

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 98671 / October 2, 2023

Admin. Proc. File No. 3-21024

In the Matter of the Application of
LAM SECURITIES INVESTMENTS, INC.
For Review of Action Taken by
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF FINRA ACTION

FINRA member firm filed an application for review of FINRA action expelling it for failing to file audited annual report. *Held*, application for review is *dismissed* for failure to exhaust remedies.

APPEARANCES:

Dick Lam, for Lam Securities Investments, Inc.

Gary Dernelle, for FINRA.

Appeal filed: August 25, 2022

Last brief received: September 16, 2022

Lam Securities Investments, Inc. (“Lam”), an expelled FINRA member firm, seeks review of FINRA action that automatically expelled it for failing to file an audited annual report, as required by Exchange Act Section 17(e) and Rule 17a-5 thereunder, within three months after receiving FINRA’s written notice of suspension. FINRA moves to dismiss on the basis that Lam did not exhaust its administrative remedies before FINRA. For the reasons below, we grant FINRA’s motion and dismiss Lam’s application for review.

I. Background

A. FINRA suspended Lam for failing to file its 2021 audited annual report.

Exchange Act Section 17(e) and Rule 17a-5(d) required Lam to file by March 31, 2022, an audited annual report for its fiscal year ending December 31, 2021 (the “2021 Report”).¹ Lam failed to do so. On April 18, 2022, FINRA sent Lam a written notice (the “Notice”) under FINRA Rule 9552(a) assessing a \$1,000 late fee and notifying Lam that failure to file the 2021 Report by May 12, 2022, would result in FINRA’s automatically suspending the firm’s membership. The Notice further advised Lam that it could request a hearing under FINRA Rules 9552 and 9559. Finally, the notice advised Lam that, if the suspension became effective, the firm could file a written request for FINRA to terminate the suspension if the firm complied fully with its obligation to file the 2021 Report. The Notice warned Lam that if it failed to do so within three months of the Notice, the firm would be automatically expelled from FINRA membership under FINRA Rule 9552(h).

B. FINRA automatically expelled Lam for failing to file a request to terminate the suspension.

Lam did not file the 2021 Report or request a hearing by May 12, 2022, and FINRA automatically suspended the firm under the terms of the Notice. Nor did Lam, as directed by the Notice, file the 2021 Report within three months of the Notice and ask FINRA to terminate the suspension on that basis. Accordingly, on July 22, 2022, FINRA automatically expelled the firm from FINRA membership and sent Lam a letter notifying it of the expulsion.

On August 25, 2022, Lam filed with the Commission this application for review of FINRA’s order of expulsion.²

¹ 15 U.S.C. § 78q; 17 C.F.R. § 240.17a-5(d).

² Lam filed a form titled “Application for, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration pursuant to Section 5 of the Exchange Act.” Nevertheless, materials Lam submitted with this form make clear that Lam was attempting to appeal FINRA’s expulsion of the firm. Given that Lam is represented solely by its CEO, Dick Lam, we exercise our discretion to construe the documents that Lam filed as an application for review. *See* Rule of Practice 100(c) (providing that we may use alternate procedures); *cf. Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998) (discussing the court’s “policy of liberal construction in favor of pro se litigants”).

II. Analysis

FINRA urges us to dismiss the application for review because Lam did not exhaust its administrative remedies for challenging the suspension before FINRA. We agree. As we have repeatedly held, “applicants who fail to exhaust administrative remedies before FINRA thereby forfeit any future challenge to FINRA’s actions before the Commission.”³ “An exhaustion requirement ‘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.’”⁴ Thus, it 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.”⁵

Here, Lam could have availed itself of FINRA’s administrative process for challenging its actions, but it did not do so. As the Notice explained, Lam had two avenues to challenge FINRA’s suspension under FINRA Rule 9552: (1) requesting a hearing or (2) filing the 2021 Report (and requesting termination of the suspension on that basis). Lam did neither. Instead, it waited until it was automatically expelled for failing to take those steps, at which point the firm sought Commission review of the expulsion.

Lam does not dispute that it failed to exhaust its administrative remedies for challenging the suspension. Nor does Lam provide any explanation or excuse for its not doing so. Instead, Lam contends we should now consider its appeal of the automatic expulsion because the firm’s principal, Dick Lam, is elderly and in poor health—issues it claims were exacerbated by the COVID-19 pandemic. Lam also states that it is in the process of finding a new auditor. But we reject that Lam’s alleged difficulties in now complying with its periodic reporting obligations—which arose after the firm was expelled for failing to challenge the suspension—justify a departure from our exhaustion requirements. FINRA rules required Lam to raise such claims before FINRA in the first instance to challenge the suspension.⁶ This would have allowed FINRA to evaluate the firm’s claims and provide a record for us to review.⁷ And, to the extent

³ *Potomac Cap. Mkts., LLC*, Exchange Act Release No. 91172, 2021 WL 666510, at *2 (Feb. 19, 2021); *see also Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 WL 3584177, at *4 (Jul. 25, 2018) (holding that “we will not consider an application for review of FINRA action if that applicant failed to exhaust FINRA’s procedures for contesting the sanction”) (internal quotation marks omitted); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at *3 (Apr. 18, 2013) (similar).

⁴ *Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 WL 1862331, at *4 (May 9, 2017) (quoting *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 622 (2d Cir. 2004)).

⁵ *Id.* (quoting *Li-Lin Hsu*, Exchange Act Release No. 78899, 2016 WL 5219504, at *2 (Sept. 21, 2016)) (internal quotation marks omitted).

⁶ FINRA Rule 9552 (providing procedures for requesting a hearing to contesting suspension).

⁷ *Cf. Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515, at *5 (Mar. 1, 2013) (rejecting respondent’s attempts to demonstrate compliance with FINRA’s document

Lam's claims about its attempts to comply with its reporting obligations are ultimately challenges to the merits of Lam's suspension, we do not consider them because Lam did not timely present them in the first instance to FINRA through its administrative process.⁸

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

requests in brief before the Commission where respondent failed to request a hearing or termination of suspension pursuant to FINRA rules before appealing).

⁸ *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 WL 1103694, at *4 (Mar. 24, 2017) (requiring respondent to present merits arguments first to FINRA before raising them on appeal of administrative expulsion); *see also Dowd*, 2018 WL 3584177, at *5 (“In bypassing FINRA’s process for explaining his conduct, [applicant] prevented FINRA from considering his defenses and from developing a record from which we could review the merits of those defenses.”).

UNITED STATES OF AMERICA
before the
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ORDER DISMISSING APPLICATION FOR REVIEW

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Lam Securities Investments, Inc., be,
and it hereby is, dismissed.

By the Commission.

Vanessa A. Countryman
Secretary