

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

REGULATORY OPERATIONS,

Complainant,

v.

FAIRBRIDGE CAPITAL MARKETS  
(CRD No. 103818),

Respondent.

Expedited Proceeding  
No. FPI160004

STAR No. 20160495496

Hearing Officer—MJD

**HEARING PANEL DECISION**

July 11, 2016

**Respondent failed to file its 2015 annual audited report as required by Exchange Act Rule 17a-5, in violation of FINRA Rule 2010. Respondent is suspended until it files the requisite audit. Respondent is also ordered to pay hearing costs.**

**Appearances**

For the Complainant: Matthew Baskir, Esq., Meredith MacVicar, Esq., and Ann-Marie Mason, Esq., for Regulatory Operations, Financial Industry Regulatory Authority.

For the Respondent: Eduardo Prado, President and Chief Executive Officer of Fairbridge Capital Markets.

**DECISION**

**I. Procedural History**

On March 15, 2016, the Department of Member Regulation sent a Notice of Suspension (“Notice”) to Respondent Fairbridge Capital Markets because it failed to file an annual audit for the 2015 fiscal year, which ended on December 31, 2015. The audit was due by February 29, 2016. The Notice stated that, pursuant to FINRA Rule 9552, Fairbridge’s registration would be suspended effective April 8, 2016, unless it submitted the required annual audit by that date.<sup>1</sup> The Notice also informed Respondent that, pursuant to Rule 9559(c)(1), a written request for a hearing filed with the Office of Hearing Officers before April 8, 2016, would stay the

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<sup>1</sup> The Notice is Complainant’s exhibit CX-1. In this Decision, “CX” refers to Complainant’s exhibits. Although Respondent labeled its six exhibits “CM,” this Decision will refer to them as “RX.” “Tr.” refers to the transcript of the hearing.

effectiveness of the Notice. On April 6, 2016, Respondent timely filed a request for a hearing pursuant to Rules 9552 and 9559.<sup>2</sup>

## II. Factual Findings and Legal Conclusions

Fairbridge has been a member of FINRA since October 2000. Its main offices are located in Guaynabo, Puerto Rico.<sup>3</sup> It has a net capital requirement of \$100,000.<sup>4</sup> The firm is one of Puerto Rico's smallest broker-dealers.<sup>5</sup>

The key facts are not in dispute. Fairbridge's deadline to file its 2015 annual audit was February 29, 2016.<sup>6</sup> Respondent has not filed its 2015 fiscal year audit.

The firm's President, Eduardo Prado, testified at the hearing to explain its considerable delay in filing its annual audit.<sup>7</sup> He attributed the delay to the financial crisis in Puerto Rico and its decision to change auditors. On February 12, 2016, Fairbridge notified the Securities and Exchange Commission ("SEC") in writing, pursuant to SEC Rule 17a-5(f)(2), that it had retained BDO Puerto Rico ("BDO") as its new auditor.<sup>8</sup> According to Prado, the firm had been in contact with BDO by December 2015 about serving as its new auditor.<sup>9</sup>

Prado also testified that the firm had "some real difficulty getting documentation from" its previous accounting firm, which had performed the firm's annual audits for the preceding 15 years. Prado acknowledged that Fairbridge had not fully paid its prior auditor for its services, and "that is part of the problem that we are having with them."<sup>10</sup> Nonetheless, according to Prado, at the time of the hearing, BDO had all the documentation needed to conduct the audit.<sup>11</sup> Prado testified that his new auditor "is almost complete with the audit" and expected it to file it within two weeks from the date of the hearing, or by the end of May 2016.<sup>12</sup>

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<sup>2</sup> CX-4.

<sup>3</sup> CX-5, at 4.

<sup>4</sup> Tr. 115.

<sup>5</sup> Tr. 75, 109.

<sup>6</sup> CX-1, at 1; CX-2; CX-3; Tr. 30.

<sup>7</sup> The hearing was held by telephone on May 18, 2016. Regulatory Operations called one witness in its case, Dawn Calonge, a surveillance director with Member Regulation at FINRA's District Office in Boca Raton, Florida. Tr. 20. Fairbridge called one witness in its case, Eduardo Prado. In addition to serving as Respondent's President, Prado is also its Chief Executive Officer and Financial Operations Principal. He is also the owner of Fairbridge. CX-5, at 5-6; Tr. 111.

<sup>8</sup> CX-6.

<sup>9</sup> Tr. 93.

<sup>10</sup> Tr. 93.

<sup>11</sup> Tr. 81, 94-96.

<sup>12</sup> Tr. 81, 91, 103. BDO told Regulatory Operations in early May 2016 that it needed another two weeks to complete its audit. Tr. 101. As of the date of issuance of this Decision, Fairbridge has not filed its 2015 audited report.

In its request for a hearing, Fairbridge stated that it had timely requested an extension to file the audit but the request was “mishandled” by Member Regulation.<sup>13</sup> According to Member Regulation, it did not receive the request in a timely manner and in the proper form. As a result, on March 15, 2016, it sent the firm the Notice that led to this expedited proceeding.

