

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 3 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

XUMANII INTERNATIONAL
HOLDINGS CORP., a Nevada corporation,

No. 14-73103

Petitioner,

MEMORANDUM*

v.

U.S. SECURITIES & EXCHANGE
COMMISSION,

Respondent.

On Petition for Review of an Order of the
Securities & Exchange Commission

Argued and Submitted October 19, 2016
Stanford, California

Before: CALLAHAN, HURWITZ, and OWENS, Circuit Judges.

Xumanii International Holdings Corp. (“Xumanii”) petitions for review of an order of the Securities and Exchange Commission (“SEC”) suspending trading in Xumanii’s stock for ten days. We dismiss the petition in part and deny it in part.

1. Xumanii did not exhaust its claims before the SEC. An SEC rule, 17

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

C.F.R. § 201.550(a), provides for post-deprivation review of trading suspensions. But, Xumanii did not avail itself of this process, and thus failed to exhaust the non-constitutional claims raised in its petition for review. Because the exhaustion requirement in 15 U.S.C. § 78y(c)(1) is jurisdictional, *Sacks v. SEC*, 648 F.3d 945, 950 (9th Cir. 2011), we dismiss Xumanii’s petition for review insofar as it raises non-constitutional claims.

2. Xumanii also contends that it was denied due process of law because it was not provided a pre-suspension hearing. Assuming without deciding that § 78y(c)(1) does not require exhaustion of this constitutional challenge, we hold that Xumanii’s due process rights were adequately protected by the availability of a prompt post-deprivation review of the trading suspension. *See Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). We deny Xumanii’s petition to the extent it asserts constitutional claims.

PETITION DISMISSED IN PART AND DENIED IN PART.