

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

In the Matter of the Application of

Southeast Investments, N.C., Inc. and Frank Harmon Black

For Review of Disciplinary Action Taken by

FINRA

File No. 3-19185

**FINRA’S RESPONSE TO
APPLICANTS’ “MOTION TO DISMISS”**

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July 10, 2025

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I. Introduction

On July 2, 2025, Southeast Investments, N.C., Inc. (“SEI”) and Frank Harmon Black (the “Applicants”), through counsel, filed with the Securities and Exchange Commission a motion (the “Motion”) requesting “dismissal with prejudice of all claims brought by [FINRA]” based on myriad, never-before-raised arguments that “FINRA’s adjudicatory process is unconstitutionally structured.” Although titled and framed as a “motion to dismiss,” a thorough review of the Motion reveals that it is in effect a motion requesting that the Commission reconsider its December 7, 2023 order in this matter. FINRA therefore files this limited response to the Motion to provide notice that it construes the Motion as a request for reconsideration under Rule 470 of the Commission’s Rules of Practice, 17 C.F.R. § 201.470, and to preserve its right to

respond to the substance of the Applicants’ constitutional and other arguments should the Commission interpret the Motion as something other than what it clearly is.¹

II. Background

In September 2015, FINRA’s Department of Enforcement filed a five-cause complaint initiating disciplinary proceedings against the Applicants. RP 0001.² The complaint alleged that: (1) SEI, acting through Black, provided to FINRA fabricated documents, which falsely showed that Black inspected the offices of several registered representatives, when Black did not do so; (2) Black and SEI, through Black, provided false investigative testimony concerning these alleged office inspections during an on-the-record interview; (3) Black and SEI established a deficient supervisory system regarding office inspections; (4) Black and SEI failed to preserve and maintain all the firm’s business-related emails; and (5) Black and SEI failed to establish, maintain, and enforce a supervisory system and written supervisory procedures designed to supervise the firm’s review and preservation of emails.

In March 2017, after a four-day evidentiary hearing, a FINRA Hearing Panel issued a decision finding that Black and SEI engaged in the misconduct alleged in the complaint. RP

¹ Commission Rule of Practice 470 provides that “[n]o response to a motion for reconsideration shall be filed unless requested by the Commission.” 17 C.F.R. § 201.470(b). Because the Applicants’ filing is only ostensibly a “motion to dismiss,” FINRA submits this response out of an abundance of caution and to make clear that, in light of the context of the Applicants’ request and the effective relief that they seek from the Commission, FINRA construes the Applicants’ request for relief as a motion for reconsideration of the December 7, 2023 Commission order. Should the Commission request additional briefing on the Motion or interpret it as something other than a motion to reconsider, FINRA requests that it be permitted to file a brief on such issues that the Commission directs. *Cf. Bitclave PTE LTD*, Exchange Act Release No. 11373, 2025 SEC LEXIS 1070 (Apr. 11, 2025) (ordering further briefing after receiving notice from the Commission’s Division of Enforcement that it construed party’s motion as a motion to reconsider). By filing this response, FINRA does not waive any arguments that may be raised in response to the Motion.

² “RP __” refers to the page numbers in the certified record that FINRA filed with the Commission on June 11, 2019.

3631. The Hearing Panel barred Black from associating with any FINRA member in any capacity and fined SEI \$73,000 for testifying falsely and fabricating documents. For their supervisory failures, the Hearing Panel fined Black and SEI, jointly and severally, \$120,000.

The Applicants appealed the Hearing Panel's decision to FINRA's National Adjudicatory Council ("NAC"). In May 2019, the NAC issued a decision finding that Black and SEI: (1) provided to FINRA fabricated documents and testified falsely that Black inspected the registered representatives' offices at issue; (2) failed to establish, maintain, and enforce a reasonable supervisory system and written supervisory procedures to ensure the adequate retention and review of business-related emails; and (3) failed to retain certain emails.³ RP 4278. For the Applicants' false testimony and fabrication of documents, the NAC barred Black and fined the firm \$73,000. For the Applicants' supervisory and email retention failures, the NAC fined them, jointly and severally, \$73,500.

