UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of SUZANNE MARIE CAPELLINI For Review of Disciplinary Action Taken by FINRA	Admin. Proc. File No. 3-22284

APPLICANT SUZANNE MARIE CAPELLINI'S REPLY IN SUPPORT OF MOTION TO STAY FINRA SANCTIONS PENDING COMMISSION DECISION, OR, IN THE ALTERNATIVE, FOR ENTRY OF A DECISION DEADLINE

OS Received 07/23/2026

TABLE OF CONTENTS

Page

OS Received 07/23/2026

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

OS Received 07/23/2026

Regulations

OS Received 07/23/2026

I. INTRODUCTION

FINRA's Opposition (the "Opposition") to Applicant Suzanne Marie Capellini's Motion to Stay Sanctions (the "Motion") fails to respond adequately to the principal arguments that Ms. Capellini advances in support of a stay.

First, Ms. Capellini has raised serious legal questions, on which she is likely to succeed on the merits. The clearest of these questions, which FINRA does not persuasively answer in its Opposition, is this: how could the Commission impose sanctions on Ms. Capellini (by affirming the NAC's October 3, 2024 decision) without a jury trial before an Article III judge under the Supreme Court's decisions in *SEC v. Jarkesy*, 603 U.S. 109 (2024), as recently reaffirmed in *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (U.S. June 4, 2026)? The answer, as made clear by the Sixth Circuit Court of Appeals' analysis in *Smith v. SEC*, 171 F.4th 798 (6th Cir. 2026), is that the Commission cannot do so without violating the Constitution. Because the Commission cannot constitutionally adjudicate fraud-based enforcement actions seeking punitive sanctions through its own administrative tribunals directly, the Commission also cannot constitutionally accomplish that same result indirectly through review of FINRA's adjudication of identical claims. This is a serious legal question, to which FINRA has no compelling response, and on which Ms. Capellini will succeed on the merits.

Second, Ms. Capellini has presented concrete evidence, in the form of a detailed declaration, recounting the specific, practical harms she has suffered and continues to suffer as a result of the unconstitutional bars against her. This declaration documents Ms. Capellini's efforts to obtain employment and other professional engagements outside the securities industry, which have been unsuccessful due to the bars. The declaration also demonstrates the ways in which FINRA's sanctions have damaged her reputation, health, dignity and emotional well-being. FINRA

OS Received 07/23/2026

ignores this declaration entirely – and fails to present any contrary evidence. Instead, FINRA appears to argue that no amount of harm, be it in the form of an individual's loss of final earning years and/or employability, or damage to reputation, health, dignity or emotional well-being, could *ever* suffice to warrant a stay. But that is not the law. The unrebutted practical harms to Ms. Capellini, particularly when combined with the irreversible constitutional injury of having been subjected to an illegitimate proceeding led by an illegitimate decisionmaker, suffice to establish irreparable harm and dwarf whatever speculative and nebulous interest FINRA has in "protecting investors" from Ms. Capellini, particularly given that FINRA has never even alleged, much less proven, that she ever did anything that actually harmed investors.

Rather than grapple meaningfully with any of these fundamental arguments in favor of a stay, FINRA's Opposition tries to distract from and avoid them. Most of the first 15 pages of the Opposition are devoted to describing the underlying facts of the case and explaining FINRA's view on why it expects to prevail on the merits of its claims that she violated FINRA Rules 3310, 8210 and 2010. While Ms. Capellini disagrees with all of this, for the reasons set forth in her other briefs on this appeal (which she incorporates herein by reference), it is all tangential to this Motion. This Motion is based on the serious Constitutional and jurisdictional issues she has raised, on which she is likely to succeed on the merits, and the irreparable harm she is suffering as a result of the unconstitutional sanctions imposed against her.

FINRA also tries to dodge Ms. Capellini's arguments on procedural grounds. FINRA argues that she waited too long to move to stay sanctions, but she moved promptly following changes in the legal landscape that made clear that a stay was warranted. And the case law, including case law cited by FINRA in its own Opposition, holds that delay is not a determinative factor for interim relief anyway. Similarly, FINRA argues that Ms. Capellini forfeited or waived her arguments that these proceedings are unconstitutional because she did not make them before FINRA. Ms. Capellini, however, did raise these arguments before FINRA, and her argument that a Commission decision affirming FINRA's sanctions would violate her constitutional rights is unique to this appeal and could not have been forfeited below. The very fact that FINRA desperately clings to these procedural arguments, however, is instructive. FINRA does not want to engage Ms. Capellini's arguments on the merits because FINRA knows it is going to lose.

Accordingly, the Commission should stay the sanctions against Ms. Capellini pending resolution of this appeal.

