

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82378 / December 21, 2017

Admin. Proc. File No. 3-17560r

In the Matter of the Application of

KIMBERLY SPRINGSTEEN-ABBOTT

For Review of Disciplinary Action Taken by

FINRA

ORDER GRANTING REQUEST TO SUBMIT ADDITIONAL BRIEFS

Kimberly Springsteen-Abbott filed an application, pursuant to Section 19(d)(2) of the Securities Exchange Act of 1934,¹ for review of FINRA disciplinary action taken against her. On September 8, 2017, the Commission ordered briefing on the application for review.

On November 30, 2017, Springsteen-Abbott timely filed her reply brief in support of her application for review. In that brief, she argued for the first time that the recent decisions in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), and *Saad v. SEC*, 873 F.3d 297 (D.C. Cir. 2017), establish that the sanctions FINRA imposed, particularly the bar from associating with a FINRA member, are punitive rather than remedial and must be considered in light of these new precedents.

By letter dated December 11, 2017, FINRA wrote to the Commission requesting that it direct the parties to file additional briefing regarding these arguments in Springsteen-Abbott's reply brief. The next day, Springsteen-Abbott filed an opposition to FINRA's request. Among other points, Springsteen-Abbott argued that *Kokesh* and *Saad* were published before FINRA filed its opposition brief, and so "[i]f FINRA believed these cases to be relevant, FINRA had every opportunity to discuss the[m]," particularly given that the opening brief included an argument that "a ban from the securities industry is a completely inappropriate punishment."

Springsteen-Abbott's arguments in her opening brief that her bar is unfair and inappropriate cannot be said to encompass the new arguments she raises in her reply brief—namely, that (a) "[i]n light of *Kokesh* and *Saad* [], FINRA . . . can no longer characterize an expulsion or suspension as remedial," and that (b) "[a]t the very least, . . . an evidentiary hearing" would be required to determine whether the sanctions are appropriate given points

¹ 15 U.S.C. § 78s(d)(2).

made in the *Saad* concurring opinion. Although Springsteen-Abbott could not have referenced *Saad* in her opening brief because it was not decided until after that brief was filed, Springsteen-Abbott chose to raise the new arguments based on *Kokesh* and *Saad* in her reply brief. FINRA should have an opportunity to respond to them.²

Accordingly, IT IS ORDERED, pursuant to Rule of Practice 421(b),³ that the parties file submissions limited to the issue of the relevance, if any, of the *Kokesh* and *Saad* decisions to this appeal. FINRA shall file a response brief not exceeding 7,000 words by January 22, 2018. Springsteen-Abbott shall file any reply brief not exceeding 5,000 words by February 5, 2018.⁴

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

² The *Kokesh* decision was published on June 5, 2017, before Springsteen-Abbott filed her opening brief. Yet she claims that FINRA should not have an opportunity to address *Saad* because it was decided before FINRA filed its opposition brief. Under Springsteen-Abbott's logic, she would be prevented from raising her arguments premised on *Kokesh* in her reply brief.

Springsteen-Abbott also refers to a pending statutory disqualification hearing before FINRA, suggesting that any delay in resolving the instant proceeding may somehow impair her rights in the statutory disqualification hearing. No decision has yet been reached in that matter, and it is separate from this proceeding. In any case, Springsteen-Abbott cannot raise a new issue in her reply brief in support of her application for review and then claim that FINRA should not be able to respond because it would delay the resolution of her application.

³ 17 C.F.R. § 201.421(b).

⁴ As provided by Rule of Practice 450(a), no briefs in addition to those specified in this order may be filed without leave of the Commission. The briefs shall conform to Rules of Practice 150-153, with respect to service, filing, and form, and Rule of Practice 450(b)-(d), with respect to content and length limitations, except as modified in this order. 17 C.F.R. §§ 201.150-153, 201.450(b)-(d). Requests for extensions of time to file briefs will be disfavored.