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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

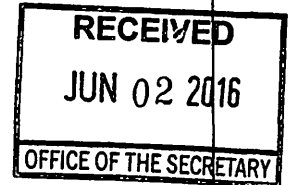
In the Matter of the Application of

Christopher A. Parris

For Review of

FINRA Disciplinary Action

File No. 3-17128



**BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY
IN OPPOSITION TO APPLICATION FOR REVIEW**

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I. INTRODUCTION

Christopher A. Parris's application for review should be dismissed because he refused to fully comply with FINRA's Rule 8210 requests and failed to avail himself of FINRA's procedures. Parris was given multiple opportunities to respond to FINRA's requests, ample warnings about the impending suspension and bar, and an opportunity to request a hearing to adjudicate the appropriateness of FINRA's requests and his responses, including the jurisdictional issue. Parris chose to not to request a hearing or respond to all of FINRA's requests. Instead, he chose a last-minute gamble of requesting reinstatement when he had not provided key documents.

The Commission has consistently held that a party is required to exhaust his administrative remedies before resorting to an appeal, and those who fail to exercise their rights by participating in a hearing cannot claim that they have exhausted their administrative remedies. Parris failed to avail himself of the opportunity to contest FINRA jurisdiction or the sufficiency

of his responses to FINRA's requests, and therefore has failed to exhaust his administrative remedies. His efforts to delay a process that was designed to be expedited in nature through obfuscation and finger pointing continues to frustrate FINRA's investigation.

The Commission has requested that the parties respond to several questions concerning FINRA Rule 9552 proceedings. FINRA applied the requirements of Rule 9552 fairly to Parris and in a manner consistent with the Exchange Act. Specifically, the requirement that Parris request a hearing to contest jurisdiction is wholly consistent with FINRA's rules, the Exchange Act, and the requirements of a fair procedure. Parris was given notice of a potential suspension and the opportunity for a hearing. Parris did not properly invoke FINRA Rule 9552(f) when he requested termination of his suspension but was not in full compliance with FINRA's document requests. Because Parris had not provided FINRA with documents it requested, FINRA Rule 9552(h) authorized FINRA to bar Parris after the suspension had been in place for three months. This matter should not be remanded to require FINRA to explain why Parris was an associated person or to explain why FINRA imposed a bar, since it was Parris's refusal to ask for a hearing that deprived the Commission of a fuller record for this appeal.

Therefore, because Parris has failed to comply with the requirements of FINRA Rule 9552, including his failure to request a hearing, his failure to comply fully with FINRA's Rule 8210 request, and his failure to exhaust his administrative remedies, the Commission should dismiss Parris's application for review.

II. FACTUAL AND PROCEDURAL BACKGROUND

FINRA's Department of Enforcement ("Enforcement") began an investigation of Parris and First American Securities ("FAS" or "firm"), a firm 50% owned and indirectly controlled by

Parris, with respect to their involvement with two private placements, and whether the offerings were, among other things, fraudulent.

FINRA was investigating a private placement called United RL Capital (“United RL”), a debt offering in which the issuer would lend funds to borrowers to acquire medical laboratories. FINRA’s review linked the United RL private placement to Parris and FAS, and also uncovered their involvement with another private placement, Percipience Global Corporation, a debt offering whereby the issuer raised funds to purchase distressed property in the Detroit area to rehab and sell at a profit. FAS acted as the exclusive placement agent for Percipience while the United RL offering was executed away from FAS as an outside business activity. FINRA became concerned that the private placements may violate suitability rules and contain material misrepresentations.

During the course of FINRA’s examination, a critically important question emerged concerning whether or not the private placements were fraudulent. The books and records that could shed light on this question, particularly the bank statements for United RL and Percipience, are not directly in the possession, custody or control of FAS but rather are in the possession, custody or control of Parris. Yet Parris did not produce these documents despite FINRA’s repeated requests. Setting aside the documents that Parris produced late, he emphatically refused to provide these two categories of requested documents.

A. FINRA’s September 15, 2015 Requests for Information

In furtherance of its investigation into Parris and the two private placements in which he was involved, FINRA sent Parris, through his attorney, a FINRA Rule 8210 request seeking, among other things, executed agreements involving United RL, Nexus Laboratory Management Systems, LLC, and Parris, United RL’s and Percipience’s bank statements, and documentation

involving payments to or from Percipience. RP 2476-2478.¹ In response to this request, Parris's attorney, Alan Wolper, stated that "we will provide as many or as few responsive documents as we deem appropriate, and that whatever production we make may or may not be in accordance with your stated deadline." RP 2479. Parris produced no documents at this time.

On September 23, 2015, FINRA sent Parris a second FINRA Rule 8210 request, enclosing the September 15, 2015 letter. RP 2486-2489. This letter reminded Parris of his obligation to provide documents and information to FINRA under Rule 8210, and directed him to respond by September 30, 2015. Again, Parris did not respond by September 30.

