

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SUZANNE MARIE CAPELLINI
(CRD No. 1357703),

Respondent.

Disciplinary Proceeding
No. 2020066627202

Hearing Officer—DDM

ORDER GOVERNING FINRA RULE 9285 MOTION

I. Introduction

On July 14, 2023, the Extended Hearing Panel issued its decision in this disciplinary proceeding (“Decision”).¹ The Panel found under cause one that Respondent Suzanne Marie Capellini violated a provision of FINRA’s anti-money laundering (“AML”) compliance rule, FINRA Rule 3310(a), while she served as an AML Compliance Officer (“AMLCO”) at member firm First Manhattan Co. from January 2018 through May 2020 (“the Relevant Period”). The Panel found that Capellini failed to adopt and implement a reasonable AML program for First Manhattan’s deposit and trading of low-priced securities,² in violation of FINRA Rules 3310(a) and 2010.³ The Panel also found that Capellini failed to detect and investigate numerous red flags of potentially suspicious activity surrounding trading in low priced securities in accounts controlled by her husband.⁴

The majority of the Panel found under cause two that Capellini provided misleading information, including an altered document, in response to three FINRA Rule 8210 requests about trading in low-priced securities in accounts held by Capellini’s husband at First Manhattan

¹ *Dep’t of Enforcement v. Capellini*, No. 2020066627202, 2023 FINRA Discip. LEXIS 11 (OHO July 14, 2023).

² A “low-priced security” is one issued by a small or microcap company that trades at less than \$5 per share. This is consistent with how the U.S. Securities and Exchange Commission (“SEC”) has defined a “penny stock.” See Section 3(a)(51) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 3a51-1 thereunder; FINRA Regulatory Notice 21-03 (Feb. 2021), <http://www.finra.org/rules-guidance/notices/21-03>.

³ *Capellini*, 2023 FINRA Discip. LEXIS 11, at *41-52.

⁴ *Id.* at *47-52.

and First Manhattan's due diligence on three low-priced securities that her husband traded, in violation of FINRA Rules 8210 and 2010.⁵

For this misconduct, the majority of the Panel barred Capellini from associating with a FINRA member firm in any capacity.⁶ Citing the SEC, the majority of the Panel held that Capellini's failure to respond truthfully to FINRA rendered her presumptively unfit for employment in the securities industry.⁷ It found numerous aggravating factors, such as the importance of the information requested to FINRA's investigation.⁸ It also noted that Capellini intentionally misled FINRA and refused to accept responsibility for her own actions.⁹ The majority found no mitigating factors.¹⁰

The Panel indicated that, had the majority not barred Capellini for violating FINRA Rules 8210 and 2010 under cause two of the Complaint, it would have fined Capellini \$25,000, imposed a two-year suspension in all principal and supervisory capacities, and required Capellini to requalify by examination as a registered principal for violating FINRA Rules 3310(a) and 2010 under cause one of the Complaint.¹¹ The Panel found several aggravating and no mitigating factors. The Panel found that Capellini's failures to detect or investigate red flags of suspicious activity were widespread and systemic, encompassing all low-priced securities at First Manhattan, more than 1,500 customers, and \$10 million in proceeds.¹² The Panel further found that Capellini acted recklessly and ignored recommendations from First Manhattan's auditors about how to improve the firm's AML procedures for low-priced securities.¹³ The Panel also found that Capellini ignored an alert from a trader about highly unusual trading in a low-priced security that her husband was selling into a trading surge. Rather than investigate the circumstances surrounding the volume spike, the Panel found, Capellini simply forwarded the alert to her husband.¹⁴ The Panel considered that Capellini's misconduct led to the potential for her own significant monetary gain, and she consistently attempted to deflect responsibility for

⁵ *Id.* at *52-61. The Panel unanimously found that Capellini violated FINRA Rules 3310(a) and 2010 by failing to adopt and implement a reasonable AML program. *Id.* at *1-2. The majority of the Panel found that Capellini violated FINRA Rules 8210 and 2010 by providing misleading responses and an altered document to FINRA in response to information requests. *Id.* at *2. One panelist dissented from the majority's finding that Capellini violated FINRA Rule 8210. *Id.* at *73-77.

