2018)	
<i>Jonathan Roth Ellis</i> , Exchange Act Release No. 80312,8, 12 2017 SEC LEXIS 970 (Mar. 24, 2017)	
<i>Scott Epstein</i> , Exchange Act Release No. 59328,10 2009 SEC LEXIS 217 (Jan. 30, 2009)	
<i>FCS Sec.</i> , Exchange Act Release No. 64852,12 2011 SEC LEXIS 2366 (Jul. 11, 2011)	
<i>Lawrence Gage</i> , Exchange Act Release No. 54600,11 2006 SEC LEXIS 2327 (Oct. 13, 2006)	
<i>Rogelio Guevara</i> , Exchange Act Release No. 78134,8, 15 2016 SEC LEXIS 2233 (Jun. 22, 2016)	
<i>David Richard Kerr III</i> , Exchange Act Release No. 79744,8 2017 SEC LEXIS 76 (Jan. 5, 2017)	
<i>Kirlin Sec.</i> , Exchange Act Release No. 61135,11 2009 SEC LEXIS 4168 (Dec. 10, 2009)	
<i>KJM Sec.</i> , Exchange Act Release No. 94059,9 2022 SEC LEXIS 190 (Jan. 25, 2022)	
<i>Kenneth Joseph Kolquist</i> , Exchange Act Release No. 82202,15 2017 SEC LEXIS 3749 (Dec. 1, 2017)	
<i>Caryl Trewyn Lenahan</i> , Exchange Act Release No. 73146, 2014 SEC LEXIS 3503 (Sept. 19, 2014)8	
<i>Gerald J. Lodovico</i> , Exchange Act Release No. 73748, 2014 SEC LEXIS 4732 (Dec. 4, 2014)8	

<i>Aliza A. Manzella</i> , Exchange Act Release No. 77084, 2016 SEC LEXIS 464 (Feb. 8, 2016)	8, 12, 13
<i>McBarron Cap. LLC</i> , Exchange Act Release No. 81785,	15
2017 SEC LEXIS 3112, (Sept. 29, 2017)	
<i>Royal Sec. Corp.</i> , 36 S.E.C. 275 (1955)	8
<i>Robert M. Ryerson</i> , Exchange Act Release No. 57839, 2008 SEC LEXIS 1153 (May 28, 2008)	13
<i>TMR Bayhead Sec., LLC</i> , Exchange Act Release 88006,	3
2020 SEC LEXIS 2833 (Jan. 17, 2020)	
<i>Lance E. Van Alstyne</i> , 53 S.E.C. 1093 (1998)	10
<i>Stephen Robert Williams</i> , Exchange Act Release No. 89238,	8
2020 SEC LEXIS 2828 (Jul. 7, 2020)	

Federal Statutes and Codes

Exchange Act Rule 17a-5(d), 17 C.F.R. § 240.17a-5(d)	3
Exchange Act Rule 17a-5(d)(5), 17 C.F.R. § 240.17a-5(d)(5)	14
Exchange Act Section 17(e)(1)(A), 15 U.S.C. § 78q(e)(1)(A)	3
Exchange Act Section 19(d)(2), 15 U.S.C. § 78s(d)(2)	12

Commission Rules

Commission Rule of Practice 161, 17 C.F.R. § 201.161	2
Commission Rule of Practice 420, 17 C.F.R. § 201.420	13

FINRA By-Laws, Rules, and Guidance

<i>Annual Audit Extension of Time Request Policy</i>	3
FINRA By-Laws, Art. IV, Section 1(a)(1)	12
FINRA By-Laws, Schedule A, Section 4(g)	4

FINRA Rule 014011
FINRA Rule 0140(c).....3
FINRA Rule 20103
FINRA Rule 9134(b)(3).....5
FINRA Rule 9552(a).....3
FINRA Rule 9552(c).....4
FINRA Rule 9552(d)4
FINRA Rule 9552(e).....4
FINRA Rule 9552(f).....4
FINRA Rule 9552(h)4
FINRA Rule 95594
FINRA Rule 9559(c)(1).....4

