

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 83711 / July 25, 2018

Admin. Proc. File No. 3-18282

In the Matter of the Application of

CHRISTINE D. MEMET

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF FINRA ACTION

Registered securities association barred individual in an expedited proceeding for failing to respond to requests for information. *Held*, application for review is dismissed.

APPEARANCES:

Christine D. Memet, pro se.

Alan Lawhead, Michael Garawski and Celia L. Passaro, for FINRA.

Appeal filed: November 16, 2017

Last brief received: December 8, 2017

Christine D. Memet, formerly associated with FINRA member firm PNC Investments, LLC, seeks review of FINRA action barring her from association with any FINRA member for failing to respond to its requests for information. FINRA requests that we dismiss Memet's application for review because she failed to exhaust her administrative remedies. For the reasons explained below, we grant FINRA's motion and dismiss Memet's application for review.

I. Background

A. Memet failed to respond to FINRA's requests for information.

Memet was associated with PNC from January 2011 until March 2017. On April 7, 2017, PNC reported to FINRA that it terminated Memet because she failed to honestly explain why she had copies of customer account statements mailed to her home address and that, after her termination, Memet transferred PNC customer information to her personal email address.

On April 28, 2017, FINRA sent Memet a request for information pursuant to FINRA Rule 8210 that informed Memet it was conducting an inquiry into PNC's allegations.¹ FINRA asked Memet to provide signed statements addressing the allegations in detail by May 12, 2017. FINRA stated that a failure to respond under Rule 8210 could result in sanctions—including a bar from associating with a FINRA member firm—and included the investigator's contact information for any questions. FINRA sent the request by certified and first-class mail to Memet's current address as reflected in the Central Registration Depository ("CRD").² The certified mailing was delivered to Memet's CRD address and signed for by "C. Memet" on May 3, 2017. There is no evidence that the first-class mailing was returned. Memet did not respond.

On June 1, 2017, FINRA sent a second request that noted Memet's failure to respond to the first request, reiterated her obligation to provide the requested information, and set a deadline for responding of June 15, 2017. FINRA again warned that a failure to respond could result in discipline and sent the request to Memet's CRD address by certified and first-class mail. The certified mailing was returned to FINRA marked as "unclaimed" and "unable to forward," but there is no evidence that the first-class mailing was returned. Again, Memet failed to respond.

B. FINRA suspended and barred Memet for her failure to respond.

"FINRA rules provide two avenues to enforce compliance with its requests for information. First, FINRA can file a disciplinary complaint alleging a violation of Rule 8210. In that case, the person alleged to have violated Rule 8210 may defend those allegations under the procedures established by FINRA's disciplinary rules. Second FINRA Rule 9552 'provide[s] a procedural mechanism for FINRA to address' violations of Rule 8210 'more expeditiously than would be possible using the FINRA disciplinary process.'"³ Thus, "expedited proceedings and

¹ See FINRA Rule 8210(a) (requiring associated persons of FINRA member firms to provide specified information, testimony, and documents "with respect to any matter involved in [a FINRA] investigation, complaint, examination, or proceeding").

² See Investor Publication, *Protect Your Money: Check Out Brokers and Investment Advisers*, available at <http://www.sec.gov/investor/brokers.htm> ("The Central Registration Depository (CRD) is a computerized database that contains information about most brokers, their representatives, and the firms they work for.").

³ Christopher A. Parris, Exchange Act Release No. 78669, 2016 WL 4446331, at *2 (Aug. 24, 2016).

disciplinary proceedings are ‘two [s]eparate avenues’ for addressing Rule 8210 violations.’⁴ The use of one procedure for addressing Rule 8210 violations does not preclude the use of the other.⁵

On July 11, 2017, FINRA sent Memet a Notice (the “Pre-Suspension Notice”) informing her that a continued failure to respond to its Rule 8210 requests would result in a suspension from associating with any member firm pursuant to Rule 9552(a).⁶ The Pre-Suspension Notice indicated that she would be suspended from associating with any FINRA member on August 4, 2017 if she failed to provide the requested information by that date. The Pre-Suspension Notice stated that the suspension would not take effect if Memet took corrective action before August 4, 2017 by complying with the requests. Nonetheless, the Pre-Suspension Notice stated that FINRA could still file a disciplinary action against Memet for her failure to respond in a timely manner.