II. ARGUMENT

A. Ms. Capellini has a Substantial Likelihood of Success on the Merits on Serious Legal Questions

Ms. Capellini's prior briefing has identified several serious Constitutional and jurisdictional questions on which she has a substantial likelihood of success on the merits, but for purposes of the present Motion, three such questions are key, each of which is discussed below. The Commission has twice permitted supplemental briefing on these evolving constitutional questions over FINRA's opposition — including its grant of leave to file Ms. Capellini's supplemental reply brief discussing the Supreme Court's recent decision in *AT&T*. *See* Order Granting Motion to Submit Reply in Support of Supplemental Briefing dated July 15, 2026; Order Granting Motion to Submit Supplemental Briefing dated April 23, 2026.

1. *A Decision by the Commission to Affirm FINRA's Sanctions would Violate Ms. Capellini's Constitutional Right to a Jury Trial*

The first serious Constitutional question on which Ms. Capellini is substantially likely to succeed on the merits is as follows: would a ruling by the Commission to affirm the NAC's October 3, 2024 decision violate Ms. Capellini's Constitutional right to a jury trial before an Article III judge? This is a serious legal question, to which the answer is plainly yes.

OS Received 07/23/2026

The Supreme Court in *Jarkesy* held that the Seventh Amendment entitles a defendant to a jury trial when the Commission seeks civil penalties for securities fraud and prohibits the Commission from adjudicating such matters in-house before one of its administrative law judges, rather than in federal court. *SEC v. Jarkesy*, 603 U.S. 109, 115, 120-141 (June 27, 2024). Under *Jarkesy*, when the government seeks legal remedies for claims akin to common-law causes of action, the Seventh Amendment entitles the respondent to a jury, and the adjudication must occur in an Article III court. Both elements are present here. FINRA's claims against Ms. Capellini rested on what it characterized as misrepresentation and concealment in response to Rule 8210 requests, and on AML failures said to have facilitated unlawful trading — claims that, like the securities-fraud claims in *Jarkesy*, target "misrepresenting or concealing material facts" and are therefore analogous to common law fraud. *Id.* at 125. And the sanctions FINRA sought and obtained — two permanent industry bars — are designed to punish and to deter; they are legal, not equitable, in character, whatever label FINRA attaches. *See, e.g.*, *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013) (characterizing FINRA bar as "the securities industry equivalent of capital punishment") (citation omitted).

Following *Jarkesy*, the Sixth Circuit in *Smith* recently reasoned that a decision by the *Commission* to impose sanctions on a respondent in a FINRA disciplinary proceeding (by affirming sanctions by FINRA) would run afoul of the Seventh Amendment for the same reasons the Commission's administrative law judges in *Jarkesy* did:

> [W]e note that Smith, FINRA, and the SEC now all agree that FINRA merely acts as an aid to the SEC's ultimate adjudication. That makes the SEC the relevant adjudicatory body for applying the two-step framework. And for that reason, this case presents the same ultimate problem as did *Jarkesy*: The SEC is imposing sanctions against Smith (albeit on the recommendation of FINRA) without a jury trial before an Article III judge.

Smith, 171 F.4th at 812 (citing *Jarkesy*).

OS Received 07/23/2026

The Supreme Court's most recent decision in this area, *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (2026), reinforces the conclusion that a Commission decision to affirm the NAC here would violate Ms. Capellini's constitutional right to a jury trial. The Court there held that the FCC could impose a monetary forfeiture without a jury only because the forfeiture order created no enforceable obligation, the agency's findings carried no preclusive effect, and the government's sole path to collection was a trial *de novo* before a jury — before any obligation attaches, "the jury gets the last word." *Id.* at 1428-29. On that basis, the Court distinguished *Jarkesy*, where the agency's penalties were immediately enforceable and the agency's own fact-finding was final — rendering the Commission's in-house scheme unconstitutional. *Id.* at 1430.

The sanctions against Ms. Capellini plainly fall on the *Jarkesy* side of that line. A FINRA bar is self-executing and immediately operative: Ms. Capellini has been barred — and the bars broadcast through BrokerCheck — since the NAC's October 3, 2024 decision, with no jury and no trial *de novo* of any kind standing between FINRA's adjudication and the sanctions' full legal effect. Judicial review, if it occurs, proceeds on the administrative record, under deferential standards, before a court sitting without a jury. The feature that rescued the agency scheme in *FCC v. AT&T*, the need for a jury trial before any obligation attached, is absent here. That presents, at a minimum, a serious legal question as to whether the bars against Ms. Capellini may constitutionally remain in effect.