B. The October 16, 2015 Pre-Suspension Notice

While Parris produced certain sets of documents responsive to some of FINRA's requests on a rolling basis, there remained significant deficiencies in Parris's production. In light of these continued deficiencies, FINRA's Department of Enforcement ("Enforcement") sought to suspend Parris from associating with any FINRA member firm pursuant to FINRA Rule 9552. On October 16, 2015, Miki Vucic Tesija, FINRA Senior Regional Counsel, warned Parris in a letter that FINRA planned to suspend him on November 9, 2015, for his failure to respond to the September 15, 2015 Rule 8210 Request. RP 3104-3106. The letter indicated that Parris failed to fully respond to request numbers 1, 2, 3, 4, 5, 6, 7, 10, 12, 13, 14, and 15. It also stated that Parris could avoid imposition of the suspension if he took corrective action by complying with the information request before the suspension date of November 9, 2015, and further explained that Parris had the opportunity to request a hearing before the suspension date to contest the imposition of the suspension. Finally, the letter stressed not only that Parris could seek

¹ "RP ____" refers to the page numbers in the certified record filed by FINRA on March 7, 2016.

reinstatement during his suspension, but also that if he failed to request termination of the suspension within three months, he would be in default, and barred on January 19, 2016. *See* FINRA Rule 9552(h).² Parris did not request a hearing.

C. The November 9, 2015 Suspension Notice

Because Parris failed to completely respond to FINRA's Rule 8210 requests, FINRA notified Parris in a letter dated November 9, 2015 that he was suspended, effective immediately, from association with any FINRA member firm in any capacity. RP 3216-3217. The letter advised Parris that he could file a written request to terminate the suspension based on fully providing the information and documents that FINRA requested in the September 15, 2015 FINRA Rule 8210 Request. The Suspension Notice reiterated the warning that Parris's failure to seek relief from the suspension by January 19, 2016, would result in an automatic bar pursuant to FINRA Rule 9552. On December 2 and 11, 2015, Parris provided documents that responded to several, but not all, of FINRA's requests. RP 3229-3253.

D. Additional Correspondence and the Bar Notice

On January 6, 2016, FINRA Senior Regional Counsel Tesija wrote to Alan Wolper, and pointed out that "many requested documents" were still missing. RP 3256-3261. The letter details what FINRA was asking for in requests 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, and 15. Tesija's letter concludes that, as of the date of the letter, "Mr. Parris has not fully complied with the 8210 Request."

On the day Parris's bar was to begin, January 19, 2016, Mr. Wolper responded with a letter to Tesija. RP 3591-3595. Although Parris provided some documents and updated

² FINRA Rule 9552(h) states, "[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."

spreadsheets to FINRA, he did not provide any documents in response to requests 5 and 15, both of which asked for information related to the United RL private placement. Request 5 asked for the bank statements of United RL from inception through the present date. Request 15 sought the transaction documents related to the “private equity” investors of United RL, including the notes issued to the investors and account statements. Instead of providing documents, Wolper’s letter stated for request 5 that United RL bank statements from before March 2015 “have zero relevance” and reiterated prior objections. RP 3593. The response to request 15 was also to assert objections, including incorporating objections from request 5, prior objections, and asserting that Parris was not subject to FINRA’s jurisdiction. RP 3595.

Also on January 19, 2016, the date on which the bar took effect, Wolper wrote to FINRA’s Executive Vice President of Enforcement to request that Parris’s suspension be terminated. RP 3587. Two days later, J. Bradley Bennett responded that he would not terminate Parris’s suspension because Parris did not show good cause as he had not responded to requests 5 and 15. RP 3603. Additionally, on January 21, 2016, FINRA advised Parris that pursuant to FINRA Rule 9552(h) and the preceding suspension notices, Parris was barred from associating with any FINRA member firm. RP 3598-3599. Parris’s appeal to the Commission followed.

III. FINRA’S EXPEDITED PROCEEDINGS UNDER FINRA RULE 9552

As the Commission has consistently emphasized, FINRA Rule 8210 is essential to FINRA’s ability to investigate possible misconduct by its members and associated persons. Failing to provide information impedes FINRA’s ability to carry out its self-regulatory functions and is a serious violation. *Dep’t of Enforcement v. North Woodward Financial*, Complaint No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *19 (FINRA NAC July 21, 2014) (*citing PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008),

aff'd, 566 F.3d 1172 (D.C. Cir. 2009)); *Elliot M. Hershberg*, 58 S.E.C. 1184, 1190 (2006), *aff'd*, 210 F. App'x 125 (2d Cir. 2006). More specifically, it “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.” *North Woodward Financial*, 2014 FINRA Discip. LEXIS 32, at *19 (citing *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13).

The purpose of FINRA Rule 9552 is simple: to encourage compliance with FINRA Rule 8210 requests by starting an expeditious suspension and bar if a party does not comply. FINRA Rule 9552(a) provides for notice of suspension based on failure to provide requested information; sections (d) and (e) provide for a stay of the suspension based on a request for a hearing. Section (f) permits a request for termination of suspension based on full compliance, and section (h) provides that failure to request termination of suspension within three months will result in an automatic bar. In its Notice to Members 04-36, FINRA emphasized the importance of the streamlined nature of the FINRA Rule 9550 series and FINRA’s, and the Commission’s emphasis on “real-time enforcement.” *Notice to Members 04-36*, 2004 NASD LEXIS 39 (May 2004). FINRA Rule 9552 provides a straight forward and exclusive way for an individual to stop a pending suspension—by asking for a hearing.