The Applicants timely appealed the NAC's decision to the Commission. RP 4323. On December 7, 2023, the Commission issued an order in which it sustained the NAC's findings and sanctions concerning the Applicants' supervisory and email-retention failures. *See Southeast Inv., N.C., Inc.*, Exchange Act Release No. 99118, 2023 SEC LEXIS 3460 (Dec. 7, 2023). The Commission, however, set aside the NAC's findings and sanctions related to the Applicants' alleged false testimony and fabrication of documents. The Commission remanded these matters to FINRA for further proceedings consistent with its decision.

On June 6, 2025, the NAC issued a decision dismissing the causes of action that the Commission had remanded to it for further consideration. *See Attachment A*. Thereafter, on June 25, 2025, the Applicants filed a petition for review of the Commission's December 7, 2023

³ The NAC affirmed the Applicants' supervisory and email retention violations on narrower grounds than the Hearing Panel. RP 4307-16.

order with the United States Court of Appeals for the Fourth Circuit under Section 25 of the Securities Exchange Act of 1934 (“Exchange Act”).⁴ See Attachment B.

The Applicants filed the Motion with the Commission on July 2, 2025. The Motion seeks to: (1) dismiss all claims brought by FINRA against the Applicants; (2) reverse the Commission’s decision affirming that the Applicants did not retain certain emails; (3) affirm with prejudice the NAC’s dismissal of the remanded causes of action; and (4) award the Applicants attorneys’ fees, costs, and damages and censure FINRA under the Equal Access to Justice Act.

III. Discussion

FINRA construes the Motion as essentially a request that the Commission reconsider its December 7, 2023 order and urges that the Commission do the same. As described above, the Applicants request that the Commission dismiss “all claims” brought against them, which at this point consist solely of the claims concerning the Applicants’ supervisory and email retention failures as set forth in the Commission’s December 2023 opinion. Similarly, the Applicants

⁴ Exchange Act Section 25 states that “[a] person aggrieved by a final order of the Commission entered pursuant to this title may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.” See 15 U.S.C. § 78y(a)(1).

Prior to the June 25, 2025 petition for review, the Applicants sought the Fourth Circuit’s review of the Commission’s December 2023 opinion. In January 2025, the Fourth Circuit dismissed the Applicants’ petition. See *Black v. SEC*, 125 F.4th 541, 547 (Jan. 14, 2025) (dismissing petition for lack of jurisdiction because the Commission’s opinion was not final based upon a remand to FINRA of certain causes of action). Further, in October 2023, the Applicants filed a request for preliminary injunction and complaint against the Commission and FINRA in federal district court seeking, among other things, to enjoin any Commission or FINRA proceedings against them and arguing that FINRA’s proceeding and structure are unconstitutional. *Black v. FINRA*, No. 23-cv-709 (W.D.N.C.). The parties have filed cross-motions for summary judgment, which remain pending.

request that the Commission reverse its findings and sanctions imposed for the Applicants' email-retention violations.⁵ As a practical matter and considering the Applicants' arguments, there is nothing left for the Commission to decide in the first instance in this case concerning the findings of liability or sanctions imposed for the Applicants' supervisory and email retention violations, the only remaining violations related to FINRA's action.⁶ *Cf. Keith Patrick Sequeira*, Exchange Act Release No. 94472, 2022 SEC LEXIS 724, at *3 (Mar. 18, 2022) (construing applicant's request that his suspension be set aside and for other relief as a motion for

⁵ The Applicants request this relief even though they did not dispute before the Commission that they failed to retain the emails in question. *See Southeast Inv.*, 2023 SEC LEXIS 3460, at *23.