FINRA's Opposition does not seriously engage any of the foregoing arguments. Instead, FINRA avers that Ms. Capellini forfeited her Constitutional arguments because she did not raise them before FINRA, but this argument fails on several levels. As an initial matter, Ms. Capellini advances in this appeal before the Commission an argument that is unique to this appeal, i.e., that if the *Commission* issues an order affirming FINRA's sanctions against her, then the *Commission*

OS Received 07/23/2026

will violate her constitutional rights. That argument was not and could not have been forfeited in the proceedings before FINRA because this appeal is the first and only time in these proceedings when the *Commission* is being asked to endorse the sanctions that FINRA has imposed.

In addition, Ms. Capellini already established in her original briefing that she has argued at every stage that these proceedings are fundamentally unfair and that FINRA lacks authority over her, and that she specifically pressed the constitutional claims here below. *See* April 3, 2025 Reply Brief in Support of Application for Review ("Original Reply") at 7, n. 24 (citing record). For example, in her Motion for Expedited Review of Order Governing Rule 9285 Motion (NAC Record 6871), she argued that "[a]mong the challenges facing FINRA is the allegation that its Hearing Officers regularly adjudicate cases in the same manner as Article III judges appointed by the Executive Branch, but because they are not so appointed, they do not have such authority and thus violate the Constitutional rights of all those who come before them," citing an article in support that identified constitutional challenges FINRA's enforcement authority faced in court.

Furthermore, as Ms. Capellini further explained, the fact that she did not develop those arguments below in the same manner as here is understandable because the key cases she relies on here, including *Jarkesy* and *Alpine Securities* (and now *Smith* and *Black*), had not yet been decided. Original Reply at 7, n. 24. Ms. Capellini has also cited authority holding that, even if she had not raised the constitutional arguments below (which she did), those challenges can and should still be considered on appeal. *Id.* To penalize Ms. Capellini for failing to anticipate before FINRA the precise contours of the constitutional doctrines that the Supreme Court and the federal courts of appeals have since articulated would be both unfair and contrary to the Commission's practice of considering evolving case law on Constitutional issues.

The decision FINRA relies upon in its Opposition, *William Joseph Kielczewski*, Exchange Act Release No. 104352, 2025 SEC LEXIS 3108, at *30 (Dec. 9, 2025), *appeal docketed*, No. 26-1006 (D.C. Cir. Jan. 8, 2026), is both distinguishable (insofar as Ms. Capellini, unlike Mr. Kielczewski, *did* raise her Constitutional arguments below, and because Ms. Capellini is arguing pursuant to the new case *Smith* that the *Commission* would violate the Constitution by affirming FINRA's sanctions, which was not addressed in *Kielczewski*) and presently on appeal, and the Commission should be cautious about treating a decision currently under appellate review as dispositively foreclosing arguments that the D.C. Circuit may itself accept. For all these reasons, FINRA cannot escape a decision on the substantive merits of Capellini's constitutional arguments here on procedural grounds of "forfeiture."

FINRA also argues that the language Ms. Capellini points to from *Smith* is dicta, but it is highly persuasive reasoning from the Sixth Circuit Court of Appeals directly supporting the exact argument Ms. Capellini has made here, that for the Commission, which is unquestionably a "state actor," to uphold FINRA's sanctions against her would permit the Commission to do indirectly what the Commission cannot do directly – adjudicate claims for misrepresentation and concealment seeking civil penalties administratively rather than in a federal court where a defendant has a Constitutional right to a jury trial.

Finally, FINRA argues it is not a state actor such that the Seventh Amendment right to a jury trial does not apply to its proceedings. Opp. At 22. But the indisputable fact that the *Commission* is a state actor renders FINRA's argument about whether *FINRA* is a state actor a nullity. And the case FINRA cites, *Kielczewski*, relies on pre-*Jarkesy* case law in any event and thus does not explain how the Commission could affirm sanctions in a FINRA disciplinary proceeding such as this one without contravening the respondent's Seventh Amendment right to a jury trial in the wake of *Jarkesy*, *FCC* and *Smith*. The Commission in *Kielczewski*, 2025 SEC LEXIS 3108, at *34 indicated that "a threshold requirement for Kielczewski's… Seventh Amendment jury trial claims is 'a demonstration that in denying plaintiff's constitutional rights, the defendant's conduct constituted state action'" and that "courts have held that the requirements of… jury trial rights do not apply to FINRA (or its predecessor), because it is not a state actor," but the only Seventh Amendment case it cited in support was *Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999), which predates *Jarkesy* by a quarter century and addresses an arbitration agreement signed at the point of registration—not a punitive enforcement adjudication. *Kielczewski* simply did not resolve the issue Ms. Capellini raises here – that the Commission would violate her Constitutional right to a jury trial under *Jarkesy* by affirming FINRA's sanctions insofar as the Commission would do indirectly what it cannot do directly under *Jarkesy*.

Accordingly, Ms. Capellini raises a serious Constitutional question – whether a decision by the Commission affirming FINRA's sanctions would violate her right to a jury trial – on which she is likely to succeed on the merits.