IV. QUESTIONS PRESENTED

The Commission has provided a list of questions that it has asked the parties to address in their briefs. Our responses to the Commission’s questions are as follows:

QUESTION 1

FINRA maintains that Parris was required to request a hearing to object to its jurisdiction. Is this consistent with FINRA’s rules and the process requirements of Exchange Act Section 15A(b)(8) and (h)(1), 15 U.S.C. § 78-o3(b)(8) and (h)(1)?

ANSWER

FINRA's requirement that Parris request a hearing to contest jurisdiction is wholly consistent with FINRA's rules, the Exchange Act, and the requirements of a fair procedure, including notice and the opportunity for a hearing. Exchange Act Section 15A(b)(8) requires that FINRA provide a "fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof." 15 U.S.C. § 78-03(b)(8). FINRA Rule 9552, in conjunction with FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), lays out the procedures available to an individual who seeks to challenge an expedited proceeding through the hearing process. Indeed, in its approval of the FINRA Rule 9550 series, the Commission found that FINRA Rule 9552 "promote[s] a reasonable, fair and efficient disciplinary process," which is consistent with the Exchange Act's purpose, among others, of "prevent[ing] fraudulent and manipulative acts and practices," through appropriate disciplinary action. *Order Approving Rule Change*, Exchange Act Release No. 61242, 75 Fed. Reg. 167 (Dec. 28, 2009) (shortening the time period before a suspension automatically becomes a bar from six to three months); *see also Order Approving Proposed Rule*, Exchange Act Release No. 43102, 65 Fed. Reg. 48266, 48271 (Aug. 1, 2000) (stating in adopting predecessor to Rule 9552 that it provides "appropriate discipline of members who fail to provide [FINRA] with certain information").

In addition, FINRA Rule 9552 explicitly complies with the fairness requirements enumerated in Exchange Act Section 15A(h)(2).³ This section requires that:

any proceeding by a registered securities association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof . . . , the association shall notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the association to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based. 15 U.S.C. § 78-o3(h)(2).

The processes outlined in FINRA Rule 9552, which were followed in the instant matter, comply with this provision in all respects. FINRA's Department of Enforcement notified Parris that he would be suspended and subsequently barred if he failed to comply with FINRA's Rule 8210 requests, and reminded Parris that he was entitled to request a hearing to challenge any and all aspects of Enforcement's determinations (with respect to FINRA's jurisdiction and Parris's non-compliance). Instead of requesting a hearing, Parris sought a termination of his suspension on the grounds of full compliance, which the head of Enforcement denied. FINRA plainly told Parris the specific grounds on which the denial was based. The fact that Parris chose to ignore the procedures available to him does not make those procedures any less fair.

³ FINRA Rule 9550 series was not drafted by FINRA, nor approved by the Commission to be consistent with Exchange Act Section 15A(h)(1). Section (h)(1) applies specifically to litigated disciplinary cases, in which "the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record." FINRA's formal disciplinary process, which includes a complaint, answer, an evidentiary hearing, a written decision, and other procedural steps, complies with section (h)(1).

FINRA's requirement that a respondent request a hearing to challenge FINRA's actions under FINRA Rule 9552, including objections to FINRA's 8210 requests or, as in this case, particularly to FINRA's jurisdiction, are not only fair, but have long been supported by the Commission. In *Howard Brett Berger*, FINRA barred the respondent for violating FINRA Rule 8210 by failing to participate in FINRA's on-the-record testimony ("OTR"). *Howard Brett Berger*, Exchange Act Release No. 55706, 2007 SEC LEXIS 895 (May 4, 2007). Applicant argued that FINRA did not have jurisdiction over him, that he should have had the ability to challenge FINRA's jurisdiction without first appearing at an OTR, and that he should have been entitled to do this without the risk that FINRA will find that he refused to provide the information and bar him. *Id.* at *29. The Commission disagreed with the applicant and sided with FINRA, finding that subjecting oneself to FINRA's disciplinary process and relying on its procedures is the appropriate route to challenge FINRA jurisdiction. *Id.* at *31. The Commission later reiterated the rule that individuals must raise their challenges to FINRA's jurisdiction in a FINRA hearing in a second opinion in the same case. *See Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *20 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d. Cir. 2009). "[S]ubjecting oneself to [FINRA's] disciplinary process, interposing one's objection, and relying on [FINRA's] procedures is the appropriate route to challenge [its] jurisdiction." *Id.* The Commission further found that FINRA followed its rules in the *Berger* proceeding and that FINRA's procedures were in accordance with the "fair procedure[s]" contemplated by Exchange Act Section 15A(b)(8). *See also Ashvin R. Shah*, 52 S.E.C. 1100 (1996) (respondent argued that NASD lacked jurisdiction, defended on the merits and testified at the DBCC hearing, and was permitted to argue both the jurisdictional and substantive issues on appeal to the NBCC and then the SEC); *Donald M. Bickerstaff*, 52 S.E.C. 232 (1995) (same).

As case law and logic demonstrate, the fair and appropriate way to challenge jurisdiction is with a hearing, with the right to appeal. This ability to request a hearing—which Parris had—followed by the ability to appeal the Hearing Panel’s determination to the Commission, is built into FINRA’s rules, is fair, and is consistent with the Exchange Act.⁴

QUESTION 2

Parris requested that FINRA terminate his suspension under Rule 9552(f), which permits a person to “file a written request for termination of [a] suspension on the grounds of “full compliance” with the relevant Rule 8210 requests. Did Parris properly invoke this rule when he requested termination of his suspension on the ground of full compliance while he continued to object to certain requests?