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

In the Matter of the Application of
The Transportation Group (Securities) Limited
For Review of Action Taken by
Financial Industry Regulatory Authority
File No. 3-21582

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

I. INTRODUCTION

FINRA moves to dismiss the application for review filed by The Transportation Group (Securities) Limited (“TTG”), an expelled member firm. TTG failed to file timely its audited annual report for its fiscal year ending December 31, 2022, as required by Section 17(e)(1)(A) of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 17a-5. Because TTG’s filing was long overdue, FINRA brought an expedited action pursuant to FINRA Rule 9552, and ultimately expelled TTG from FINRA membership in accordance with its rules.

The Commission should dismiss TTG’s application for review for two independent reasons. First, TTG failed to exhaust its administrative remedies before resorting to this appeal. It is undisputed that FINRA properly notified TTG that the firm would be suspended—which then would convert to an expulsion—unless the firm filed its audited annual report with FINRA or requested a hearing in writing by a certain deadline. TTG, however, took no action. TTG did not file the required report by March 1, 2023, its original due date, or within the suspension

period that ensued. TTG also did not request a hearing to contest the suspension nor did the firm request termination of the suspension upon showing it filed the requisite report. TTG does not contest these facts. TTG's failure to take corrective action by a final set deadline resulted in its expulsion from FINRA membership. By failing to request a hearing or seek reinstatement based on its full compliance before FINRA, TTG forfeited its right to contest FINRA's action to the Commission. The Commission therefore should dismiss TTG's application for review for its failure to exhaust its administrative remedies.¹

Second, TTG's application for review is untimely. TTG requested the Commission's review nearly a month after the 30-day appeal deadline had expired. TTG did not seek an extension of its deadline to file this appeal, and TTG has presented no evidence of extraordinary circumstances that warrant Commission review of its late appeal. Therefore, FINRA respectfully asks that the Commission dismiss TTG's appeal because it is untimely.

II. FACTS

A. TTG Fails to File Its Audited Annual Report by the Required Deadline

TTG, a former FINRA member firm, was expelled on June 21, 2023. RP 19, 79-80.² Exchange Act Section 17(e)(1)(A) and Rule 17a-5 required that TTG file, no later than

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

² "RP ____" refers to the page numbers in the certified record filed by FINRA on September 8, 2023.

March 1, 2023, an audited annual report for its fiscal year ending December 31, 2022 (the “2022 Report”).³ TTG failed to do so.⁴ RP 9.

³ Exchange Act Section 17(e)(1)(A) and Exchange Act Rule 17a-5(d) require all registered broker-dealers to file timely annual reports that contain financial statements audited by a PCAOB-registered accounting firm. *See* 15 U.S.C. § 78q(e)(1)(A); 17 C.F.R. § 240.17a-5(d). Broker-dealers are required to file their audited annual report no more than 60 calendar days after the end of the firm’s fiscal year. *See* Exchange Act Rule 17a-5(d), 17 C.F.R. § 240.17a-5(d)(5). A violation of these federal provisions also violates FINRA Rule 2010, which requires that FINRA members “observe high standards of commercial honor and just and equitable principles of trade.” *See* FINRA Rule 2010; *TMR Bayhead Sec., LLC*, Exchange Act Release 88006, 2020 SEC LEXIS 2833, at *13 & n.13 (Jan. 17, 2020) (recognizing that a violation of Exchange Act Section 17(e) and Exchange Act Rule 17a-5(d) also constitutes a violation of FINRA Rule 2010).

⁴ TTG was obligated to file its 2022 Report by no later than March 1, 2023. Because TTG had been under net capital since November 2022, the firm was ineligible for a 30-day extension of the due date. *See* RP 58; *see also generally, FINRA Annual Audit Extension of Time Request Policy*, <https://www.finra.org/filing-reporting/annual-audit/extension-time-request-policy> (explaining that, in determining whether to grant an extension of time, FINRA staff may consider factors such as the firm’s prior regulatory and filing history, including prior late filings of FOCUS and/or annual audit reports or net capital problems). TTG never filed the 2022 Report before it was expelled from FINRA membership on June 21, 2023.