2. *A Decision by the Commission to Affirm FINRA's Sanctions would Violate the Private Nondelegation Doctrine*

The second serious Constitutional question on which Ms. Capellini is substantially likely to succeed on the merits is as follows: would a ruling by the Commission to affirm the NAC's October 3, 2024 decision violate the private nondelegation doctrine? This is another serious legal question to which the answer is yes.

In the recent case of *Black v. Securities and Exchange Commission*, 2026 U.S. Dist. LEXIS 62340, *28-29 (D.N.C. Mar. 24, 2026), the Court included the following discussion:

> This Court finds the entirety of Judge Walker's concurrence in part and dissent in part in *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.* persuasive. 121 F.4th 1314, 468 U.S. App. D.C. 484 (D.C. Cir. 2024), *cert. denied*, 145 S. Ct. 2751, 222 L. Ed. 2d 1044 (2025). Judge Walker explains that "FINRA is likely a private entity

> exercising significant executive authority, [and it] subverts the constitutional design." *Id.* at 1343. FINRA "enforces federal law and rules that carry the force of law. And it does so without any initial approval from its supposed supervisor, the SEC." *Id.* at 1344-45. Judge Walker highlights that while "the SEC can reverse a sanction that FINRA imposes[,] . . . reversal of the sanction does not negate the vast array of powers that FINRA exercises before the matter even reaches the SEC." *Id.* at 1345. "This panoply of enforcement powers requires no contemporaneous oversight by the SEC. The SEC does not control FINRA's investigations, its prosecutions, or its initial adjudications. Until the SEC accepts an appeal from a final FINRA decision, FINRA wields its enforcement powers unilaterally." *Id.* at 1340. Indeed, "the issue of when oversight occurs is just as important as how much oversight occurs." *Id.* at 1346. Simply put, "Congress requires FINRA to 'enforce' both its own rules and federal securities law, without adequate control by the President. That arrangement violates the Constitution." *Id.* at 1348.

The *Black* court found persuasive Judge Walker's concurrence in part and dissent in part in the D.C. Circuit Court's decision in *Alpine*, which Capellini relied upon in her original briefing to demonstrate FINRA violated the private nondelegation doctrine here. Accordingly, following the reasoning in *Black*, the SEC should vacate the NAC's decision. To do otherwise would violate the private nondelegation doctrine.

FINRA argues that this language from *Black* is dicta and points to some limited contrary authority which is now on appeal in the courts, Opp. at 22, but *Black* nonetheless illustrates that multiple federal judges, including Judge Orso in *Black* and Judge Walker in *Alpine*, agree with the arguments Ms. Capellini has set forth here that FINRA's Enforcement proceedings violate the private nondelegation doctrine. The serious-question standard does not require binding Circuit precedent squarely deciding the issue in the movant's favor — if such precedent existed, the question would be settled, not serious. What the standard asks is whether the questions are substantial and unresolved, and the well-reasoned analyses of the district court in *Black* (finding Judge Walker's constitutional analysis of FINRA's structure persuasive), and of the *Alpine* majority itself — a *holding*, not dicta, that a private nondelegation challenge to FINRA's

OS Received 07/23/2026

enforcement authority was likely to succeed, 121 F.4th 1314, 1330–31, 1337 (D.C. Cir. 2024) — establish precisely that.

The applicability of the private nondelegation is thus a serious legal question on which Ms. Capellini is substantially likely to succeed on the merits.

3. *The Legal Landscape is Unsettled and Shifting against FINRA*

FINRA argues in response to the Constitutional issues Ms. Capellini has raised that "[n]o court has held that *any* constitutional right applies in FINRA disciplinary proceedings" (Opp. at 22), but this is answered by FINRA's own subsequent discussion of *Alpine*, where the D.C. Circuit held a constitutional challenge to FINRA's enforcement authority likely to succeed and directed that FINRA be enjoined from giving immediate effect to its sanction pending Commission review. 121 F.4th at 1330–31, 1337. FINRA's remaining refuge is *Alpine*'s footnote 3 — tentative language that an individual's bar "may be meaningfully different" from a firm's expulsion because the individual "can pursue other work." Opp. at 17, 23. But as made clear in the irreparable harm discussion below, on the present record, Ms. Capellini has presented uncontested evidence establishing her inability to pursue other work as a direct result of the bars.

Meanwhile, the tide in the courts runs in one direction – against FINRA. *See Smith*; *Black*; *SEC v. Commonwealth Equity Servs.*, 133 F.4th 152, 169 (1st Cir. 2025) (affirming jury-trial right after *Jarkesy*); *Wulferic, LLC v. FDA*, 2025 U.S. Dist. LEXIS 148024, at *2, *25–34 (N.D. Tex. Aug. 1, 2025) (applying *Jarkesy* to invalidate another agency's in-house adjudication). FINRA's counterweights — such as the Commission's *Kielczewski* and *Robbi J. Jones* (*on appeal in Jones v. SEC*, 25-60703 (5th Cir.)) decisions, likewise under review — confirm rather than refute that the framework is in active flux.

