BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Christopher Robert Arnold

For Review of Action Taken by

FINRA

File No. 3-21818

FINRA'S BRIEF IN OPPOSITION TO CHRISTOPHER ROBERT ARNOLD'S APPLICATION FOR REVIEW

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I. INTRODUCTION

Christopher Robert Arnold ("Arnold") seeks to have the Securities and Exchange Commission ("Commission") overturn a bar that FINRA imposed after he twice did not testify as directed under FINRA Rule 8210 and defaulted from an expedited proceeding brought under FINRA Rule 9552 to secure his testimony. Arnold's application for review is ripe for dismissal under Section 19(f) of the Securities Exchange Act of 1934 ("Exchange Act"). The specific grounds for the bar that Arnold sustained exist in fact, FINRA imposed the bar following its rules, and those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. Dismissal of Arnold's appeal is also consistent with longstanding precedent in which the Commission holds that it will not entertain an application for review filed by an applicant who, like Arnold, did not exhaust procedural remedies offered by FINRA.

Arnold's claim that he moved and thus did not receive the various letters and notices that preceded his bar provides the Commission no reason to vacate it. FINRA mailed all the relevant

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correspondence that led to Arnold's bar to his last known residential address as reflected in the Central Registration Depository ("CRD®"). Arnold had an elementary duty to keep that address current, and he bears the foreseeable consequences of admittedly not discharging that duty. In this respect, his attempt to draw parallels to the limited, few cases in which the Commission has vacated bars sustained automatically under FINRA Rule 9552(h) proves unsuccessful. None of the cases cited by Arnold holds, as he contends, that the Commission will vacate a bar incurred by an applicant who moves and fails to update his CRD® address in order that he may pursue the process that he did not pursue in the first instance because he did not discharge a duty that he inarguably possessed.

Finally, Arnold's appeal is admittedly untimely, and he has not proven the type of "extraordinary circumstances" that warrant the Commission receiving his late-filed application for review. To conclude otherwise would undermine the finality to which all parties to an expedited proceeding are entitled.

Arnold has failed to present the Commission with any reason to disturb the bar that he sustained in conformity with FINRA rules. FINRA therefore requests that the Commission dismiss Arnold's application for review. Doing so is consistent with the important regulatory and public interests that are intrinsic to the Exchange Act.

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II. FACTS

A. Background

Arnold first associated with a FINRA member in 2011. RP 585.[1] From May 2017 to August 2022, he registered through USCA Securities LLC ("USCA") as a financial operations principal and as an operations professional. RP 585. Arnold is not associated with a FINRA member currently. RP 585.

B. Arnold Fails Twice to Provide Testimony Requested by FINRA

1. Arnold Does Not Appear and Testify as Instructed under FINRA Rules

On October 3, 2022, FINRA staff sent Arnold the first of two letters issued under FINRA Rule 8210 in an investigation that FINRA conducted of Arnold and USCA.[2] RP 1-5. The first letter directed Arnold to appear by internet videoconference on November 3, 2022, at 10 a.m. Eastern Time, for the purpose of testifying on-the-record before FINRA staff.[3] RP 1.

FINRA staff sent the first letter that directed Arnold to testify by certified mail and first-class mail to his last known residential address as reflected in CRD®.[4] RP 1, 11, 15-16;

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[1] "RP" refers to the page numbers in the certified record that FINRA filed with the Commission on January 12, 2024.

[2] FINRA Rule 8210 requires FINRA members and persons subject to FINRA's jurisdiction "to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in [an] investigation, complaint, examination, or proceeding." FINRA Rule 8210(a)(1).

[3] The letter instructed Arnold how to appear by internet videoconference and explained his obligations under FINRA Rule 8210. RP 1-5.

[4] FINRA staff must serve a notice directing a currently or formerly registered person to provide information or testimony under FINRA Rule 8210 by mailing or otherwise transmitting the notice to the last known residential address of the person as reflected in CRD®, unless

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Applicant's Br. at 2, 4. The United States Postal Service ("Postal Service") delivered the certified mailing to Arnold's CRD® address on October 12, 2022, and it returned to FINRA a delivery receipt for the certified mailing that displayed the recipient signature, "C.A."[5] RP 7, 11, 18; Applicant's Br. at 4. The Postal Service did not return the first-class mailing to FINRA.

On November 3, 2022, as scheduled, FINRA staff began an internet videoconference at 10:00 a.m. to take Arnold's testimony.[6] RP 13-26. Arnold nevertheless did not appear. RP 18-19. Accordingly, after providing Arnold one hour to show (which he did not do), FINRA staff adjourned the internet videoconference without securing Arnold's testimony. RP 19-21.

2. Arnold Does Not Appear and Testify after Being Instructed a Second Time to So Do

On November 9, 2022, FINRA staff sent Arnold a second letter that directed him to appear by internet videoconference with FINRA staff and testify on-the-record—in this instance,

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[Cont'd]
responsible FINRA staff has actual knowledge that the person's CRD® address is out of date or inaccurate, in which case the notice shall also be mailed or otherwise transmitted to any other more current address known to FINRA staff. *See* FINRA Rule 8210(d).

[5] The delivery receipt that the Postal Service returned to FINRA included a delivery address slightly different than Arnold's CRD® address. RP 7, 11. FINRA staff confirmed that this address and Arnold's CRD® address are alternate addresses for the identical physical location. RP 47-49. Accordingly, the use of either address would result in a delivery to Arnold's CRD® address. *Compare* RP 7, 43 *with* RP 83, 89, 95. FINRA staff did not possess, during the period relevant to this appeal, any information that indicated Arnold's CRD® address was outdated or inaccurate. *See also* RP 57, 85, 91.

[6] On October 20, 2022, FINRA staff sent an email to an address that USCA provided for Arnold that requested the opportunity to discuss with him the internet videoconference set to take place on November 3, 2022. RP 9, 20, 48-49. FINRA staff did not receive any information that indicated the email was not delivered, and Arnold did not contact FINRA staff to discuss the testimony that he was scheduled to give. RP 20.

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on November 30, 2022, at 10 a.m. Eastern Time (9 a.m. Central Time).[7] RP 27-33. The second letter directing Arnold to testify stated that he did not testify on November 3, 2022, as scheduled, that he had not contacted FINRA staff regarding his testimony, and that he thus violated FINRA Rule 8210.[8] RP 27. The second letter further informed Arnold that, if he did not appear and testify on November 30, 2022, FINRA could commence an expedited or disciplinary proceeding that might result in a bar that would prohibit him from associating with any FINRA member in any capacity. RP 27, 31.

As it did with the first letter that directed Arnold to testify, FINRA staff sent the second letter by certified mail and first-class mail to his last known residential address as reflected in CRD®.[9] RP 11, 27, 46-48; Applicant's Br. at 2, 5. The Postal Service delivered the certified mailing to Arnold's CRD® address on November 14, 2022, and it returned to FINRA a delivery receipt for the certified mailing that displayed an illegible recipient's signature. RP 11, 43, 47-49; Applicant's Br. at 5. The Postal Service did not return to FINRA the first-class mailing of the second letter that directed Arnold to testify.

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[7] The second letter directing Arnold to testify also included instructions for Arnold to appear by internet videoconference and explained his obligations under FINRA Rule 8210. RP 27-35.

[8] The second letter enclosed a copy of FINRA's October 3, 2022 letter requesting that Arnold testify by internet videoconference on November 3, 2022. RP 29-30.

[9] In addition to mailing the second letter, FINRA staff sent the letter by email to the address that USCA provided for Arnold. RP 27, 35-42, 48-49. FINRA staff did not receive a response to the email, any message that the address to which they sent the second letter was not valid, or any indication that the email was not delivered. RP 49.

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On November 30, 2022, FINRA staff conducted the second internet videoconference that it scheduled to take Arnold's testimony.[10] RP 45-55. Arnold again did not appear at the appointed time. RP 50. Consequently, FINRA staff adjourned the second internet videoconference, like the first, without securing Arnold's testimony. RP 50.

