

**UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION**

In the Matter of the Application of
SUZANNE MARIE CAPELLINI

Admin. Proc. File No. 3-22284

For Review of Disciplinary Action Taken by
FINRA

NOTICE OF SUPPLEMENTAL AUTHORITIES

Suzanne Marie Capellini (“Capellini”) respectfully submits this notice of supplemental authorities relevant to her appeal of the decision of FINRA’s National Adjudicatory Council (“NAC”) dated October 3, 2024 (the “Decision”). Specifically, these authorities support Capellini’s arguments that FINRA’s exercise of Enforcement authority against her: (1) violated her Constitutional right to a jury trial; and (2) violated the private nondelegation doctrine.

I. Supplemental Authorities Regarding the Right to a Jury Trial

AT&T, Inc. v. FCC

In *AT&T, Inc. v. FCC*, 149 F.4th 491, 494 (5th Cir. 2025) (attached as Exhibit A), the Fifth Circuit Court of Appeals, following *SEC v. Jarkesy*, 603 U.S. 109 (2024), held that in-house adjudication conducted by the Federal Communications Commission (“FCC”) violated the Constitution by denying AT&T an Article III decisionmaker and a jury trial. In so ruling, the Fifth Circuit relied upon the same language from *Jarkesy* that Capellini relies upon here to argue that FINRA’s in-house adjudication against her violated her Constitutional right to a jury trial. For example, *AT&T* recognized, as Capellini argues here, that under *Jarkesy*, the Seventh Amendment

applies to suits that are “legal in nature,” including actions that seek “civil penalties,” which are designed to “punish or deter.” *Compare, AT&T*, 149 F.4th at 498 to Capellini’s Opening Brief in Support of Application for Review (“Op. Br.”), 11-13.

In addition, the *AT&T* court refused the FCC’s request to apply the “public rights” exception to the right to a jury trial because doing so would “blow a hole in what is meant to be a narrow exception to Article III.” 149 F.4th at 499-503. This is similar to Capellini’s argument that to allow the SEC to use FINRA to do what it cannot do itself – adjudicate fraud claims seeking civil penalties administratively instead of in federal court before a jury – would create a glaring *Jarkesy* loophole. Op. Br., 13. And the Fifth Circuit in *AT&T* Court relied upon the exact same language from *Jarkesy* that Capellini relies on here, indicating that “what matters” for purposes of Article III and the Seventh Amendment “is the substance of the suit, not where it is brought, who brings it or how it is labeled.” *Compare* 149 F.4th at 502-503 (quoting *Jarkesy*); Op. Br. 13 (same). *AT&T* directly supports application of the Seventh Amendment to FINRA’s Enforcement proceedings against Capellini because FINRA’s proceedings, like the FCC’s proceedings in *AT&T*, sought civil penalties designed to “punish or deter.” Thus, following the Supreme Court’s decision in *Jarkesy* and the Fifth Circuit’s recent decision in *AT&T*, FINRA violated Capellini’s Constitutional right to a jury trial, and the Decision should be vacated and set aside.

SEC v. Commonwealth Equity Servs.

The First Circuit Court of Appeals in *SEC v. Commonwealth Equity Servs.*, 133 F. 4th 152, 169 (1st Cir. 2025) (attached as Exhibit B) has also recently discussed the impact of the Supreme Court’s decision in *Jarkesy*, observing that *Jarkesy* “held that the Seventh Amendment right to a jury trial applies to SEC securities enforcement actions of its administrative orders... and that ‘every encroachment upon [the jury trial right] has been watched with great jealousy....’” (internal

citations omitted). The *Commonwealth* decision vacated the entry of summary judgment and a disgorgement award of approximately \$93 million in a civil enforcement action brought by the SEC against Commonwealth for failing to adequately disclose conflicts of interest in violation of the Investment Advisers Act. *Id.* at 155-56. In so ruling, the First Circuit faulted the district court for refusing to allow a jury to decide the fact intensive issue of materiality, and for making fundamental errors in its disgorgement calculations insofar as the SEC had failed to adequately establish a causal relationship between Commonwealth's profits and its alleged violations. *Id.* at 167-173. *Commonwealth* directly supports Capellini 's arguments here, including that her case should have been decided by a jury, and that FINRA Enforcement fundamentally failed to establish a causal relationship between any of her alleged violations and any financial gain to her, or any harm to investors or anyone else. Op. Br. 11-13, 30. Therefore, following *Commonwealth*, the Decision should be vacated and set aside.