FINRA's effort to neutralize *DreamFunded* fares no better. FINRA notes it did not oppose the stay granted there (Opp. at 22, n. 7) — but FINRA opposed the original stay motion in the

OS Received 07/23/2026

same matter in 2021, *DreamFunded Marketplace, LLC*, Exchange Act Release No. 93566, 2021 SEC LEXIS 3421, *1 (Nov. 12, 2021) — a decision FINRA's own table of authorities cites — and the question here is not FINRA's litigation posture but the Commission's reasoning: that intervening constitutional developments warrant preserving the status quo during review. That reasoning applies with equal or greater force to Ms. Capellini. So too FINRA's observation that its June 2025 rule change staying the effectiveness of expulsions does not extend to individuals (Opp. at 23, n.8): the constitutional concern FINRA thereby acknowledged does not switch off at the firm/individual line — least of all on a record establishing that, for this individual, the bars operate with the career-ending force of an expulsion.

4. *FINRA Lacks Jurisdiction*

The third serious legal question on which Ms. Capellini is substantially likely to succeed on the merits is as follows: does FINRA lack jurisdiction over Ms. Capellini given that it filed its Complaint against her more than two years after the effective date of termination of her registration? This is another serious legal question to which the answer is yes.

Article V, Section 4(a)(i) of FINRA's By-Laws requires FINRA to file a complaint within "two years after the effective date of termination of registration pursuant to Section 3…." Section 3(a) in turn states: "Following the termination of the association with a member of a person who is registered with it, such member shall, not later than 30 days after such termination, give notice of the termination of such association to [FINRA] via electronic process or such other process as [FINRA] may prescribe on a form designated by [FINRA]." The plain language the By-Laws thus contemplates ***two*** ways a FINRA registration can be terminated: (1) "via electronic process"; or (2) "such other process as [FINRA] may prescribe on a form designated by [FINRA]."

The effective date of Ms. Capellini's termination of registration was May 8, 2020, as reflected in her CRD Report, which states:

> Registrations with Previous Employer(s)
>
> From 04/01/2009 to ***05/08/2020*** FIRST MANHATTAN CO (1845).

NAC Record 6477; 6899 n. 19 (emphasis added). This is supported by the undisputed facts establishing that Ms. Capellni's former employer, First Manhattan, provided FINRA notice of Ms. Capellini's termination "via electronic process" (email and a WebEx presentation) in May 2020:

> It is also undisputed that First Manhattan's law firm, WilmerHale, told FINRA about Capellini's termination within a few days of her termination. In fact, on May 11, 2020, WilmerHale made a presentation to FINRA, among others, in which it displayed 280 pages of materials, including the Rule 8210 responses prepared by Capellini that are the subject of this case.

NAC Record 989; *see also* 507; 1387; 1432-36; 1518-20; 5309. The Complaint was filed more than two years later, on June 1, 2022, and is therefore time-barred.

FINRA argues that *only* the filing of a Form U5 can trigger termination. Opp. 20-21. But that is not what Article V, Section 3(a) says. It says a member can give notice of termination either:

> via electronic process or such other process as [FINRA] may prescribe on a form designated by [FINRA].

FINRA's reading renders the foregoing language of the By-Laws meaningless because there would be only *one* way a member can notify FINRA of termination, the Form U5, whereas the By-Laws plainly contemplate *two* ways, (1) "electronic process" or (2) "such other process as [FINRA] may prescribe on a form designated by [FINRA]." At a minimum the By-Laws are ambiguous and should thus be construed against FINRA, the drafters, particularly here given the Constitutional questions surrounding the exercise of FINRA enforcement authority. *See, e.g.*, *In re Cerence S'holder Derivative Action*, 2024 U.S. Dist. LEXIS 230625*,* *8-9 (D. Mass. Dec. 20, 2024) (applying Delaware case law holding that any ambiguity must be construed against the drafter).

FINRA cites *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *11–14 (July 27, 2015), but there a formerly registered person argued the termination of his *employment* started the jurisdictional clock, which the Commission rejected, holding "FINRA maintains jurisdiction over formerly associated persons for two years after their FINRA registration ends, i.e., 'two years after the effective date of termination of registration.'" Ms. Capellini is not arguing that the mere fact her employment terminated in May 2020 triggered termination of her FINRA registration; she is arguing that First Manhattan's electronic notice of termination to FINRA in May 2020 did. *Evansen* thus does not answer the question here, which is whether a firm's notice of termination *other than* a Form U5 can trigger the "effective date of termination of registration." The By-Laws answer that question. Electronic process, including the email and WebEx presentation here, trigger termination of registration. No precedent holds that *only* the filing of the Form U5 can constitute sufficient notice triggering termination of FINRA registration; such a ruling would contravene the plain language of the By-Laws. At the very least, as recognized by the Hearing Officer below, "none of the SEC or NAC decisions confront precisely the circumstances that exist here," NAC Record at 989-991, making clear that this is a serious legal question.