C. FINRA Brings an Expedited Proceeding That Ends When Arnold Defaults

1. FINRA Notifies Arnold That It Will Suspend Him

In January 2023, FINRA staff began an expedited proceeding under FINRA Rule 9552 to suspend Arnold from association with any FINRA member.[11] RP 59-67. Specifically, in a letter dated January 5, 2023 (the "Pre-Suspension Notice"), FINRA staff notified Arnold that his failure to testify as directed in FINRA's October 3, 2022 and November 9, 2022 letters would subject to him a suspension on January 30, 2023 (the "Suspension Date"). RP 59. The Pre-Suspension Notice informed Arnold that, "[i]f you take corrective action by complying with the

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[10] Before commencing the second internet videoconference, FINRA staff called two telephone numbers that USCA provided for Arnold. RP 49-50. No one answered the first telephone number, and FINRA staff could not leave a voicemail. RP 49-50. Although no one answered the second telephone number, FINRA staff did leave a voicemail that requested Arnold contact FINRA. RP 50. This second telephone number matches the telephone number that Arnold provided to FINRA staff after he learned of his bar. RP 50, 97. Arnold nevertheless did not contact FINRA staff. RP 50.

[11] FINRA Rule 9552 provides:

> If a member, person associated with a member or person subject to FINRA's jurisdiction fails to provide any information, report, material, data, or testimony requested . . . pursuant to the FINRA By-Laws or FINRA rules, . . . FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

FINRA Rule 9552(a).

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FINRA Rule 8210 requests before the Suspension date, the suspension will not take effect."[12] RP 59. The Pre-Suspension Notice further explained that Arnold could, prior to the Suspension Date, file a written request for a hearing before a Hearing Officer or Hearing Panel, which would "stay the effective date of any suspension."[13] RP 59-60. Finally, the Pre-Suspension Notice advised Arnold that, in the event of his suspension, the option would remain for him to file a written request to terminate the suspension on the ground that he complied fully with the notice.[14] RP 60. The Pre-Suspension notice emphasized that, if Arnold did not do so within three months, he would be barred automatically from associating with any FINRA member in any capacity on April 10, 2023.[15] RP 60.

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[12] The Pre-Suspension Notice included copies of the two letters issued under FINRA Rule 8210 that FINRA sent Arnold by certified mail and first-class mail. RP 59, 61-67.

[13] FINRA Rule 9552 allows a person served with a notice under the rule to file a written request for a hearing with FINRA's Office of Hearing Officers. FINRA Rule 9552(e). Such a request serves to stay the effective date of the referenced suspension. FINRA Rule 9552(d).

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

[15] FINRA Rule 9552 contains a stipulation for "Defaults." FINRA Rule 9552(h). It states that "[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." *Id.* (emphasis added). A request for termination of a suspension must be filed with the head of the FINRA department or office that issued the notice before a suspension turns automatically to a bar. *See* FINRA Rule 9552(f), (h). The head of the appropriate department or office may grant relief from a suspension for good cause shown. FINRA Rule 9552(f).

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FINRA staff sent the Pre-Suspension Notice by certified mail and first-class mail to Arnold's last known residential address as reflected in CRD®.[16] RP 11, 59; Applicant's Br. at 2, 6. The Postal Service delivered the certified mailing of the Pre-Suspension Notice to Arnold's CRD® address on January 11, 2023, and it returned to FINRA a delivery receipt for the certified mailing that displayed an illegible recipient's signature. RP 11, 83; Applicant's Br. at 6. The Postal Service did not return the first-class mailing of the notice to FINRA.[17]

2. FINRA Suspends Arnold after He Takes No Action

Arnold did not respond to the Pre-Suspension notice, and he did not take corrective action or request a hearing by the Suspension Date. RP 87. So, on January 30, 2023, FINRA staff notified Arnold by letter (the "Suspension Notice") that, pursuant to FINRA Rule 9552, and consistent with the Pre-Suspension Notice, FINRA was suspending him from associating with any FINRA member in any capacity. RP 87-88. The Suspension Notice advised Arnold that he could file a written request that FINRA terminate the suspension on the ground that he complied fully with FINRA's January 5, 2023 Pre-Suspension Notice. RP 87. His failure to do so within three months of the Pre-Suspension Notice, the Suspension Notice reiterated, would result

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[16] FINRA Rule 9552 requires FINRA staff to serve a person with a notice of suspension in accordance with FINRA Rule 9134, or by facsimile or email. FINRA Rule 9552(b). FINRA Rule 9134 permits service on a person by, among other means, certified mail or first-class mail sent to the person's CRD® address, unless responsible FINRA staff has actual knowledge that the CRD® address is out of date, in which case staff must serve duplicate copies at the person's last known residential address. FINRA Rule 9134(a)(2), (b)(1). Service by mail is complete upon mailing. FINRA Rule 9134(b)(3).

[17] In addition to mailing the Pre-Suspension Notice to Arnold, FINRA staff emailed a copy of the notice to the email address for him that USCA provided. RP 48-49, 59, 69-78. FINRA staff received a notification that the email was delivered. RP 79. Someone, however, later contacted FINRA staff from that email address and stated, "I am not the Chris Arnold you are addressing this attachment to. The email has been deleted as requested." RP 81.

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without delay in a bar that prohibited him from associating with any FINRA member in any capacity. RP 87.

FINRA staff sent the Suspension Notice by certified mail and first-class mail to Arnold's last known residential address as reflected in CRD®. RP 11, 87; Applicant's Br. at 2, 8. The Postal Service delivered the certified mailing of the Suspension Notice to Arnold's CRD® address on February 4, 2023, and it returned to FINRA a delivery receipt for the certified mailing that displayed the recipient signature, "CA." RP 11, 89; Applicant's Br. at 8. The Postal service did not return the first-class mailing of the notice to FINRA.

3. Arnold Defaults and Consequently Is Barred

Arnold did not respond to the Suspension Notice, and at no time did he try to schedule on-the-record testimony or request that FINRA terminate his suspension on the ground that he complied fully with the first or second requests issued under FINRA Rule 8210. RP 93. Therefore, Arnold defaulted, and FINRA sent him a letter dated April 10, 2023 (the "Bar Notice") informing him that he was barred, effectively immediately, from associating with any FINRA member in any capacity. RP 93-94. The Bar Notice advised Arnold that, if he should seek to appeal FINRA's action, the Commission's rules regarding timeliness required that he file an application for review within 30 days of his receipt of the Bar Notice. RP 93.

As with all the other relevant letters and notices in this matter, FINRA staff sent the Bar Notice by certified mail and first-class mail to Arnold's last known residential address as reflected in CRD®. RP 11, 93; Applicant's Br. at 2, 8-9. The Postal Service delivered the certified mailing of the Bar Notice to Arnold's CRD address on April 15, 2023, and it returned to FINRA a delivery receipt for the certified mailing that displayed the recipient signature, "CA." RP 11, 95; Applicant's Br. at 9. The Postal Service returned the first-class mailing of the Bar

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Notice to FINRA, but not until September 23, 2023, more than five months after Arnold incurred his bar. RP 273-75.

D. FINRA Denies Arnold's Request to Vacate the Bar

1. Arnold Requests Information Nearly Two Months after He Is Barred

Arnold emailed FINRA staff on May 31, 2023—more than seven months after FINRA first requested that he testify under FINRA Rule 8210, nearly five months after FINRA notified him that it was commencing an expedited proceeding under FINRA Rule 9552 to suspend him, and almost 8 weeks after he was barred automatically from associating with any FINRA member in any capacity because he defaulted from the FINRA Rule 9552 proceeding. RP 97. In his email, Arnold conceded that he did not respond to FINRA's two requests that he testify after he left USCA. RP 97. Arnold also admitted that he had a duty to keep his CRD® address current. RP 97. Arnold acknowledged, however, that he did not abide by that duty, and he claimed that, because of such failure, he did not receive the Pre-Suspension Notice or Suspension Notice that FINRA sent him in accordance with FINRA Rule 9552. RP 97. Arnold thus asked that FINRA staff provide him "information related to my matter for my records and for my employer to review." RP 97. FINRA staff satisfied Arnold's request.[18] RP 99-112, 113.

2. Arnold Retains Counsel and Asks That FINRA Vacate the Bar

In late June 2023, Arnold retained counsel. RP 119. On June 20, 2022, Arnold's counsel emailed FINRA staff and claimed that Arnold "never received the suspension notice or

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[18] Arnold emailed FINRA staff a second time—on June 7, 2028. RP 115-16. In this email, Arnold thanked staff for sending him the information he requested on May 31, 2023, and he stated that he "wanted to follow up on our discussion about the possibility to rectify this and speak OTR with the Enforcement team." RP 116. Arnold and FINRA staff spoke on June 8, 2023, but Arnold did not request that FINRA vacate the bar that he sustained after he defaulted under FINRA Rule 9552. RP 115.

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the underlying 8210 requests until after the suspension converted to a bar. I'm hoping to get feedback on the possibility of and mechanism for vacating the bar and allowing him to comply with the 8210 requests seeking his testimony."[19] RP 123.

Thereafter, on August 17, 2023, FINRA staff emailed Arnold's counsel and asked that he provide additional information.[20] RP 244. The email stated that FINRA was "reviewing [Arnold's] request to vacate the bar imposed against him." FINRA staff noted, however, that FINRA's records showed that it received signed certified mailing delivery receipts for each of the relevant FINRA Rule 8210 letters staff sent to Arnold's CRD® address, as well as for all three notices issued by FINRA staff during the FINRA Rule 9552 proceeding that ensued after Arnold twice failed to testify. FINRA staff therefore asked that Arnold provide: (1) an explanation for each signature, (2) a timeline of his mailing addresses beginning from October 1, 2022, and (3) any records showing that he arranged to have the Postal Service forward to him mail sent to his CRD® address. RP 244.

Arnold's counsel responded to FINRA's request for more information by email on August 22, 2022. RP 261-62. In his email, counsel said that "[Arnold] cannot explain the signatures you reference except to say they are not his and cannot be his." RP 262. Counsel claimed that Arnold's mailing address changed from the Galveston, Texas address reflected as his residential address in CRD® to an address in Houston, Texas, from August 2022 to March

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[19] After acknowledging this and other emails, FINRA staff informed counsel that FINRA would contact him after staff reviewed the files concerning the circumstances that informed Arnold's bar. RP 165.

[20] On August 15, 2023, after reviewing FINRA's files, FINRA staff scheduled a telephone call to speak with Arnold's counsel. RP 211-21. Arnold's counsel did not join the scheduled call. RP 226-67. In lieu of rescheduling that call, FINRA staff informed counsel that FINRA would instead send an email concerning Arnold's request to vacate the bar he incurred. RP 226.

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27, 2023, and later to an address in Grove, Minnesota, from March 27, 2023, to the date of counsel's email. RP 261. Finally, counsel asserted that "[Arnold] attempted to set up mail forwarding from his former CRD address . . . [,but] [h]e was unable to do so . . . . [H]e never suspected that failing to do so could jeopardize his future employment and, as such, *it was not a priority for him*. Therefore, [Arnold] never finalized any mail-forwarding arrangements during the period in question." RP 261 (emphasis added).

3. FINRA Declines to Vacate Arnold's Bar

On November 3, 2023, FINRA staff wrote Arnold that, after considering the information that he provided, and although he claimed that he had moved from his CRD® address, FINRA was denying his request that his bar be vacated. RP 283-84. FINRA's letter said that its records showed the Postal Service delivered the October 3, 2022, and November 9, 2022 FINRA Rule 8210 letters to Arnold's CRD® address, and the Postal Service returned to FINRA signed certified mail delivery receipts for both letters. RP 283. Arnold, however, did not appear and testify as FINRA staff instructed him to so do in those letters. RP 283.

The letter further detailed that the Postal Service delivered the Pre-Suspension Notice, Suspension Notice, and Bar Notice to Arnold's CRD® address, and the Postal Service returned to FINRA signed delivery receipts for each of these notices, which FINRA sent to Arnold by certified mail. RP 283. Arnold nevertheless did not take corrective action, request a hearing, nor seek termination of his suspension based on his full compliance with FINRA's requests that he testify, and he therefore did not exhaust the procedural remedies that FINRA afforded him. RP 283.

Finally, the letter acknowledged Arnold's belated willingness to testify but noted that such willingness did not provide a basis to vacate his bar. RP 284. For these reasons, FINRA

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staff informed Arnold that FINRA would not vacate the bar that he sustained automatically under FINRA Rule 9552(h).[21] RP 284.

Thereafter, on December 19, 2023, Arnold filed an application for review that asked the Commission to review FINRA's action. RP 375-581.

III. ARGUMENT

While FINRA was investigating Arnold and his former firm, FINRA staff directed Arnold to testify on-the-record under FINRA Rule 8210. When Arnold did not testify, which was his unequivocal duty, and he did not come forward after a second request for his testimony, FINRA brought an expedited proceeding and notified him of its intention to suspend his association with any member under FINRA Rule 9552. FINRA staff informed Arnold of the procedural remedies that were available to him to avoid a suspension, or have it lifted, but he took no action. Arnold accordingly defaulted, and he automatically sustained a bar from associating with any FINRA member in any capacity under FINRA Rule 9552(h).

Although Arnold did not testify or avail himself of the process FINRA afforded him, he asks, many months after FINRA's final action, that the Commission overturn the bar that he sustained. The Commission should not entertain this request. It should instead dismiss Arnold's appeal. The Commission reviews an associational bar, like the one that Arnold incurred, under Section 19(f) of the Exchange Act, and each of the conditions needed for the Commission to

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[21] On November 17, 2023, Arnold's counsel emailed FINRA staff an unsolicited "response" to the letter that denied Arnold's request that FINRA vacate his bar. RP 285-90. The email included as attachments documents that Arnold claimed showed that he did not reside at his CRD® address at the time that FINRA served him with the letters and notices relevant to this matter in compliance with FINRA rules. For the reasons discussed below, *infra* part III.B, these documents are irrelevant to the issues presented in this appeal.

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dismiss Arnold's application for review under that standard is present here. Dismissal is also consistent with longstanding precedent holding that the Commission will not entertain an application for review filed by an applicant who, like Arnold, did not exhaust his FINRA-provided procedural remedies.

Arnold's assertion that he moved and thus did not receive the various letters and notices that preceded his bar, even if true, provides him no excuse for the final FINRA action that he appeals. Arnold had an elementary duty to keep his CRD® address current, and he bears the foreseeable consequences—a bar—of admittedly not discharging that duty and neither receiving nor reading mail sent to his CRD® address in full compliance with FINRA rules. It is for this reason, Arnold's contention that "extraordinary circumstances" exist to call for the Commission accepting what he grants is an untimely appeal also fails. His willingness to testify now does not justify overturning his bar nor provide a reason to accept his late-filed application for review.

Arnold therefore has presented the Commission no basis to disturb the bar that he sustained by default under FINRA Rule 9552(h). His appeal should accordingly be dismissed.

A. Exchange Act Section 19(f) Requires That the Commission Dismiss Arnold's Application for Review

The Commission reviews an associational bar incurred by default under FINRA Rule 9552, such as the bar that Arnold challenges in this appeal, in accordance with Section 19(f) of the Exchange Act.[22] 15 U.S.C. § 78s(f). Section 19(f) requires that the Commission dismiss an

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[22] Arnold founds his appeal on an assertion that the Commission reviews the bar that he incurred under Section 19(e) of the Exchange Act, 15 U.S.C. § 78s(e), which provides the standard of review for a final disciplinary sanction imposed by a self-regulatory organization such as FINRA. Applicant's Br. at 17-18. Arnold mistakes the applicable standard of review. It is well-settled that Exchange Act Section 19(f), not Section 19(e), provides the standard for the Commission's review of a bar imposed under FINRA Rule 9552(h). *See Christopher Anthony Sumner*, Exchange Act Release No. 96790, 2023 SEC LEXIS 238, at *2 n.2 (Feb. 1, 2023);

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appeal involving such a bar if it finds: 1) the specific grounds for the bar exist in fact; 2) the bar was effected in accordance with FINRA rules; and 3) those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[23] 15 U.S.C. § 78s(f). The bar that Arnold sustained comported fully with the foregoing conditions.[24] The Commission should accordingly dismiss his application for review.

