

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 78899 / September 21, 2016

Admin. Proc. File No. 3-17344

In the Matter of the Application of  
  
LI-LIN HSU  
  
For Review of Action Taken by  
  
FINRA

OPINION AND ORDER DISMISSING  
APPLICATION FOR REVIEW

Appeal filed: July 1, 2016  
Last brief received: August 8, 2016

FINRA requests that we dismiss Li-Lin Hsu's application for review of its action barring her from association with any FINRA member firm in any capacity.<sup>1</sup> Hsu, an individual formerly associated with a FINRA member, was barred for failing to provide information in connection with a FINRA investigation. Because we agree with FINRA that Hsu failed to exhaust her administrative remedies, we grant its motion to dismiss her application for review.

**Background**

On April 9, 2015, FINRA informed Hsu that it was conducting an inquiry with respect to her suspension and termination from Ameriprise Financial Services, Inc. ("Ameriprise"). FINRA explained that the purpose of its inquiry was to determine whether violations of the federal securities laws or FINRA, NASD, NYSE, or MSRB rules had occurred. It requested that Hsu provide certain documents and information pursuant to FINRA Rule 8210.<sup>2</sup>

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<sup>1</sup> Hsu has not filed an opposition to FINRA's motion.

<sup>2</sup> See FINRA Rule 8210(a) (stating that "FINRA staff shall have the right" to require a "person associated with a member" to provide specified testimony, information, or documents).

Hsu responded to the requests, and FINRA requested additional documents from her on July 31, 2015, and August 11, 2015. After Hsu failed to respond to those requests, FINRA suspended her pursuant to FINRA Rule 9552.<sup>3</sup> Hsu eventually provided the requested information, and FINRA terminated the suspension in December 2015.

On January 6, 2016, FINRA requested that Hsu provide ten additional categories of documents and information by January 13, 2016, and asked her to arrange a time to speak with its assigned investigator. Hsu did not respond to these requests or to the investigator's subsequent calls and emails. On January 14, 2016, FINRA informed Hsu that she had violated Rule 8210 because she had failed to respond to its requests, and FINRA made a second request that Hsu provide the documents and information sought in the January 6 letter by January 22, 2016. FINRA also informed Hsu that if she failed to do so, she would be subject to the institution of an expedited or formal disciplinary proceeding that could lead to sanctions, including a bar from the securities industry. Hsu did not respond.

On February 29, 2016, FINRA sent Hsu a notice of suspension letter pursuant to Rule 9552. The letter informed her that she would be suspended from association with any FINRA member in any capacity on March 24, 2016, unless she complied with FINRA's January 6 and 14, 2016 requests for information. The letter also apprised Hsu that she could stay the suspension before it took effect by requesting a hearing pursuant to FINRA Rule 9552(e).<sup>4</sup> FINRA further advised Hsu that if she were suspended, she could file with the head of FINRA Enforcement a written request for termination of the suspension on the grounds that she had fully complied with the prior requests. Finally, the letter notified Hsu that if she were suspended and failed to request termination of the suspension within three months of the notice of suspension, *i.e.*, by June 1, 2016, she would be barred automatically pursuant to FINRA Rule 9552(h).<sup>5</sup>

Hsu failed to produce any of the requested documents or information and did not request a hearing. On March 24, 2016, FINRA notified Hsu that she had been suspended from association with any FINRA member. FINRA reminded her that she would be barred if she did not request termination of the suspension by June 1, 2016.

Hsu did not request termination of the suspension (or comply with FINRA's requests). Instead, she sent FINRA an email on June 1, 2016, requesting that FINRA extend her compliance deadline. Hsu asserted that she had been out of the country receiving treatment for

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<sup>3</sup> See FINRA Rule 9552(a) (stating that if a "person associated with a member" fails to provide information requested pursuant to FINRA rules then FINRA staff may provide written notice to such 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").

<sup>4</sup> See FINRA Rule 9552(e) (stating that a "request for a hearing shall be made before the effective date of the notice," which is 21 days after service of the notice).

<sup>5</sup> See FINRA Rule 9552(h) ("A member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred.").

injuries following an August 3, 2015 car accident and that her attorney had advised her not to respond to the requests without his supervision.

On June 1, 2016, FINRA notified Hsu by email that her request for an extension had been reviewed and denied. FINRA emphasized that it had commenced the Rule 9552 proceeding on February 29, 2016, and had apprised Hsu of the necessity of responding to its requests—and the repercussions for failing to do so—through its previous correspondence.