⁶ *Id.* at *72.

⁷ *Id.* at *70.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *65-69.

¹² *Id.* at *6.

¹³ *Id.*

¹⁴ *Id.* at *67.

her own shortcomings as First Manhattan's AMLCO.¹⁵ Across the board, the Panel found all of these factors to be aggravating.

Capellini appealed the Decision to FINRA's National Adjudicatory Council ("NAC") on August 4, 2023.¹⁶ Her appeal automatically stayed the sanctions imposed.¹⁷

On August 17, 2023, FINRA's Department of Enforcement moved under FINRA Rule 9285 for an order imposing interim conditions and restrictions on Capellini's activities until FINRA's final decision takes effect and all appeals are exhausted ("Motion").¹⁸ Enforcement argues that it targeted the conditions and restrictions to Capellini's specific misconduct and that they are necessary to prevent customer harm should Capellini reassociate with a FINRA member firm.¹⁹ Specifically, Enforcement requests three conditions and restrictions: (1) prohibit Capellini from serving in an AML compliance role; (2) prohibit Capellini from servicing or supervising accounts owned or controlled by family members; and (3) prohibit Capellini from responding to any FINRA inquiries or requests for information on behalf of any FINRA member firm.²⁰

On August 25, 2023, Capellini filed an opposition ("Opposition") to Enforcement's request.²¹ First, Capellini argues that I should deny Enforcement's Motion because Enforcement failed to meet and confer with Capellini's counsel prior to filing the Motion.²² Capellini also argues that interim conditions and restrictions are not reasonable or necessary because Capellini has not been associated with a member firm for more than three years, has no reasonable prospects for reassociation, and was never proven to have caused customer harm.²³ Finally, Capellini contends that Enforcement filed its Motion to sully Capellini's reputation or assist the SEC in its pending actions against her family members.²⁴

¹⁵ *Id.* at *67.

¹⁶ Respondent Suzanne Capellini's Notice of Appeal (August 4, 2023).

¹⁷ FINRA Rule 9311(b) (stating that an appeal of an Extended Hearing Panel Decision to the NAC "shall operate as a stay of that decision until the [NAC] issues a decision" on appeal).

¹⁸ Department of Enforcement's Motion for Interim Conditions and Restrictions (August 17, 2023).

¹⁹ Mot. at 4. According to the Central Registration Depository, Capellini is not currently associated with a member firm. She was last registered with FINRA through her association with First Manhattan, which terminated on May 8, 2020.

²⁰ Mot. 5-9.

²¹ Respondent Suzanne Capellini's Opposition to Department of Enforcement's Motion for Interim Conditions and Restrictions (Aug. 25, 2023).

²² Opp'n 1-2.

²³ Opp'n 2-5.

²⁴ Opp'n 5-6.

II. Legal Standard

Enforcement seeks an order imposing interim conditions and restrictions on Respondent under FINRA Rule 9285(a)(1), which provides that if a respondent appeals a disciplinary decision finding that the respondent “violated a statute or rule provision,” Enforcement may move for an order imposing “conditions or restrictions on the activities” of the respondent “that are reasonably necessary for the purpose of preventing customer harm.”²⁵

FINRA Rule 9285(a)(3) permits respondents to file an opposition or other response to the motion. Any such filing “shall explain why no conditions or restrictions should be imposed or specify alternate conditions or restrictions that are sought to be imposed and explain why the conditions or restrictions are reasonably necessary for the purpose of preventing customer harm.” FINRA Rule 9285(a)(5) grants the Hearing Officer “authority to impose any conditions or restrictions that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm.”²⁶