As a result, whether FINRA has jurisdiction over Ms. Capellini is a serious legal issue, on which she is substantially likely to succeed on the merits.

B. Ms. Capellini is Suffering Ongoing, Irreparable Harm, which Weighs Heavily in Favor of a Stay

Ms. Capellini submitted with her opening brief a detailed declaration recounting the practical irreparable harm she has suffered and continues to suffer as a result of the bar, in the form of the loss of her final earning years and employability, as well as damage to her reputation, health, dignity and emotional well-being, which FINRA has failed to contest or rebut with any contrary evidence and which, particularly when combined with the constitutional injury she has suffered, more than suffices to establish irreparable harm, weighing heavily in favor of a stay.

FINRA argues that loss of money, time, energy, employment and inability to find work cannot constitute irreparable harm, Opp. 16-19, but the case law recognizes that the "loss of opportunity to pursue one's chosen profession, including by limiting their professional opportunities, constitutes irreparable harm." *Choupanzadeh v. Mullin*, 2026 U.S. Dist. LEXIS 132285, *11-14 (D.N.H. June 15, 2026) (citing and quoting *Saghafi v. Edlow*, 2026 U.S. Dist. LEXIS 91662, at *12 (D. Md. Apr. 24, 2026)). The cases FINRA cites are not to the contrary.

First, FINRA's cases acknowledge that there are circumstances in which economic injury, such as the destruction of a business, *can* constitute irreparable harm. *See Bruce Zipper*, Exch. Act Rel. No. 82158, 2017 SEC LEXIS 3706, at *15 (Nov. 27, 2017) (destruction of a business can constitute irreparable harm); *Bloomberg, L.P.*, Exch. Act Rel. No. 83755, 2018 SEC LEXIS 1911, at *38-40 (July 31, 2018) (permanent loss of customers can constitute irreparable harm). An individual person's loss of opportunity to pursue her chosen profession is directly analogous to that type of economic harm. *See Choupanzadeh*, 2026 U.S. Dist. LEXIS 132285, *12 (finding irreparable harm that "extends beyond ordinary economic injury" where "plaintiffs will not merely lose their jobs, but would also be 'categorically barred from lawful employment'") (citations omitted).

Second, several of FINRA's cases that refuse to find irreparable harm based on an individual's alleged loss of livelihood hinge on a failure of proof that the individual actually lost their livelihood as a result of the sanction at issue, rather than on any legal principle that loss of such livelihood could never constitute irreparable harm. *See Paul H. Giles*, Exchange Act Release No. 92177, 2021 SEC LEXIS 1627, at part II B (June 14, 2021) (Respondent had "not demonstrated that he will have to end his association with his current firm absent a stay, let alone leave the industry" and had "not shown that, absent a stay, he would be unable to obtain another

OS Received 07/23/2026

job…"); *DreamFunded Marketplace, LLC*, Exchange Act Release No. 93566, 2021 SEC LEXIS 3421, at *9 (Nov. 12, 2021) ("Applicants ask that the Commission not 'end a person's crowdfunding career.' But DreamFunded has not operated since withdrawing its registration with the Commission in October 2017 and terminating its funding portal membership with FINRA in November 2017."); *Richard Allen Riemer, Jr.*, Exchange Act Release No. 82014, 2017 SEC LEXIS 3523, at *9 (Nov. 3, 2017) ("Riemer does not assert (much less establish) that he could not find other employment."). These cases, like footnote 3 of the *Alpine* decision and *Lukezic*, discussed in Ms. Capellini's opening Motion to Stay (at p. 11), suggest that insofar as an individual can successfully *prove* they will lose the capacity to pursue other work as a result of a sanction, that individual has suffered irreparable harm warranting interim relief, in an analogous manner to a firm that has its business destroyed as a result of a sanction. Given Ms. Capellini's unrebutted declaration, there is no question that she has proven the bars have deprived her of the ability to pursue her chosen profession, or any similar profession.

In any event, the harms Ms. Capellini identify go far beyond her inability to pursue other work. The harm established here is not the abstract loss of the ability to reassociate with a FINRA member, and it is not "mere" money loss. It is the concrete, compounding, collateral consequence of two lifetime bars and their accompanying findings, broadcast daily through BrokerCheck: disqualification from any position requiring registration or a clean regulatory record; the practical unemployability of a barred compliance professional; the destruction of a reputation built over four decades in a small professional community; and statutory disqualification with effects across adjacent fields. *See* Declaration of Suzanne Marie Capellini filed with Motion to Stay, ¶¶ 5-17.