Also on June 1, 2016, FINRA notified Hsu that she had been barred from associating with any FINRA member in any capacity in accordance with Rule 9552(h) and the notice of suspension and suspension from association letters. On July 1, 2016, Hsu timely appealed the bar.

### Analysis

We dismiss Hsu’s application because she failed to exhaust her administrative remedies before FINRA. “[W]e will not consider an application for review if that applicant failed to exhaust FINRA’s procedures for contesting the sanction at issue.”<sup>6</sup> We have explained that 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.”<sup>7</sup>

Hsu does not dispute that she did not follow these procedural steps. She failed to “avail herself of FINRA’s administrative process through [1] taking corrective action” by producing the information FINRA requested, “[2] requesting a hearing in response to the notice of suspension, or [3] filing for termination of the suspension.”<sup>8</sup> Because Hsu did none of these things, she failed to exhaust her administrative remedies.<sup>9</sup>

In her application for review, Hsu argues that FINRA should have granted her request for an extension of time to respond to its suspension notice. But a request for an extension of time to respond to a Rule 9552 notice does not satisfy the obligation to exhaust administrative remedies before FINRA. An extension request does not demonstrate compliance with Rule 8210 requests, request a hearing, or seek termination of a suspension on the grounds of full compliance. Put differently, simply contacting FINRA after receiving a notice under Rule 9552 does not constitute exhaustion. Accordingly, we have dismissed applications for review where, although

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<sup>6</sup> *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at \*2 (Sept. 19, 2014) (quoting *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 WL 1390384, at \*3 (Apr. 10, 2014) and citing other authority) (internal quotation marks omitted).

<sup>7</sup> *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at \*5 & n.29 (Apr. 3, 2003) (quoting *Royal Sec. Corp.*, Exchange Act Release No. 5171, 1955 WL 43159, at \*2 (May 20, 1955)) (internal quotation marks omitted), *aff’d*, 380 F.3d 611 (2d Cir. 2004).

<sup>8</sup> *Lenahan*, 2014 WL 4656403, at \*2.

<sup>9</sup> *Id.* (dismissing application for failure to exhaust administrative remedies where, as here, applicant “failed to exercise her rights at any stage of the process before FINRA”).

an applicant contacted FINRA, she failed to take the necessary steps required to exhaust her remedies.<sup>10</sup>

Dismissal for failure to exhaust administrative remedies may not be appropriate if an applicant can establish that FINRA abused its discretion in denying a request for an extension of time. But where FINRA properly denies an extension request, dismissal is appropriate. In other words, an extension request that is properly denied does not excuse an applicant's failure to exhaust.<sup>11</sup>

We review FINRA's denial of Hsu's request pursuant to an abuse of discretion standard.<sup>12</sup> Hsu sought an extension of time on two bases. We conclude FINRA did not abuse its discretion by denying her request.

First, Hsu asserted to FINRA that she needed an extension because she was out of the country receiving medical treatment for injuries suffered in an August 2015 car accident in California. But Hsu did not substantiate her claimed physical injuries by providing medical records or establish that they prevented her from responding to FINRA's January 2016 requests by June 1, 2016.<sup>13</sup> Hsu's car accident did not prevent her from traveling internationally or

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<sup>10</sup> See, e.g., *Norman Chen*, Exchange Act Release No. 65345, 2011 WL 4336720, at \*2-4 (Sept. 16, 2011) (dismissing application for review on exhaustion grounds where applicant produced no documents, sought hearing after deadline to do so, and, instead of requesting termination of suspension on grounds of full compliance, merely promised to be in full compliance and punctual going forward); *Gary A. Fox*, Exchange Act Release No. 46511, 2002 WL 31084725, at \*1-2 (Sep. 18, 2002) (finding that applicant failed to exhaust administrative remedies where his sole response to NASD requests and notices was "to ask that all future requests be sent to his attorney").

<sup>11</sup> See *Royal Sec. Corp.*, 1955 WL 43159, at \*2-3 (dismissing application for review for failure to exhaust remedies before NASD where we could not "find that applicants' stated reason for failing to file a timely [internal] appeal is such as to warrant action by us overriding the NASD's judgment" to deny motion for extension of time); see also *Datek Secs. Corp.*, Exchange Act Release No. 32306, 1993 WL 175228, at \*1-2 (May 14, 1993) (dismissing application for review on exhaustion grounds where applicants failed to timely appeal NASD action internally and NASD "properly rejected" their extension request); *Earl S. Foster*, Exchange Act Release No. 31663, 1992 WL 400643, at \*1-2 (Dec. 28, 1992) (same).