ANSWER

No, Parris did not properly invoke FINRA Rule 9552(f) when he requested a termination of his suspension on the grounds of full compliance while he continued to object to certain FINRA requests. FINRA Rule 9552(f) does not say that a person can make a written request for termination of a suspension based on *partial* compliance. The rule instead requires “full

⁴ Federal courts have also long held that an individual challenging jurisdiction should seek to have that issue resolved at the outset. See *Baldwin v. Iowa State Traveling Men’s Ass’n*, 283 U.S. 522, 524-26 (1931) (recognizing that making a special appearance to contest jurisdiction “saves the question of the propriety of the court’s decision on the matter even though after the motion [is] overruled the respondent . . . proceeds, subject to a reserved objection and exception, to a trial on the merits.”); *Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1547 (D.C. Cir. 1987) (“[A defendant] may appear, raise the jurisdictional objection, and ultimately pursue it on direct appeal. . . . Should he proceed this way, he may defend on the merits in the district court without losing his right to press on direct review the jurisdictional objection, along with objections on the merits.”). In contrast to individuals who seek an adjudicator’s ruling on jurisdiction at the beginning of a lawsuit, Parris did not. Now that months have passed since he could have had a hearing, Parris asks the Commission for, among other relief, a remand for a hearing on jurisdiction.

compliance,” which is the fundamental prerequisite for reinstatement.⁵ Parris admits that he was not in full compliance. Applicant’s Brief In Support Of Petition For Review (“Br.”) at 6. Therefore, he was not entitled to the relief afforded under the rule. Indeed, the fact that the request for termination goes to the FINRA department head, rather than to an adjudicatory body reinforces that full compliance is a yes or no question. The request does not go before an adjudicator for an evaluation of the sufficiency or caliber of the responses – the sole question addressed by the department head is whether the individual requesting the termination of suspension is in full compliance with FINRA’s Rule 8210 requests. Because full compliance is the only articulated basis for relief, Parris’s request was correctly denied.

Moreover, contrary to Parris’s assertions, Parris is in no position to unilaterally decide what documents are important or relevant to FINRA’s investigation. Associated persons must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether information is relevant. *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009). FINRA Rule 8210’s requirement of full cooperation applies equally to violations that are litigated in a disciplinary proceeding or to an expedited proceeding for failure to provide information. Indeed, FINRA’s Document Request 5 asked for the bank statements of United RL from inception through the present date. Request 15 sought the transaction documents related to the “private equity” investors of United RL,

⁵ FINRA Rule 9552(f) states that:

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. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

including the notes issued to the investors and account statements. The documents produced in response to these requests would be critically important to FINRA's investigation since FINRA was concerned that FAS was involved with private placements that potentially violated FINRA or SEC rules.

QUESTION 3

FINRA Rule 9552(h), entitled "Defaults," provides that "[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." Does this rule authorize FINRA to bar an individual who timely requests termination of a suspension under Rule 9552(f) if FINRA declines to grant that request?

ANSWER

Yes, this rule authorizes FINRA to bar Parris, when he made a meritless request to terminate his suspension. The Commission has dismissed an appeal for failure to exhaust administrative remedies with facts that are on all fours with this case. In *Norman Chen*, the applicant sought Commission review of the bar imposed by FINRA for his failure to respond to FINRA's Rule 8210 requests. See *Norman Chen*, Exchange Act Release No. 65345, 2011 SEC LEXIS 3224 (Sept. 16, 2011). Pursuant to FINRA Rule 9552, FINRA sent multiple notices to applicant that he would be suspended and ultimately barred if he failed to respond to FINRA's requests. *Id.* at *2-3. Applicant made an untimely request for a hearing, which a FINRA Hearing Panel denied. *Id.* at *4-5. Applicant then sought to have his suspension terminated, pursuant to FINRA Rule 9552(f). *Id.* at *5-6. FINRA denied Chen's reinstatement request, and recounted the multiple letters it had sent him and stated that he had yet to "provide FINRA with the information requested in the staff's letters." *Id.* Applicant appealed his bar to the

Commission, and FINRA moved to dismiss. *Id.* at * 1. In its order, the Commission dismissed Chen’s application for review, explaining that Chen “again failed to respond to FINRA’s original requests for information.” *Id.* at *10. The Commission noted that because the applicant “failed to respond to FINRA’s inquiry or timely request a hearing . . . [his] bar was imposed automatically pursuant to FINRA rules.” *Id.* at *8. The same holds true for Parris. Parris failed to respond fully to FINRA’s document requests. When Parris did not demonstrate full compliance with the Rule 8210 requests, FINRA properly imposed a bar on him.

