

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

In the Matter of the Application of

John F. Mangan

For Review of Action

Taken by

FINRA

File No. 3-22478

**FINRA'S OPPOSITION TO JOHN F. MANGAN'S
MOTION TO FILE A SUR-REPLY**

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June 27, 2025

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The Commission should deny John F. Mangan’s request to file a sur-reply for several reasons. First, FINRA did not raise any new arguments in its reply brief.¹ A sur-reply is meant to provide the moving party with the opportunity to respond to matters that could not have been raised in its opposition brief. *Lewis v. Rumsfeld*, 154 F. Supp. 2d 56, 61 (D.D.C. 2001) (“The standard for granting a leave to file a sur-reply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party’s reply”);

¹ Mangan’s reliance on *Nancy Kimball Mellon* is misplaced. In that instance, the Commission’s decision to permit Mellon, a pro se applicant, to file a sur-reply was influenced by the fact that FINRA did not object to the filing of a sur-reply, as it does here. *Nancy Kimball Mellon*, Exchange Act Release No. 97623, 2023 SEC LEXIS 1440, *5, n.6 (May 31, 2023). Moreover, Commission rules do “not contemplate the filing of a sur-reply[.]” *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, *1, n.1 (Jan. 30, 2009); *see also* Commission Rule of Practice 154(b), 17 C.F.R. § 201.154(b) (governing motions and providing only for briefs in opposition and reply briefs and not sur-reply briefs).

see also Simms v. Ctr. for Corr. Health and Pol’y Stud., 794 F. Supp. 2d 173, 186 n.7 (D.D.C. 2011) (denying motion for sur-reply when the defendant’s reply did not contain any material that went “beyond the parties (sic) dispute as framed by the [original] motion and plaintiff’s opposition”). Pending before the Commission is FINRA’s motion to dismiss Mangan’s application for review on the grounds that the Commission lacks jurisdiction. FINRA’s motion also reasonably requested that the Commission stay briefing on the merits until it resolves FINRA’s dispositive motion. Mangan’s opposition addressed FINRA’s jurisdictional arguments and stay arguments, but also interjected substantive arguments concerning the merits of his underlying request to vacate his AWC. FINRA’s reply rebutted Mangan’s arguments on the jurisdictional and stay issues, but did not address Mangan’s substantive arguments, instead reserving the right to make arguments should the Commission determine it has jurisdiction. FINRA did not in its reply expand on claims made in its original motion to dismiss, and the Commission should not permit Mangan to file a sur-reply here.²

² In his proposed sur-reply, Mangan argues that FINRA did not have the right to file its motion to dismiss this early in the case, and instead should have waited to seek dismissal until after briefing on the substantive issues. Mangan’s Sur-Reply at 4. The Commission should reject these baseless arguments. Jurisdiction is a threshold issue, and a matter should not proceed to briefing on the merits if the Commission does not have jurisdiction. It is settled law that if the Commission lacks jurisdiction under Section 19(d), it must dismiss the proceedings. *See Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 SEC LEXIS 956, at *3-4 (Apr. 30, 2008) (“If we find that we do not have jurisdiction [under Section 19(d)], we must dismiss the proceeding.”) (emphasis added); *Lance E. Van Alstyne*, 53 S.E.C. 1093, 1097 (1998) (dismissing application for review and stating that the Commission “lack[s] authority under Section 19(d) to review that action, because the NAC’s order does not fall within the actions enumerated under Section 19(d)(1)”).

Second, Mangan’s proposed sur-reply is another attempt at an impermissible collateral attack on a settlement he agreed to which the Commission does not have jurisdiction to review.³ Mangan is seeking yet another opportunity to argue that “extraordinary circumstances” require the Commission to ignore the absence of any jurisdictional grounds to review this appeal and deviate from settled precedent to review FINRA’s denial of Mangan’s petition to vacate his AWC. Contrary to his assertion, however, the Commission does not have discretion to exercise jurisdiction where Congress has not authorized it. “Section 19(d) does not authorize [the Commission] to review SRO action because an applicant claims ‘extraordinary circumstances’ or ‘compelling reasons.’ SRO action is not reviewable merely because it adversely affects the applicant.” *Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 SEC LEXIS 3464, *10 (July 7, 2020) (internal citations omitted). Nothing in Mangan’s proposed sur-reply establishes Commission jurisdiction.

³ Mangan’s proposed sur-reply also argues that FINRA ignored the Commission’s decision in *Roger T. Denha*, Investment Advisers Act Release No. 6872, 2025 SEC LEXIS 1079 (Apr. 11, 2025). As an initial matter, that decision involved a Commission decision concerning an application, pursuant to Rule 193 of the Commission’s Rules of Practice, by an individual whom the Commission had barred for consent to associate with a Commission-registered investment adviser. That is not the case here. In addition, in its reply brief, FINRA reserved its right to address this substantive issue should the Commission order briefing.

For these reasons, the Commission should deny Mangan's request to file a sur-reply.

Respectfully submitted,

/s/ Colleen Durbin

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June 27, 2025

CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this June 27, 2025, I caused a copy of the foregoing Opposition to John F. Mangan's Motion to File a Surreply, In the Matter of the Application of John F. Mangan, Administrative Proceeding File No. 3-22478, to be filed through the SEC's eFAP system on:

Vanessa Countryman, Secretary
Securities and Exchange Commission
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CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that this opposition 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/Colleen Durbin

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