

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95464 / August 10, 2022

Admin. Proc. File No. 3-20946

In the Matter of the Application of
USTOCKTRADE SECURITIES, INC.
For Review of Disciplinary Action Taken by
FINRA

Appeal filed: July 29, 2022
Motion for stay filed: July 29, 2022
Last brief received: August 5, 2022

ORDER DENYING MOTION FOR A STAY

Ustocktrade Securities, Inc., appeals from a FINRA decision suspending it from FINRA membership for failing to file its 2021 audited annual report.¹ FINRA also ordered that the suspension would convert to an expulsion on August 11, 2022, unless Ustocktrade filed its audited annual report by that date. Ustocktrade moves to stay FINRA's imposition of sanctions pending the Commission's consideration of its appeal until September 30, 2022. FINRA filed an opposition to the motion, and Ustocktrade filed a reply. Because Ustocktrade has not met its burden for justifying a stay, the motion is denied.

I. Background

Ustocktrade missed the March 1, 2022 filing deadline for its 2021-audited annual report. FINRA subsequently notified Ustocktrade that it would be suspended from FINRA membership if it did not file its audited annual report by April 11, 2022. Ustocktrade responded by requesting a hearing, which stayed the effectiveness of the suspension pending the outcome of the hearing.

At the hearing, Ustocktrade's President, Davina Anderson, testified that, after experiencing difficulties maintaining its net capital requirements during 2021, Ustocktrade stopped operating its securities business on November 23, 2021. She also testified that

¹ *Dep't of Enforcement v. Ustocktrade Sec., Inc.*, FINRA Expedited Proceeding No. FPI220001 (July 12, 2022).

Ustocktrade transferred all of its customer accounts to a clearing firm on January 21, 2022. Ustocktrade conceded at the hearing that its audited annual report was late, but requested an extension of time to file the audited annual report until July 30, 2022.

On July 12, 2022, an Expedited Hearing Panel issued its decision (the “Decision”), which concluded that Ustocktrade violated Section 17(e) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-5, and FINRA Rule 2010 by failing to timely file its 2021 audited annual report. As a result, the Expedited Hearing Panel suspended Ustocktrade’s FINRA membership and ordered that the suspension would convert to an expulsion on August 11, 2022 if Ustocktrade did not file its 2021 audited annual report by that date. Ustocktrade filed its application for review, along with its stay request, with the Commission on July 29, 2022.

II. Analysis

A stay pending appeal is an “extraordinary remedy,” and the movant bears the burden of establishing that relief is warranted.² We emphasize that our conclusions with respect to a stay motion are not final, and that “[f]inal resolution must await the Commission’s determination of the merits of an [applicant’s] appeal.”³ We base the conclusions we reach in considering a stay motion “only on a review of the record and arguments currently before us.”⁴

In determining whether to grant a stay under Rule of Practice 401,⁵ we consider whether (i) there is a strong likelihood that the movant will eventually succeed on the merits of the appeal; (ii) the movant will suffer irreparable harm without a stay; (iii) no other person will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest.⁶ “The appropriateness of a stay turns on a weighing of the strengths of these four factors; not all four factors must favor a stay for a stay to be granted.”⁷ “The first two factors are the most critical, but a stay decision rests on the balancing of all four factors.”⁸ To obtain a stay under

² *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 432–34 (2009)); *accord Alpine Sec. Corp.*, Exchange Act Release No. 87599, 2019 WL 6251313, at *5 & n.51 (Nov. 22, 2019); *Mark E. Laccetti*, Exchange Act Release No. 79138, 2016 WL 6137057, at *2 & n.10 (Oct. 21, 2016).

³ *Bloomberg*, 2018 WL 3640780, at *7 (brackets in original) (quoting *Harry W. Hunt*, Exchange Act No. 68755, 2013 WL 325333, at *4 (Jan. 29, 2013)).

⁴ *Id.*

⁵ 17 C.F.R. § 201.401; *see also* Exchange Act Section 19(d)(2), 15 U.S.C. § 78s(d)(2) (authorizing Commission to stay challenged self-regulatory organization action).

⁶ *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *3 (Nov. 27, 2017).

⁷ *Bloomberg*, 2018 WL 3640780, at *7.