One collateral consequence merits particular emphasis because it is categorical, automatic, and directly redressable by the relief sought here. The bars render Ms. Capellini a "bad actor" under Rule 506(d) of Regulation D, 17 C.F.R. § 230.506(d), automatically disqualifying any private offering in which she participates in a covered capacity from the Rule 506 safe harbor. This is not a contested inference about her employability; it is a legal disqualification that operates by rule, without regard to her qualifications or the views of any prospective employer, and it forecloses precisely the compliance-adjacent work outside the securities industry that Ms. Capellini seeks. Decl. ¶¶ 12–14. Critically, the disqualification runs only so long as the bars remain in effect — meaning a stay would immediately lift it, while a vacatur entered years from now could never restore the opportunities lost in the interim. This is precisely the type of irreparable harm that warrants a stay of sanctions.

Giles's observation that lost employment is not irreparable "even when the loss is unrecoverable" addressed purely economic injury. 2021 SEC LEXIS 1627, at part II B. *Giles* did not hold that the permanent, non-compensable destruction of a late-career professional identity — what the D.C. Circuit has called "the securities industry equivalent of capital punishment," *Saad*, 718 F.3d at 906 — imposed twice on a sixty-eight-year-old compliance professional, can be remedied by a vacatur entered years later. She cannot be returned to the age at which the bars took effect; the years already lost cannot be reinstated; and monetary relief is unavailable for any of it — the hallmark of irreparable harm.

FINRA also argues that Ms. Capellini's delay in moving to stay sanctions weighs against her claim of irreparable harm, but as FINRA's own authorities acknowledge, delay by itself is not a determinative factor in deciding whether to award interim relief. *See Kenny A. Akindemowo*, Exchange Act Release No. 78352, 2016 SEC LEXIS 2522, at *6 n. 11 (July 18, 2016) (citation omitted). Ample case law confirms this, particularly in a case such as this one where: (1) the injury is ongoing, such that each additional month the bars remain in effect deepens the harms to Ms.

OS Received 07/23/2026

Capellini that no eventual vacatur can restore, and (2) the purported delay does not prejudice the opposing party. *See, e.g.*, *Cuviello v. City of Vallejo United*, 944 F.3d 816, 833 (9th Cir. 2019) ("[A]lthough a failure to seek speedy relief can imply the lack of a need for such relief, 'such tardiness is not particularly probative in the context of ongoing, worsening injuries.' Cuviello did not suffer a discrete, excisable injury. Each instance in which Cuviello restrained his own speech contributed to the constitutional injury he suffered.") (citation omitted); *Fish v. Kobach*, 840 F.3d 710, 753 (10th Cir. 2016) ("Secretary Kobach points to delay as though it should conclusively defeat a preliminary injunction but fails to make any argument as to how the particular delay at issue here undercuts a finding of irreparable harm. He argues only the length of the delay and fails to show how that delay prejudiced him. This failure alone is sufficient for us to reject his delay rationale.").

Nor was there anything dilatory about the motion's timing in any event. Unlike the movants in the cases cited by FINRA, who sought stays on records that had not changed, Ms. Capellini moved within weeks of the developments that transformed the legal landscape of this appeal: including the lapse, on April 27, 2026, of the Commission's extended decision deadline without any further extension order; the Commission's grant of a stay in *DreamFunded Marketplace, LLC*, Exchange Act Release No. 105425, 2026 SEC LEXIS 1272 (May 8, 2026); and the Supreme Court's decision in *FCC v. AT&T* on June 4, 2026. Her motion followed on June 23, 2026. A stay motion filed in the first month of this appeal could have cited none of that authority, nor the recent *Smith* and *Black* cases. The relevant chronology is not how long the bars have run — FINRA itself has represented to the Commission that the bars "have been in effect th[e] entire time," FINRA Mot. for Extension of Time, ¶ 5 (June 24, 2026) — but how promptly Ms. Capellini acted once the law and the procedural posture shifted. FINRA cannot invoke the

OS Received 07/23/2026

continuous operation of the bars when it seeks more time for itself, then treat that same continuity as a reason why Ms. Capellini's injury is not urgent. Accordingly, the timing of the present motion in no way undercuts Ms. Capellini's entitlement to a stay.