FINRA Rule 9285 became effective on April 15, 2021.²⁷ FINRA explained in Regulatory Notice 21-09 that the rule seeks to enhance investor protection by potentially preventing “associated persons and firms found to have violated a statute or rule from engaging in additional misconduct during the appeal process.” FINRA described the rule as adding “an interim layer of investor protection” during that period.²⁸

For its part, the SEC stated in its order adopting the rule that the Hearing Officer should “target the misconduct demonstrated in the disciplinary proceeding” and tailor the conditions and restrictions “to the specific risks posed by the Respondents during the appeal period.”²⁹ As a result, according to the SEC, “[t]he conditions and restrictions are not intended to be as restrictive as the underlying sanctions and would likely not be economically equivalent to imposing the sanctions during the appeal.”³⁰

²⁵ Rule 9285(a)(1) states that the “Hearing Officer that participated in the underlying disciplinary proceeding shall have jurisdiction to rule upon a motion for the imposition of conditions and restrictions.” Here, the Hearing Officer who participated in the underlying disciplinary proceeding is no longer with the Office of Hearing Officers. Accordingly, pursuant to FINRA Rule 9235(b), the Chief Hearing Officer exercises her authority to act on his behalf.

²⁶ FINRA Rule 9285(d) states, in part, that conditions and restrictions imposed by a Hearing Officer that are not subject to a stay shall remain effective until FINRA’s final decision in the underlying disciplinary proceeding takes effect.

²⁷ FINRA Regulatory Notice 21-09 (Mar. 2021), <http://www.finra.org/rules-guidance/notices/21-09>.

²⁸ *Id.* at 3.

²⁹ SR-FINRA-2020-011, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers with a Significant History of Misconduct, Exchange Act Release No. 90635, 2020 SEC LEXIS 5168, at *5 (Dec. 10, 2020); accord FINRA Regulatory Notice 21-09.

³⁰ 2020 SEC LEXIS 5168, at *5.

III. Discussion

At the outset, I address Capellini's argument that I should deny Enforcement's Motion because Enforcement failed to meet and confer with Capellini before filing the Motion. Capellini notes that the Case Management and Scheduling Order issued on July 22, 2022, requires parties to meet and confer before filing a motion and that, by failing to meet and confer, Enforcement has unnecessarily wasted the time and resources of the parties and the Hearing Officer. Capellini contends that had Enforcement conferred before filing the Motion, it would have learned that Capellini has no intention of reassociating with a member firm, and the parties could have agreed that she provide advance notice to Enforcement before reassociating.³¹

Although Enforcement could have communicated with Capellini's counsel before filing the Motion, as directed by the Case Management and Scheduling Order, FINRA Rule 9285 does not require it. I decline to deny Enforcement's Motion based on this basis.³² Furthermore, the Case Management and Scheduling Order issued in this case presumably governed the time the case was pending before the Extended Hearing Panel. Once the Extended Hearing Panel issued the Decision, the Case Management and Scheduling Order no longer governed this proceeding, so the Office of Hearing Officers issued the Scheduling Order Governing FINRA Rule 9285 Motions on August 7, 2023. The Scheduling Order Governing FINRA Rule 9285 Motions does not require Enforcement to confer with Capellini prior to filing a Rule 9285 motion. Instead, it states that Enforcement must specify what conditions and restrictions it seeks and explain why they are reasonable and necessary to prevent customer harm. Enforcement complied with these prerequisites. As such, I reject Capellini's argument.

A. Enforcement's Request that I Prohibit Capellini from Serving in an AML Compliance Role

Enforcement argues that this request targets Capellini's misconduct under cause one. The Panel held that Capellini's misconduct demonstrated a lack of understanding of the AML rules and her duties as an AMLCO and a compliance professional.³³ The Panel found that Capellini failed to ask even basic questions in the face of numerous red flags of potential irregularities.³⁴ Enforcement contends that this restriction is necessary to protect investors from harm in the event Capellini reassociates with a member firm during the pendency of her appeal. Enforcement argues that investors would be at risk if Capellini were to return to a firm and reassume the role

³¹ Opp'n 1-2.