In its application, TTG inaccurately claims that during its entire FINRA membership, the firm had been “in good standing” and had “never incurred any reprimands, sanctions or substantial penalties of any kind or nature.” RP 54. In truth, however, TTG has a history of delinquent financial reporting for which the firm was suspended multiple times. In 2022, for example, FINRA brought several expedited actions against TTG under FINRA Rule 9552 and suspended the firm for its failure to timely file varied financial reports, including its audited annual report for 2021. *See* RP 69-80. In each proceeding, TTG initially was suspended, but FINRA lifted the suspension after the firm filed the requisite report. RP 69, 71, 73, 75, 77. While suspended, TTG remained obligated to file audited annual reports in compliance with the requirements of Exchange Act Section 17(e)(1)(A) and Exchange Act Rule 17a-5(d). *See* FINRA 0140(c) (“A member . . . who has been suspended from membership . . . shall have all of the obligations imposed by the Rules.”).

B. FINRA Commences an Expedited Proceeding and Suspends TTG for Its Delinquent Reporting

In March 2023, FINRA commenced an expedited proceeding to suspend TTG from FINRA membership in accordance with FINRA Rule 9552(a).⁵ In a letter dated March 16, 2023, FINRA notified TTG that the firm had missed the required deadline to file the 2022 Report and FINRA intended to suspend TTG on April 10, 2023 (“Notice of Suspension”).⁶ RP 9-11.

The Notice of Suspension advised that TTG could avoid imposition of a suspension if it took corrective action by either filing the required report or requesting a hearing in writing.⁷ RP 10. If TTG had initiated either action before April 10, 2023, such effort would have stayed the effective date of the suspension.⁸ RP 10. The Notice of Suspension further apprised that TTG could seek reinstatement should its suspension become effective but warned that if TTG failed to request termination of the suspension by fully complying with the Notice of Suspension within

⁵ FINRA Rule 9552(a) states:

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 the FINRA By-Laws or FINRA rules, or fails to keep its membership application or supporting documents current, FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

⁶ The Notice of Suspension also assessed a \$1,000 late filing fee. RP 11. *See* FINRA By-Laws, Schedule A, Section 4(g), which imposes a \$100-per-day fee (not to exceed ten business days or \$1,000) for the failure to file timely required reports.

⁷ *See* FINRA Rule 9552(c) and (e); *see also* FINRA Rule 9559.

⁸ *See* FINRA Rules 9552(d) and 9559(c)(1).

three months,⁹ the firm would be expelled automatically from FINRA membership.¹⁰ RP 10. In accordance with FINRA Rule 9552(b), FINRA served the Notice of Suspension on the firm's chief compliance officer ("CCO") and sent it by FedEx overnight delivery to TTG's business address provided in CRD on March 17, 2023. RP 14. The mailing was delivered on March 20, 2023.¹¹ RP 14.

TTG neither filed the 2022 Report nor requested a hearing by the suspension date: April 10, 2023. On that day, FINRA staff sent an email to the firm's representatives informing them that the 2022 Report was still overdue; therefore, TTG's suspension would take effect that day. RP 15. FINRA staff further asked the TTG representatives to "provide a reason for the late annual audit." RP 15. In response, TTG's CCO, Charles Kolber, acknowledged that TTG's audited annual report was overdue. RP 15. He also represented that the filing delay was due to "some internal logistical issues," that an accountant had been engaged, and that the audit would be completed by April 30, 2023. RP 15. FINRA did not receive the 2022 Report nor a written request for a hearing by the suspension date. Accordingly, on April 10, 2023, TTG's suspension took effect.

⁹ See FINRA Rule 9552(f), which states in 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."

¹⁰ See FINRA Rule 9552(h), which states, "[a] member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred."