The Pre-Suspension Notice also stated that Memet could prevent the suspension from becoming effective by requesting a hearing under Rule 9552(e).⁷ The request for a hearing should include “any and all defenses to the suspension.” The Pre-Suspension Notice explained further that Rule 9552(f) allowed Memet to request termination of a suspension based on full compliance with the requests for information,⁸ but that once a suspension was imposed, a failure to respond by October 16, 2017 would trigger an automatic bar.⁹

Like the Rule 8210 requests, FINRA sent the Pre-Suspension Notice by certified and first-class mail to Memet’s CRD address. FINRA did so after searching a public records

⁴ *Destina Mantar*, Exchange Act Release No. 79851, 2017 WL 221653, at *4 (Jan. 19, 2017) (alteration in original).

⁵ *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588 (July 27, 2015) (affirming sanctions imposed in a disciplinary proceeding for a failure to timely respond to a request for information after FINRA vacated a bar imposed in an expedited proceeding upon the receipt of the requested information from the barred individual).

⁶ *See* Rule 9552(a) (stating that “FINRA staff may provide written notice” to a person who fails to provide information that “the failure to take corrective action within 21 days of service of the notice will result in suspension . . . of association of the person with any member”).

⁷ *See* FINRA Rule 9552(e) (“A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice A request for a hearing must set forth with specificity any and all defenses to the FINRA action.”).

⁸ *See* FINRA Rule 9552(f) (“A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision The head of the appropriate department or office may grant relief for good cause shown.”).

⁹ *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.”).

database that showed no updated address listings. The certified mailing was recorded as lost, but there is no evidence that the first-class mailing was returned.

Memet did not provide the requested information, request a hearing, or otherwise respond to the Pre-Suspension Notice. On August 4, 2017, FINRA sent her a notice (the “Suspension Notice”) stating that she was suspended, reiterating the process for requesting termination of the suspension, and warning that a failure to respond pursuant to its procedures would result in an automatic bar. FINRA mailed the Suspension Notice through certified and first-class mail to the CRD address after again checking the public database listings for Memet’s address. The certified mailing was returned to FINRA marked “unclaimed” and “unable to forward.” Again, the record includes no indication that the first-class mailing was returned. Memet again did not respond.

On October 16, 2017, FINRA sent Memet a notice (the “Bar Notice”) informing her that she was barred from associating with any FINRA member and advising her that she could appeal to the Commission “within thirty days of her receipt” of the Bar Notice. FINRA staff sent the Bar Notice by certified and first-class mail to the same CRD address after a third public records search confirmed that it was Memet’s current address. On October 19, 2017, the certified mailing was delivered at that address and acknowledged with an illegible signature. As with each of the other requests and notices, there is no indication that the copy sent by first-class mail was returned.

On October 27, 2017, FINRA received a telephone call from Memet regarding FINRA’s action. Later that day, FINRA emailed Memet copies of all of the previous notices and requests.¹⁰

C. Memet filed an application for review with the Commission.

On November 16, 2017, Memet appealed to the Commission. In her application for review, she claims that the Bar Notice was the first FINRA notice that she received. Memet’s application for review lists as her current address the same CRD address used by FINRA in serving all of its requests and notices.