1. The Bar Arnold Incurred Is Grounded in Fact and Was Imposed In Accordance with FINRA Rules

FINRA staff twice sent Arnold letters that required he testify by internet videoconference on-the-record before FINRA staff in accordance with the well-established duties imposed on him under FINRA Rule 8210—first on November 3, 2002, and again on November 30, 2022. RP 1-5, 27-33; Applicant's Br. at 4, 5, 22. As the record proves, and as Arnold plainly admits, he did not appear on either occasion to testify at the time appointed by FINRA staff. RP 13-26, 27, 45-55, 59; RP 97 ("I am not disputing that I . . . failed to reply to your request for information."). Arnold hence violated FINRA Rule 8210. *See Romano*, 2015 SEC LEXIS 3980, at *13

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Christopher A. Parris, Exchange Act Release No. 78669, 2016 SEC LEXIS 3075, at *12 (Aug. 24, 2016); *Dennis A. Pearson*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *10 (Dec. 11, 2006); *see also Michael Nicholas Romano*, Exchange Act Release No. 76011, 2015 SEC LEXIS 3980, at *12 n.10 (Sept. 29, 2015) ("Section 19(f) provides the standard for our review of expedited disciplinary proceedings for violations of Rule 8210.").

[23] Because Arnold invokes the wrong standard of review, his claim that the bar he sustained is "excessive or oppressive," Applicant's Br. at 17-22, is inherently misplaced in this review proceeding. *Compare* 15 U.S.C. § 78s(e)(2) (permitting the Commission, after conducting a review under Exchange Act Section 19(e)(1), to "cancel, reduce, or require the remission of" any final disciplinary sanction that is "excessive or oppressive"), *with* 15 U.S.C. § 78s(f) (which does not include any similar element in Exchange Act Section 19(f)'s standard of review).

[24] Arnold does not claim, nor does the record support finding, that the bar he incurred imposes an undue burden on competition. *See* 15 U.S.C. § 78s(f).

("Romano admits, and the record shows, that he violated Rule 8210 by not providing the information FINRA requested . . . ."); *Pearson*, 2006 SEC LEXIS 2871, at *11 ("Pearson . . . admittedly failed personally to respond to any of those requests or to appear before NASD to give testimony.").

Accordingly, using the process authorized under FINRA Rule 9552, FINRA commenced an expedited proceeding to secure his testimony. RP 59-67. Consistent with the requirements of FINRA Rule 9552(a), FINRA staff sent the Pre-Suspension Notice, which informed him that, if he failed to timely take corrective action by complying with the FINRA Rule 8210 requests for his testimony, or if he did not file a request for a hearing with FINRA's Office of Hearing Officers, he would be suspended from associating with any FINRA member in any capacity on the Suspension Date.[25] RP 59-6l; Applicant's Br. at 6. The Pre-Suspension Notice, as well as the later-issued Suspension Notice, further warned Arnold unambiguously that, once suspended, a failure by him to file a written request to terminate the suspension based on his full compliance with FINRA's requests that he testify would result automatically in a bar prohibiting him from associating with any FINRA member in any capacity effective April 10, 2023.[26] RP 60, 87.

Arnold did not take corrective action or request a hearing before the Suspension Date, and he at no time asked, in writing or otherwise, during the three months following the Pre-

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[25] FINRA Rule 9552 requires that a notice issued under the rule state the specific grounds and include the factual basis for FINRA's action, state when that action will take effect, and inform the person to whom the notice is issued of his or her rights to request a hearing. FINRA Rule 9552(c). The Pre-Suspension Notice complied fully with these requirements. RP 59-60.

[26] FINRA Rule 9552 does not require that FINRA send a notice confirming the effectiveness of a suspension after it sends the notice of suspension required under FINRA Rule 9552(a). The Suspension Notice that FINRA staff issued in this case was nevertheless consistent with the Pre-Suspension Notice, and staff served it in like compliance with the requirements of FINRA Rule 9134.

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Suspension Notice, that FINRA terminate his suspension on the ground that he complied fully with his obligations under FINRA Rule 8210. RP 87, 93; RP 97 ("I am not disputing that I . . . . failed to reply to your request for information."). Arnold consequently defaulted, and by operation of FINRA Rule 9552(h), he incurred an immediate bar from associating with any FINRA member in any capacity on April 10, 2023. RP 93-94.

The specific grounds for Arnold's bar thus exist in fact, and FINRA imposed that bar in accordance with its rules. *See Norman Chen*, Exchange Act Release No. 65345, 2011 SEC LEXIS 3224, at *7-8 (Sept. 16, 2011) ("FINRA's actions, here, were in accordance with its rules . . . . Chen failed to respond to FINRA's inquiry or timely request a hearing. As a result, Chen's bar was imposed automatically pursuant to FINRA rules."); *Pearson*, 2006 SEC LEXIS 2871, at *11 ("[B]y automatic operation of NASD Procedural Rule 9552(h), Pearson was barred based on his failure to request . . . termination of the suspension."); *see also Lee Gura*, 57 S.E.C. 972, 976 (2004) ("The NASD's actions were in accordance with its rules . . . NASD's rules set forth the procedures for suspending and ultimately barring individuals who fail to supply information or take corrective action. Gura chose not to avail himself of these procedures. . . As a result, Gura's bar was imposed 'automatically.'"); *David I. Cassuto*, 56 S.E.C. 565, 571 (2003) ("[T]he NASD's actions were consistent with NASD [rules]."). The first two conditions that require the Commission to dismiss Arnold's application for review under Section 19(f) of the Exchange Act are hence present in this case.

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2. FINRA Applied Its Rules Consistent with the Exchange Act's Purposes

The third condition needed for the Commission to dismiss Arnold's appeal under Section 19(f) is also present here. FINRA applied its rules consistent with the purposes of the Exchange Act when it brought an expedited action that ended with Arnold sustaining a bar.

FINRA Rule 8210 is essential to FINRA's ability to review the possible misconduct of its members and their associated persons.[27] *See Romano*, 2015 SEC LEXIS 3980, at *14. The rule requires any firm or person that is subject to FINRA's jurisdiction to provide information or to testify upon request. *See* FINRA Rule 8210(a). Inherent in this duty is the "unequivocal obligation to cooperate fully and promptly" with all information and testimony requests issued by FINRA staff under the rule. *David Kristian Evansen,* Exchange Act Release No, 75531, 2015 SEC LEXIS 3080, at *10 (July 27, 2015). A violation of FINRA Rule 8210 is then patently serious and subverts FINRA's ability to perform its regulatory responsibilities. *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010). Accordingly, vigorous enforcement of FINRA Rule 8210 ensures the continued strength of FINRA's self-regulation of its members and heightens the integrity of the securities markets and the protection of investors. *Fawcett*, 2007 SEC LEXIS 2598, at *23; *Pearson*, 2006 SEC LEXIS 2871, at *27 ("As we have repeatedly emphasized, it is critically important to the self-regulatory system that members and their associated persons cooperate with NASD investigations by

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[27] "Rule 8210 is the principal means by which FINRA obtains information from member firms and associated persons in order to detect and address industry misconduct." *Romano*, 2015 SEC LEXIS 3980, at *14 n.12. Because FINRA lacks subpoena power, the rule serves as a "vitally important" tool for acquiring information in any FINRA investigation, examination, or proceeding. *Charles C. Fawcett*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *23 (Nov. 8, 2007).