¹¹ Service by courier or express delivery is complete upon delivery. FINRA Rule 9134(b)(3). The record includes a copy of the FedEx proof-of-delivery referencing tracking information. RP 14.

C. TTG Fails to Request Termination of Its Suspension and is Expelled from FINRA Membership

Despite assurances from TTG's CCO that it would, TTG did not file the 2022 Report nor request termination of, or challenge, its suspension in the months leading up to its expulsion date. FINRA staff, however, contacted TTG to inquire about the firm's filing status. On June 6, 2023, staff emailed Joseph Sipkin, TTG's chief financial officer and FINOP, asking for "an anticipated date to submit the firm's 2022 annual audit," to which Sipkin replied, "[I]t should be very soon. I am waiting for the company to supply me with certain information. Once I have that, I will be able to get what I need to finish it up." RP 17-18. Despite the assurance that the filing would be made "very soon," TTG never filed the 2022 Report.

Accordingly, on June 21, 2023, Lambert notified TTG by letter that, pursuant to FINRA Rule 9552(h), and as provided in the Notice of Suspension, TTG was expelled from FINRA membership effective immediately ("Expulsion Notice"). RP 19-20. The Expulsion Notice further instructed that, should TTG wish to appeal FINRA's action to the Commission, it must file an "application for review within thirty days of its receipt of th[e] letter." RP 19. FINRA again served the Expulsion Notice on the firm's CCO and mailed it by FedEx overnight delivery to the firm's CRD address on June 21, 2023. RP 21-22. The mailing was delivered the next day (June 22, 2023). RP 22.

D. TTG Files Its Audited Annual Report Several Weeks After Its Expulsion and Later Applies for Commission Review

On July 20, 2023, nearly one month after TTG's expulsion and more than five months after its original due date, FINRA received the 2022 Report. RP 57. On or about August 21, 2023, approximately two months after the firm's expulsion and 30 days after its deadline to seek

Commission review of the expulsion, TTG submitted an application for review to the Commission. RP 53-56.

In its application for review, TTG seeks reinstatement as a FINRA member firm and makes several arguments in support. TTG argues that its appeal is timely filed because its expulsion date purportedly should have been July 21 instead of June 21, 2023. RP 53. TTG claims its expulsion was due to certain circumstances that were purportedly beyond its control. RP 53-54. TTG asserts that reinstatement is appropriate because the 2022 Report now has been filed. And TTG promises that, if the expulsion is set aside, the firm will file timely financial reports in the future and comply fully with FINRA rules. RP 54.

III. ARGUMENT

The Commission should dismiss TTG's application for review because TTG failed to exhaust its administrative remedies by filing its 2022 Report within the given time parameters or requesting a hearing. FINRA gave TTG proper notice of its expedited proceeding and TTG does not dispute this fact. Therefore, TTG was apprised of the consequences for not following FINRA's rules and exhausting its administrative remedies.

None of the assertions raised in TTG's application for review excused the firm's failure to satisfy its regulatory obligations and file a timely audited annual report in accordance with the applicable Exchange Act provisions and FINRA rules or exhaust the remedies made available to the firm during the expedited proceeding. Because TTG did not exhaust its administrative remedies, the firm has forfeited its right to challenge FINRA's action through an appeal. Moreover, TTG submitted an application for review well past the 30-day appeal deadline. Yet the firm did not request to extend the deadline and no extraordinary circumstances were

presented for TTG's late appeal. TTG's appeal is therefore untimely. On either ground, the Commission should dismiss this appeal.

A. TTG Failed to Exhaust Its Administrative Remedies

The Commission should follow established precedent and not consider TTG's application for review because the firm failed to exhaust administrative remedies that FINRA made available to it. As the Commission previously has held, "applicants [that] fail to exhaust administrative remedies before FINRA thereby forfeit any future challenge to FINRA's actions before the Commission." *Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 SEC LEXIS 1875, at *13 (July 25, 2018).

