UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69020 / March 1, 2013

Admin. Proc. File No. 3-15086

In the Matter of the Application of

Julio C. Ceballos
1045 Wheeler Ave PH
Bronx, NY 10472

for Review of Disciplinary Action Taken by FINRA

ORDER GRANTING
MOTION TO DISMISS
APPLICATION FOR REVIEW

**I.**

On October 31, 2012, Julio C. Ceballos, formerly a registered representative associated with Chase Investment Services Corp., a FINRA member firm, filed an application for review of a disciplinary action taken against him by FINRA.[1] FINRA barred him from associating with any FINRA member in any capacity, effective March 19, 2012, because he failed to respond to two requests for information it issued pursuant to FINRA Rule 8210.[2] On November 21, 2012,

[1] The Financial Industry Regulatory Authority, Inc. is a private, not-for-profit, self-regulatory organization registered with, and overseen by, the Securities and Exchange Commission. It was created in July 2007 following the consolidation of the National Association of Securities Dealers, Inc. and the member regulation, enforcement, and arbitration functions of the NYSE Regulation, Inc. *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to NYSE Rule 2*, Securities Exchange Act Release No. 56751, 2007 SEC LEXIS 2902, at *3−4 (Nov. 6, 2007); *Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes to Accomm. the Consol. of the Member Firm Regulatory Functions of NASD and NYSE Reg., Inc.*, Exchange Act Release No. 56145, 2007 SEC LEXIS 1640, at *133 (July 26, 2007). The consolidation of the two SROs eliminated their overlapping jurisdiction and set in motion the writing of a uniform set of rules to be administered by the surviving entity—a process that continues to this day.

[2] Rule 8210(a)(1) states, in relevant part, that the staff has the right to "require a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation . . ." FINRA Rule 8210(a)(1). The rule "provides a means, in the absence of subpoena power, for the [the association] to obtain from its members information necessary to conduct investigations." *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009) (unpublished).

FINRA filed a motion to dismiss his application, arguing that Ceballos failed to file a timely appeal and exhaust his administrative remedies. Ceballos did not respond. For the reasons set forth below, we grant FINRA's motion.

## II.

### A. Ceballos Failed to Respond to Two Requests for Information Issued by FINRA Pursuant to Rule 8210

Ceballos was associated with Chase from June 2010 until February 2011. On April 6, 2011, Chase filed a Uniform Termination Notice for Securities Industry Registration on Form U5.[3] In it, Chase disclosed that it terminated Ceballos's association with the firm, effective February 1, 2011, because he allegedly had written checks from a JP Morgan Chase bank account with insufficient funds.

On April 6, 2011, FINRA sent Ceballos a letter pursuant to FINRA Rule 8210 requesting information. FINRA asked Ceballos to provide a signed statement that addressed the allegations in the Form U5, copies of all correspondence and memoranda regarding the circumstances surrounding his termination, and information about other complaints, if any, while he was associated with Chase. The deadline for Ceballos's response was April 20, 2011. FINRA sent its request by both first-class and certified mail to Ceballos's last known residential address listed in the Central Registration Depository.[4]

There is no evidence in the record that the letter FINRA sent by first-class mail was returned. The letter sent by certified mail was returned by the United States Postal Service marked "Return to Sender/Unclaimed/Unable to Forward." Ceballos does not dispute that he lived at the CRD address during the entire period at issue. Ceballos, however, never responded to FINRA's Rule 8210 request for information.

On May 24, 2011, FINRA sent Ceballos a second Rule 8210 request asking for the same information as in its earlier letter, a copy of which it attached. The second request set a deadline of June 7, 2011 for Ceballos to respond and warned him that he could be subject to disciplinary action if he failed to comply. FINRA sent the second request by first-class and certified mail to the CRD address.

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[3] Broker-dealers, investment advisers, and issuers of securities must file a Form U5 with FINRA to terminate the registration of an individual associated with such broker-dealer, investment adviser, or issuer.

