

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

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 SUPPLEMENT TO MOTIONS FOR STAY AND  
ADDITIONAL EVIDENCE**

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December 14, 2023

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**I. INTRODUCTION**

Applicant Silver Leaf Partners, LLC, filed a supplement to its August 31, 2023 Motions for Stay and Additional Evidence (“August 31, 2023 Motions”). Silver Leaf’s supplemental pleading asks the Commission to consider with, and in support of, its August 31, 2023 Motions an amicus brief filed in a separate proceeding, *Alpine Securities Corp. v. Financial Industry Regulatory Authority*, No. 23-5129, 2023 U.S. App. LEXIS 16987 (D.C. Cir. Jul. 5, 2023) (“the Amicus Brief”). See Attachment A to Silver Leaf’s Supplement. Without discussion or explanation, Silver Leaf points to SEC Rule of Practice 452 for the submission of additional evidence in support of its request.

The Commission should deny Silver Leaf’s request, which is a thinly disguised attempt to make additional arguments that Silver Leaf could have—but failed—to make in its original motion. Moreover, Silver Leaf’s “supplement” fails to address the grounds for the relief it seeks,

and a cursory analysis under Silver Leaf’s purported authority to admit the Amicus Brief (SEC Rule of Practice 452) demonstrates that the Amicus Brief should not be admitted.

## II. ARGUMENT

Silver Leaf’s filing is misleadingly entitled “Supplement to Motions for Stay and Additional Evidence” when in fact, based on the relief requested, it should most appropriately be construed as a motion to introduce the Amicus Brief as additional evidence in its appeal of a June 2020 decision by FINRA’s National Adjudicatory Council imposing disciplinary sanctions for violations of FINRA and NASD rules. *See* RP 6579.<sup>1</sup> The Amicus Brief, however, does not constitute evidence relevant to Silver Leaf’s petition for review. It contains no facts regarding the underlying disciplinary proceeding, makes no arguments that are specific to Silver Leaf’s appeal, and does not constitute new or relevant legal authority or precedent. Rather, the Amicus Brief contains argument and citations to legal authorities in a separate matter where an unrelated party challenges a FINRA disciplinary proceeding on various constitutional grounds. In seeking to introduce the brief, Silver Leaf merely seeks to bolster its request that the Commission stay proceedings in this appeal with arguments the firm could have included in the August 31, 2023 Motions, but did not. The Commission should not permit Silver Leaf to circumvent the requirement that it make its arguments in the original pleading it filed (i.e., the August 21, 2023 Motions). *See Aegis Capital, LLC, Circle One Wealth Management, Administrative Proceedings Rulings Release No. 3961, 2016 SEC LEXIS 2320, at \*3-4 (Jul. 1, 2016) (declining to consider respondents’ need to retain counsel when deciding a motion for a continuance because respondents failed to raise the argument in their initial motion).*

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

Further, even taking Silver Leaf’s request at face value, the Commission should deny its request to admit the Amicus Brief into evidence. First, Silver Leaf fails to meet even the minimum standards for motions filed with the Commission. Although Silver Leaf’s filing is entitled “Supplemental Submission,” the relief requested—consideration of an amicus brief filed in the *Alpine* proceeding—is essentially the Commission’s acceptance of additional “evidence,” which is properly sought through a motion to adduce additional evidence under Rule 452. The filing therefore must meet the requirements of SEC Rule of Practice 154, which governs motions filed with the Commission. Silver Leaf’s filing does not even attempt to satisfy Rule 154.

Rule 154(a) requires that any motion filed with the Commission “shall state with particularity the grounds therefor” and “shall be accompanied by a written brief of the points and authorities relied upon.” 17 C.F.R. § 201.154(a). Silver Leaf’s filing does neither. The filing itself does not provide any basis for Silver Leaf’s request that the Commission permit submission of the Amicus Brief, nor is the filing accompanied by any supporting brief that could provide insight into the grounds on which Silver Leaf relies in making such a request. To the contrary, Silver Leaf’s request is two sentences long and says nothing substantive whatsoever. The Commission should therefore deny Silver Leaf’s request. *See, e.g.,* Order Dismissing Petition to Review Denial of “Motion to Accept ‘As Is’ the Second Amended Brief in Support of Motion to Reconsider at 4, *Raghavan Sathianathan*, Admin. Proc. File No. 3-12245, Exchange Act Release No. 55227 (Feb. 2, 2007) (declining to review a previous order denying a motion that did not meet the basic requirements of Rule 154).