FINRA Rule 9552’s structure, purpose, and text reinforce the conclusion that a meritless request to terminate a suspension is the same as not requesting termination. The structure and text of FINRA Rule 9552 show that the only way to stay a pending suspension for failure to provide FINRA with information is to request a hearing. Under FINRA Rule 9552(a), FINRA staff is authorized to notify a person that “fails to provide any information, report, [or] material . . .” that he has not provided the information and that failure to take corrective action within 21 days will result in a suspension. Under FINRA Rule 9552(e), a person who has been served with a notice of pending suspension can file a request for a hearing with the Office of Hearing Officers. That request for a hearing ordinarily operates to stay the pending suspension. *See* FINRA Rule 9559(c) (providing that “[u]nless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown,” a request for hearing “shall stay the effectiveness” of a notice issued under FINRA Rule 9552). Under the rule, once a suspension has started only three additional sections of the rule can apply: a request for termination of the suspension, under section (f), an offer of settlement, under section (g), and a default, under section (h). *See* FINRA Rule 9552(f), (g) & (h). None of these sections provide for a stay of the suspension. If during the three month suspension, the suspended person has not

successfully requested termination of the suspension and has not reached an offer of settlement, then the default section, FINRA Rule 9552(h) applies.

This result is also consistent with the purpose of FINRA Rule 9552, which is to provide an expedited process for resolving a person's failure to provide information to FINRA. As the Commission has stated: "FINRA Rule 9552 sets forth the procedures for suspending *and ultimately barring* individuals who fail to supply requested information or take corrective action." *Chen*, 2011 SEC LEXIS 3224, at *7 (emphasis added). FINRA Rule 9552 accordingly authorized FINRA to bar Parris after he made a meritless request to terminate his suspension.

On the other hand, Parris's answer to this question has no basis in FINRA Rule 9552. Parris urges that: "Individuals who request termination, but whose request is denied, should be afforded a hearing on the issue of compliance." Br. at 28. The text of FINRA Rule 9552, however, shows this is incorrect. Under section (e), a person must request a hearing *before* the suspension starts. "A request for a hearing shall be made before the effective date of the notice . . ." FINRA Rule 9552(e). When Parris failed to produce all the requested documents and allowed the suspension to begin, his ability to avoid being barred turned solely on whether he fully complied with FINRA's request for information. That decision is made by a FINRA department head without a hearing. "Such request shall be filed with the head of the FINRA department . . . The head of the appropriate department or office may grant relief for good cause shown." FINRA Rule 9552(f). Parris's suggestion of a second opportunity for a hearing, after an unsuccessful request to terminate the suspension, is nothing more than wishful thinking.

Parris also argues that *any* request to terminate the suspension means that the rule does not allow a person to be barred. Br. at 28. The Commission should reject Parris's interpretation

as contrary to the purpose of the rule. The purpose of FINRA Rule 9552 is to create a streamlined process under which a person who fails to respond to FINRA's requests is suspended for three months and eventually barred. But Parris's interpretation of the rule would result in Parris and similar persons being suspended but not barred. To make a request for termination of a suspension, a person has, of course, already been suspended. "A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension" FINRA Rule 9552(f). When the request for termination has no merit, the request is denied and the suspension continues. Under Parris's flawed interpretation, however, the rule does not authorize FINRA to impose a bar, which leaves the suspended person with the same status. A perpetual suspension, nevertheless, is the function equivalent of a bar. The text of a rule should be read to further the purposes of the rule, not to frustrate it. *See* FINRA Rule 0130 (FINRA rules "shall be interpreted in light of the purposes sought to be achieved by the Rules and to further FINRA's regulatory programs."); *Bickerstaff*, 52 S.E.C. at 234. Parris's interpretation of the rule would frustrate the purpose of the rule, therefore, FINRA Rule 9552(h) must continue to be read to authorize a bar when a respondent's request to terminate a suspension is meritless.

QUESTION 4

FINRA's Sanctions Guidelines list several considerations relevant to FINRA adjudicators' determination of sanctions for a failure to provide documents or testimony under Rule 8210. These considerations include that "[w]here the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request." Are the considerations identified in the Sanctions Guidelines relevant where FINRA bars an individual under the default procedures provided in Rule 9552(h)?

ANSWER

The considerations of the FINRA Sanction Guidelines (“Guidelines”)⁶ are not relevant to FINRA’s expedited proceedings under FINRA Rule 9552 when an individual fails to request a hearing. The Sanction Guidelines are FINRA-created guidance for FINRA *adjudicators*, which the Sanction Guidelines define as Hearing Panels and the National Adjudicatory Council. “The National Adjudicatory Council (NAC) [], has developed the FINRA Sanction Guidelines for use by the various bodies adjudicating disciplinary decisions, including Hearing Panels and the NAC itself (collectively, the Adjudicators) . . . The guidelines recommend ranges for sanctions and suggest factors that Adjudicators may consider . . .” Guidelines, at 1 (2015) (Overview). This expedited proceeding was never before an adjudicator, which makes the Guidelines’ provision inapplicable.⁷

The Guidelines provide—for a specific violation—a range of sanctions that an adjudicator should consider when assessing sanctions in a disciplinary proceeding. The “principal considerations” typically frame a factual question—such as the importance of the information requested as viewed from FINRA’s perspective. Guidelines, at 33 (Failure to

⁶ http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf. Referenced portions of the Guidelines are attached to this brief as Exhibit A.