³² See FINRA Rule 9285(a)(1) (stating that, unless otherwise ordered by the Hearing Officer, Enforcement may file a written Rule 9285 motion within 10 days after service of a notice of appeal, without also requiring that Enforcement first meet and confer with the respondent); 2020 SEC LEXIS 5168, at *13-14 (stating that proposed Rule 9285 would require Enforcement to file a written motion and provide the respondent with an opportunity to file a written opposition, but not requiring Enforcement to confer with the respondent prior to filing the motion).

³³ *Capellini*, 2023 FINRA Discip. LEXIS 11, at *69.

³⁴ *Id.* at *48.

of AMLCO or any AML compliance professional.³⁵ Acknowledging that the Panel did not specifically find that Capellini's misconduct caused customer harm, Enforcement argues that, because it found that she failed to understand the importance of her obligations as AMLCO, enabling her to resume that position would place investors at risk.³⁶

Capellini argues that this restriction is unnecessary to prevent customer harm because Capellini has no intention of reassociating with a member firm and, even if she tried to, no member firm would hire her in a supervisory capacity given the findings in the Decision.³⁷ Capellini also argues that, because the Panel never found that her conduct caused customer harm, it would be pure conjecture to conclude that interim conditions and restrictions are necessary to prevent future harm.³⁸

The plain language of FINRA Rule 9285 does not preclude me from imposing conditions or restrictions on a formerly registered person who is no longer associated with a member firm.³⁹ Although Capellini contends that she has no intention of reassociating with a member firm, that can change, and her statement now that she will not reassociate is not a sufficient basis for denying Enforcement's motion. While the Panel's sanction of a bar from the securities industry is stayed, Capellini is free to reassociate with a firm regardless of the representations in her Opposition, and under Rule 9285, I am free to impose conditions and restrictions that are reasonably necessary to prevent customer harm.

I also reject Capellini's claim that, because the Decision did not find she caused actual customer harm, there is insufficient reason to impose interim conditions or restrictions. Capellini compares Rule 9285 interim conditions and restrictions to requests for preliminary injunctions and argues that Enforcement must prove actual, irreparable harm to prevail on its motion. Capellini is wrong. The "scope of [Rule 9285's] conditions or restrictions would depend on what the hearing officer determines to be reasonably necessary for the purpose of preventing customer harm."⁴⁰ Nothing in Rule 9285's language suggests that Enforcement must prove past customer harm to prevail. Here, prohibiting Capellini from serving in an AML compliance role specifically targets the misconduct demonstrated in the decision and is tailored to avoid the risk posed by Capellini's past failure to adapt First Manhattan's AML program to the firm's actual AML risk. Citing an expert witness, the Panel found that, on Capellini's watch, First Manhattan "provided an open and unwatched window for highly questionable activity" without meaningful

³⁵ Mot. 5.

³⁶ Mot. 6.

³⁷ Opp'n 2-3.

³⁸ Opp'n 3-5.

³⁹ See OHO Order 22-21 (2019064813801) (Oct. 31, 2022), at 3-4, 10, 14-16 & n.52, <http://www.finra.org/sites/default/files/2023-05/oho-order-22-21-2019064813801-nypex.pdf>. (imposing interim conditions and restrictions on an individual whose FINRA registrations had been revoked).

⁴⁰ 2020 SEC LEXIS 5168, at *5.

scrutiny.⁴¹ This restriction will prevent a repeat of this misconduct during the pendency of the appeal.

Accordingly, I find it reasonable and necessary to prevent customer harm to prohibit Capellini from serving in an AML compliance role until FINRA's final decision takes effect and all appeals are exhausted.

