

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Suzanne Marie Capellini

For Review of Disciplinary Action Taken by

FINRA

File No. 3-22284

**FINRA'S RESPONSE TO CAPELLINI'S
NOTICE OF SUPPLEMENTAL AUTHORITIES**

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November 26, 2025

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In a filing styled “Notice of Supplemental Authorities,” Suzanne Marie Capellini both brings to the Commission’s attention three cases and two recent FINRA rule filings and submits several additional pages of argument in support of her application for review.¹ Capellini’s supplemental argument is nothing more than an additional brief that is not permitted either by the Commission’s scheduling order in this matter or by its Rules of Practice. Moreover, even if the Commission were to consider this additional argument, which it should not, the cases Capellini discusses are presented solely because they apply the United States Supreme Court’s reasoning in *SEC v. Jarkesy*, 603 U.S. 109 (2024), a case whose findings do not concern the disciplinary

¹ FINRA files this response today, November 26, 2025, pursuant to the Commission’s October 1, 2025 order staying pending administrative proceedings while the Commission was subject to a lapse in appropriations and its November 13, 2025 order lifting the stay and further extending all deadlines by an additional period of 10 days. *See In re: Pending Admin. Proc.*, Exchange Act Release No. 104162, 2025 SEC LEXIS 2846 (Oct. 1, 2025); *In re: Pending Admin. Proc.*, Exchange Act Release No. 104177, 2025 SEC LEXIS 2867 (Nov. 13, 2025).

proceedings of a private, self-regulatory organization like FINRA. Lastly, the rule filings Capellini discusses similarly fail to support her constitutional claims, and they are instead simply a pretext to reassert faulty arguments previously made concerning the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314 (D.C. Cir. 2024). Capellini’s additional arguments accordingly do not change the Commission’s analysis of the constitutional challenges that she raises in this appeal, which are in any event meritless.

I. The Commission’s Scheduling Order and Rules Do Not Permit Capellini to Submit an Additional Brief

This appeal has been fully briefed pursuant to the Commission’s December 3, 2024 scheduling order, and the extension it granted on March 13, 2025. *See Order Granting Motion for Extension of Time and To Exceed Word Limitation*, Exchange Act Release No. 102664, 2025 SEC LEXIS 695 (Mar. 13, 2025); *Order Scheduling Briefs*, Exchange Act Release No. 101801, 2024 SEC LEXIS 3333 (Dec. 3, 2024) (hereinafter “Scheduling Order”). The Scheduling Order provides that “[n]o briefs other than those specified in this schedule may be filed without leave of the Commission.” *Scheduling Order*, 2024 SEC LEXIS 3333, at *1. Likewise, Commission Rule of Practice 450(a) prohibits the filing of any briefs other than those allowed by the briefing schedule, except with leave of the Commission. 17 C.F.R. § 201.450(a).

Capellini violates these proscriptions on additional briefing by using her submission of supplemental authorities to make several pages of surplus arguments, purportedly in support of her meritless claims that FINRA’s disciplinary proceedings concerning her implicate the Constitution’s Seventh Amendment and violate private nondelegation principles. The Commission should accordingly disregard Capellini’s notice, which amounts to nothing more

than pages of prohibited supplemental briefing for which she did not obtain the Commission's leave to file. *See Scheduling Order*, 2024 SEC LEXIS 3333, at *1; 17 C.F.R. § 201.450(a).

II. Capellini's Constitutional Challenges Continue to Have No Merit

None of the authorities Capellini discusses in her notice of supplemental authorities alters the analysis of her constitutional claims, which are without merit. FINRA is a private entity that is neither part of the government nor a state actor such that Seventh Amendment protections apply in its disciplinary proceedings. Moreover, FINRA operates subordinately to the Commission in satisfaction of private nondelegation principles when it imposes discipline on its members and their associated persons.

A. The Seventh Amendment Does Not Apply to FINRA Disciplinary Proceedings

Capellini's supplemental Seventh Amendment arguments miss their mark. Significantly, Capellini continues to fail to show that FINRA, a private, self-regulatory organization that is not part of the government, is a state actor such that constitutional requirements like the Seventh Amendment apply to FINRA disciplinary proceedings. *See Silver Leaf Partners, LLC*, Exchange Act Release No. 102538, 2025 SEC LEXIS 649, at *25 (Mar. 7, 2025) (finding that FINRA is not part of the government under the applicable test from *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374 (1995)), *appeal docketed*, No. 25-1171 (2d Cir. May 2, 2025); *Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999) ("A threshold requirement of plaintiff's constitutional claims is a demonstration that in denying plaintiff's constitutional rights, the defendant's conduct constituted state action."). To the contrary, the Commission has long held that FINRA does not engage in state action when it disciplines its members. *See Gregory Evan Goldstein*, Exchange

Act Release No. 71970, 2014 SEC LEXIS 1350, at *26 (Apr. 17, 2014) (“We have found repeatedly that FINRA is not a state actor.”).

Instead, Capellini points to additional cases that rely on *Jarkesy*—the only reason she brings these cases to the Commission’s attention. The cases Capellini cites concern claims by agencies that are unquestionably part of the government. *AT&T, Inc. v. FCC*, 149 F.4th 491 (5th Cir. 2025), concerns an in-house adjudication brought by the Federal Communications Commission. Similarly, *Wulferic, LLC v. U.S. FDA*, 2025 U.S. Dist. LEXIS 148024 (N.D. Tex. Aug. 1, 2025), involves an administrative process by the U.S. Food and Drug Administration. *SEC v. Commonwealth Equity Serv., LLC*, 133 F.4th 152 (1st Cir. 2025), involves the Commission and is further distinguishable because that case was brought by the Commission in court and the court of appeals considered *Jarkesy* in the context of whether the issue of materiality could be decided by the district court on a motion for summary judgment or must be decided by a jury. In short, these cases do not change the fact that Capellini has not established that FINRA is a state actor for constitutional purposes.

In *Jarkesy*, the Supreme Court confronted issues concerning “the basic concept of separation of powers that flow from the scheme of a tripartite government” and the ability of Congress to “withdraw from judicial cognizance” a matter that was the subject of a “suit at common law” at the time of the Founding under the Seventh Amendment. *Jarkesy*, 603 U.S. at 127 (internal quotation marks omitted). Capellini has not shown how such an analysis applies to a private actor like FINRA.

Nor are FINRA disciplinary actions suits at common law. FINRA’s system of private self-regulation of the securities industry dates to the 1790s and, at its core, sets rules of professional and ethical conduct by its members. *See Saad v. SEC*, 873 F.3d 297, 299 (D.C. Cir.

2017) (explaining that “[a]s part of its industry oversight, FINRA sets professional rules of conduct for its members”).² The hallmark the Supreme Court has looked to in determining whether a matter is a suit at common law is whether it is “made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789.” *Jarkesy*, 603 U.S. at 127-28 (quoting *Stern v. Marshall*, 564 U.S. 462, 484 (2011)) (internal quotation marks omitted). The self-regulatory mechanisms of the securities industry have never been “the stuff of the traditional actions at common law.” *Id.* at 128. Rather, they have been “the stuff of” private self-regulation of the securities industry pursuant to privately developed and implemented procedures—a system that Congress embraced in the 1930s with the passage of the Exchange Act. Thus, a disciplinary hearing before a self-regulatory organization like FINRA is not a “suit at common law” that must be heard in an Article III court. *See Daniel Turov*, 51 S.E.C. 235, 238 (1992).

Even if Capellini could establish that the Seventh Amendment applies to FINRA disciplinary proceedings—which she cannot—she nonetheless waived its protections by associating with a FINRA member and submitting to FINRA’s jurisdiction and rules, including its disciplinary procedures. *See CFTC v. Schor*, 478 U.S. 833, 848-50 (1986) (finding that Article III and jury-trial rights are “subject to waiver, just as are other personal constitutional rights”).

² Because a FINRA disciplinary action is not in the nature of a suit at common law, and FINRA imposes sanctions that are remedial and in the public interest, Capellini provides no justification for her assertion that a sanction imposed by way of a FINRA disciplinary action should be heard in an Article III court and not by the Commission under the statutory review scheme provided under Section 19(e) of the Exchange Act, 15 U.S.C. §78s(e). *Cf. Jarkesy*, 603 U.S. 128 (finding “no involvement by an Article III court in the initial adjudication is necessary” when a common law claim is not present).

B. The Rule Filings Capellini Cites Do Not Support Her Private Nondelegation Doctrine Claims

Finally, Capellini cites recent rule changes by FINRA and argues, incorrectly, that these support her claim that FINRA’s action against her violated the private nondelegation doctrine. Notice at 4-5.³ Capellini misunderstands the rule changes and mischaracterizes the reasons for them.

The first rule changes Capellini cites “stay the effectiveness of specified expulsions of member firms, cancellations of membership, and denials of applications for continued membership of disqualified member firms to allow for SEC review.” *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Stay the Effectiveness of Specified Expulsions and FINRA Actions*, Exchange Act Release No. 103228, 2025 SEC LEXIS 1624, at *1 (June 11, 2025). These rule changes are indeed meant to “align,” Notice at 4-5, FINRA rules with the D.C. Circuit’s opinion in *Alpine*. See *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Stay the Effectiveness of Specified Expulsions and FINRA Actions*, 2025 SEC LEXIS 1624, at *3-4, *17-18. *Alpine*, however, concerned the expulsion of a member firm in an expedited proceeding, and the rule change only applies to member firms that are expelled or otherwise excluded from membership in certain limited circumstances. See *Alpine Sec. Corp.*, 121 F.4th at 1330 (explaining that the court’s opinion is “narrow and limited to expedited expulsion proceedings”); *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Stay the Effectiveness of Specified Expulsions and FINRA Actions*, 2025 SEC LEXIS 1624, at *3 (explaining that the proposed rule change applies to “the effectiveness of

³ “Notice at __” refers to Capellini’s November 3, 2025 Notice of Supplemental Authorities. “RP __” refers to the page number in the certified record filed by FINRA on November 12, 2024. “Capellini Opening Br. at __” refers to Capellini’s January 31, 2025 brief in support of her application for review.

expulsions in expedited proceedings”); *see also Silver Leaf*, 2025 SEC LEXIS 649, at *26 n.51 (explaining that the firm in *Alpine* “demonstrated a likelihood of success as to its private nondelegation claim under the narrow circumstances where FINRA expelled the applicant in an expedited proceeding and the expulsion was allowed to take effect before the completion of Commission review proceedings”).

Significantly, the court in *Alpine* found that expulsion of a FINRA member firm “is unique” because it could effectively “shut down” a firm’s securities trading business. The court, however, distinguished the bar of an individual, which “may be meaningfully different” because a barred person can pursue other work while a FINRA bar is on appeal to the Commission. *Alpine Sec. Corp.*, 121 F.4th 1331, n.3. Accordingly, neither *Alpine* nor the rule changes apply in this case, which concerns the misconduct of a single individual, Capellini, whom FINRA has barred from associating with a member firm.

The other rule changes that Capellini cites amend FINRA rules that allow for a sanction (such as a bar) or other regulatory measure to take effect immediately. Those rule changes provide FINRA staff and adjudicators the authority “to grant respondents and applicants, where appropriate, the opportunity to seek a stay from the SEC or take other appropriate action before the sanction or other regulatory measure takes effect.” *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Effectiveness of Certain Immediately Effective FINRA Sanctions and Actions*, Exchange Act Release No. 103285, 2025 SEC LEXIS 1703, at *2 (June 17, 2025). These rule changes are *not*, as Capellini argues, for the purpose of aligning FINRA rules with *Alpine*—indeed, the rule filing expressly explained that FINRA was amending rules relating to the effectiveness of sanctions and other regulatory measures that “do not share the relevant characteristics of the sanction at issue in *Alpine*.” *Id.* at *5 n.5. Rather,

the rule changes allow FINRA to “briefly delay” the effectiveness of sanctions and other regulatory measures where appropriate, such as certain instances in which immediately effective sanctions “could have significant near-term effects.” *Id.* at *5. These rule changes also have no bearing on Capellini’s baseless nondelegation doctrine argument.⁴

None of these rule changes alter the fact that FINRA functions subordinately to the Commission in satisfaction of private nondelegation principles, and Capellini fails to establish otherwise. Moreover, Capellini ignores that Commission’s recent holding in *Silver Leaf* that “the relationship between FINRA and the Commission satisfies private-nondelegation principles.” *Silver Leaf*, 2025 SEC LEXIS 649, at *25-26.

Respectfully submitted,



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⁴ Capellini’s claim that the immediately effective bar FINRA imposed for her misconduct left her “with no opportunity to seek a stay or obtain meaningful interim relief from the SEC” is simply wrong. Notice at 5. At the time Capellini’s bar became effective, Capellini was not associated with any FINRA firm and, as she herself stated in briefing, she had no intention to reassociate with a FINRA member. RP 1104 (Stip. No. 5); Capellini Opening Br. at 30. In any event, had she chosen to do so, Capellini could have moved for a stay of the bar before the Commission. *See* 17 C.F.R. § 201.401(d).

CERTIFICATE OF COMPLIANCE

I, Celia L. Passaro, certify that this response complies with the Commission's Rules of Practice by omitting or redacting any sensitive personal information described in Rule of Practice 151(e).

Respectfully submitted,



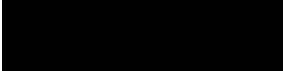
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CERTIFICATE OF SERVICE

I further certify that on this 26th day of November 2025, I caused a copy of the foregoing FINRA's Response to Capellini's Notice of Supplemental Authorities, in the matter of the Application for Review of Suzanne Marie Capellini, Administrative Proceeding File No. 3-22284, to be filed through the SEC's eFAP system.

And served by electronic mail on:

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