⁶ The Applicants' request that the Commission affirm the NAC's dismissal of the remanded causes of action and award fees, costs, and damages to them under the Equal Access to Justice Act does not change the fact that the only violations remaining from FINRA's action are encompassed by the December 7, 2023 opinion and that, consequently, the Applicants are by necessity seeking reconsideration of that opinion vis-à-vis the Motion. *See Edward M. Daspin*, Exchange Act Release No. 98554, 2023 SEC LEXIS 2741, at *1 n.4 (Sept. 27, 2023) (construing applicant's request for a variety of different forms of relief as substantively a motion for reconsideration of a prior Commission opinion). Moreover, the Applicants' additional requests contained in the Motion and unrelated to the December 2023 opinion can be easily disposed of on jurisdictional grounds. First, Applicants have not appealed the NAC's dismissal of the remanded causes of action and the dismissal is not currently before the Commission. Further, even if the Applicants did seek to appeal the NAC's dismissal of the remanded causes of action, none of the bases for jurisdiction under Exchange Act Section 19(d)(1) is present, and the Applicants are not aggrieved parties entitled to appeal pursuant to Exchange Act Section 19(d)(2). *See* 15 U.S.C. §§ 78s(d)(1) (setting forth the bases for the Commission's jurisdiction of an appeal of an SRO action), (2) (providing that an aggrieved party may appeal an SRO action enumerated under Exchange Act Section 19(d)(1)); *Sandeep Varma*, Exchange Act Release No. 98102, 2023 SEC LEXIS 2001, *3 (Aug. 10, 2023) (stating that Exchange Act Section 19(d) authorizes Commission review of an SRO action only under the specific circumstances enunciated therein); *Daniel M. Pecoraro*, 48 S.E.C. 875, 875 n.1 (1987) (dismissing appeal of entity against whom no findings were made and on whom no sanctions were imposed on grounds that entity was not "aggrieved" and therefore had no basis for appeal under Exchange Act Section 19(d)(2)). Second, the Commission has previously held that the Equal Access to Justice Act does not apply to FINRA proceedings and the Commission lacks the authority to award the Applicants fees, costs, and damages under this statute. *See Sisung Secs. Corp.*, Exchange Act Release No. 56741, 2007 SEC LEXIS 2562, *29-30 (Nov. 5, 2007). This relief, requested by the Applicants for the first time in this matter in the Motion, is therefore unavailable.

reconsideration of a prior Commission decision where he did not identify any action that FINRA took after imposing the suspension addressed by the prior Commission decision). There have been no proceedings before the Commission since the December 2023 order, and the Applicants do not argue that there should be any additional proceedings. Consequently, and for all intents and purposes, the Motion is nothing more than a request to reconsider the Commission's December 2023 order determining liability and sanctions for the Applicants' supervisory and email retention failures. As such, the Motion should be construed as a motion to reconsider governed by the requirements of Commission Rule of Practice 470.

IV. Conclusion

Under the facts and circumstances, FINRA construes the Applicants' "Motion to Dismiss" as a request that the Commission reconsider its December 7, 2023 order. As such, FINRA notifies the Applicants and the Commission that it believes that the Applicants' requested relief is governed by Commission Rule of Practice 470. FINRA urges the Commission to interpret the Applicants' request in a similar fashion.

Respectfully Submitted,

/s/ Andrew Love

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July 10, 2025

CERTIFICATE OF COMPLIANCE

I, Andrew Love, certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

/s/ Andrew Love
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Dated: July 10, 2025

CERTIFICATE OF SERVICE

I, Gary Dernelle, certify that on this 10th day of July 2025, I caused a copy of the foregoing Response to Applicants' "Motion to Dismiss," Administrative Proceeding File No. 3-19185, to be filed with the SEC's Office of the Secretary via the eFAP filing system and to be served by electronic mail on:

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**INDEX OF ATTACHMENTS TO FINRA'S RESPONSE TO
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Attachment	Description
A	NAC Decision Dismissing Remanded Causes of Action Dated June 6, 2025
B	Applicants' Petition for Review dated June 25, 2025