⁸ *Id.*

this framework, a movant need not establish that it is likely to succeed on the merits, but it must at least show “that the other factors weigh heavily in its favor” and that it has “raised a ‘serious legal question’ on the merits.”⁹

Ustocktrade fails to satisfy its burden. Instead of addressing the stay factors, Ustocktrade’s stay motion asserts that it retained a new audit firm on July 28, 2022, and received a capital contribution from its parent company to pay for the audit expenses on July 29, 2022. These assertions fail to raise any serious legal question regarding the merits—let alone a likelihood of success on the merits.¹⁰ Indeed, Ustocktrade’s assertions demonstrate that it continues to remain out of compliance with its obligation to file its audited annual report.

Ustocktrade’s stay motion also contains no assertion that it will be irreparably harmed without a stay. In its reply, Ustocktrade for the first time contends that absent a stay: (i) it would cease to exist; (ii) its parent company would rescind its investment; (iii) Ustocktrade’s owner would be unable to recover his investment in the company; and (iv) creditors would be harmed. These assertions are insufficient to demonstrate irreparable harm.

First, arguments raised for the first time in a reply brief are ordinarily deemed waived.¹¹ In any case, Ustocktrade’s claim that its business would cease to exist absent a stay of its FINRA suspension and pending expulsion is difficult to square with the fact that it ceased its securities business last year and transferred its customer accounts to a clearing firm over six months ago. At the least, Ustocktrade does not explain why any harm would be irreparable. Even were Ustocktrade to succeed on the merits and the Commission set aside its expulsion, it appears that Ustocktrade would be no worse off at that point than it is now when it is not currently operating a securities business. Ustocktrade also does not explain why the expulsion would cause its parent company to rescind its investment in the firm, prevent its owner from recovering his investment in the firm, or prevent Ustocktrade from using those investments to pay its creditors. Nor does it explain why any of these potential outcomes would be irreparable.

The third and fourth factors—the risk of harm to others from a stay and the public interest—also support the denial of a stay. Ustocktrade’s continued failure to file an audited annual report—over five months since the original deadline and, now, beyond the July 30, 2022

⁹ *Zipper*, 2017 WL 5712555, at *6 (quoting *Sherley v. Sibelius*, 644 F.3d 388, 398 (D.C. Cir. 2011)).

¹⁰ *See KJM Sec., Inc.*, Exchange Act Release No. 88053, 2020 WL 416696, at *2 (Jan. 27, 2020) (concluding that a movant’s “assert[ions] that it has engaged and paid auditors and awaits the results of the audit” did not “demonstrat[e] a likelihood of success on the merits, or even a serious legal question,” in the movant’s appeal from a FINRA decision expelling it from FINRA membership for failure to file its audited annual report).

¹¹ *Robbi J. Jones*, Exchange Act Release No. 91045, 2021 WL 396767, at *3 n.17 (Feb. 2, 2021) (declining to consider arguments raised for the first time in reply brief in support of stay).

date that Ustocktrade originally requested as an extension—presents a risk to the public and undermines the public interest.¹² The Commission has noted that “[t]he obligation to timely submit [audited annual] reports ensures that the Commission and the SRO have access to information about the broker-dealer’s compliance with financial responsibility requirements, its stability as a participant in the markets, and the risks that it may present to investors and counterparties.”¹³ Ustocktrade’s ongoing failure to submit its 2021 audited annual report subverts those goals such that a stay would not serve the public interest.¹⁴

* * *

Accordingly, IT IS ORDERED that Ustocktrade Securities, Inc.’s motion for a stay is denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹² See *Potomac Cap. Mkts., LLC*, Exchange Act Release No. 91172, 2021 WL 666510, at *5 (Feb. 19, 2021) (“The Commission has emphasized that the annual audit report requirement is ‘not technical but involve[s] fundamental safeguards imposed for the protection of the public on those who wish to engage in the securities business.’” (brackets in original) (quoting *Gremo Invs., Inc.*, Exchange Act Release No. 64481, 2011 WL 1825020, at *4 (May 12, 2011))).

¹³ *MKM Partners LLC*, Exchange Act Release No. 79700, 2016 WL 7473302, at *5 (Dec. 28, 2016).

¹⁴ In its reply, Ustocktrade asserts that “scheduling issues” caused its failure to meet the August 11, 2022 filing deadline imposed by the Decision. But Ustocktrade makes no assurances that similar issues would not preclude a timely filing of its audited annual report by September 30, 2022 if a stay were granted.