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Client Alert: FINRA Under Fire: New Lawsuit Challenges the Constitutionality of Its Enforcement Power

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The Financial Industry Regulatory Authority's (FINRA) enforcement framework is again under scrutiny, as Boustead Securities, Sutter Securities, and former CEO Keith Moore filed a constitutional challenge in the U.S. District Court for the District of Delaware seeking to halt a pending FINRA disciplinary proceeding that they claim is unconstitutional from top to bottom. The complaint alleges that FINRA, a private corporation and the only registered national securities association, serves as a first-mover regulator whose public complaint can immediately choke off market access in a mandatory membership regime, all before the U.S. Securities and Exchange Commission (SEC) or a court has any say.

The case arrives on the heels of the D.C. Circuit's narrow injunction in Alpine Securities, which barred FINRA from immediately expelling a member via expedited proceedings without contemporaneous SEC review, based on a likely private nondelegation violation. Judge Walker's partial dissent in *Alpine* went further, arguing that FINRA's investigative, prosecutorial, and initial adjudicatory roles amount to executive power that must be exercised by officers accountable under Article II, sharpening the constitutional lens through which new cases like Boustead are now viewed.

Boustead's claims reflect this trend but extend beyond expedited expulsion to challenge the architecture of FINRA's forum. The plaintiffs advance five theories: private nondelegation, Appointments Clause invalidity for FINRA Hearing Officers, Seventh Amendment jury rights in light of *Jarkesy*, due process violations

stemming from structural bias and limited procedural safeguards, and separation of powers concerns over the absence of presidential supervision or removal authority.

The complaint also details immediate business disruptions allegedly triggered by a FINRA January 15, 2026 public filing, including instructions to Nasdaq that reportedly halted initial public offerings underwritten by Boustead, interference in limited membership applications at Nasdaq and the New York Stock Exchange, issuer terminations, a clearing firm relationship cancellation, and the closure of personal brokerage accounts for senior principals. The suit frames these events as foreseeable collateral consequences of an "open regulatory matter," creating a "here and now" injury from being forced through an unconstitutionally structured proceeding.

How Boustead Fits—and Potentially Shifts—the FINRA Enforcement Landscape

Boustead places a comprehensive constitutional challenge to FINRA's enforcement arm squarely in federal court, not limited to expedited expulsion (unlike *Alpine*), and anchored in recent Supreme Court and appellate authority. The plaintiffs argue that FINRA's status as the only national securities association magnifies the real world impact of its public filings, since counterparties and exchanges treat a pending FINRA complaint as a disqualifying risk long before SEC or judicial review, effectively translating allegations into de facto market exclusion. This framing builds on *Alpine's* logic about the necessity of SEC superintendence and folds in structural Article II and jury trial arguments that, if credited, could reverberate across FINRA's adjudicatory model.

Thematic Continuity with *Alpine*

Boustead's nondelegation and SEC superintendence themes resonate with *Alpine's* central holding that the absence of contemporaneous SEC review at the expulsion stage likely violates the private nondelegation doctrine because of the immediate, industry wide effect of expulsion. Boustead applies similar logic to the moment of public accusation, alleging that even absent formal expulsion, market actors treat a publicly filed complaint as exclusionary, raising comparable superintendence concerns earlier in the process.

Expansion into Article II, Jury Trial, and Due Process

Boustead broadens the battleground by directly challenging the appointment and removal of Hearing Officers under Article II and by invoking *Jarkesy* to assert jury trial rights for legal claims with monetary sanctions, pushing beyond *Alpine's* expulsion specific posture. The due process allegations of structural bias within FINRA's in house forum further test whether private organizational control over adjudication can satisfy constitutional neutrality expectations when federal power is being exercised.

Implications for FINRA Regulated Firms and Individuals

If courts agree that immediate market defining consequences flow from FINRA's public filings in a mandatory membership landscape, pressure will grow to ensure earlier SEC or judicial involvement where coercive sanctions or industry exclusionary effects loom.

From a risk management vantage point, the complaint's allegations highlight the need for firms and associated persons to plan for collateral consequences of an "open regulatory matter," including exchange level decisions, clearing relationships, issuer engagements, and even personal account access, and to prepare for rapid response and potential front end judicial relief. This approach echoes prior guidance that members should strategically position early to preserve legal arguments and manage business risk during enforcement proceedings whose constitutional footing remains unsettled.

Member Firms facing investigations or complaints should assess whether the facts present expedited expulsion risk or other sanctions with immediate market effects, document collateral consequences in real time, and evaluate whether to seek preliminary relief in federal court to prevent irreparable harm while preserving constitutional arguments, all while monitoring SEC oversight touchpoints.

If you would like more information on how recent constitutional challenges to FINRA's enforcement framework may impact your business, regulatory strategy, or risk exposure, please contact Justin Senior or a member of Shumaker's Financial Services Industry Sector.

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