⁷ Even if an applicant requests a hearing before a Hearing Panel pursuant to FINRA Rule 9552(e), the Guidelines do not apply to expedited proceedings. *See William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *6 n.5 (Mar. 14, 2003) (concluding that respondent’s reliance on Section 19(e) misconstrued the applicable review standard where respondent argued that NASD’s sanctions were excessive or oppressive and that his suspension was inconsistent with NASD Sanctions Guidelines. Rather, the Commission found that Section 19(f) governed, and that the Commission must dismiss the appeal if specific grounds on which the NASD based its action exist in fact, that NASD’s determination was in accordance with its rules, and that those rules were applied in a manner consistent with the purposes of the Exchange Act).

Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210). Here, Parris did not request a hearing, and there was no fact-finding by an adjudicator. Consequently, the Sanction Guidelines do not apply.

Parris's discussion of the Hearing Panel decision in *Dep't of Enforcement v. Lorenzo*, Complaint No. 2012032112401, 2013 FINRA Discip. LEXIS 29 (FINRA Hearing Panel June 18, 2013) does not change this answer. Parris notes that "there is precedent for Hearing Officers to consider the Sanction Guidelines under Rule 9552." Br. at 29. There is, however, a glaring difference between the facts in *Lorenzo* and the facts present here. In *Lorenzo*, the respondent, when challenging FINRA's 8210 requests, requested a hearing that was adjudicated on the merits, with a decision issued by a FINRA Hearing Panel. Had Parris asked for a hearing pursuant to FINRA Rule 9552(e), when rendering its decision, the "Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and . . . may also impose any other fitting sanction." See FINRA Rule 9559(n)(1). As illustrated by the decision in *Lorenzo*, respondents who seek to modify or eliminate a suspension that will mature into a bar do so by requesting a hearing. Parris's decision not to request a hearing and to seek reinstatement (without providing requested documents) resulted in no adjudicator considering Parris's defenses or whether to apply the Sanction Guidelines. This was the correct outcome.

QUESTION 5

Parris argues that FINRA barred him without explaining the basis for its determination that he was an associated person of FAS. Should the Commission remand this case to FINRA to

explain in the first instance its determination with respect to Parris's status as an associated person and/or explain in more detail its reasons for imposing a bar on him?

ANSWER

The Commission should not remand this case to FINRA to explain why Parris was an associated person or to explain why FINRA imposed a bar. As stated above, Parris's refusal to ask for a hearing and marshal evidence to show that he is not an associated person does not highlight any shortcoming on FINRA's part. In addition, Parris failed to comply with FINRA Rule 8210, and was subsequently barred, as prescribed by FINRA Rule 9552. Both the series of letters that warned Parris about the possibility of being barred and the terms of FINRA Rule 9552 clearly explain why FINRA imposed the bar.

Parris's argument that FINRA had an obligation to explain its basis for claiming that he was an associated person, or hold a hearing to prove this issue is completely unsupported. FINRA Rule 9552 provides a single, straight forward, and exclusive way for an individual to stop a pending suspension. That person must request a hearing. Under FINRA Rule 9552(e), a person's request for a hearing "must set forth with specificity any and all defenses to the FINRA action." Once an individual requests a hearing, FINRA Rule 9559 governs, and sets requirements for the time of a hearing, transmission of documents to the respondent, and the contents of a decision. FINRA Rule 9559(f), (h) & (p). There is no provision in FINRA Rule 9552 or 9559 that requires FINRA to explain its jurisdictional basis for issuing a pre-suspension letter to a person. Jurisdiction is a defense to a FINRA expedited proceeding, which Parris could have raised if he requested a hearing. Indeed, Parris's attorney stated his objection to FINRA's jurisdiction in detail when Parris was testifying pursuant to FINRA's request: "You can't subject him to any sanctions under Rule 8210 because as far as we're concerned, he is not subject to the

jurisdiction of FINRA.” Br. at 5; RP 1668-1669. Parris cannot blame FINRA’s Department of Enforcement for failing to explain its basis for jurisdiction when he chose not to raise it as a defense.

V. ARGUMENT

The Commission should dismiss Parris’s application for review. Parris failed to exhaust his administrative remedies when he failed to request a hearing before FINRA and prove why he should not be suspended. Parris neither presented evidence in support of his position that he is not an associated person within FINRA’s jurisdiction, nor did he offer evidence that he complied with all of FINRA’s document requests. Parris had the opportunity to present these points at a hearing. Instead, he waited until *the day* that his suspension was replaced with a bar and requested reinstatement based on full compliance, even though he admittedly was not in full compliance. The Commission lacks jurisdiction to review Parris’s reinstatement request and also lacks jurisdiction to review his argument that he is not an associated person subject to FINRA jurisdiction. This appeal should be dismissed.

A. Parris Did Not Exhaust His Administrative Remedies Before Bringing His Appeal

Parris failed to exhaust his administrative remedies concerning his jurisdictional arguments. FINRA told Parris that he could “request a hearing” before a FINRA Hearing Panel, as provided by FINRA Rule 9552(e), to present any defenses he had to explain his failure to provide documents. Parris, who is represented by counsel, did not request a hearing.

As the Commission has emphasized, “[i]t 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.” *Ricky D. Mullins*, Exchange Act Release No.