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complying with information requests."). Given the acute importance of FINRA Rule 8210 and its enforcement, the bar that Arnold sustained after he twice failed to testify as directed by FINRA staff is consistent with the purposes of the Exchange Act.[28] *See Romano*, 2015 SEC LEXIS 3980, at *14 ("Given the regulatory importance of Rule 8210, FINRA's bar of Romano for failure to provide the requested information is appropriate and consistent with the purposes of the Exchange Act."); *Pearson*, 2006 SEC LEXIS 2871, at *28 ("NASD's barring of Pearson 'is consistent with the Exchange Act's basic purpose of protecting public investors.'" (quoting *Gershon Tannenbaum*, 50 S.E.C. 1138, 1141 (1992)); *see also Elliot M. Hershberg,* 58 S.E.C. 1184, 1189 (2006) ("NASD's action fulfills the Exchange Act's purpose of protecting investors . . . [T]he bar protects investors by encouraging the timely cooperation that assists in the prompt discovery and correction of wrongdoing.").

That Arnold incurred his bar by operation of FINRA Rule 9552(h) does not diminish the certainty of the prior conclusion. FINRA Rule 9552 is a procedural mechanism that allows FINRA to address apparent violations of FINRA Rule 8210 more quickly than is possible using FINRA's disciplinary process.[29] *Parris*, 2016 SEC LEXIS 3075, at *4. As the Commission has

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[28] Arnold avers that his failure—twice—to testify did not cause harm to investors or the public interest. Applicant's Br. at 20-21. A violation of FINRA Rule 8210, however, "will rarely, in itself, result in direct harm to a customer." *Paz Sec., Inc.*, Exchange Act Release 57656, 2008 SEC LEXIS 820, at *17 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009). It is nevertheless a significant harm to FINRA's part in the self-regulatory system because it "undermines [FINRA's] ability to detect misconduct." *Paz Sec.*, 2008 SEC LEXIS 820, at *17.

[29] FINRA rules provide two equally valid means to enforce requests for information and testimony made under FINRA Rule 8210. *See Parris*, 2016 SEC LEXIS 3075, at *4. FINRA staff can file a disciplinary complaint alleging a violation of FINRA Rule 8210 or address such conduct by utilizing the expedited process permitted under FINRA Rule 9552. *Id.* FINRA's decision to proceed expeditiously is entitled to the Commission's "considerable deference." *Romano*, 2015 SEC LEXIS 3980, at *19 n.20 (citing *Schellenbach v. SEC*, 989 F.2d 907, 912 (7th Cir. 1993)).

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declared on multiple occasions, the use of FINRA Rule 9552 expedited proceedings strengthens investor protection and promotes a "reasonable, fair[,] and efficient" process that is consistent with the Exchange Act's purposes.[30] *Order Approving Proposed Rule Change Amending the FINRA Rule 9550 Series*, Exchange Act Release No. 61242, 2009 SEC LEXIS 4254, at *4 (Dec. 28, 2009) (SR-FINRA-2009-076); *see also Order Approving Proposed Rule Change by NASD Relating to Uniform Hearing Procedures for and Consolidation of Rule Relating to Expedited Proceedings*, Exchange Act Release No. 49380, 2004 SEC LEXIS 552, at *6 (Mar. 9, 2004) (SR-NASD-2003-110) ("The Commission finds that the [NASD Rule 9550 Series] is consistent with the Act and the rules and regulations thereunder applicable to a national securities association."); *Order Approving Proposed Rule Change by NASD Relating to Amendments to the Code of Procedure and Other Provisions*, Exchange Act Release No. 43102, 2000 SEC LEXIS 1584, at *26-27 (Aug. 1, 2000) (SR-NASD-99-76) ("[T]he creation of the NASD Rule 9540 Series also provides for the appropriate discipline of members who fail to provide the Association with certain information . . . The Commission also finds that the proposed rule change is consistent with Section 15A(b)(8) of the Act.").

FINRA Rule 9552(h), and the bar that Arnold incurred automatically under that rule, align squarely with the foregoing Exchange Act purposes. *See Chen*, 2011 SEC LEXIS 3224, at *7 ("FINRA's actions [automatically barring respondent under FINRA Rule 9552(h)] were in

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[30] Exchange Act Section 15A(b)(8) requires that FINRA rules, among other things, provide a fair procedure for the barring of any person from being associated with a FINRA member. 15 U.S.C. § 78o-3(b)(8). Such rules must align with the provisions of Exchange Act Section 15A(h), which in turn require that FINRA notify a person of, and give that person an opportunity to be heard upon, the specific grounds for the action under consideration, as well as provide a statement of the specific grounds on which a bar is based. 15 U.S.C. § 78o-3(h)(2). FINRA Rule 9552 is, and was applied in the expedited proceeding that ended when Arnold defaulted, in accordance with these requirements.

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accordance with its rules and the purposes of the Exchange Act."); *Pearson*, 2006 SEC LEXIS 2871, at *27 (finding that NASD "applied its rules in a manner consistent with the purposes of the Exchange Act" when the respondent was automatically barred under NASD Rule 9552(h) for failing to provide information and testimony); *see also Gura*, 57 S.E.C. at 976 ("The NASD's actions were in accordance with . . . the purposes of the Exchange Act."). The Commission should accordingly dismiss Arnold's application for review.[31] *See Romano*, 2015 SEC LEXIS 3980, at *29 (dismissing applicant's review proceeding based on the Commission's

[31] Dismissing Arnold's appeal is consistent with long-standing precedent that holds the Commission will not consider an application for review filed by an applicant who failed to exhaust his or her procedural remedies. *See, e.g.*, *Shad Nhebi Clayton*, Exchange Act Release No. 93760, 2021 SEC LEXIS 3657, at *7-8 (Dec. 13, 2021) ("We have previously stated that applicants who did not avail themselves of FINRA's administrative processes thereby forfeit any future challenge to FINRA's actions before the Commission."). A failure to exhaust occurs when, as occurred here, FINRA properly notifies a respondent of an expedited proceeding brought under FINRA Rule 9552, and that person fails to request a hearing before being suspended, request termination of the suspension after being suspended, or provide the requested information or testimony at any point before they are barred in accordance with FINRA Rule 9552(h). *See id.* at *10. Arnold's request that FINRA revisit his bar was not, as he suggests, Applicant's Br. at 24-26, made pursuant to a process that afforded him a remedy under FINRA rules. *See Brendan D. Feitelberg*, Exchange Act Release No. 89365, 2020 SEC LEXIS 2746, at *10 (July 21, 2020) (finding that a FINRA letter denying a request to revisit a bar imposed under FINRA Rule 9552(h) "merely refused to revisit FINRA's previous action"). FINRA staff's decision to deny that request is not an action that is reviewable by the Commission under Section 19(d)(1) of the Exchange Act. *See id.*; *cf. Warren B. Minton*, 55 S.E.C. 1170, 1176 (2002) ("The NASD's denial of Minton's motion to set aside his default did not impose any disciplinary sanctions on Minton. Nor does it deny him membership, bar him from association, or limit his access to NASD services."). Indeed, treating staff's decision as such, no matter how long after the bar that a respondent incurred is final, would undermine the interests of finality to which the parties to an expedited proceeding are entitled. *See infra* part III.C. An applicant could under such circumstances manufacture a timely appeal by simply requesting that FINRA vacate his or her bar and having such request denied. *See Lance E. Van Alstyne*, 53 S.E.C. 1093, 1097-98 (1998) ("By Van Alstyne's reasoning, the denial of any collateral motion seeking to vacate a final SRO decision—no matter how long after the decision became final and regardless of the reason for the motion—could . . . provide this Commission with jurisdiction under Section 19(d).").

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determination that FINRA's action barring him satisfied all the conditions needed for dismissal under Exchange Act Section 19(f)); *Pearson*, 2006 SEC LEXIS 2871, at *28 (same).

B. Arnold Bears the Foreseeable Consequences of Not Updating His CRD® Address

FINRA staff served Arnold with two letters that required him to testify under FINRA Rule 8210, as well as notice of the FINRA Rule 9552 expedited proceeding that FINRA staff brought after he did not so do, in accordance with FINRA rules. Arnold's claim that he did not receive these letters and notices—because he moved—is no reason to overturn the bar that he sustained under FINRA Rule 9552(h). Arnold had an elementary duty to keep his residential address in CRD® current, and he bears the consequences of admittedly failing to discharge that duty.