[4] As part of the registration process, associated persons such as Ceballos are required to sign and file with FINRA a Form U4, which obligates them to keep a current address on file with FINRA at all times. *Perpetual Sec., Inc*. Exchange Act Release No. 56613, 2007 SEC LEXIS 2353, at *35 (Oct. 4, 2007); *Nazmi C. Hassanieh*, Exchange Act Release No. 35029, 52 SEC 87, 1994 SEC LEXIS 3862, at *8 (Nov. 30, 1994). A notice issued pursuant to Rule 8210 is deemed received by such person when mailed to the individual's last known residential address as reflected in the CRD. FINRA Rule 8210(d). *See also* NASD Notice to Members 97-31, 1997 NASD LEXIS 35, at *1-2 (May 1997) (reminding registered persons to keep a current mailing address with NASD "[f]or at least two years *after* an individual has been terminated by the filing of . . . [a] Form U5") (emphasis in original).

Again, there is no evidence in the record that the letter FINRA sent by first-class mail was returned. A return receipt for the one sent by certified mail, signed by "Julio Ceballos," showed that it was delivered on May 26, 2011. Ceballos, again, did not respond.

## B. FINRA Sanctioned Ceballos

On December 15, 2011, FINRA notified Ceballos in writing, pursuant to FINRA Rule 9552(a), that it intended to suspend him from associating with any member firm in any capacity on January 9, 2012 unless he took corrective action before that date by complying with its Rule 8210 requests. That notice also advised Ceballos that he could request a hearing under Rule 9552(e), which, if made timely, would stay the effective date of the suspension.[5] The notice further warned Ceballos that, if the suspension was imposed, FINRA would automatically bar him from associating with any member firm in any capacity on March 19, 2012 unless he requested termination of the suspension based on full compliance.[6]

FINRA served its written notice on Ceballos at the CRD address by overnight courier service, first-class mail, and certified mail.[7] The overnight courier service delivered the notice on December 16, 2011. There is no evidence that the copy sent by first-class mail was returned. And the United States Postal Service returned the certified mailing receipt to FINRA marked "Return to Sender/Unclaimed/Unable to Forward." Ceballos did not take any action to comply with the outstanding requests or request a hearing.

On January 9, 2012, FINRA sent Ceballos a letter informing him that, as of that date, he was suspended from associating with any FINRA member in any capacity pursuant to Rule 9552(d). That letter reminded Ceballos that an automatic bar would be imposed on March 19, 2012 if he did not fully comply with the notice of suspension, which required him to fully respond to the SRO's two earlier Rule 8210 information requests and file a request to terminate his suspension.[8] FINRA served the letter on Ceballos at the CRD address by overnight courier service and by first-class mail. The courier delivered the notice on January 10, 2012. There is no evidence that the letter sent by first-class mail was returned.

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[5] Rule 9559(c) provides that, "[u]nless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9551 through 9556."

[6] Rule 9552(f) permits a suspended individual to file a written request for termination of the suspension on the ground of full compliance with the notice of suspension. Rule 9552(h) provides that a suspended person who fails to request termination of the suspension within three months of issuance of the original notice of suspension will be barred automatically.

[7] Rule 9552(b) provides for service of a notice of suspension in accordance with FINRA Rule 9134, which permits service by both mail and courier service at an individual's residential CRD address. FINRA Rule 9134(a) – (b)(1). Service by mail is complete upon mailing while service by courier service is complete upon delivery. FINRA Rule 9134(b)(3).

[8] Rule 9552 does not explicitly require FINRA to send a letter confirming the effectiveness of a suspension after it sends a notice of suspension. The letter dated January 9, 2012 nonetheless is consistent with notice of suspension sent on December 15, 2011 and complies with the service requirements applicable to a notice of suspension. *See supra* note 7.

On March 9, 2012, FINRA e-mailed a copy of the December 15, 2011 notice of suspension to Ceballos and instructed him to list his current address and telephone number in all correspondence. In its motion to dismiss this proceeding, FINRA states that it sent the e-mail as a courtesy in response to a telephone call Ceballos made to FINRA staff that same day. FINRA did not elaborate on what Ceballos said during the call.