Wulferic, LLC v. FDA

The United States District Court for the Northern District of Texas, following *Jarkesy* and *AT&T*, recently held that an administrative proceeding the FDA brought against a tobacco manufacturer violated the manufacturer's Constitutional right to a jury trial. *Wulferic, LLC v. F.D.A.*, 2025 U.S. Dist. LEXIS 148024, *2 (N.D.Tex. Aug. 1, 2025) (attached as Exhibit C). The court held that the FDA's civil penalty scheme, which was "designed to punish or deter", and which provided "'enhanced' penalties for certain intentional violations," was "legal in nature, like those in *Jarkesy* and *AT&T*." *Id.* at **26-27. Capellini similarly contends FINRA's proceedings against her were unconstitutional because "as in *Jarkesy*, the criteria for the severity of 'FINRA's' sanctions turns on 'culpability of the defendant.'" Op. Br. 13. And following *AT&T*, *Wulferic* refused to apply the public rights exception because to do so "would blow a hole in what is meant

to be a narrow exception to Article III." *Id.* at *32. *Wulferic* directly supports application of the Seventh Amendment to FINRA's Enforcement proceedings against Capellini because those proceedings, like the FDA's proceedings in *Wulferic*, also sought civil penalties designed to "punish or deter." Thus, following *Jarkesy*, *AT&T* and *Wulferic*, the Decision should be set aside.

II. Supplemental Authorities regarding the Private Nondelegation Doctrine

SEC Release No. 34-103228; File No. SR-FINRA-2025-004 and SEC Release No. 34-103285; File No. SR-FINRA-2025-006

Recent proposed rule changes by FINRA, effectively immediately upon filing with the SEC, confirm that, as Capellini argued in her opening brief, the proceedings against her violated the private nondelegation doctrine. On June 11, 2025, the SEC published notice that FINRA had filed with the SEC an immediately effective proposed rule change to stay the effectiveness of specified expulsions and FINRA actions. SEC Release No. 34-103228; File No. SR-FINRA-2025-004 ("Rel. No. 34-103228").¹ On June 17, 2025, the SEC published notice that FINRA had filed with the SEC an immediately effective proposed rule change relating to the effectiveness of certain immediately effective FINRA sanctions and actions. SEC Release No. 34-103285; File No. SR-FINRA-2025-006 ("Rel. No. 34-103285").² The purpose of these changes was to "align" FINRA rules with *Alpine Securities Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314 (D.C. Cir. 2024), *cert. denied* (June 2, 2025), Rel. No. 34-103228 at 3 and Rel. No. 34-103285 at 4. Capellini cited *Alpine* previously to argue that FINRA violated the private nondelegation doctrine. Op. Br. 13-14.

As relevant here, FINRA's proposed changes amended the rules requiring or allowing a sanction such as a bar to become effective immediately by providing FINRA adjudicators, such as Hearing Officers and the NAC, the authority to grant respondents and applicants the opportunity

¹ <https://www.sec.gov/files/rules/sro/finra/2025/34-103228.pdf>.

² <https://www.sec.gov/files/rules/sro/finra/2025/34-103285.pdf>.

to seek a stay from the SEC or take other appropriate action before the sanction takes effect. Rel. No. 34-103285 at 1-3. The purpose of this change was to conform FINRA's rules to the decision in *Alpine*, which held that FINRA's expulsion of a firm, "which effectively amounts to being barred from the securities industry," without providing the firm with a meaningful opportunity for SEC merits review first, likely violated the private nondelegation doctrine. 121 F. 4th at 1324-28.

FINRA's recent proposed rule changes, designed to align its rules with the holding in *Alpine*, directly support Capellini's argument that the proceedings against her also violated the private nondelegation doctrine. The NAC issued its Decision before these rule changes were proposed or in effect. As a result, Capellini was immediately barred from the securities industry, with no opportunity to seek to a stay or obtain meaningful interim relief from the SEC before the bar took effect, in clear violation of the private nondelegation doctrine. While the rule changes are not retroactive, their existence underscores that FINRA now acknowledges the constitutional problems with its prior approach. FINRA's proposed rule changes thus confirm that these proceedings are irrevocably tainted with an unconstitutional violation of the private nondelegation doctrine, and the sanctions against Capellini should be immediately set aside.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 3, 2025, I served a copy of the foregoing by email on:

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