71926, 2014 SEC LEXIS 1268, at *9-10 (Apr. 10, 2014). The Commission has repeatedly held that requiring respondents who failed to provide FINRA with requested documents to exhaust their administrative remedies before FINRA is necessary to FINRA's important regulatory functions, promotes development of the record in the forum particularly suited to create it, allows FINRA the opportunity to correct any error in its earlier decisions, and promotes the efficient resolution of disputes between FINRA and its members. *See, e.g., Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at *6-7 (Sept. 19, 2014) (*quoting MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004)); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *12 (Apr. 18, 2013) (reaffirming that the Commission's 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.); *Mullins*, 2014 SEC LEXIS 1268, at *10 (same).

An aggrieved party is required to exhaust his administrative remedies before resorting to an appeal, and those who fail to exercise their rights to administrative review cannot claim that they have exhausted their administrative remedies. *Royal Sec. Corp.*, 36 S.E.C. 275, 277 n.3 (1955). The Commission has previously held that it "will not consider an application for review if the applicant failed to exhaust FINRA's procedures for contesting the sanction at issue." *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5 (May 6, 2010). By failing to request a hearing – as he should have – Parris has denied a FINRA Hearing Panel the opportunity to evaluate the correctness of Enforcement's actions and left the Commission without a properly developed record. Parris is also suggesting the highly inefficient step of having the Commission remand this matter to FINRA to resolve the purportedly factually

complex issue of whether Parris is a controlling person of FAS. The Commission should not reward Parris's failure to request a hearing by remanding this matter and ordering FINRA to again offer Parris a hearing.

The lack of a record developed before a Hearing Panel is entirely Parris's fault. Parris's failure to follow FINRA's procedure and his failure to offer any evidence on his jurisdiction contention to a Hearing Panel means that he should not qualify for appellate review by the Commission. Just as the applicant in *Lenahan* was not entitled to the Commission's appellate review of her claims that she did not understand the collateral ramifications of being barred by FINRA, Parris is likewise not entitled to Commission review of his jurisdictional arguments or claims that FINRA's outstanding document requests are irrelevant when he did not argue these points at a hearing. *Lenahan*, 2014 LEXIS 3503, at *10. In light of his failure to exhaust his remedies, the Commission should dismiss his appeal.

B. Parris's Jurisdictional Arguments are Neither Ripe nor Appropriate for Commission Consideration

Parris's claim that he is not an associated person for purposes of FINRA jurisdiction is not ripe for adjudication. The lack of ripeness is due exclusively to Parris's failure to request a hearing on the matter of jurisdiction. The Commission has not been provided with a decision reached by a FINRA adjudicator, based on trial-level evidence and argument, on which to base appellate review. This appeal should therefore be dismissed.

1. The Fault that the Record is Not Developed Enough For Commission Reviews Lies With Parris

The sole reason this matter is before the Commission with a record ill-suited for Commission review is because Parris chose not to request a hearing in the one forum that would

have created a record explicitly addressing the question of jurisdiction, or any other issues raised by Parris. Instead, Parris asks the Commission to vacate FINRA's action or remand it, maintaining he was railroaded by FINRA's procedures and barred without explanation. Br. at 23-25. In fact, it is Parris who has made calculated decisions to withhold documents critical to FINRA's investigation, while conspicuously avoiding testifying under oath at a hearing, or even presenting evidence.

During its investigation of Parris, FAS, and the two private placements, FINRA's Department of Enforcement maintained that FINRA had jurisdiction over Parris. Parris disagreed. Enforcement told Parris that he could "request a hearing" before a FINRA Hearing Panel, as provided by FINRA Rule 9552(e), to present any defenses he had to explain his failure to provide documents. Parris, who is represented by counsel, did not request a hearing. Rather, Parris chose to request a termination of his suspension on the grounds of "full compliance" when he admittedly had not fully complied, instead making the unilateral decision as to which documents he believed FINRA was entitled. When his request to terminate the suspension was predictably denied, he filed the instant appeal without exhausting his administrative remedies or complying with the FINRA Rule 8210 requests. Parris should not be allowed to gamble on one course of action, and later complain that he would like to try another. *See Mayer A. Amsel*, 52 S.E.C. 761, 767 (1996).

2. Parris's Status as a Schedule B Owner Does Not Exempt Him from FINRA Jurisdiction

Parris argues that his status as a Schedule B owner of FAS renders him untouchable for purposes of FINRA Rule 8210 requests. This is simply not true. Article I of FINRA's By-laws defines a "person associated with a member" or "associated person of a member" to mean:

(1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member.

Parris satisfies the definition of a controlling person because he indirectly controls FAS and is engaged in the securities and investment banking business, regardless of fact that he is only listed on Schedule B.

Parris misreads FINRA's By-Laws and asserts that Schedule B owners are not subject to Rule 8210 simply because the By-Laws explicitly reference Schedule A owners (extending status of associated person "for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member"), while it is silent as to Schedule B owners. This section of the By-Laws, however, simply extends the scope of FINRA Rule 8210 to all persons listed on Schedule A who may not fit into the other enumerated definitions of associated person. Parris, by contrast, is an associated person, and his attempts to twist the language of the By-Laws should be rejected.