The Commission routinely has dismissed applications for review where the applicant has failed to exhaust their administrative remedies in FINRA Rule 9552 proceedings. *Shad Nhebi Clayton*, Exchange Act Release No. 80312, 2021 SEC LEXIS 93760, at *10-11 (Dec. 13, 2021) (dismissing appeal for applicant's failure to exhaust administrative remedies before FINRA); *Stephen Robert Williams*, Exchange Act Release No. 89238, 2020 SEC LEXIS 2828, at *8-9 (July 7, 2020) (same); *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 SEC LEXIS 970, at *9-10 (Mar. 24, 2017) (same); *David Richard Kerr III*, Exchange Act Release No. 79744, 2017 SEC LEXIS 76, at *9-10 (Jan. 5, 2017) (same); *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, at *10 (Jun. 22, 2016) (same); *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 SEC LEXIS 464, at *9-10 (Feb. 8, 2016) (same); *Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 SEC LEXIS 4732, at *7-8 (Dec. 4, 2014) (same); *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at *6 (Sept. 19, 2014) (same).

An aggrieved party—like TTG—is required to exhaust its administrative remedies before resorting to an appeal. As the Commission emphasized, the exhaustion requirement applies with equal if not greater force to self-regulatory organizations (“SROs”), like FINRA, because it “promotes the efficient resolution of disciplinary disputes between SROs and their members.” *Williams*, 2020 SEC LEXIS 2828, at *8. An applicant that fails to exercise their rights to participate in a proceeding before FINRA cannot claim that they have exhausted their administrative remedies. *Royal Sec. Corp.*, 36 S.E.C. 275, 277 n.3 (1955).

TTG, no stranger to the process and procedures surrounding FINRA expedited proceedings, failed repeatedly to comply with FINRA’s rules and procedures. The firm did not file a timely report, challenge its suspension for failing to do so, nor contest its expulsion until several weeks *after* FINRA expelled the firm. The record plainly shows, and TTG does not contest, that FINRA complied with its rules and timely delivered to TTG the Suspension and Expulsion Notices. RP 13-14; 21-22. FINRA properly notified TTG of its failure to file the 2022 Report by the March 1, 2023 due date, the consequences of the firm’s failure to file the report, and the steps the firm could take to avoid suspension and expulsion. RP 9-12.

TTG could have: (1) filed the requisite report; (2) requested a hearing under FINRA Rules 9552(e) and 9559; or, once the suspension became effective, (3) requested termination of its suspension based on full compliance pursuant to FINRA Rule 9552(f). TTG, however, took none of these corrective steps. TTG did not file the 2022 Report despite promising to FINRA staff that it would submit the filing by April 30, 2023, and again shortly before the effective date of its expulsion. RP 15. TTG did not request a hearing. Nor did the firm seek termination of its suspension. After three months had passed without filing the requisite report, TTG defaulted. And, in accordance with FINRA Rule 9552(h), FINRA appropriately expelled the firm. TTG’s

failure to avail itself of its administrative remedies in the expedited proceeding before FINRA warrants the Commission's dismissal of this appeal on exhaustion grounds.

None of the assertions TTG raises in its application for review mitigates the firm's duty to comply with FINRA's procedures or provide a basis for Commission review. First, TTG claims that reinstatement is appropriate because the 2022 Report has been filed. RP 54. But the relevant time for TTG to have complied with FINRA's rules and file its requisite report within the stated timelines was *before*, and not after, the firm's expulsion. *Cf. KJM Sec.*, Exchange Act Release No. 94059, 2022 SEC LEXIS 190, at *10 (Jan. 25, 2022) (finding the late filing of applicant's audited annual report submitted seven weeks after its expulsion from FINRA is not mitigating). TTG had ample time to take corrective action and file the 2022 Report before its expulsion date. Rather than taking advantage of FINRA's administrative process, TTG instead chose to ignore its reporting delinquency. Expelled firms, like TTG, cannot reassess their strategy and attempt to seek reinstatement through an untimely appeal. *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *44 (Jan. 30, 2009) ("Public policy considerations favor the expeditious disposition of litigation, and a respondent cannot be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action.").

