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Client Alert: The Supreme Court Declines to Address Challenges to FINRA Enforcement Proceedings, and FINRA Proposes Rules to Avoid Future Challenges

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On June 2, 2025, the Supreme Court denied the petition for writ of certiorari filed by Alpine Securities Corporation in *Alpine Securities Corp. v. Financial Industry Regulatory Authority*. Interestingly, on the same day, the Financial Industry Regulatory Authority (FINRA) sought to expedite a material rule change in an effort to protect itself from similar potential constitutional challenges in the future. These challenges—notably that the absence of U.S. Securities and Exchange Commission (SEC) review prior to an expulsion by FINRA likely violates the private nondelegation doctrine—were recently raised by Alpine in its long legal battle with FINRA, which recently resulted in the confirmation of Alpine's expulsion from FINRA membership. Originally, Alpine was expelled in an expedited proceeding without a chance to have the SEC review the expulsion.

While Alpine's dispute regarding the constitutionality of the FINRA expulsion process will not reach the

Supreme Court, those same challenges could still be raised in the near future by another firm. FINRA expelled 19 firms between 2020 and 2024, and future expelled firms might raise these same challenges.

Now, FINRA is attempting to shore up its defenses via rule modification. On June 2, FINRA filed proposed changes to various rules that would allow for SEC review of specific FINRA actions, such as expulsions, membership cancellations, and denials of continued membership, against member firms before they become effective. Ostensibly, these changes give FINRA a stronger defense that its actions are not in violation of the private nondelegation doctrine, which essentially requires that a private entity statutorily delegated a regulatory role (like FINRA) be supervised by a government actor (in this case, the SEC).

Interestingly, FINRA has filed the proposed changes for immediate effectiveness and requested that the SEC waive the requirement that the proposed changes not become operative for 30 days after the date of the filing. In doing so, FINRA can implement the proposed rule change on the date of filing, June 2.

The rule proposal is aimed at providing the following safeguards; relevant enforcement action will not become effective until one of two actions take place. One, the time for filing an application for review with the SEC has expired and no such application was filed; or two, if a timely action is filed, the expulsion would not take effect until the SEC completes its review.

The proposed changes would amend the following FINRA Rules:

- Rule 8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay
- Rule 9360. Effectiveness of Sanctions
- Rule 9370. Application to SEC for Review
- Rule 9520. Eligibility Proceedings
- Rule 9524. National Adjudicatory Council Consideration
- Rule 9525. Discretionary Review by the FINRA Board
- Rule 9527. Application to SEC for Review
- Rule 9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series
- Rule 900. Code of Procedure

As it relates to the *Alpine* case, and under the current rules, expulsions are generally effective immediately upon a Hearing Panel's decision becoming final. The proposed rule change slows this process and allows for SEC review. Additionally, under the proposal, Rule 9370 would be amended to explicitly state that expulsions under Rule 9349 (expulsions by the National Adjudicatory Council) or Rule 9351 (expulsions by the FINRA Board) would be stayed pending SEC review or the expiration of the review period.

Importantly, not only would these changes help to protect the validity of FINRA's enforcement arm action in similar cases, but they would also protect member firms and registered representatives facing enforcement sanctions by allowing more time to seek a review of their cases. As always, FINRA seeks to strike further balance in the rule proposal by noting that there will still be situations in which sanctions will take effect immediately—like cases wherein a member firm or a registered representative poses a risk to investors.

Please do not hesitate to reach out to the author of this article or a member of our team for more information.

Summer Associate Ryan McKeever was a contributing researcher for this article.

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