Ceballos took no action to end his suspension by supplying the information requested by FINRA, and the automatic bar from associating with any member firm in any capacity took effect on March 19, 2012. On March 20, 2012, FINRA sent Ceballos a letter notifying him that he was barred and could appeal its decision by filing an application for review with the Commission within thirty days of his receipt of the letter. FINRA sent that letter to Ceballos by overnight courier service and by first-class mail to his CRD address. The courier delivered the letter on March 21, 2012. Once again, there is no evidence that the letter sent by first-class mail was returned.

On June 18, 2012, in response to a telephone call from Ceballos, FINRA e-mailed a copy of its letter, dated March 20, 2012, to him and noted that it contained specific information about his option to file an appeal.[9] It was not until October 31, 2012—more than four months later—that the Commission received an undated and unsigned letter from Ceballos seeking its review of FINRA's action barring him from associating with any member firm in any capacity. Ceballos listed his CRD address as part of his contact information in the application for review.

## III.

### A. Ceballos Did Not File a Timely Appeal

Pursuant to § 19(d)(2) of the Securities Exchange Act of 1934 and Commission Rule of Practice 420(b), an applicant who chooses to appeal a final FINRA disciplinary sanction must file an application for review with the Commission within thirty days after receiving notice of the final disciplinary sanction.[10] Exchange Act § 19(d)(2) authorizes the Commission to extend the thirty-day period, but we have long emphasized in Rule of Practice 420(b) that we will not do so "absent a showing of extraordinary circumstances."[11]

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[9] The record contains no further details about the telephone conversation.

[10] 15 U.S.C. § 78s(d)(2); 17 C.F.R. § 201.420(b). Exchange Act § 19(d)(2) and Rule 420(b) also require notice of the FINRA final disciplinary sanction to be filed with the Commission so that the Commission can determine whether to review the sanction on its own motion. *Id*.

[11] 15 U.S.C. § 78s(d)(2) (providing that a person aggrieved by a final disciplinary sanction may file an appeal within thirty days of receiving notice of the sanction or "within such longer period" as the Commission may determine); 17 C.F.R. § 201.420(b) ("The Commission will not extend this 30-day period, absent a showing of extraordinary circumstances."); *see also Lance E. Van Alstyne*, Exchange Act Release No. 40738, 1998 SEC LEXIS 2610, at *13 & n.15 (Dec. 2, 1998) ("In the interests of finality, only under extraordinary circumstances will we authorize the filing of a late appeal from an SRO action that is subject to the Section 19(d)(1) filing requirement.") (citations omitted).

> Courts have recognized that strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief. As we have repeatedly stated, "parties to administrative proceedings have an interest in knowing when decisions are final and on which decisions their reliance can be placed." For this reason, the "extraordinary circumstances" exception is to be narrowly construed and applied only in limited circumstances. To do otherwise would thwart the very clear policies of finality and certainty underlying the thirty-day filing deadline set forth in Exchange Act Section 19(d) and Rule of Practice 420(b).[12]

Rule 420 is the "exclusive remedy for seeking an extension of the 30-day period."[13]

Ceballos did not file his application for review within the requisite period. We see no extraordinary circumstances here that would warrant our acceptance of this late-filed appeal. For several months, FINRA repeatedly sought specific information, warned Ceballos of the consequences of his failure to respond, and informed him of the options he had to challenge the sanctions. FINRA properly served Ceballos at the CRD address listed in FINRA's records—the same address that Ceballos uses in his application for review.[14] FINRA imposed a bar on Ceballos on March 19, 2012 and notified him of this action through its letter, dated March 20, which the overnight courier service delivered on March 21, 2012. Ceballos should have filed an application for Commission review no later than April 20. Instead of complying with the requirements clearly enumerated in the letter, Ceballos did nothing for almost two months until, on June 18, 2012, he called FINRA.