The Commission should not consider TTG's belated filing of the 2022 Report because it was submitted nearly four weeks after the firm's expulsion date and more than five months after the initial filing deadline. To do so would undermine the finality of FINRA's proceedings and the importance of reporting obligations. *See Lance E. Van Alstyne*, 53 S.E.C. 1093, 1098 (1998) (holding "parties to administrative proceedings have an interest in knowing when decisions are final and on which decisions their reliance can be placed"); *Gremo Inv.*, Exchange Act Release

No. 64481, 2011 SEC LEXIS 1695, at *14-15 (May 12, 2011) (finding that “[t]he reporting provisions are important to monitor the financial status of broker-dealers and to protect investors. Reporting violations are therefore serious”).

Second, TTG argues for the first time that two primary circumstances caused the late filing of its 2022 Report: (1) an operational incapacity of the firm’s FINOP, Joseph Sipkin, who TTG claims that, because of employee departures, illnesses, and a corporate restructuring, could not work with the auditor to prepare its financial statements until late June 2023; and (2) the physical incapacity of TTG’s chief executive officer (“CEO”), Joseph Steuert, whose medical illness prevented him from resuming his full-time duties as the firm’s CEO until mid-June 2023. RP 54. But these unsubstantiated claims go to the merits of its expulsion and TTG never raised any of these concerns in the first instance to FINRA through its administrative process.¹² See e.g., *Clayton*, 2021 SEC LEXIS 3657, at *11 (declining to address arguments that go to the merits of the sanction because applicant failed to exhaust their administrative remedies before FINRA).

Even if the Commission were to consider TTG’s claims—which it should not—the Commission should find they lack merit. TTG has introduced no evidence in the record in support of these claims. *Kirlin Sec.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *38 n.87 (Dec. 10, 2009) (finding that it is the applicant’s burden to produce evidence in

¹² Moreover, the explanations TTG provides in its application for review for failing to file the 2022 Report timely are very different than the assurances the firm made to FINRA staff throughout its proceeding. For example, TTG claims for the first time in its application that its FINOP could not work with the auditor to prepare financial statements until late June 2023. RP 54. But, on April 10, the firm’s CCO represented to FINRA staff that an accountant had been retained and the annual audit was expected to be completed by April 30. RP 15. And, on June 6, Sipkin indicated to FINRA staff that he was working diligently with the auditor to submit the 2022 Report “very soon.” RP 17.

support of its claimed defenses). Moreover, TTG offers no reason as to why it remained silent during the entire proceeding about its operational and physical difficulties and instead awaited the filing of this late appeal to provide purported reasons for failing to timely file the 2022 Report.

In any event, the relevant question here is whether TTG followed the procedural steps in its expedited proceeding and exhausted its administrative remedies as a condition to applying for Commission review. TTG, unquestionably, did not. TTG had ample opportunity to prevent its expulsion by either filing the 2022 Report or contest its inability to do so at a requested hearing. Allowing TTG to bypass FINRA's procedures and reverse its course by filing an appeal without first exhausting its administrative remedies before FINRA would compromise "the self-regulatory function of SROs." *Manzella*, 2016 SEC LEXIS 464, at *10; *see also Curtis Steven Culver*, Exchange Act Release No. 75774, 2015 SEC LEXIS 3541, at *7 (Aug. 27, 2015).

Third, TTG now promises to comply with all FINRA rules and regulations in the future, including providing timely submissions of its FOCUS reports and audited financial reports. RP 54. But FINRA members are already obligated to comply with the federal securities laws and FINRA's rules. *See* FINRA By-Laws, Article IV, Section 1(a)(2) (agreeing as a condition to membership to comply with, among other things, the federal securities laws); FINRA Rule 0140 (providing that FINRA's "[r]ules shall apply to all members"); *see also Lawrence Gage*, Exchange Act Release No. 54600, 2006 SEC LEXIS 2327, at *14 (Oct. 13, 2006) ("The membership of every [FINRA] member is conditioned on the member's continued compliance with [FINRA] rules."). Moreover, TTG's assurance of future compliance is not a justifiable reason for the Commission to set aside FINRA's action and reopen this case. *Accord Ellis*, 2017

SEC LEXIS 970, at *17 (finding applicant's belated desire to cooperate not mitigating for failing to exhaust administrative remedies).