FINRA rules require that staff serve a notice requiring a currently or formerly registered person to provide information or testimony under FINRA Rule 8210 by mailing or otherwise transmitting the notice to the last known residential address of that person as reflected in CRD®. FINRA Rule 8210(d). FINRA rules similarly demand that staff serve notice of an expedited proceeding to suspend a person under FINRA Rule 9552 by, among other methods allowed, certified mail or first-class mail sent to the person's residential address as shown in CRD®. FINRA Rule 9134(a)(2), (b)(1); FINRA Rule 9552(b). In both instances, service by mail is complete upon mailing, and the person served is deemed to have received the related notice. FINRA 8210(d); FINRA Rule 9134(b)(3); FINRA Rule 9552(b).

The record proves, and Arnold does not dispute, that FINRA staff complied fully with the foregoing service requirements. *See infra* part II. B, C; Applicant's Br. at 2, 4, 5, 6, 8, 9. On October 3, 2022, and again on November 9, 2022, FINRA staff sent letters that directed Arnold to testify by internet videoconference under FINRA Rule 8210. RP 1-5, 27-33. FINRA staff

served both letters by certified mail and first-class mail sent to Arnold's last known residential address as reflected in CRD®. RP 1, 11, 15-16, 27, 46-48; Applicant's Br. at 2, 4, 5. When Arnold did not testify as directed in each of those letters, FINRA staff served notice that FINRA intended to suspend him following FINRA Rule 9552. RP 59-67. FINRA staff also sent the Pre-Suspension Notice (as well as the Suspension Notice and Bar Notice) to Arnold's CRD® address by certified mail and first-class mail. RP 59, 87, 93; Applicant's Br. at 2, 6, 8, 9. FINRA accordingly provided Arnold effective notice that he was obligated to testify under FINRA Rule 8210, and of his suspension under FINRA Rule 9552(a), in complete conformity with FINRA rules.[32] *See Clayton*, 2021 SEC LEXIS 3657, at *10 ("Clayton had notice of the proceeding because FINRA served him properly."); *Memet*, 2018 SEC LEXIS 1876, at *14 ("Memet received proper notice of each mailing under FINRA's rules when it was sent to her residential address as reflected in the CRD."); *Ellis*, 2017 SEC LEXIS 970, at *13 ("Because FINRA sent every notice and request for information to Ellis's CRD address, he is deemed to have received notice of FINRA's proceeding against him and his options for avoiding a bar."); *Aliza A.*

[32] The evidence shows that FINRA's mailings were received at Arnold's CRD® address because the certified mailing delivery receipts for such mailings were returned with signatures, including three signed with the initials, "CA" or "C.A." See *Christine D. Memet*, Exchange Act Release No. 83711, 2018 SEC LEXIS 1876, at *14 (July 25, 2018) ("The evidence indicates that FINRA's mailings were received at Memet's CRD address because the certified mailing of the first request was signed for by 'C. Memet' at that address."); *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 SEC LEXIS 970, at *14 (Mar. 24, 2017) ("[B]ecause someone signed for the certified mailing . . . it was reasonable for FINRA to continue mailing Ellis's notices . . . to that address."). FINRA rules, however, do not require that FINRA staff confirm that a person received the notices addressed to them under either FINRA Rule 8210 or 9552. *Clayton*, 2021 SEC LEXIS 3657, at *8 ("FINRA's rules do not require it to confirm receipt."); *Pearson,* 2008 SEC LEXIS 2871, at *20 n.30 ("NASD rules do not require that receipt be acknowledged by the addressee."). Accordingly, Arnold's claim that he did not sign any of the certified mail delivery receipts that the Postal Service returned to FINRA, even if true, provides no support for the arguments he makes in this appeal.

Manzella, Exchange Act Release No. 77084, 2016 SEC LEXIS 464, at *12 (Feb. 8, 2016) ("The service requirement was satisfied upon mailing, and as a result, Manzella had notice of information contained in the letters, including the means to challenge the suspension.").

As the sole factual justification for his appeal, Arnold avers that he was no longer living at his CRD® address and thus never received the relevant letters and notices until after he defaulted and sustained a bar under FINRA Rule 9552(h). Applicant's Br. at 4, 5, 6, 11, 22. This claim, even if true, is no reason to overturn the bar that Arnold incurred. As the Commission has held, repeatedly, a registered representative or formerly registered representative has a continuing duty keep his or her residential address in CRD® current.[33] *Clayton*, 2021 SEC LEXIS 3657, at *8; *Ellis*, 2017 SEC LEXIS 970, at *13; *Manzella*, 2016 SEC LEXIS 464, at *12; *Evansen*, 2015 SEC LEXIS 3080, at *16; *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *15 (Apr. 18, 2013); *Pearson,* 2006 SEC LEXIS 2871, at *23-24; *Cassuto*, 56 S.E.C. at 570; *Minton*, 55 S.E.C. at 1177. This duty reflects an associated person's obligation to both receive and read regulatory correspondence that FINRA sends to that person's CRD® address in accordance with FINRA rules. *See Manzella*, 2016 SEC 464, at *12; *Pearson,* 2006 SEC LEXIS 2871, at *24; *Minton,* 55 S.E.C. at 1177.

[33] For FINRA to conduct investigations into the possible misconduct of its members and their associated persons, a formerly registered person must keep his or her CRD® address current during the two-year period following termination of registration. *Evansen*, 2015 SEC LEXIS 3080, at *16 n.36 (citing *NASD Notice to Members 97-31*, 1997 NASD LEXIS 35 (May 1997)). When Arnold registered through a FINRA member firm, he agreed to comply with FINRA's rules and be bound by this continuing obligation. *See Evansen*, 2015 SEC LEXIS 3080, at *16 & n. 39 (citing FINRA By-Laws Article IV, Section 2(a)(1)).

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Arnold admits that he possessed the duty to keep his CRD® address current, but thinking it unimportant, he simply failed to satisfy it.[34] RP 97 ("I left the industry and [did] not update my contact information as required."); RP 261 ("[H]e never suspected that failing to do so could jeopardize his future employment and, as such, it was not a priority for him."); Applicant's Br. at 20 ("Arnold has acknowledged that he neglected to update his CRD address after he resigned from USCA."). Arnold cannot use his known neglect as justification for the Commission to vacate the bar that he sustained in this matter, which was imposed in full compliance with FINRA rules.[35] *See Clayton*, 2021 SEC LEXIS 3657, at *9 (finding that the respondent could not avoid a bar incurred by default under FINRA Rule 9552(h) by failing to receive or claim mail properly sent to his CRD® address); *Ellis*, 2017 SEC LEXIS 970, at *13 (same); *Martinez*, 2013 SEC LEXIS 1147, at *15 (same). As a formerly registered representative of a FINRA member, Arnold carried the responsibility to understand FINRA's rules, and he alone shoulders the foreseeable consequences—a bar—of his acknowledged failure to comply with those rules.[36]

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[34] Arnold concedes that he did not attempt seriously to, at a minimum, have mail sent to his CRD® address forwarded to him by the Postal Service. RP 261. This fact further undermines his claimed excuse for the bar that he incurred. *See Cassuto*, 56 S.E.C. at 570 ("Cassuto failed to provide his current address to the NASD, and he does not describe any efforts that he made to have his mail forwarded.").

[35] Even if the Commission were to construe Arnold's assertion that he "neglected" to keep his CRD® address current as being a claim of mere negligence, such negligence would not serve as an excuse for his failure to abide by his duties under FINRA rules. *See Minton*, 55 S.E.C. at 1178 n.16 ("[I]gnorance of NASD requirements is not an excuse.").