B. Enforcement's Request that I Prohibit Capellini from Servicing or Supervising Accounts Owned or Controlled by Family Members

Enforcement requests that I also prohibit Capellini from serving as the registered representative for, and from supervising, any account owned or controlled by a family member, including her husband and brother.⁴² This condition also targets Capellini's AML-related misconduct. Enforcement argues that the restriction is reasonably necessary to protect customers should Capellini reassociate with a member firm. Enforcement argues that Capellini's actions have demonstrated she is unable or unwilling to properly identify and address potentially suspicious trading activity in low-priced securities in the accounts of her family members.⁴³ As a result, Enforcement argues, she placed investors at risk.⁴⁴

Capellini claims that, because she is not currently associated with a firm and has no intention of changing her status, she is not a danger to investors.⁴⁵ Additionally, she argues that, because the Panel did not find she caused customer harm, and she has an unblemished 40-year career, there is no basis for imposing interim conditions and restrictions to prevent customer harm during the appeal process.⁴⁶ Finally, she argues that Enforcement did not file its motion to prevent customer harm. Rather, she argues, it filed it to sully Capellini's reputation.⁴⁷

Rule 9285 does not direct that I consider whether the Panel found that Capellini caused customer harm. Nor does the lack of past customer harm mean that a repeat of Capellini's misconduct would not cause customer harm in the future.⁴⁸ Rather, the proper consideration here is whether the misconduct at issue causes me to conclude that the restriction is reasonably necessary to prevent customer harm. Here, I believe it is, based on the egregiousness of Capellini's AML violations. This restriction specifically addresses the potential customer harm posed by Capellini's failure to detect and investigate red flags of potential suspicious activity

⁴¹ *Capellini*, 2023 FINRA Discip. LEXIS 11, at *44.

⁴² Mot. 6-8.

⁴³ Mot. 7.

⁴⁴ Mot. 7-8.

⁴⁵ Opp'n 3-5.

⁴⁶ Opp'n 2-4.

⁴⁷ Opp'n 5-6.

⁴⁸ See OHO Order 22-21, at 10 (finding that the lack of past customer harm does not mean there is no risk of future harm).

surrounding trading in low-priced securities in accounts held or controlled by her husband and for which she served as representative of record.⁴⁹

Furthermore, as stated above, Rule 9311(b) stayed the bar imposed in the Decision pending appeal. As such, Capellini is free to reassociate at any time with a member firm, regardless of the representations in her Opposition that she does not intend to do so. Finally, Capellini has not provided any evidence that Enforcement filed the Motion to sully Capellini's reputation. Enforcement fully supported the Motion by citations to the Decision and tailored its requested restrictions and conditions to the misconduct at issue. In any event, I (not Enforcement) ultimately decide whether conditions and restrictions are necessary based on the findings of violation and what I determine is reasonably necessary for preventing customer harm.

Accordingly, I find it reasonable and necessary to prevent customer harm to prohibit Capellini from servicing or supervising accounts owned or controlled by family members until FINRA's final decision takes effect and all appeals are exhausted.

C. Enforcement's Request that I Prohibit Capellini from Responding to any FINRA Inquiries or Requests for Information on Behalf of Any FINRA Member Firm

Enforcement argues that it tailored this condition to address Capellini's violations of FINRA Rule 8210 under cause two. A majority of the Panel based its findings on Capellini's providing misleading responses and an altered document to FINRA.⁵⁰ The majority also found that Capellini acted intentionally to mislead FINRA.⁵¹ Enforcement argues that Capellini therefore cannot be trusted to respond to FINRA's requests in a truthful manner. As such, Enforcement argues, this restriction will prevent potential harm to investors by limiting Capellini's ability to impede regulatory inquiries and investigations.⁵²

Capellini argues that the majority of the Panel erred in finding that she acted intentionally and contends that the NAC should reverse this finding on appeal.⁵³ Capellini argues that, given the likelihood of her success on appeal and that Enforcement has not demonstrated that Capellini poses a threat to customers, I should deny the Motion.⁵⁴

⁴⁹ See *Capellini*, 2023 FINRA Discip. LEXIS 11, at *43-52. The Decision also found that Capellini served as registered representative for an account owned by her brother, who also engaged in low-priced securities trading that also triggered exception reports. *Id.* at *5, *15.

⁵⁰ *Id.* at *52-61.

