

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 103369 / July 2, 2025

Admin. Proc. File No. 3-22221

In the Matter of the Application of
BOURNEHILL INVESTMENT SERVICES, 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 firm's failure to exhaust administrative remedies.

APPEARANCES:

Gregory P. Bodkin, for Bournehill Investment Services, Inc.

Colleen Durbin, for FINRA.

Appeal filed: September 26, 2024

Last brief received: December 5, 2024

Bournehill Investment Services, Inc. (“Bournehill”), an expelled FINRA member firm, seeks review of FINRA action that automatically expelled the firm for failing to file an audited annual report after FINRA issued a notice of suspension. FINRA moves to dismiss on the basis that Bournehill did not exhaust its administrative remedies before FINRA. We grant FINRA’s motion and dismiss Bournehill’s application for review.

I. Background

Section 17(e) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-5(d) required Bournehill to file with FINRA an audited annual report for the firm’s 2023 fiscal year by April 1, 2024.¹ Bournehill requested a 30-day extension, which FINRA granted, extending the deadline to May 1, 2024. Bournehill did not file the required report by that extended deadline, however.

FINRA then sent Bournehill a written notice of suspension (the “Notice”) under FINRA Rule 9552(a); Bournehill acknowledges it received that notice on or about May 25, 2024. The Notice stated as follows:

- Bournehill’s failure to file its annual report by June 17, 2024, would result in an automatic suspension of the firm’s membership.
- Bournehill could request a hearing before the suspension’s June 17 effective date.
- If the suspension became effective, Bournehill could file a written request for FINRA to terminate the suspension within three months of the Notice if Bournehill complied fully with its obligation to file the 2023 audited report.
- If Bournehill did not fully comply with its filing obligation and request termination of the suspension within three months of the Notice, the firm would be automatically expelled from FINRA membership.

Bournehill took no action before FINRA to avoid suspension and, as a result, the suspension became effective on June 17, 2024. Bournehill also made no effort to prevent its automatic expulsion from FINRA membership, and FINRA expelled the firm on August 26, 2024.

Bournehill then filed this application for review with the Commission.

II. Analysis

FINRA moves to dismiss Bournehill’s application for review because the firm did not exhaust its administrative remedies for challenging the suspension before FINRA. We agree. As the Commission has repeatedly held, “applicants who fail to exhaust administrative remedies

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

before FINRA thereby forfeit any future challenge to FINRA’s actions before the Commission.”² This exhaustion requirement “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.”³ Dismissing Bournehill’s application furthers those interests.⁴

FINRA’s Notice to Bournehill explained that the firm had two avenues for challenging the suspension and preventing expulsion: (1) request a hearing before the suspension took effect, or (2) file the required audited annual report and request termination of the suspension on that basis. Bournehill did neither. Instead, it waited until it was automatically expelled after failing to take those steps, at which point it sought Commission review of the expulsion.

Bournehill does not dispute that it received the Notice and failed to comply with its requirements. Rather, the firm claims it did not “engage in this process” because it “was hamstrung by several constraints, not the least of which is the exorbitant cost associated with conducting a PCAOB audit as a small firm.” But FINRA’s rules require Bournehill to explain any such reasons for noncompliance with FINRA before seeking Commission review.⁵ Indeed, the Notice expressly informed Bournehill that the firm could request a hearing before the suspension took effect, during which the firm could have asserted justifications for its noncompliance. Had such a hearing occurred, FINRA would have been able to evaluate Bournehill’s claims, and we would then have a record to review.⁶ The firm did not seek a hearing or otherwise make any attempts to engage in the process set forth in the Notice. Bournehill instead raised its arguments against FINRA’s actions for the first time in its application for review with the Commission.

² *Potomac Cap. Mkts., LLC*, Exchange Act Release No. 91172, 2021 WL 666510, at *2 (Feb. 19, 2021); *see also, e.g., 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) (observing that the Commission has “repeatedly” held that it will not consider an appeal where applicant failed to exhaust administrative remedies before FINRA and collecting cases); *cf. MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621–24 (2d Cir. 2004) (affirming Commission’s finding that applicant had failed to exhaust administrative remedies before NYSE).

³ *MFS Sec. Corp.*, 380 F.3d at 621.

⁴ *Cf. Lam Secs. Invs., Inc.*, Exchange Act Release No. 98671, 2023 WL 6389861, at *2 (Oct. 2, 2023) (dismissing application for review for failure to exhaust administrative remedies prior to expulsion for failing to file audited annual report).

⁵ *See* FINRA Rule 9552(e) (providing procedures for requesting a hearing to contest suspension); Rule 9559(c)(1) (providing for automatic stay of suspension upon timely request for hearing); *Dowd*, 2018 WL 3584177, at *3-5 (requiring applicant to present merits arguments to FINRA through established FINRA process before seeking Commission appeal).

⁶ *Lam Secs. Invs., Inc.*, 2023 WL 6389861, at *2.

We also reject Bournehill's suggestions that FINRA deprived the firm of "due process." Bournehill claims that the firm was in "constant communication with FINRA" staff about the firm's difficulties finding an auditor and that it discussed "the process that [it] was going through to rectify the situation" but that FINRA never informed the firm of its options to forestall the expulsion.⁷ However, Bournehill itself acknowledges that it received the Notice—which detailed the firm's options and deadlines and the consequences for noncompliance—several weeks before the firm needed to submit its annual report or request a hearing. And while the firm claims that it did not receive notice of the firm's eventual expulsion until after the expulsion had become effective, the Notice alerted Bournehill when the expulsion could occur and the steps Bournehill needed to take to avoid that outcome, such as requesting a hearing. Bournehill does not dispute that it took none of those steps. We thus find no basis for concluding that Bournehill was deprived of a fair process.

For the reasons above, we dismiss Bournehill's application for review.

An appropriate order will issue.

By the Commission (Chairman ATKINS and Commissioners PEIRCE, CRENSHAW, and UYEDA).

Vanessa A. Countryman
Secretary

⁷ The Exchange Act requires FINRA to provide "a fair procedure for the disciplining of members." 15 U.S.C. § 78o-3(b)(8); *see also* *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at *15 (Jan. 30, 2009) (noting that, although self-regulatory organizations "are not subject to the Constitution's due process requirements . . . the Exchange Act requires [self-regulatory organizations] to provide 'fair procedure[s]' for its disciplinary actions").

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 Bournehill Investment Services, Inc.,
is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary