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 OPPOSITION TO APPLICANT'S MOTION FOR SUPPLEMENTAL BRIEFING

I. INTRODUCTION

FINRA opposes Suzanne Marie Capellini's (the "Applicant") April 10, 2026 motion for supplemental briefing. Applicant's motion is premised on her professed need to advise the Commission of what she describes as "highly relevant case law decided since the parties submitted their original briefs over a year ago." That "case law," however, consists of two recent federal court opinions that did not reach the merits of the constitutional issues presented in them and from which Applicant cites dicta that lacks precedential significance for the purpose of evaluating the constitutional arguments she has raised in this appeal. The merits of Applicant's constitutional arguments in this matter have long been fully briefed by the parties and the supplemental briefing that Applicant requests concerning these "new authorities" will not "*significantly aid the decisional process*." *See* Commission Rule of Practice Rule 421(b), 17 C.F.R. § 201.421(b) (emphasis added). Accordingly, the Commission should deny Applicant's motion.

OS Received 04/17/2026

II. BACKGROUND

Applicant's appeal concerns a final FINRA action dated October 3, 2024. RP 6995-7026.[1] In that action, FINRA found that the Applicant, a compliance professional with decades of experience, who served as the anti-money laundering compliance officer for FINRA member First Manhattan Co. ("FMC") while also acting as the registered representative for accounts controlled by her husband, (1) violated FINRA Rules 8210 and 2010 by providing false and misleading responses to FINRA information requests and by providing FINRA an altered document, and (2) violated FINRA Rules 3310 and 2010 by failing to establish and implement a reasonably designed AML program for the deposit and trading of low-priced securities and by failing to detect and investigate red flags of suspicious activity related to low-priced securities transactions executed by her husband. RP 6996, 6999-7000, 7010-29, 7026. For violating FINRA Rules 8210 and 2010, FINRA barred the Applicant from associating with any FINRA member in any capacity. RP 7023-26. With respect to Applicant's other misconduct, FINRA imposed on her a second, independent bar. RP 7021-23.

More than a year ago, Applicant and FINRA filed their principal briefs in this appeal. Those briefs addressed fully several meritless constitutional challenges to FINRA's disciplinary process that the Applicant raised for the first time before the Commission, including claims that

[1] "RP __" refers to the page number in the certified record filed by FINRA on November 12, 2024. "Capellini Br. at __" refers to Applicant's January 31, 2025 Opening Brief in Support of the Application for Review. "FINRA Br. at __" refers to FINRA's March 3, 2025 Brief in Opposition to the Application for Review. "Capellini Reply at __" refers to Applicant's April 3, 2025 Reply Brief in Support of the Application for Review. "Capellini Supplemental Authorities at __" refers to Applicant's November 3, 2025 Notice of Supplemental Authorities. "FINRA Response at __" refers to FINRA's November 26, 2025 Response to Capellini's Notice of Supplemental Authorities. "Capellini Motion at __" refers to Capellini's April 10, 2026 Motion for Supplemental Briefing. "Proposed Br. at __" refers to the [Proposed] Supplemental Brief attached to the Capellini Motion as Exhibit A.

the Applicant ostensibly grounded on Article II of the Constitution, the Seventh Amendment, and on private non-delegation principles. *See*, *e.g.*, Capellini Br. at 11-18; FINRA Br. at 37-48; Capellini Reply at 6-15.

Subsequently, under the guise of a "notice of supplemental authorities," Applicant filed yet another brief that presented several additional pages of argument in support of her constitutional claims. *See* Capellini Supplemental Authorities. FINRA objected to that filing, as it was neither permitted under the Commission's order scheduling the filing of briefs in this matter nor by the Commission's Rules of Practice. *See* FINRA Response. And in any event, the additional authorities Applicant cited then, some of which she now repeats in her "proposed supplemental brief," offered nothing to alter the Commission's analysis of the constitutional challenges the Applicant has raised in this case, including her Seventh Amendment and private non-delegation claims. *See* FINRA Response at 3-8.

Now, the latest. On April 10, 2026, the Applicant filed a "Motion for Supplemental Briefing," requesting leave to submit a "limited supplemental brief," a copy of which she attaches to her motion. Capellini Motion at 1. In her motion, Applicant claims that supplemental briefing is needed "to alert the Commission to certain highly relevant case law decided since the parties submitted their original briefs over a year ago." *Id*. That "case law" consists of two recent federal court opinions that the Applicant asserts "directly support [her constitutional] arguments." *Id*.

In the first case, *Smith v. SEC*, No. Civ. 24-3907, 2026 U.S. App. LEXIS 8983 (6th Cir. Mar. 27, 2026), the United States Court of Appeals for the Sixth Circuit denied Smith's petition for review asserting constitutional challenges to FINRA's disciplinary processes because Smith failed to exhaust his administrative remedies by raising those arguments before the Commission.

See id. at *2-3, *22, *27. In his lead opinion, Judge Readler nonetheless contemplated that, had Smith not forfeited his constitutional challenges by failing to raise them below, he may have been able to establish that he was entitled to a jury trial in an Article III court. *Id*. at *22-27. The other members of the Panel—Judges Murphy and Bloomekatz—issued concurring opinions, neither of which joined in the parts of Judge Readler's lead decision discussing the Seventh Amendment issue. *Id*. at *28-41. Indeed, Judge Bloomekatz explicitly stated that she "depart[ed] from the majority opinion because of its dicta opining on the merits of Smith's constitutional claim" and "[b]ecause [she] would not have addressed the merits of the unexhausted constitutional claim, . . . concur[ring] in the judgment only." *Id*. at *40-41.

In the second case, the District Court for the Western District of North Carolina dismissed the petitioner's constitutional challenges to FINRA's structure and proceedings because it found it lacked subject matter jurisdiction to decide the case. *See Black v. SEC*, No. 23-CV-00709-MEO-DCK, 2026 U.S. Dist. LEXIS 62340 (D.N.C. Mar. 24, 2026). Like in *Smith*, the court considered in passing, but did not reach the merits of, plaintiffs' constitutional claims. *Id*. at *28-29.

III. ARGUMENT

When deciding whether to order additional briefing, the Commission "may . . . consider any matter that it deems material, whether or not raised by the parties . . . where the Commission believes that such briefing would *significantly aid the decisional process*." 17 C.F.R. § 201.421(b) (emphasis added). Although Applicant's motion for supplemental briefing is ostensibly premised on two federal court opinions that she loosely characterizes as "highly relevant case law" that "directly supports" her constitutional arguments, the parts of those opinions that she seeks to address by filing her "[Proposed] Supplemental Brief" is in fact dicta

that carries with it no precedential consequence. Capellini Motion at 1. Under these circumstances, the "new authorities" that Applicant believes warrant yet another round of briefing in this case will not "significantly aid" the Commission in reaching a decision in this case. *See* 17 C.F.R. § 201.421(b). The Commission should therefore deny Applicant's motion.

The first "new authorit[y]" that Applicant claims to support her motion for supplemental briefing is the recently issued Sixth Circuit opinion in *Smith v. SEC*. Applicant contends that this opinion supports her argument that FINRA's disciplinary proceedings concerning her violated the Seventh Amendment. But, as Applicant concedes (as she must), the Sixth Circuit's lead opinion in *Smith* did not decide the merits of petitioner's Seventh Amendment claim "because Smith did not raise [it] before the SEC." Proposed Br. at 2. Consequently, as the court found, it was "statutorily barred from reaching Smith's constitutional arguments."[2] *Smith*, 2026 U.S. App. LEXIS 8983, at *22.

Undeterred, Applicant nonetheless asserts that supplemental briefing is needed here to discuss those parts of Judge Readler's lead opinion that reflect on an assumed Seventh Amendment challenge that petitioner admittedly did not bring, but which Judge Readler concludes simply "*may*" have entitled him to a jury trial in an Article III court.[3] *Id*. at *22-27.

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[2] As a threshold matter, FINRA argued in its brief opposing Applicant's request for review that, because the Applicant failed to raise her constitutional arguments before FINRA, and instead raised them for the first time in her appeal to the Commission, she forfeited her ability to challenge FINRA's action on constitutional grounds. FINRA Br. at 37 n.16. As the Commission has since confirmed, "challenges premised on constitutional claims are not exempt from 'ordinary principles of waiver and forfeiture.'" *See William Joseph Kielzcewski*, Exchange Act Release 104352, 2025 SEC LEXIS 3108, at *30 (Dec. 9, 2025). It is for this additional reason that supplemental briefing on any of Applicant's constitutional challenges is unwarranted.

[3] Judge Readler's discussion of the Seventh Amendment issues in *Smith* relies on his application of *SEC v. Jarkesy*, 603 U.S. 109, 109 (2024). *Id*. at *22-27. The parties here have already thoroughly briefed the applicability of *Jarkesy* in this case. *See* Capellini Br. at 11-18;

[Footnote continued on next page]

As even Judge Readler acknowledges, however, his reflections on a Seventh Amendment argument that might have been are, in hindsight, "all for naught." *Id*. at *27.