[36] Arnold attempts to downplay the significance of his having failed to fulfill his obligations under FINRA rules by describing them as involving a mere "administrative issue." RP 287, 376; Applicant's Br. at 20. This self-serving narrative misses well wide of its mark. As established earlier in this brief, *supra* part III.A.2, FINRA Rule 8210 plays a vital role in FINRA's ability to fulfill its statutory obligations under the Exchange Act. It is therefore critical that FINRA be able to rely on the information contained in CRD®, including information pertaining to the mailing addresses of registered and formerly registered representatives subject

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See Memet, 2018 SEC LEXIS 1876, at *15 ("Memet cannot escape the consequences of her failure to comply or exhaust in accordance with FINRA procedures by failing to receive or claim mail properly sent to her [CRD®] address."); *Manzella*, 2016 SEC LEXIS 464, at *14 ("As a FINRA associated person, she bore the responsibility of both understanding the FINRA rules and the consequences of non-compliance."); *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 4624, at *12 n.12 (Apr. 10, 2014) ("Even if Mullins had argued that he did not receive certain FINRA correspondence because he no longer received correspondence at the CRD address . . . that argument would have no merit. As noted, it was Mullins's responsibility to update his CRD address, as expressly required by FINRA rules, and we have repeatedly held that not doing so is no defense to a failure to respond."); *Pearson*, 2006 SEC LEXIS 2871, at *26 ("[T]o the extent that Pearson did not learn about NASD's action against him, the fault is not NASD's but his own . . ."); *Cassuto*, 56 S.E.C. at 570 ("[E]ven if we concluded that Cassuto did not receive any of these various communications, that failure is due to Cassuto.").

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to FINRA's jurisdiction. *See Pearson,* 2006 SEC LEXIS 2871, at *24 ("Pearson cannot shift the burden of keeping [address] information current to the NASD because NASD must be able to rely on its records."). Accepting Arnold's invitation to set aside his bar, based on nothing more than his admitted failure to maintain a current CRD® address, would inevitably lead to abuse and seriously compromise FINRA's ability to fulfill its regulatory responsibilities. *See Cassuto*, 56 S.E.C. at 570 ("It was Cassuto's responsibility to maintain a current address in the CRD. Otherwise, an applicant could thwart an NASD investigation by moving without leaving a forwarding address."); *Nazmi C. Hassanieh*, 52 S.E.C. 87, 91 (1994) ("[T]he NASD must be able to rely on its records. Otherwise, investigative efforts could easily be avoided by an individual's moving without leaving a forwarding address."); *cf. Keith Patrick Sequeira*, Exchange Act Release No. 85231, 2019 SEC LEXIS 286, at *20-21 (Mar. 1, 2019) ("[A]ccepting Sequeria's argument would create an opportunity for abuse . . . We find no support for this position, and in fact would be contrary to the purpose of such expedited proceedings."), *aff'd*, 816 F. App'x 703 (3d Cir. 2020).

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Arnold's attempt to draw parallels to the limited, few cases in which FINRA barred an applicant under FINRA Rule 9552(h), but the Commission nonetheless vacated the bar and remanded the matter to FINRA for further proceedings, proves unsuccessful. Applicant's Br. at 21, 23-24. As the Commission has made clear, its decision to order a remand in those cases was based not on any single factor—such as Arnold's claim that he moved and did not update his CRD® address—but on a "totality of the circumstances." *See, e.g.*, *Destina Mantar*, Exchange Act Release 79851, 2017 SEC LEXIS 194, at *19 (Jan. 19, 2017) ("We emphasize that we base our decision to remand on the totality of the circumstances . . . ."). Indeed, in *Ryan R. Henry*, which Arnold cites in support of his request that the Commission vacate or remand his bar, Applicant's Br. at 21, the Commission reiterated the very rule that proves fatal to Arnold's application for review. There, the applicant argued that he had moved from his CRD address and thus was unaware that FINRA was sending correspondence to that address. Exchange Act Release No. 53957, 2006 SEC LEXIS 1333, at *9 (June 8, 2006). The Commission plainly held, however, that "Henry's change of address does not excuse his failure to respond." *Id.*

For this reason, the Commission declined to give any weight to documents that Henry, like Arnold, offered as support for his assertion that he was living at an address other than his CRD® address. *Id.* The Commission nevertheless remanded the matter to FINRA because "certain factual aspects of the case [were] unclear from the record." *Id.* at *10. These included evidence that Henry's grandmother signed for and kept from him the various notices FINRA issued and sent to his CRD® address in accordance with FINRA Rule 9552. *Id.* at *12. No such factual uncertainty exists with respect to FINRA's notices in this case. Arnold simply moved and did not abide by his continuing obligation to update his CRD® address. Arnold's change of

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address does not excuse his failure to respond to FINRA's requests for his testimony or his default from the expedited proceeding. *See id.* at *9.

The Commission's opinion in *Christopher A. Parris* likewise does not justify Arnold's request that the Commission vacate and remand the bar that he incurred here. Applicant's Br. at 23. In *Parris*, the Commission found that the applicant had in fact timely filed a written request for termination of suspension under FINRA Rule 9552(f). 2016 SEC LEXIS 3075, at *15 & n. 21. The Commission therefore found that the specific grounds that FINRA stated for barring Parris under FINRA Rule 9552(h) did not exist in fact. *Id.* at *12-13. The Commission accordingly set that bar aside because one of the conditions necessary to affirm FINRA's action under Section 19(f) was absent. *Id.*

Arnold, by comparison, did not request termination of the suspension timely or provide the testimony that FINRA requested at any point before he sustained a bar in accordance with FINRA Rule 9552(h). Instead, as FINRA has shown here, the specific grounds for FINRA to bar Arnold exist in fact, and FINRA imposed that bar following its rules. *See supra* part III.A. Each of the conditions needed for the Commission to dismiss Arnold's application for review under Section 19(f) of the Exchange Act is thus present in this case.

Finally, the Commission's opinion in *Destina Mantar* is not, as Arnold claims, Applicant's Br. at 23, instructive in this appeal proceeding. In *Mantar*, the applicant did not claim simply that she moved and failed to update her CRD® address to justify her failure to provide information to FINRA. Instead, the Commission found that Mantar may not have received actual notice of FINRA's expedited action to obtain such information until the day her bar became effective, even though FINRA sent all the notices concerning the expedited proceeding to the CRD® address at which she still lived. 2017 SEC LEXIS 194, at *13.

Moreover, upon learning of FINRA's action, Mantar promptly contacted FINRA, and she provided FINRA staff with the information that FINRA requested under FINRA Rule 8210. *Id.* The record of FINRA's action barring Mantar, however, did not include any evidence that FINRA reviewed or replied to Mantar's post-bar correspondence. *Id.* at *7. Finally, Mantar timely appealed FINRA's action to the Commission. *Id. at *8.* Based on the "totality of the circumstances," the Commission determined to remand the matter to FINRA for further proceedings to decide whether a bar of Mantar remained appropriate. *Id.* at *19-20.

In contrast, Arnold did not contact FINRA until nearly two months after his bar took effect. RP 97. And when he did, Arnold asserted nothing more than that he moved and did not amend his address in CRD® to support his request that FINRA vacate his bar. Arnold alone shoulders the foreseeable consequences of his acknowledged failure to follow his obligations under FINRA rules. *See, e.g.*, *Memet*, 2018 SEC LEXIS 1876, at *15; *Mullins*, 2014 SEC LEXIS 4624, at *12 n.12.

Additionally, the FINRA Rule 8210 requests with which Arnold did not comply directed him to testify—not supply information, as was the case in *Mantar*. RP 1-5, 27-33. This distinction is important.[37] Unlike documents provided in response to an information request issued under FINRA Rule 8210, which FINRA staff can review without FINRA possessing jurisdiction over a person, FINRA would necessarily have to vacate the bar that Arnold sustained and reinstate him as an associated person subject to FINRA's jurisdiction to obtain the testimony that he claims he is now willing to provide FINRA. Allowing Arnold to use his move and failure to abide by his duties under FINRA rules as the instrument to overturn his bar would, in effect,

[37] Indeed, Arnold recognizes this distinction in his brief. Applicant's Br. at 25.

require the vacatur of any bar sustained by any person under FINRA Rule 9552(h) who claims a like excuse for his or her failure to testify and exhaust the process FINRA provides. Such an outcome would create an exception that swallows whole the very regulatory and public interests that FINRA Rule 8210 and FINRA Rule 9552 are meant to serve under the Exchange Act. *See, e.g.*, *Romano*, 2015 SEC LEXIS 3980, at *14; *Pearson*, 2006 SEC LEXIS 2871, at *27.

