

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

In the Matter of the Application of

Silver Leaf Partners, LLC

For Review of Disciplinary Action

Taken by

FINRA

File No. 3-19896

**FINRA'S OPPOSITION TO SILVER LEAF'S  
SUPPLEMENT TO MOTIONS FOR STAY AND ADDITIONAL EVIDENCE**

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July 16, 2024

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Applicant Silver Leaf Partners, LLC, filed a Supplement to Motions for Stay and Additional Evidence in which it seeks to submit for the Commission’s consideration the Supreme Court’s recent decision in *Securities and Exchange Commission v. Jarkesy*, 219 L.Ed.2d 650 (U.S. 2024), and repeats its request to stay the Commission’s consideration of its application for review until the U.S. Court of Appeals for the District of Columbia Circuit resolves constitutional issues raised in an unrelated matter, *Alpine Securities Corp. v. Financial Industry Regulatory Authority*. FINRA does not oppose Silver Leaf’s motion to submit the Court’s decision in *Jarkesy*, but FINRA opposes the motion to stay because Silver Leaf provides no reason why the Commission’s review of Silver Leaf’s application should not continue.

**I. PROCEDURAL BACKGROUND**

In July 2020, Silver Leaf filed an application for review of a decision issued by FINRA’s National Adjudicatory Council (“NAC”). In its decision, the NAC found that Silver Leaf

violated FINRA and NASD rules by (a) paying almost \$3 million in transaction-based compensation to an unregistered person and several nonmember entities and (b) failing to reasonably supervise its business. *See* RP 6579.<sup>1</sup> For paying transaction-based compensation to an unregistered person and nonmember entities, the NAC fined Silver Leaf \$50,000. RP 6610-11. For failing to reasonably supervise its business, the NAC fined Silver Leaf \$50,000, ordered the firm to retain an independent consultant to review its policies and procedures, and suspended the firm from engaging in its “Corporate Advisory” line of business until it certifies its implementation of the independent consultant’s recommendations. RP 6611-14. Under FINRA Rule 9370, the sanctions the NAC imposed are stayed while Silver Leaf’s appeal to the Commission is pending.

On August 31, 2023, Silver Leaf filed a pleading titled “Motions for Stay and Additional Evidence,” in which it asked the Commission to stay indefinitely its review of the NAC’s decision until the court of appeals resolved the constitutional issues raised in the *Alpine* litigation.<sup>2</sup> FINRA opposed Silver Leaf’s motion to stay because Silver Leaf did not provide good cause for a stay, as required under SEC Rule of Practice 161. Specifically, Silver Leaf did not show that it would be prejudiced in any way if a stay was not granted.

On December 7, 2023, Silver Leaf filed a pleading titled “Supplement to Motions for Stay and Additional Evidence,” in which it reaffirmed its request to stay this proceeding

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<sup>1</sup> “RP” refers to the page in the certified record FINRA filed with the Commission.

<sup>2</sup> Silver Leaf also asked the Commission to review “FINRA’s business and enforcement practices,” order FINRA to amend its Central Registration Depository disclosure regarding the NAC’s decision, and “reserve a process for damages and restitution related thereto.” FINRA opposed those requests, as well.

indefinitely and sought to submit to the Commission an amicus curiae brief that was filed with the court in the *Alpine* litigation.<sup>3</sup>

On July 11, 2024, Silver Leaf filed its most recent pleading titled “Supplement to Motions for Stay and Additional Evidence,” in which it repeats its request to stay this proceeding and asks the Commission to consider the *Jarkesy* decision.

## **II. ARGUMENT**

The Commission should deny Silver Leaf’s motion to stay this proceeding indefinitely for the reasons stated in FINRA’s Opposition to Motion for Stay and Additional Evidence, which FINRA filed with the Commission on September 8, 2023. As FINRA explains in that brief, Silver Leaf’s motion to stay is governed by SEC Rule of Practice 161. *See John Roger Faherty*, Exchange Act Release No. 41454, 1999 SEC LEXIS 1067, at \*1-2 (May 26, 1999) (stating that an applicant’s request “for an indefinite postponement of this review proceeding” is governed by SEC Rule of Practice 161 rather than SEC Rule of Practice 141).

Delay for its own sake is contrary to the SEC’s Rules of Practice. Under SEC Rule of Practice 161, the Commission may stay a review proceeding for “good cause.” *Id.* at \*2. In considering such a request, the Commission “should adhere to a policy strongly disfavoring” delays “except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.” SEC Rule of Practice 161(b), 17 C.F.R. § 201.161(b). The Commission also must consider the length of the proceeding to date, the number of postponements, adjournments or extensions already granted, the stage of the proceedings at the time of the request, and any other matters as justice may

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<sup>3</sup> FINRA filed an opposition on December 14, 2023.

require. *Id.* A stay of proceedings may not exceed 21 days unless the Commission finds that a longer period is necessary. SEC Rule of Practice 161(c)(1), 17 C.F.R. § 201.161(c)(1).

Silver Leaf has not made the required “strong showing” that it will be prejudiced if the Commission does not stay this review proceeding. Indeed, Silver Leaf has not shown—in its motion to stay or in any of its supplemental filings—that it will be prejudiced in any way if its motion to stay is denied.

Other relevant factors also weigh against staying this proceeding: Silver Leaf’s application for review has been pending for four years, and the parties have fully briefed the issues on appeal. Because Silver Leaf has not shown that it will be prejudiced if this proceeding is not stayed, and the other relevant factors weigh against a stay, the Commission should deny Silver Leaf’s motion to stay this proceeding.

FINRA does not oppose Silver Leaf’s motion to submit for the Commission’s consideration the Supreme Court’s decision in *Jarkesy*.

#### **IV. CONCLUSION**

The Commission should deny Silver Leaf’s motion to stay because Silver Leaf has failed to demonstrate good cause for an indefinite stay of this review proceeding.

Respectfully submitted,

/s/ Michael M. Smith

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July 16, 2024

**CERTIFICATE OF COMPLIANCE**

I, Michael M. Smith, certify that I have complied with the Commission's Rules of Practice by filing an opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

/s/ Michael M. Smith

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Dated: July 16, 2024

**CERTIFICATE OF SERVICE**

I, Michael M. Smith, certify that on this 16th day of July 2024, I caused a copy of the foregoing Opposition to Supplement to Motions for Stay and Additional Evidence, *In the Matter of the Application of Silver Leaf Partners, LLC*, Administrative Proceeding File No. 3-19896, to be served through the SEC's eFAP system on:

Vanessa A. Countryman  
The Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, DC 20549-1090

I further certify that, on this date, I caused a copy of FINRA's opposition in the foregoing matter to be served by electronic service on:

M. Fyzul Khan, Esq.  
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Respectfully submitted,

/s/ Michael M. Smith

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