As the Commission previously has stated, “[t]he prompt filing of audited annual reports is an important requirement that provides FINRA and the Commission with an important means of timely oversight of the financial health of broker-dealers and of protecting public investors.” *FCS Sec.*, Exchange Act Release No. 64852, 2011 SEC LEXIS 2366, at *36 (July 11, 2011) (internal quotations omitted). Because TTG failed to file its audited annual report timely, FINRA could not adequately monitor the firm’s financial condition for an extended period thereby posing a financial risk to the investing public. That TTG had been operating a securities business while under net capital for more than six months, *see* RP 57-58, and the firm’s auditor reported a going concern about TTG’s financial condition, RP 37, surely made the timeliness of TTG’s filing even more critical.

In sum, TTG failed to exhaust its administrative remedies, which means the firm does not qualify for appellate review. Accordingly, the Commission should dismiss TTG’s appeal.

B. TTG’s Application for Review Should be Dismissed as Untimely

Separately, the Commission should dismiss TTG’s application for review because it is untimely. Exchange Act Section 19(d)(2) provides that any person aggrieved by a final disciplinary sanction imposed by a self-regulatory organization has 30 days to file an appeal after the date the notice of the self-regulatory organization’s determination was filed with the SEC and received by the aggrieved person, or “within such longer period as [the SEC] may determine.” 15 U.S.C. § 78s(d)(2). SEC Rule of Practice 420 is the “exclusive remedy” for seeking an extension of the 30-day appeal period. 17 C.F.R. § 201.420(b). That rule provides that the Commission will allow the filing of a late application for review only upon “a showing of

extraordinary circumstances.” *Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 SEC LEXIS 1153, at *7 & n.9 (May 20, 2008).

TTG’s application for review is late, and the Commission should dismiss it. The Expulsion Notice advised that TTG could appeal the expulsion within 30 days of its receipt of the Notice. RP 19. The Expulsion Notice was delivered to TTG on June 22, 2023. RP 22. Absent an extension of the filing deadline,¹³ TTG had thirty days to file its application for review. *See Manzella*, 2016 SEC LEXIS 464, at *16 (providing that service to applicant’s CRD address provided her with constructive notice of the action and started the running of the appeal period). TTG instead waited to submit its appeal on August 21, 2023 (which the Commission acknowledged on August 25, 2023), which is well past the 30-day appeal deadline. RP 53-56, 59-60. And TTG has presented no extraordinary circumstances that warrant an exception to its late appeal.¹⁴

TTG claims, with no supporting evidence, that its application for review is filed timely because the 2022 Report was due by March 31, instead of on March 1, 2023. RP 53. This is false. Absent an extension, which according to FINRA staff, TTG was ineligible to obtain (*see*

¹³ The record provides no evidence that TTG sought an extension of the deadline to file this appeal.

¹⁴ In addition to finding that TTG’s purported claims of staff departures, illnesses, and a corporate restructuring do not excuse its belated filing of the 2022 Report, the Commission also should find that such claims do not justify the lateness of this appeal. TTG provides no justifiable reason, for example, as to why—when it finally filed the 2022 Report on July 21, 2023—it could not have also filed this appeal at that time. Indeed, TTG freely admits in its application for review that any operational or personal difficulties the firm supposedly was suffering had been resolved by “mid-June” 2023. RP 54. After which, according to TTG, the firm had recovered to “full operational capacity” and its CEO “was again able assume his full-time duties as CEO.” RP 54. Given the firm’s own representations, since June 2023, TTG could have filed a timely application for review with the Commission.