<sup>12</sup> See *Michael Nicholas Romano*, Exchange Act Release No. 76011, 2015 WL 5693099, at \*5 (Sept. 29, 2015) (reviewing a FINRA hearing officer's denial of a motion to stay an expedited hearing addressing alleged violations of Rule 8210 under the abuse of discretion standard and stating that the movant "must carry a heavy burden to succeed") (internal quotation omitted).

<sup>13</sup> See *Curtis Steven Culver*, Exchange Act Release No. 75774, 2015 WL 5047648, at \*3 (Aug. 27, 2015) (dismissing application for review of bar issued under Rule 9552(h) because "[w]ithout medical records or other proof that medical or personal problems prevented Culver from responding to the Rule 8210 requests, there is no basis for excusing his failure to exhaust available administrative remedies" before FINRA); *Lee Gura*, Exchange Act Release No. 50570, (continued...)

providing information in late 2015 in response to other FINRA requests. Hsu also represents that she answered a Commission subpoena at the Los Angeles regional office on May 26, 2016, *i.e.*, nearly a week before the deadline to respond to FINRA's requests, and that she did so completely. Hsu does not establish that she could not also have complied with FINRA's requests.

Second, Hsu asserted that she needed an extension because her attorney advised her not to disclose any information to FINRA without his supervision since FINRA might share it with Ameriprise and Ameriprise had pursued litigation against her. This suggests that Hsu did not respond to FINRA's Rule 9552 notice for reasons other than her claimed injuries, medical treatment, and travel. Moreover, a recipient of a Rule 8210 request cannot avoid compliance based on the advice of counsel<sup>14</sup> or because of implications for other litigation.<sup>15</sup> In any event, Hsu does not allege that her attorney advised her that she was not required to respond to FINRA's requests; rather, Hsu states that her attorney informed her that responding to the requests might have collateral consequences in her litigation with Ameriprise and that she should coordinate with him before doing so. Hsu also presents no evidence that she engaged in such coordination with her attorney.<sup>16</sup> She simply did not answer the requests, and waited until the day she would be barred automatically to request an extension of her compliance deadline. On these facts, we find that FINRA properly acted within its broad discretion in denying Hsu's request for an extension of time.

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(...continued)

2004 WL 2363871, at \*2 (Oct. 20, 2004) (holding that unsubstantiated claims of severe depression did not excuse applicant's failure to respond to Rule 8210 requests).

<sup>14</sup> *Toni Valentino*, Exchange Act Release No. 49255, 2004 WL 300098, at \*5 (Feb. 13, 2004) ("We have repeatedly held that reliance on counsel does not excuse an associated person's obligation to supply information or testimony or otherwise cooperate with NASD investigations."); *see also Joseph G. Chiulli*, Exchange Act Release No. 42359, 2000 WL 91733, at \*5 (Jan. 28, 2000) ("Reliance on counsel, however, does not excuse Chiulli from his obligation to supply information to the NASD. When Chiulli registered with the NASD, he agreed to abide by its rules, which are unequivocal with respect to an associated person's duty to cooperate with NASD investigations."); *Sundra Escott-Russell*, Exchange Act Release No. 43363, 2000 WL 1423640, at \*3 (Sept. 19, 2000) ("Escott-Russell was not relieved of her obligation to respond to the NASD's requests by her lawyer's advice.").

<sup>15</sup> *Darrell Jay Williams*, Exchange Act Release No. 30886, 1992 WL 165331, at \*2 (July 6, 1992) (sustaining sanctions where associated person asserted that, on advice of counsel, he would cooperate fully with NASD information request once any associated litigation was resolved because "the possibility of litigation in connection with the underlying transaction provided no excuse" for failure to comply with Rule 8210).

<sup>16</sup> Hsu's attorney never entered an appearance in the Rule 9552 proceeding or contacted FINRA.

We thus conclude that there is no basis to excuse Hsu's failure to exhaust her administrative remedies before FINRA.

Accordingly, and for the reasons set forth above, IT IS ORDERED that Li-Lin Hsu's application for review is DISMISSED.

By the Commission.

Brent J. Fields  
Secretary