It is axiomatic that these types of abstract discussions of legal issues, which are "not necessary to decide" a case, is mere dicta that, "no matter how strong or how characterized," is not binding. *United States v. Garcia*, 413 F.3d 201, 232 n.2 (2d Cir. 2005) (Calabresi, J., concurring). In the end, the Applicant is left with nothing more than dicta to justify her motion for supplemental briefing on her Seventh Amendment arguments.

The second "new authority" that the Applicant asserts justifies her request for supplemental briefing fares no better than the first. Claiming support from an opinion of the Western District of North Carolina in the case of *Black v. SEC*, the Applicant also seeks supplemental briefing to expand on her claim that FINRA's disciplinary process violates the private non-delegation doctrine. Proposed Br. at 4-5. The sole question decided in *Black*, however, was "whether [the court had] jurisdiction over Plaintiff's claims despite the statutory review scheme [provided in the Securities Exchange Act of 1934]." 2026 U.S. Dist. LEXIS 62340, at *14. And as to this question, as Applicant readily concedes, the court dismissed the case after finding that it *did not* have subject matter jurisdiction to decide plaintiffs' claims. *Id*. at *2, *22; Proposed Br. at 4.

Despite not reaching the merits of the petitioners' constitutional claims, the court contemplated that the petitioners might have nonetheless suffered "irreparable harm" as a result

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FINRA Br. at 37-48; Capellini Reply at 6-15. In this respect, the Commission has concluded that constitutional jury trial rights do not apply to FINRA because it is not a state actor. *See, e.g.*, *Kielczewski*, 2025 SEC LEXIS 3108, at *34.

of FINRA's proceedings.[4] *Black*, 2026 U.S. Dist. LEXIS 62340, at *28-29. But because the *Black* court decided that it lacked jurisdiction to hear the plaintiff's constitutional claims, its thoughts on whether the plaintiff's may have suffered "irreparable harm" because of FINRA's disciplinary proceedings in that case is dicta that is without precedential value.[5]

In summary, because it concerns non-binding dicta, Capellini's proposed supplemental briefing concerning *Smith* and *Black* will not "significantly aid the [Commission's] decisional process." See 17 C.F.R. § 201.421(b). The supposed "new authorities" for which Applicant seeks supplemental briefing are not, as she teases, "relevant case law" that "directly" supports her constitutional challenges because neither case decided the merits of *any* constitutional issue. Allowing supplemental briefing in these circumstances would not aid the Commission in deciding the constitutional issues that have already been fully briefed in this case—issues which, in any event, Applicant waived and forfeited by failing to raise them in the proceedings before FINRA. Accordingly, the Commission should deny Capellini's motion for supplemental briefing.

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[4] In so doing, the court relied solely on Judge Walker's concurrence in part and dissent in part in *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314 (D.C. Cir. 2024), in which Judge Walker asserted that FINRA's structure violated the Constitution because it exercised authority without proper oversight by the SEC. *Black*, 2026 U.S. Dist. LEXIS 62340, at *28-29. The parties here have already fully briefed the implications of the D.C. Circuit's Alpine opinion. *See* Capellini Br. at 13-14; FINRA Br. at 46-48 & n.27; Capellini Reply at 11-12. In this regard, the Commission has acknowledged the *Alpine* opinion but found it not applicable to proceedings like this one. *See Silver Leaf Partners, LLC*, Exchange Act Release No. 102538, 2025 SEC LEXIS 649, at *26 n.51 (Mar. 7, 2025). "The relationship between FINRA and the Commission satisfies private-nondelegation principles." *Id.* at *26.

[5] The court found that, "after the suspense that comes with a ride on the [jurisdictional] roller coaster, . . . it appears to the Court that it does not have jurisdiction to address the merits of Plaintiffs' claims." *Id*. at *29 (internal quotations omitted).

IV. CONCLUSION

The parties already have thoroughly briefed the issues on appeal. The supplemental briefing that Capellini's requests, because it is sought solely to discuss dicta, will not significantly aid the Commission's decisional process. Accordingly, the Commission should deny Capellini's motion for supplemental briefing.[6]

Respectfully submitted,

/s/ Celia Passaro

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[6] Should the Commission decide to grant Capellini's request for additional briefing, FINRA reserves its right to submit arguments on the merits in the time set by a Commission briefing order.

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,

/s/ *Celia Passaro*

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CERTIFICATE OF SERVICE

I further certify that on this 17th day of April 2026, I caused a copy of the foregoing FINRA's Opposition to Capellini's Motion for Supplemental Briefing, 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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