II. Analysis

We dismiss Memet’s application for review because she failed to exhaust her administrative remedies. “Exhaustion of administrative remedies is a general prerequisite to judicial review of any administrative action.”¹¹ The “proper exhaustion of administrative

¹⁰ On December 11, 2017, FINRA filed a supplement to the certified record that included the October 27, 2017 email (with attachments) from FINRA to Memet after she had been barred. We consider these documents under Rule of Practice 452, 17 C.F.R. § 201.452 (authorizing the Commission to admit new evidence). *See also* Rule of Practice 420(e), 17 C.F.R. § 420(e) (stating that the certified record for an application for review of FINRA action shall consist of the “record upon which the action complained of was taken”).

¹¹ *Hedley v. United States*, 594 F.2d 1043, 1044 (5th Cir. 1979).

remedies . . . ‘means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits).’”¹² “[A]s a general rule . . . courts should not topple over administrative decisions unless the administrative body not only has erred, *but has erred against objection made at the time appropriate under its practice.*”¹³ “Proper exhaustion demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.”¹⁴ As a result, an applicant who disregards the procedural mechanisms for challenging a sanction before an agency has failed to exhaust administrative remedies.¹⁵

“The general rule requiring exhaustion of administrative remedies as a prerequisite to judicial relief applies with equal if not greater force to the administration of voluntary associations.”¹⁶ The requirement that administrative remedies be exhausted therefore applies to SROs. “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.”¹⁷ The 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.”¹⁸ In so doing, the requirement also facilitates an orderly review of FINRA actions by “promot[ing] the development of a record” by FINRA “in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review.”¹⁹ Accordingly, we have held consistently 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” before seeking Commission review.²⁰

We find that Memet failed to exhaust her administrative remedies for challenging FINRA’s actions before appealing to the Commission. FINRA’s requests for information warned Memet that a failure to respond could result in disciplinary action. Then, before

¹² *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (emphasis in original).

¹³ *Id.* (alteration, omission, and emphasis in original).

¹⁴ *Id.* at 90-91.

¹⁵ *See, e.g., Dawson Farms, LLC v. Farm Serv. Agency*, 504 F.3d 592, 602 (5th Cir. 2007) (“Because Dawson Farms never appealed the lower agencies’ decisions to the NAD, and any such appeals now would be untimely, Dawson Farms failed to exhaust its administrative remedies.”).

¹⁶ *Freeman v. Sports Car Club of Am.*, 51 F.3d 1358, 1365 (7th Cir. 1995) (applying exhaustion requirement to the revocation of race car driver’s racing license).

¹⁷ *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004) (affirming the application of exhaustion requirements in Commission review of SRO actions).

¹⁸ *Id.* at 622.

¹⁹ *Id.* at 621.

²⁰ *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at *2 & n.5 (Sept. 19, 2014) (citing cases).

imposing sanctions, FINRA sent Memet notices that described FINRA’s process for avoiding or challenging such actions by (1) timely producing the requested information; (2) requesting a hearing in response to the notice of suspension; or (3) requesting termination of the suspension. We have held repeatedly that applicants who fail to avail themselves of any of these options before FINRA thereby forfeit any future challenge to FINRA’s actions before the Commission.²¹ So too here.²²

We are not persuaded by Memet’s claim that she did not respond because she did not receive any of FINRA’s requests or notices until the Bar Notice. Memet received proper notice of each mailing under FINRA’s rules when it was sent to her residential address as reflected in the CRD.²³ Indeed, Memet is deemed to have received each mailing sent to that address.²⁴ And although we have at times remanded to FINRA in certain circumstances where it was unclear from the record if the applicant had received any of FINRA’s requests for information or notices of sanctions,²⁵ this is not such a case. The evidence indicates that FINRA’s mailings were received at Memet’s CRD address because the certified mailing of the first request was signed for by “C. Memet” at that address.²⁶ Memet’s use of that address on her application for review also confirms that the address is still current. Given the ample evidence that each of the mailings was served properly, we are not persuaded by Memet’s claims that she is “unsure of why” she did not receive the mailings, that she wants to comply with FINRA’s requests, and that she would have responded immediately if she had received them. We note that, rather than demonstrating any willingness to comply with FINRA’s requests, Memet has still not provided

²¹ *E.g.*, *David Richard Kerr III*, Exchange Act Release No. 79744, 2017 WL 56621, at *4 (Jan. 5, 2017); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at *3 (Apr. 18, 2013) (discussing the Commission’s “well-established precedent” in dismissing appeals where the applicant failed to exhaust his administrative remedies before FINRA).

