

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

In the Matter of the Application of
Wood (Arthur W.) Company, Inc.
For Review of Action Taken by
Financial Industry Regulatory Authority
File No. 3-22326

**FINRA'S MOTION TO DISMISS THE APPLICATION FOR REVIEW AND
TO STAY THE DEADLINE FOR FILING OF THE CERTIFIED RECORD AND INDEX**

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December 4, 2024

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I. INTRODUCTION

Applicant Wood (Arthur W.) Company, Inc. (“Wood” or the “Firm”) filed this application for review of the expulsion imposed as the result of two FINRA Rule 9552 proceedings for the Firm’s failure to file its Form Custody Report and FOCUS Report for the quarter ending June 30, 2024, as required under Securities Exchange Act of 1934 (“Exchange Act”) Rule 17a-5. After Wood filed this appeal, however, FINRA vacated the expulsion.

The Commission should dismiss Wood’s application for review because it lacks jurisdiction over this appeal. Because the expulsion has been vacated and Wood is not subject to a final disciplinary sanction by FINRA, the Commission does not have jurisdiction over this appeal under Section 19(d) of the Exchange Act.

Even if the Commission finds that it has jurisdiction, the appeal should be dismissed because it is moot. Because FINRA vacated the expulsion, even a favorable decision by the

Commission will not provide the Firm with any relief. Wood, therefore, has no cognizable interest in the outcome of this appeal, and the Commission should dismiss it.¹

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Expedited Proceedings

On July 24, 2024, Wood missed the deadline to file its Form Custody Report and FOCUS Report for the quarter ending June 30, 2024 (“June 2024 reports”), as required by Exchange Act Rule 17a-5.² See August 8, 2024 FINRA Rule 9552(a) Notices, attached as Exhibits 1 and 2, at 1. Accordingly, on August 8, 2024, FINRA sent Wood two notices pursuant to FINRA Rule 9552(a) (“Notice of Suspension Letters”) advising the Firm that it had failed to file the June 2024 reports by the July 24, 2024 deadline, and that the Firm’s failure to file the reports by September 3, 2024, would result in its suspension. Exhibits 1 and 2, at 2.³ Consistent with Rule 9552(c),

¹ Pursuant to Commission Rule of Practice 161, FINRA requests that the Commission stay the deadline for the certification and filing of the record and index while this motion is pending. See 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive arguments that Wood’s appeal should be dismissed on jurisdictional and mootness grounds before it reviews the entirety of the record. Although Wood did not serve FINRA with its application for review, FINRA would otherwise file the record on December 5, 2024, 14 days after it received the Commission’s letter acknowledging Wood’s appeal.

² Exchange Act Rule 17a-5 requires firms to file on a quarterly basis a Form Custody Report detailing whether and how the firm maintains custody of securities and funds of its customers. In addition, Exchange Act Rule 17a-5 requires firms to file periodic FOCUS Reports, which are the “basic financial and operational report[s] required of those brokers or dealers subject to any minimum net capital requirement.” SEC Form X-17A-5 Part IIA (FOCUS Report), General Instructions, available at https://www.sec.gov/files/formx-17a-5_2a.pdf, at 1. The filing deadline for the June 2024 quarterly reports was July 24, 2024. See *FINRA Information Notice*, 2023 NASD LEXIS 16 (Nov. 1, 2023).

³ FINRA Rule 9552(a) states that:

[i]f 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

[Footnote cont’d on next page]

the Notice of Suspension Letters provided the Firm the opportunity to request a hearing before the effective suspension date, which would then stay the suspension. Exhibits 1 and 2, at 2. The Firm did not do so, and FINRA suspended the Firm on September 3, 2024. *See* Wood (Arthur W.) Company, Inc. CRD Report, attached as Exhibit 3, at 16-17.