Second, the Commission should deny Silver Leaf’s request for consideration of the Amicus Brief because the request fails to satisfy the two prongs of SEC Rule of Practice 452, which sets forth the requirements for the submission of additional evidence. Rule 452 states,

among other things, that the “Commission may allow the submission of additional evidence.” 17 C.F.R. § 201.452. The burden is on Silver Leaf to meet the requirements of Rule 452. *See, e.g., Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*58 (Nov. 9, 2012) (“Tucker failed to satisfy either of these requirements and we therefore decline to admit them.”); *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at \*56 n.60 (Feb. 10, 2012). Specifically, Rule 452 requires the moving party show with particularity that (1) the evidence is material and (2) there were reasonable grounds for the party’s failure to adduce the evidence earlier. *See Sidney C. Eng*, 53 S.E.C. 709, 720 (1998). The rule requires a distinctive demonstration that the additional evidence applicants seek to admit will “materially affect the outcome of the proceedings.” *Richard A. Holman*, 40 S.E.C. 870, 874 (1961). Silver Leaf’s half-page submission—which appears to be an end-run around its burden to make the required showing for a motion to adduce additional evidence—makes no attempt to demonstrate that the Amicus Brief meets either requirement of Rule 452.

Nor could Silver Leaf make such a showing. As stated above, the Amicus Brief does not constitute additional evidence as the brief does not contain any facts or other information pertaining to Silver Leaf’s appeal. Moreover, Silver Leaf cannot demonstrate that the brief will materially affect the outcome of Silver Leaf’s petition for review. The Amicus Brief argues that FINRA’s structure violates the United States Constitution. *See Brief of the American Free Enterprise Chamber of Commerce as Amicus Curiae in support of Plaintiff-Appellant and Reversal at 4, Alpine*, No. 23-5129 (D.C. Cir. Sept. 5, 2023). Silver Leaf made this same argument, unpersuasively, in its August 31, 2023 Motions. As discussed in FINRA’s September 8, 2023 Opposition to Motions for Stay and Additional Evidence (“Opposition to August 31, 2023 Motions”), the proceedings in *Alpine*, the merits of which have yet to be addressed, have no

bearing on Silver Leaf's appeal. Opposition to August 31, 2023 Motions at 3. That *amicus curiae* in the *Alpine* matter made arguments similar to those made less articulately in Silver Leaf's initial motion does nothing to change that fact. Consequently, the Amicus Brief, which reiterates baseless arguments Silver Leaf already submitted and was filed in support of a matter unrelated to Silver Leaf's appeal, is not material. *Cf. Asensio & Company, Inc.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at \*43-44 (Dec. 20, 2012) (denying motion to adduce additional evidence where Commission determined that submission firm sought to introduce contained no new information and merely restated previously made legal arguments). The Commission should therefore deny Silver Leaf's request for consideration of the brief.<sup>2</sup>

### III. CONCLUSION

Silver Leaf has failed to meet the standard for filing a motion with the Commission and has not made the requisite showing for the submission of additional evidence. The Commission therefore should deny Silver Leaf's request that the Commission consider the Amicus Brief.

Respectfully submitted,

/s/ Elizabeth Sisul

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December 14, 2023

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<sup>2</sup> Silver Leaf also has not shown reasonable grounds exist for its failure to make the arguments as enunciated in the Amicus Brief in the August 31, 2023 Motions. Although the Amicus Brief was filed after Silver Leaf filed the August 31, 2023 Motions, as discussed above, Silver Leaf could have made similar arguments and cited to the preexisting case law in the Amicus Brief when it originally filed the August 31, 2023 Motions. It did not do so, and it has failed to show that admitting the Amicus Brief under Rule 452 is appropriate.

**CERTIFICATE OF COMPLIANCE**

I, Elizabeth Sisul, 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/ Elizabeth Sisul

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Dated: December 14, 2023

**CERTIFICATE OF SERVICE**

I, Elizabeth Sisul, certify that on this 14th day of December 2023, 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 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/ Elizabeth Sisul

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