VI. CONCLUSION

Parris failed to respond completely to FINRA's requests for information, and consequently, was suspended. He ignored numerous FINRA notices, and failed to avail himself of FINRA's procedures to request a hearing and present his defenses. Instead, he requested termination of the suspension, even though he had not fully complied with FINRA's document

requests. Parris failed to exhaust his administrative remedies and seeks appellate review without a proper basis.⁸ The Commission should dismiss Parris's application for review.

Respectfully submitted,



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June 1, 2016

⁸ Should the Commission rule that it has jurisdiction over Parris's appeal notwithstanding that Parris did not exhaust his administrative remedies, we agree that the Commission should remand this case to FINRA for further proceedings.

EXHIBIT A



Financial Industry Regulatory Authority

Sanction Guidelines

Overview

The regulatory mission of FINRA is to protect investors and strengthen market integrity through vigorous, even-handed and cost-effective self-regulation. FINRA embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. FINRA believes that an important facet of its regulatory function is the building of public confidence in the financial markets. As part of FINRA's regulatory mission, it must stand ready to discipline member firms and their associated persons by imposing sanctions when necessary and appropriate to protect investors, other member firms and associated persons, and to promote the public interest.

The National Adjudicatory Council (NAC), formerly the National Business Conduct Committee, has developed the *FINRA Sanction Guidelines* for use by the various bodies adjudicating disciplinary decisions, including Hearing Panels and the NAC itself (collectively, the Adjudicators), in determining appropriate remedial sanctions. FINRA has published the *FINRA Sanction Guidelines* so that members, associated persons and their counsel may become more familiar with the types of disciplinary sanctions that may be applicable to various violations. FINRA staff and respondents also may use these guidelines in crafting settlements, acknowledging the broadly recognized principle that settled cases generally result in lower sanctions than fully litigated cases to provide incentives to settle.

These guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicators in imposing sanctions consistently and fairly. The guidelines recommend ranges for sanctions and suggest factors that Adjudicators may consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicators may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these guidelines.

These guidelines address some typical securities-industry violations. For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.

In order to promote consistency and uniformity in the application of these guidelines, the NAC has outlined certain **General Principles Applicable to All Sanction Determinations** that should be considered in connection with the imposition of sanctions in all cases. Also included is a list of **Principal Considerations in Determining Sanctions**, which enumerates generic factors for consideration in all cases. Also, a number of guidelines identify potential principal considerations that are specific to the described violation.

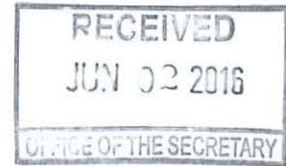
Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210

FINRA Rules 2010 and 8210

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p>Failure to Respond or to Respond Truthfully</p> <ol style="list-style-type: none"> Importance of the information requested as viewed from FINRA's perspective. <p>Providing a Partial but Incomplete Response</p> <ol style="list-style-type: none"> Importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request. Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response. Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response. <p>Failure to Respond in a Timely Manner</p> <ol style="list-style-type: none"> Importance of the information requested as viewed from FINRA's perspective. Number of requests made and the degree of regulatory pressure required to obtain a response. Length of time to respond. 	<p>Failure to Respond or to Respond Truthfully</p> <p>Fine of \$25,000 to \$73,000.</p> <p>Providing a Partial but Incomplete Response</p> <p>Fine of \$10,000 to \$73,000.</p> <p>Failure to Respond in a Timely Manner</p> <p>Fine of \$2,500 to \$37,000.</p>	<p>Individual</p> <p>If the individual did not respond in any manner, a bar should be standard.¹</p> <p>Where the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.</p> <p>Where mitigation exists, or the person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years.²</p> <p>Firm</p> <p>In an egregious case, expel the firm. If mitigation exists, consider suspending the firm with respect to any or all activities or functions for up to two years.</p> <p>In cases involving failure to respond in a timely manner, consider suspending the responsible individual(s) in any or all capacities and/or suspending the firm with respect to any or all activities or functions for a period of up to 30 business days.</p>

1. When a respondent does not respond until after FINRA files a complaint, Adjudicators should apply the presumption that the failure constitutes a complete failure to respond.

2. The lack of harm to customers or benefit to a violator does not mitigate a Rule 8210 violation.



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June 1, 2016

VIA MESSENGER

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Room 10915
Washington, DC 20549-1090

RE: In the Matter of the Application of Christopher A. Parris
Administrative Proceeding No. 3-17128

Dear Mr. Fields:

Enclosed please find the original and three copies of the Brief of FINRA in Opposition to Application for Review in the above-captioned matter.

Please contact me at (202) 728-8816 if you have any questions.

Very truly yours,

Colleen E. Durbin

Enclosures

cc: Alan M. Wolper, Esq.
Heidi E. VonderHeide, Esq.

CERTIFICATE OF SERVICE

I, Colleen E. Durbin, certify that on June 1, 2016, I caused a copy of FINRA's Brief in Opposition to Application for Review, In the Matter of the Application of Christopher A. Parris, Administrative Proceeding File No. 3-17128 to be served by messenger and facsimile on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

and via Federal Express Overnight Delivery and facsimile on:

Alan M. Wolper, Esq.
Heidi E. VonderHeide
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Chicago, Illinois 60661
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Service was made on the Commission by messenger and on the applicant's counsel by Federal Express overnight delivery service due to the distance between FINRA's offices and the applicant's counsel.



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