The August 8 Notice of Suspension Letters also advised Wood that, pursuant to FINRA Rule 9552, it had three months to request termination of suspension on the ground of full compliance and that, if it did not do so, the Firm would be automatically expelled. *See* FINRA Rules 9552(f), (h); Exhibits 1 and 2, at 2. On November 11, 2024, in accordance with the Notice of Suspension Letters, FINRA sent a letter notifying Wood that it had been expelled (“Notice of Expulsion Letter”). *See* Notice of Expulsion Letter, attached as Exhibit 4, at 1. Shortly thereafter, also on November 11, 2024, Wood filed the Form Custody Report and FOCUS Report for the quarter ending June 30, 2024, that were the subject of the FINRA Rule 9552 proceedings. *See* Wood (Arthur W.) Company, Inc. FOCUS and Custody Report Filing Lists, attached as Exhibits 5 and 6, at 3.

[cont’d]

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.

B. FINRA Vacates the Expulsion

On November 15, 2024, Wood filed with the SEC a copy of the expulsion letter. *See* SEC November 21, 2024 Acknowledgment Letter, attached as Exhibit 7. On November 21, 2024, the SEC issued a letter acknowledging the Firm's application for review of FINRA's action. Exhibit 7. On December 3, 2024, Member Supervision sent a letter notifying Wood that it had vacated the expulsion. Member Supervision's letter is attached as Exhibit 8. Thus, as of December 3, 2024, Wood was no longer subject to an expulsion.

III. ARGUMENT

The Commission should dismiss this appeal on the grounds that it lacks jurisdiction under Section 19(d) of the Exchange Act because Wood is not currently subject to a final disciplinary sanction. Alternatively, the Commission should dismiss this appeal because it is moot. FINRA has vacated Wood's expulsion, and there is no sanction in effect that denies Wood FINRA membership. Because the expulsion is no longer in effect, Wood cannot obtain any relief from the Commission.

F. The Commission Lacks Jurisdiction over This Appeal

Exchange Act Section 19(d) defines the Commission's jurisdiction over applications for review of actions by self-regulatory organizations ("SROs") such as FINRA. 15 U.S.C. § 78s(d). Section 19(d)(1) authorizes Commission review of an SRO action that: 1) imposes any final disciplinary sanction on any member or person associated with a member; 2) denies membership or participation to any applicant; 3) prohibits or limits any person in respect to services offered by the SRO; or 4) bars any person from being associated with a member. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 962 (2000) (finding the Commission lacked jurisdiction over the appeal of an

NASD action when the action did not fall within any of the four jurisdictional bases of Section 19(d)).

The Commission consistently has held that its jurisdiction under Exchange Act Section 19(d) requires a “live sanction,” defined as a sanction that exists at the time of review for the Commission to potentially affirm, modify, or set aside. *See Alpine Sec. Corp.*, Exchange Act Release No. 89685, 2020 SEC LEXIS 4008, at *5 (Aug. 26, 2020); *Dakota Sec. Int’l, Inc.*, Exchange Act Release No. 85238, 2019 SEC LEXIS 288, at *7-8 (Mar. 1, 2019). As the Ninth Circuit explained, if “FINRA imposed a disciplinary sanction but then fully retracted the sanction by, for example, setting aside a suspension and returning any fine levied, it would make little sense for the Commission to proceed with review.” *Sharemaster v. SEC*, 847 F.3d 1059, 1068 (9th Cir. 2018). The Commission’s prior holding that Exchange Act Section 19(d) requires a live sanction prevents this outcome.

Indeed, the Commission has dismissed applications for review for lack of jurisdiction when the SRO lifted the sanction imposed or never imposed a sanction. *See, e.g., Alpine Sec. Corp.*, 2020 SEC LEXIS 4008, at *5 (dismissing an application for review on jurisdictional grounds because FINRA lifted the suspension imposed in an expedited proceeding after the appeal was filed); *Dakota Sec. Int’l, Inc.*, 2019 SEC LEXIS 288, at *8-9 (dismissing an application for review for lack of jurisdiction when a suspension was never imposed because the applicant paid required fees before the effective date of the suspension).