In response to his call, FINRA e-mailed Ceballos another copy of the letter dated March 20, 2012 and highlighted the specific information it discussed about the requirements for filing a timely appeal with the Commission.[15] Yet, Ceballos failed to do anything further during the next four months. The Commission received Ceballos's application for review on October 31, 2012, more than six months after the deadline for seeking Commission review expired.[16]

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[12] *Pennmont Sec.*, Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at *16 (Apr. 23, 2010) (citations omitted), *petition denied*, 414 F. App'x 465 (3d Cir. 2011) (unpublished).

[13] 17 C.F.R. § 201.420(b).

[14] *See Edward J. Jakubik*, Exchange Act Release No. 61541, 2010 SEC LEXIS 1014, at *16 (Feb. 18, 2010) (finding that applicant was deemed to have received the association's default decision that was properly served at his CRD address); Rule 8210(d) *supra* note 4; Rule 9134 *supra* note 7.

[15] Ceballos does not dispute that he received FINRA's letters and had a continuing duty to read mail sent to him at his CRD address. *E.g.*, *William T. Banning*, Exchange Act Release No. 28588, 1990 SEC LEXIS 3453, at *4 & n.7 (Dec. 22, 2004) (finding that an applicant who was no longer an associated person during the period at issue nonetheless had a continuing duty to receive and read mail sent to his CRD address) (citation omitted).

[16] Ceballos, who is *pro se*, failed to comply with a number of Rules of Practice in connection with the filing of his application for review. Ceballos did not serve FINRA with a copy of his application for review as required by Rule of Practice 420(c). 17 C.F.R. § 201.420(c). Nor did he file a certificate of service under Rule 151(d), or date and sign the application for review under Rule 152(b). 17 C.F.R. §§ 201.151(d), 201.152(b). Although these

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Ceballos did not seek permission to extend the thirty-day deadline under Rule 420(b) and offers no explanation for the delinquent appeal.[17] Instead, he attached to his application for review what he claims are copies of the documents FINRA requested. Those documents include a letter to Ceballos from JP Morgan Chase Bank, dated March 2, 2012, that acknowledges that the bank did not notify Ceballos about his low balances or insufficient funds "as quickly as expected between October 25, 2010 and January 31, 2011," and certain checking account statements, processed checks, and account transaction histories.[18] But he fails to offer any reason why he could not have provided FINRA with these documents prior to March 19, 2012, when the bar from association with any FINRA member took effect.[19] In any event, we cannot reasonably construe Ceballos's belated attempt to comply with FINRA's Rule 8210 requests as the kind of circumstances required to justify an extension of the deadline for filing an appeal.[20] To do so would undermine the important investor protections Rule 8210 is meant to safeguard.[21]

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deficiencies provide an independent basis for rejecting his appeal, we have determined in our discretion to waive them in this instance.

[17] *See Jakubik*, 2010 SEC LEXIS 1014, at *16 (finding no extraordinary circumstances where applicant failed to explain why he waited nearly five years to file his application despite having received timely notice of NASD action).

[18] Ceballos's Application for Review at 2-21. Ceballos has not moved the Commission for leave to adduce this additional evidence as required by Commission Rule of Practice 452, 17 C.F.R. § 201.452, which states that motions for leave to adduce additional evidence "shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." FINRA states in its motion to dismiss that Ceballos did not provide FINRA with this information before filing his application for review, but does not state whether it objects to its admission. Ceballos has not explained why he did not introduce these documents earlier or why they are material to our determination of whether there are extraordinary circumstances that warrant accepting his untimely appeal. We decline to admit this new evidence.

[19] Whatever difficulty Ceballos may have faced in responding to FINRA's deadlines—and, here, there is no evidence that he had any difficulty—he should have should have "raised, discussed, and resolved [it] with the [FINRA] staff in the cooperative spirit and prompt manner contemplated by the Rules." *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *23 (Sept. 10, 2010) (citation omitted), *petition for review denied*, 436 F. App'x 31 (2d Cir. 2011) (unpublished).