RP 58), broker-dealers are required to file an audited annual report no later than 60 calendar days after the date of the firm's fiscal year.¹⁵ In TTG's case, the firm's fiscal year ended December 31, 2022, which means that the firm's audited annual report was due no later than March 1, 2023. In arguing the timeliness of its appeal, TTG also mistakenly asserts that the firm was in "regulatory capital compliance" as of December 31, 2022, as confirmed by its amended FOCUS report. RP 53. But TTG was not in compliance with net capital rules. Indeed, the record shows that (1) the three FOCUS filings TTG submitted for its fiscal year ending December 31, 2022, all reported a net capital deficiency (as did the 2022 Report¹⁶); (2) TTG has had insufficient net capital since November 2022; and (3) TTG was ineligible for a 30-day extension of filing its audited annual report because the firm was under its net capital requirement by its 2022 fiscal year end. RP 57-58. In fact, TTG provides no tenable reason for waiting almost 30 days after the appeal deadline to file its application for review. TTG was obligated to "proceed promptly in pursuing appellate recourse." *Kenneth Joseph Kolquist*, Exchange Act Release No. 82202, 2017 SEC LEXIS 3749, at *14 (Dec. 1, 2017) (dismissing appeal as untimely for failing to show that applicant appealed as soon as reasonably practicable). Instead, TTG waited nearly a month after its appeal window had expired, and two months after its expulsion, to file this late appeal.

Absent the presence of extraordinary circumstances, as is the case here, the Commission has declined to review late applications for review. *See e.g., McBarron Cap. LLC*, Exchange Act Release No. 81785, 2017 SEC LEXIS 3112, at *6 (Sept. 29, 2017) (dismissing application for

¹⁵ *See* 17 CFR § 240.17a-5(d)(5).

¹⁶ *See* RP 37 (stating that "the Company incurred a net loss of \$57,647 during the year ended December 31, 2022, and, as of that date, had a net capital deficiency pursuant to FINRA rules of \$10,315"); *see also* RP 1-8 (citing several firm net capital and financial reporting exceptions from FINRA's 2022 examination of TTG).

review as untimely when filed nearly a month after the appeal deadline); *Guevara*, 2016 SEC LEXIS 2233, at *8 (dismissing application for review as untimely when filed 17 days after the appeal deadline). As the Commission commonly has held, “strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.” *McBarron*, 2017 SEC LEXIS 3112, at *7 (citation omitted). Accordingly, the Commission should dismiss TTG’s appeal because it is untimely.

IV. CONCLUSION

TTG failed to file its audited annual report, failed to take corrective action or request a hearing, and failed to request termination of its suspension, and consequently, the firm was expelled in accordance with FINRA’s rules. The Commission should follow its established precedent and dismiss TTG’s application for review because the firm failed to exhaust FINRA’s procedures for contesting its sanction before seeking review. The Commission should also dismiss TTG’s appeal because it is untimely.

Respectfully submitted,

By: /s/ Lisa Jones Toms
Lisa Jones Toms
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8044
lisa.toms@finra.org
nac.casefilings@finra.org

September 8, 2023

CERTIFICATE OF SERVICE

I, Lisa Jones Toms, certify that on this 8th day of September 2023, I caused a copy of FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule, In the Matter of the Application of The Transportation Group (Securities) Limited, Administrative Proceeding File No. 3-21582, to be filed through the SEC's eFAP system on:

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

and served by electronic mail on:

Charles Kolber
Managing Director and Chief Administrative Officer
122 East 42nd Street, Suite 2018
New York, NY 10168
c.kolber@ettg.net

/s/ Lisa Jones Toms
Lisa Jones Toms
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8044
lisa.toms@finra.org
nac.casefilings@finra.org

CERTIFICATE OF COMPLIANCE

I, Lisa Jones Toms, certify that this FINRA's Motion to Dismiss the Application for Review and Stay the Briefing Schedule complies with the Commission's Rules of Practice by omitting or redacting any sensitive personal information described in Rule of Practice 151(e).

Respectfully submitted,

/s/ Lisa Jones Toms _____

Lisa Jones Toms
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8044
lisa.toms@finra.org
nac.casefilings@finra.org