Here, FINRA vacated the expulsion previously imposed on Wood, and there is no sanction in effect that denies Wood FINRA membership. Accordingly, the Commission does not have jurisdiction and should dismiss the application for review on this basis.

G. The Firm’s Application for Review Is Moot

Alternatively, the Commission should dismiss this proceeding because it is moot. As the Commission recently explained, “Exchange Act Section 19(d) authorizes ‘aggrieved’ persons to seek review of specified SRO actions,” and the Commission has “dismissed as moot challenges filed under Section 19(d) where the SRO requirement or action at issue has been superseded or vacated.” *Alpine Sec. Corp.*, Exchange Act Release No. 98868, 2023 SEC LEXIS 3223, at *21 (Nov. 6, 2023).

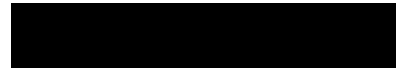
In *Alpine Sec. Corp.*, the rules at issue in the appeal had been repealed, and the Commission “could not grant any relief with respect to Alpine’s challenge to them.” *Id.* at *22-23. Because there was “no effective relief” the Commission could grant, it found the application moot. *Id.* at *24; *see also Blair Edwards Olsen*, Exchange Act Release No. 93216, 2021 SEC LEXIS 2978, at *10 (Sept. 30, 2021) (dismissing an application for review on mootness grounds when FINRA vacated the challenged bar during the pendency of the appeal); *Michael A. Sparks*, Exchange Act Release No. 81787, 2017 SEC LEXIS 3106, at *2 (Sept. 29, 2017) (dismissing as moot an application for review of a bar imposed under FINRA Rule 9552 because FINRA vacated the bar during the pendency of the appeal); *see also Marshall Fin., Inc.*, Exchange Act Release No. 48917, 2003 SEC LEXIS 2956, at *2 (Dec. 12, 2003) (explaining that an application for review will be dismissed “as moot unless the complaining party has suffered some actual injury that can be redressed by a favorable judicial decision”).

Wood seeks to set aside an expulsion that FINRA has already vacated. Consequently, Wood is no longer “aggrieved” by FINRA’s decision below, and there is no relief the Commission could grant him. The appeal is moot, and the Commission should dismiss it on this basis.

IV. CONCLUSION

The Commission should dismiss this appeal because, under Section 19(d) of the Exchange Act, the Commission lacks jurisdiction to hear it. Alternatively, the Commission should dismiss this appeal as moot because FINRA vacated Wood's expulsion and even a favorable decision by the Commission would not entitle Wood to any relief.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

I, Elizabeth Sisul, certify that this motion complies with the Commission's Rules of Practice by filing a motion that omits or redacts any sensitive personal information described in Rule of Practice 151(e).



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CERTIFICATE OF SERVICE

I, Elizabeth Sisul, certify that on this 4th day of December 2024, I caused a copy of the foregoing Motion to Dismiss and to Stay the Deadline for Filing of the Certified Record and Index, in the matter of Application for Review of Wood (Arthur W.) Company, Inc., Administrative Proceeding File No. 3-22326, to be filed through the SEC's eFAP system.

And served by electronic mail on:

Donald McCarthy, President/CEO
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Respectfully submitted,


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FINRA'S INDEX TO EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
1	August 8, 2024 FINRA Rule 9552(a) Notice for Focus Report
2	August 8, 2024 FINRA Rule 9552(a) Notice for Custody Report
3	Wood (Arthur W.) Company, Inc.'s CRD Report
4	November 11, 2024 Notice of Expulsion Letter
5	November 11, 2024 Wood (Arthur W.) Company, Inc.'s Focus Report Filing List
6	November 11, 2024 Wood (Arthur W.) Company, Inc.'s Custody Report Filing List
7	November 21, 2024 SEC Application for Review Acknowledgement Letter
8	December 3, 2024 Letter to Wood (Arthur W.) Company, Inc. re: Vacated Expulsion