On February 13, 2016, Prado emailed a letter to Member Regulation asking for a 30-day extension to file Fairbridge’s audited report. In the letter, Prado explained that the firm needed the extension because it had retained a new auditor and there was a delay in its receiving documents from the firm’s previous auditor.<sup>14</sup>

To request an extension of time to file an audit, Member Regulation requires a firm to submit two documents no later than three days before the audit deadline. The first is a letter signed by a firm’s chief financial officer specifying the length and the reason for the extension. The second is a letter from the auditor representing that, based on the work completed to date, the auditor believes the firm is in compliance with the net capital and customer protection requirements set forth in SEC Rules 15c3-1 and 15c3-3, there are no existing material weaknesses or books and records deficiencies, and it expects to issue an unqualified audit opinion.<sup>15</sup> FINRA’s policy for granting extensions of time to file an audit is available on FINRA’s website. If a firm timely submits the two letters, Member Regulation “typically” grants a ten-business-day extension. Only in “exceptional circumstances” does Member Regulation grant a firm an extension of 30 calendar days.<sup>16</sup>

According to Member Regulation, although Fairbridge timely submitted the letter requesting the extension, it did not timely submit the letter from the firm’s auditor. On February 13, 2016, Prado sent both letters to FINRA’s offices in Boca Raton via Federal Express. Prado addressed the Federal Express envelope to an old FINRA office. Federal Express redirected the envelope to the correct FINRA office address and delivered it on February 16, 2016. Even though the Federal Express envelope was ultimately delivered to the correct address, according to testimony at the hearing, Member Regulation never received it.<sup>17</sup>

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<sup>13</sup> CX-4.

<sup>14</sup> CX-7; RX-1. The letter attached to the February 13, 2016 email was incorrectly dated February 25, 2016, because Prado used a template for the letter sent a year earlier in which Fairbridge requested an extension of time to file the firm’s 2014 audited report. Tr. 116. In early 2015, Fairbridge received a ten-business-day extension to file its 2014 audit. Tr. 25-26, 100.

<sup>15</sup> Tr. 35-37.

<sup>16</sup> Tr. 38-39.

<sup>17</sup> Tr. 45-47; CX-8; RX-2; RX-4. In the Federal Express envelope, Prado enclosed a letter from BDO addressed to FINRA dated February 15, 2016, which contained the representations required by Member Regulation before it grants a firm’s request for an extension of time to file its audit. CX-8, at 4; RX-2, at 4.

Member Regulation had discussed the extension request with Prado before issuing its Notice to the firm.<sup>18</sup> On March 14, referring to their prior telephone conversations, Member Regulation surveillance director Dawn Calonge emailed Prado that Member Regulation had no record of receiving the firm's auditor's letter or the Federal Express envelope. She told him that he needed to "provide this to the staff as soon as possible if [he wanted] any consideration for the extension."<sup>19</sup> On March 15, Prado sent an email to Calonge with copy of Fairbridge's letter asking for an extension, together with BDO's letter to FINRA supporting the extension request. The same day, Calonge responded that the time within which to request an extension had passed. Because it did not get both required letters before the February 29, 2016 deadline for filing Fairbridge's annual audit, on March 15, 2016, Member Regulation sent Fairbridge the Notice.

The Hearing Panel finds Fairbridge's defenses to failing to file its audited report unavailing. At the time of the hearing, Fairbridge's annual audit was more than two months overdue. The Hearing Panel determines that the firm has had ample time to file its annual report irrespective of the financial crisis in Puerto Rico, its decision to switch accounting firms at year-end, and its claimed confusion surrounding its communications with Member Regulation over its extension request. Prado also asked the Hearing Panel to consider that Fairbridge's customers have more than \$1 billion in securities on deposit and that suspending the firm would exacerbate Puerto Rico's financial crisis.<sup>20</sup> This argument is not relevant to whether Fairbridge has filed its annual audit.

SEC Exchange Act Rule 17a-5(d) requires every registered broker-dealer to file annually a report audited by an independent public accountant. Failure to comply with Exchange Act Rule 17a-5 violates FINRA Rule 2010.<sup>21</sup>

### **III. Conclusion**

The Hearing Panel finds that Fairbridge failed to file its 2015 fiscal year annual audit. Accordingly, it violated SEC Exchange Act Rule 17a-5, which constitutes a violation of FINRA Rule 2010.

### **IV. Order**

Fairbridge is suspended from FINRA membership for failing to file its 2015 audit, in violation of FINRA Rule 2010. The suspension will be effective upon the issuance of this Decision and will remain effective until Fairbridge files a report complying with the requirements of Exchange Act Rule 17a-5. If at the end of two months following the date of this

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<sup>18</sup> Tr. 46-47. Calonge testified that she told Prado that Member Regulation had not received the extension request but that it would only have been able to grant an extension of ten business days. Under the firm's circumstances, she told him, it would not consider a 30-calendar-day extension.

<sup>19</sup> RX-5, at 3.

<sup>20</sup> Tr. 18, 133.

<sup>21</sup> *E. Magnus Oppenheim & Co.*, 58 S.E.C. 231, 235 (2005).

Decision, Fairbridge has not filed a properly audited report for 2015, the suspension will convert to an expulsion. If Fairbridge files an acceptable audited report, pursuant to Rule 9552(f), it may apply to Member Regulation for termination of the suspension.

Fairbridge is ordered to pay costs of \$1,759.53, which includes an administrative fee of \$750 and the cost of the hearing transcript. The costs shall be due as of a date established by FINRA.<sup>22</sup>

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Michael J. Dixon  
Hearing Officer  
For the Hearing Panel

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<sup>22</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.