²² *See, e.g.*, *Norman Chen*, Exchange Act Release No. 65345, 2011 WL 4336720, at *1 (Sept. 16, 2011) (dismissing application for review for failing to exhaust administrative remedies after applicant was barred for not providing signed statements addressing allegations in response to Rule 8210 request).

²³ FINRA Rule 8210(d) (permitting service of a Rule 8210 request by mailing to the “last known residential address of the person as reflected in the Central Registration Directory”); FINRA Rule 9134(b)(1) (permitting service of notices and other papers at a “natural person’s residential address, as reflected in the Central Registration Depository, if applicable”).

²⁴ FINRA Rule 8210(d) (stating notices “shall be deemed received” when sent to the CRD address); *NASD Reminds Registered Persons of Continuing Obligation to Update NASD Records*, NASD Notice 97-31, 1997 WL 1909798, at *2 (May 1, 1997) (stating that a person formerly associated with a member firm will be “deemed to have received” notices and complaints properly sent to the CRD address “whether or not he or she actually” received them).

²⁵ *See, e.g.*, *Destina M. Mantar*, Exchange Act Release No. 79851, 2017 WL 221653, at *4-5 (Jan. 19, 2017).

²⁶ *See Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 WL 1103694, at *4 (Mar. 24, 2017) (stating that when “someone signed for [a] certified mailing sent to” an address “it was reasonable for FINRA to continue mailing [the] notices . . . to that address”).

the requested information after receiving the bar notice and filing her appeal.²⁷ Memet cannot “escape the consequences of her failure to comply or exhaust” in accordance with FINRA procedures by failing to receive or claim mail properly sent to her address.²⁸

Under these circumstances, we find Memet forfeited her right to challenge the bar before us by failing to pursue the available FINRA avenues for avoiding imposition of the bar.²⁹

An appropriate order will issue.³⁰

By the Commission (Chairman CLAYTON and Commissioners STEIN, JACKSON and PEIRCE).

Brent J. Fields
Secretary

²⁷ *Cf. Mantar*, 2017 WL 221653, at *4 (explaining that a remand was appropriate not only because the applicant may have been unaware of FINRA’s requests for information but also because after learning of the requests the applicant “provided FINRA with the information it requested . . . before filing her [timely] application for review with the Commission”).

²⁸ *Aliza A. Manzella*, Exchange Act Release No. 770084, 2016 WL 489353, at *3 (Feb. 8, 2016); *see also id.* (rejecting claim that refusing to “physically take receipt” of a notice excuses a failure to exhaust).

²⁹ *Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 WL 1862331, at *4 (May 9, 2017) (granting FINRA’s motion to dismiss for failing to exhaust administrative remedies where the applicant did not take the necessary steps to avoid being barred despite having actual notice of the requests for information and proceedings against him because he “signed the certified mail receipts for the Pre-Suspension Notice,” none “of the first class mailings were returned,” and he “put his CRD address as the return address on his application for review”).

³⁰ We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83711 / July 25, 2018

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In the Matter of the Application of

CHRISTINE D. MEMET

For Review of Action Taken by

FINRA

ORDER DISMISSING APPEAL OF ACTION TAKEN BY REGISTERED SECURITIES
ASSOCIATION

On the basis of the Commission's opinion issued this day, it is
ORDERED that the appeal filed by Christine D. Memet is dismissed.

By the Commission.

Brent J. Fields
Secretary