⁵¹ *Id.* at *71.

⁵² Mot. 8-9.

⁵³ Opp'n 4.

⁵⁴ Opp'n 2-5.

Capellini misconstrues the requirements for granting a Rule 9285 motion. Under Rule 9285, proof of likelihood of success on appeal is not necessary to prevail.⁵⁵ Here, a majority of the Panel concluded that Capellini violated Rule 8210 in two ways. First, she misled FINRA by producing documents she gathered after receiving its request without telling FINRA that she gathered the documents after receiving the request.⁵⁶ The majority of the Panel concluded that her silence when she produced the documents implied that the firm's existing due diligence files contained the documents.⁵⁷ Second, the majority found that she intentionally altered a document before producing it to FINRA.⁵⁸ I find that, given the nature and intentionality of Capellini's Rule 8210 violations, this prohibition is necessary to prevent customer harm should she reassociate with a firm.⁵⁹

Accordingly, I find it reasonable and necessary to prevent customer harm to prohibit Capellini from responding to any FINRA inquiries or requests for information on behalf of any FINRA member firm until FINRA's final decision takes effect and all appeals are exhausted.

* * * *

When the SEC approved FINRA's adoption of Rule 9285, it noted that the rule struck "a reasonable balance between protecting investors and preventing undue burden on individuals and firms while their appeals are pending."⁶⁰ I find that the requested conditions and restrictions are reasonably necessary to prevent customer harm and that the restrictions are not as restrictive as, or economically equivalent to, the sanctions the Panel imposed.

IV. Order

For the reasons stated above, I grant the Motion and impose the following conditions and restrictions on Capellini until FINRA's final decision takes effect and all appeals are exhausted:

1. Capellini is prohibited from serving in an AML compliance role if she reassociates with a FINRA member firm.
2. Capellini is prohibited from servicing or supervising accounts owned or controlled by family members if she reassociates with a FINRA member firm.

⁵⁵ See FINRA Rule 9285(a)(1) (stating that, to prevail on a Rule 9285 motion, Enforcement must show that the conditions or restrictions "are reasonably necessary for the purpose of preventing customer harm.").

⁵⁶ *Capellini*, 2023 FINRA Discip. LEXIS 11, at *53-57.

⁵⁷ *Id.*

⁵⁸ *Id.* at *55-57.

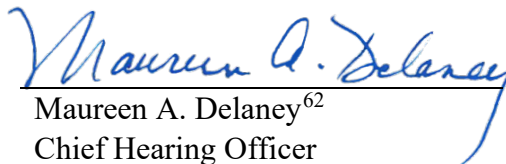
⁵⁹ See OHO Order 22-21, at 13 (imposing restrictions to "protect the public from the risk of harm based on further misstatements to FINRA during the appeal period").

⁶⁰ 2020 SEC LEXIS 5168, at *16.

3. Capellini is prohibited from responding to any FINRA inquiries or requests for information on behalf of any FINRA member firm if she reassociates with a FINRA member firm.
4. The conditions and restrictions imposed in this Order shall become effective immediately as of issuance of this Order.
5. The conditions or restrictions imposed by this Order that are not subject to any stay, or imposed by the NAC Review Subcommittee, shall remain effective until FINRA's final decision in the underlying disciplinary proceeding takes effect.⁶¹

If the parties have any questions about this Order, they should contact the assigned Case Administrator, Jonelle Williams, at 202-728-8163 or Jonelle.Williams@finra.org.

SO ORDERED.


Maureen A. Delaney⁶²
Chief Hearing Officer

Dated: September 14, 2023

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⁶¹ See FINRA Rule 9285(d) (“Conditions or restrictions imposed by a Hearing Officer that are not subject to any stay, or imposed by the Review Subcommittee, shall remain effective until FINRA’s final decision in the underlying disciplinary proceeding takes effect.”).

⁶² Pursuant to Rule 9235(b) the Chief Hearing Officer signs this Order in Hearing Officer McClain’s absence.