Lastly, FINRA considered fully Arnold's request that it vacate his bar, and FINRA staff wrote to him that this request was denied.[38] FINRA's letter, which is included in the record of this appeal proceeding, RP 283-84, acknowledged Arnold's claim that he did not receive FINRA's correspondence because he had moved from his CRD® address, and that he was willing to testify if FINRA would simply vacate his bar. FINRA's letter advised Arnold, however, that neither of these reasons justified vacating the bar that Arnold sustained by default under FINRA Rule 9552(h). FINRA's letter explained, accurately, that FINRA staff served Arnold with two letters that directed him to testify, as well as the notices that were issued as part of the expedited proceeding that FINRA brought to secure that testimony under FINRA Rule 9552, by sending them by certified mail to Arnold's residential address as reflected in CRD®, which was in accordance with FINRA rules. In return, FINRA received from the Postal Service signed delivery receipts that confirmed the certified mailings were delivered to the proper address. Arnold nevertheless did not testify, and he defaulted from the expedited proceeding. FINRA staff therefore decided that Arnold did not pursue the procedural remedies afforded him

[38] As is discussed earlier in this brief, *see supra* note 31, FINRA's letter denying Arnold's request to have his bar vacated is not subject to Commission review under Section 19(d)(1) of the Exchange Act.

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under FINRA Rules, and his new-found willingness to testify did not supply a basis for the relief that he requested.[39]

None of the cases cited by Arnold holds that the Commission will vacate a bar incurred by an applicant who moves and does not update his CRD® address in order that he may pursue the procedural remedies that he did not pursue in the first instance because of his own failure to communicate. For these reasons, the Commission should decline to vacate the bar that Arnold sustained, and it should not remand this matter for further proceedings.

C. "Extraordinary Circumstances" Warranting Arnold's Admittedly Late Appeal Do Not Exist

Arnold grants that his application for review is untimely. Applicant's Br. at 28-29. He nonetheless asks that the Commission review the FINRA action at issue in this matter because he moved from his CRD® address and thus did not receive notice of his bar until the deadline for his appeal had passed. *Id.* at 29. Arnold's admitted failure to keep his CRD® address current, does not, as he contends, *id.* at 28-29, constitute "extraordinary circumstances" warranting an extension of the deadline for him to file an application for review with the Commission.

Section 19(d)(2) of the Exchange Act requires that a person aggrieved by a final FINRA action file an application for review with the Commission within thirty days after the date that such person receives notice of such action, "or within such longer period as [the Commission] may determine." 15 U.S.C. § 78s(d)(2). Although the Commission may extend this thirty-day

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[39] These conclusions are consistent with Commission precedent. *See, e.g.*, *Clayton*, 2021 SEC LEXIS 3657, at *7-8, 10-11; *cf. Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 SEC LEXIS 641, at *11 (Mar. 1, 2013) (finding applicant failed to exhaust his procedural remedies under FINRA Rule 9552 and concluding that his "belated attempt to comply with FINRA's 8210 requests" was not "the kind of circumstances to justify an extension of the deadline for filing an appeal").

deadline under Rule 420(b) of the Commission's Rules of Practice, it may not do so "absent a showing of extraordinary circumstances."[40] *Id.* The allowance for "extraordinary circumstances" is "narrowly construed and applied only in limited circumstances." *PennMont Sec.*, Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at *16 (Apr. 23, 2010). As the Commission has long held, an applicant looking to show extraordinary circumstances must establish that the reason for filing an untimely appeal "was beyond the control of the applicant." *Id.* at *18.

There is no dispute that Arnold did not file his application for review within the statutory period for an appeal of FINRA's action. Applicant's Br. at 28-29. Although he asserts that he did not learn of the FINRA action that resulted in his bar until May 24, 2023, *id.* at 28, his claimed lack of "actual notice" has no effect on the timeliness of his appeal. As FINRA established above, *supra* part III.B, FINRA staff served Arnold with two letters that required him to testify under FINRA Rule 8210, as well as notice of the FINRA Rule 9552 expedited proceeding that FINRA staff brought after he did not so do, in accordance with FINRA rules. He is deemed, under FINRA rules, to have received them. *See, e.g.*, *Memet*, 2018 SEC LEXIS 1876, at *14 ("Memet is deemed to have received each mailing sent to that address."). FINRA thus provided Arnold effective notice of his obligation to testify under FINRA Rule 8210, and of his suspension under FINRA Rule 9552(a), in complete conformity with FINRA rules. *See, e.g.*, *id.*

Arnold's claim that he moved is, therefore, of no moment. As he concedes, it was his duty under such circumstances to update his CRD® address under FINRA rules. His failure to

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[40] 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).

so do, an action well within his control, simply does not excuse the late filing of his application for review. *See Ceballos*, 2013 SEC LEXIS 641, at *11 ("We see no extraordinary circumstances here that would warrant our acceptance of this late-filed appeal."); *Minton*, 55 S.E.C. at 1179 ("NASD followed rules approved by us. We find that Minton has failed to demonstrate any extraordinary circumstances that would justify his application for review. . . ."); *Van Alstyne*, 53 S.E.C. at 1099 ("Although Van Alstyne claims that he never actually received the NASD compliant or decision in this case . . . [w]e decline to afford Van Alstyne . . . the extraordinary relief of a late appeal from the NASD's default determination.").

"[P]arties to administrative proceedings have an interest in knowing when decisions are final and on which decisions their reliance can be placed." *Edward J. Jakubik*, Exchange Act Release No. 61541, 2010 SEC LEXIS 1014, at *16 (Feb. 18, 2010) (quoting *Van Alstyne*, 53 S.E.C. at 1097-98). Although Arnold claims that he is now willing to testify, his belated desire to comply with two FINRA Rule 8210 request for that testimony does not justify an extension of the deadline for filing an appeal. *See Ceballos*, 2013 SEC LEXIS 641, at *14. "To do so would undermine the important investor protections [FINRA] Rule 8210 is meant to safeguard." *Id.* Arnold has presented the Commission no reason to disturb the bar that he sustained by default under FINRA Rule 9552(h). *See Minton*, 55 S.E.C. at 1178-79 (concluding that the applicant "moved repeatedly without notifying the CRD or the Postal Service of his whereabouts" and that the Commission thus saw "no reason to disturb a completed NASD disciplinary action").

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IV. CONCLUSION

The specific grounds for FINRA imposing a bar on Arnold exist in fact, the bar was imposed following FINRA rules, and those rules are and were applied in a manner consistent with the purposes of the Exchange Act. The Commission should accordingly dismiss Arnold's application for review under the terms of Section 19(f) of the Exchange Act. His claim that he moved and did not receive the various letters and notices that FINRA properly sent to his CRD® address neither excuses the inaction that caused him to sustain a bar under FINRA rules nor provides a justification to accept his admittedly late-filed appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Gary Dernelle, certify that I have complied with the Commission's Rules of Practice by filing FINRA's Brief in Opposition to Christopher Robert Arnold's Application for Review, which omits or redacts any sensitive personal information described in Rule of Practice 151(e).

I also certify that this brief, which contains 11,730 words, complies with the limitations of Rule of Practice 450.

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CERTIFICATE OF SERVICE

I, Gary Dernelle, certify that on this 3rd day of April 2024, I caused a copy of FINRA's Brief in Opposition to Application for Review, In the Matter of the Application of Christopher Robert Arnold, Administrative Proceeding File No. 3-21818, to be served through the SEC's eFAP system on:

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I further certify that, on this date, I caused a copy of said brief to be served by electronic service on:

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