[20] *See Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 SEC LEXIS 1153, at *14 (May 20, 2008) (finding no extraordinary circumstances where, among other things, NASD "did not cause the fourteen-month delay between the issuance of the [underlying] decision and the filing of the petition before [the Commission]," but rather the delay "resulted from [applicant's] deliberate choice not to appeal"); *cf. Pennmont Sec.*, 2010 SEC LEXIS 1353, at *21 (finding no extraordinary circumstances where applicants elected to pursue objections in federal courts first).

[21] *See PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12-13 (Apr. 11, 2008) (finding that delay and neglect by an associated person in responding to a Rule 8210 request "undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest"), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

## B. Ceballos Did Not Exhaust His Administrative Remedies

Ceballos was also required to exhaust FINRA administrative remedies before seeking relief from the Commission. We have emphasized that "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review."[22] On this basis, we repeatedly have held that "we will not consider an application for review if the applicant failed to exhaust FINRA's procedures for contesting the sanction at issue."[23]

As the Second Circuit has reasoned:

> Were SRO members, or former SRO members, free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised. Moreover, like other administrative exhaustion requirements, the SEC's promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review. It also provides SROs with the opportunity to correct their own errors prior to review by the Commission. The SEC's exhaustion requirement thus promotes the efficient resolution of disciplinary disputes between SROs and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations.[24]

The December 15, 2011 notice of suspension stated that FINRA intended to suspend Ceballos on January 9, 2012 unless he took corrective action by complying with the Rule 8210 requests. The notice also stated that, alternatively, he could request a hearing under Rule 9552(e), which would have stayed the effectiveness of the suspension under Rule 9559(c). But Ceballos did not request a hearing and does not explain in the application for review why he failed to exhaust the procedure FINRA afforded him.

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[22] *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 SEC LEXIS 789, at *22 & n.29 (Apr. 3, 2003) (citing *Royal Sec. Corp.*, Exchange Act Release No. 5171, 36 SEC 275, 1955 SEC LEXIS 94, at *5 (May 20, 1955)), *aff'd*, 380 F.3d 611 (2d Cir. 2004).

[23] *E.g.*, *Norman S. Chen*, Exchange Act Release No. 65345, 2011 SEC LEXIS 3224, at *6, 11 (Sept. 16, 2011) (dismissing applicant's appeal for failure to exhaust administrative remedies where FINRA barred applicant under Rule 9552 for failing to respond to Rule 8210 information requests); *see also Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5-8 (May 6, 2010) (same); *Jeffrey A. King*, Exchange Act Release No. 52571, 2005 SEC LEXIS 2516, at *8-10 (Oct. 7, 2005) (same); *David I. Cassuto*, Exchange Act Release No. 48087, 2003 SEC LEXIS 1496, at *10-14 (June 25, 2003) (same); *Gary A. Fox*, Exchange Act Release No. 46511, 2002 SEC LEXIS 2381, at *3-6 (Sep. 18, 2002) (same); *MFS Sec. Corp*, 2003 SEC LEXIS 789, at *21-26 (refusing to consider applicant's denial of access to services claim because applicant failed to exhaust New York Stock Exchange's procedures).

[24] *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004).

The December 15, 2011 notice further informed Ceballos that, after the suspension took effect, he could request its termination based on full compliance. To the extent that Ceballos intends for us to consider the documents he attached to his application for Commission review as responsive to FINRA's Rule 8210 requests, we decline to do so. Rule 9552(f) permits a suspended individual to file *with FINRA* a written request for termination of the suspension on the ground of full compliance with the notice of suspension. Rule 9552(h) provides that a suspended person who fails to request *from FINRA* termination of the suspension within three months of issuance of the original notice of suspension will be barred automatically. Thus, FINRA rules required Ceballos to provide the documents to FINRA in the first instance. This would have allowed FINRA to evaluate the sufficiency of Ceballos's response and provided a record for us to review. We see no reason here to depart from our precedent requiring an applicant for Commission review to exhaust his administrative remedies.

Accordingly, IT IS ORDERED that FINRA's motion to dismiss the application for review filed by Julio C. Ceballos is GRANTED.

By the Commission.

Elizabeth M. Murphy
Secretary