With respect to Ms. Capellini's claimed constitutional injury, FINRA tries to distinguish *Axon* by arguing it involved a federal agency and argues that here "review by the Commission and courts can fully vindicate" her constitutional claims. Opp. at 19. Subsequent review, however, can "fully vindicate" a constitutional claim only if the reviewing forum is itself constitutionally adequate — and the entire point of *SEC v. Jarkesy*, 603 U.S. 109 (2024), and *FCC v. AT&T*, as well as the Sixth Circuit's reasoning in *Smith*, is that Commission review of claims and sanctions of this character supplies neither the Article III forum nor the jury the Constitution requires. The here and now injury Ms. Capellini is suffering is thus directly analogous to the injury in *Axon* – being subjected to an illegitimate proceeding by an illegitimate decision-maker, which cannot be adequately remedied later because the injury would have already been suffered. *Axon Enter. v. FTC*, 598 U.S. 175, 191 (2023). This constitutional injury, combined with the practical injury Ms. Capellini is suffering, constitute clear irreparable harm warranting a stay.

C. A Stay will not Substantially Harm any Other Party or the Public Interest, which Weighs Heavily in Favor of a Stay

To establish harm to another party or the public interest, FINRA cites generic case law holding that enforcing FINRA Rules 8210 and 3310 is designed for the protection of investors. But FINRA has not pointed to any facts or evidence that demonstrate any specific, concrete risk that Ms. Capellini would pose to the public if a stay were granted; nor could it do so given the undisputed fact that nothing she was alleged to have done actually harmed any investor or market integrity. While the *Goldstein* and *PAZ* cases FINRA cites (Opposition at 19) hold, for example, that violators of Rule 8210 pose a risk to investors: (1) Ms. Capellini did not violate Rule 8210, as explained in her original appeals briefs and as the OHO dissent held; (2) Ms. Capellini is not seeking to work in the securities industry but outside the securities industry, and FINRA and the SEC do not have a legitimate interest in preventing that; and (3) it is entirely speculative that she would cause harm to anyone if the bars were lifted, whereas the harm to her from the bars is concrete and ongoing. *Compare Choupanzadeh*, 2026 U.S. Dist. LEXIS 132285, *14 ("The government responds that USCIS has a strong public interest in promoting the statutes and regulations immigrants and nonimmigrants must abide by when entering the United States. According to the government, granting plaintiffs injunctive relief would thwart those interests. As the plaintiffs point out, however, defendants fail to identify any national security concerns relating to them….").

In short, a stay would not return Ms. Capellini to the securities industry (she does not wish to return to the securities industry but instead pursue work in an adjacent field); it would suspend the operation of a sanction whose validity is under active constitutional review, while that review concludes. Where the movant's harm is specific, grave and ongoing and the regulator's interest is generic and abstract, the equities tip decidedly in favor of the movant.

Nor is the relief Ms. Capellini seeks novel. In *Alpine*, the D.C. Circuit directed that FINRA be enjoined from giving immediate effect to its sanction pending Commission review, precisely because the constitutional challenge was serious. 121 F.4th at 1330–31, 1337. In *DreamFunded*, the Commission granted the same interim protection in May of this year. A stay here would do no more than what that court, and this Commission, have already found appropriate: suspend a FINRA sanction while the body charged with reviewing it resolves a substantial challenge to its validity.

D. In the Alternative, the Commission should Set a Date Certain for Decision

FINRA's opposition, despite reciting the alternative request in its caption, nowhere specifically addresses — let alone opposes — Ms. Capellini's request that the Commission set a

OS Received 07/23/2026

date certain for its decision. The extended decision deadline lapsed on April 27, 2026 without a further extension order. A definite decision date would mitigate the ongoing harm without disturbing the sanctions in the interim, imposes no burden on FINRA — which has identified none — and serves the Commission's own interest in orderly resolution. If the Commission declines to stay the sanctions, this unopposed alternative should, at minimum, be granted.

III. CONCLUSION

For the foregoing reasons, and those set forth in her original motion papers, Ms. Capellini respectfully requests that the Commission enter an order staying the FINRA disciplinary sanctions imposed on her pending the Commission's decision on her Application for Review and any subsequent judicial review. In the alternative, Ms. Capellini respectfully requests that the Commission enter an order setting a date certain—no later than September 21, 2026—by which it will issue its decision on her Application for Review.

OS Received 07/23/2026

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Respectfully submitted,

Ian J. McLoughlin

Ian J. McLoughlin
SHAPIRO HABER & URMY LLP
One Boston Place
Boston, MA 02108
Telephone: (617) 439-3939
Facsimile: (617) 439-0134
imcloughlin@shulaw.com

Counsel for Suzanne Capellini

CERTIFICATE OF SERVICE

I certify that on July 23, 2026, I served a copy of the foregoing by email on:

Attn: Celia Passaro
Office of General Counsel
FINRA
1700 K Street, N.W.
Washington, D.C. 20006
ersilia.passaro@finra.org
nac.casefilings@finra.org

Ian J. McLoughlin
Ian J. McLoughlin

OS Received 07/23/2026