

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

In the Matter of the Application for Review of  
DNA Brands, Inc. (DNAX) and ZA Group, Inc. (ZAAG) Shareholders  
File No. 3-22572

**FINRA'S MOTION TO DISMISS THE APPLICATION FOR REVIEW AND  
TO STAY THE DEADLINE FOR FILING OF THE CERTIFIED RECORD AND INDEX  
AND THE ISSUANCE OF A BRIEFING SCHEDULE**

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**I. INTRODUCTION**

This matter concerns requests made by two companies, ZA Group, Inc. (“ZAAG”) and DNA Brands, Inc. (“DNAX”) (together, “Issuers”) to FINRA’s Department of Market Operations (“Operations”) to process documentation related to the Issuers’ various corporate actions. Following its review of the Issuers’ requests and pursuant to FINRA Rule 6490, Operations issued deficiency determinations, on July 18 and August 1, 2025, respectively, to ZAAG and DNAX based on the fact that a convertible note holder of both companies had been the subject of actions by the Securities and Exchange Commission (“Commission”) and the Connecticut Department of Banking for securities-law-related violations.<sup>1</sup> Several months later,

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<sup>1</sup> Specifically, Stephen M. Hicks is a convertible note holder, in the name of Trillium Partners LP, of both ZAAG and DNAX, with rights to convert debt into shares representing 71.8% and 17% of their common stock, respectively. In 2018, the Commission obtained a final judgment enjoining Hicks from violating certain provisions of the Securities and Exchange Act of 1934 (“Exchange Act”), the Securities Act of 1933, and the Investment Advisers Act of 1940. *See* Shareholders’ Appl. for Review & Br. in Support (“Shareholders’ Br.”), Exhibits 2, 4. Based on the same underlying conduct, Hicks was subject to an enforcement action brought by the Connecticut Department of Banking. *See* Shareholders’ Br., Exhibit 4. The Connecticut Department of Banking also revoked the broker-dealer license of a firm that Hicks owned after

[Footnote cont’d on next page]

one shareholder of ZAAG and one shareholder of DNAX (“Shareholders”) filed this application for review with the Commission seeking to challenge FINRA’s deficiency determinations.<sup>2</sup>

Shareholders’ Appl. for Review, Attachment 1.

These Shareholders ask the Commission to: (1) order FINRA to vacate the deficiency determinations and process the corporate actions within 30 days of the Commission’s order or, alternatively, to deem FINRA’s deficiency determinations as “improper and constructive denial[s]” of the DNAX and ZAAG corporate actions; (2) “impose structural reforms on FINRA’s Rule 6490 process,” including, among other things, mandatory processing timeframes and an independent internal appeals authority; and (3) take steps to ensure that FINRA’s exercise of its authority under FINRA Rule 6490 “remains consistent with the Exchange Act and with the relevant constitutional principles.” Shareholders’ Br. at 18-22.

Pursuant to SEC Rule of Practice 154, FINRA now moves the Commission to dismiss this proceeding based on a failure to exhaust administrative remedies and a lack of appellate jurisdiction. First, the Issuers, on whose behalf the Shareholders seek to act, never appealed the deficiency determinations to FINRA’s Uniform Practice Code Committee (“UPCC”) in accordance with FINRA Rule 6490(e). The Shareholders’ attempt to file this application directly with the Commission is an impermissible end-run around the UPCC and FINRA’s rules for the review of requests to process the announcement of company-related actions, including the requirement that issuers appeal a deficiency determination within seven days—otherwise,

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[cont’d]

determining that Hicks had acted as an unregistered principal of the broker-dealer. *See* Shareholders’ Br., Exhibit 4.

<sup>2</sup> Attachment 1 to the Shareholders’ application for review identifies these Shareholders as John Morgan (ZAAG) and Adrian Patasar (DNAX).

FINRA’s determination will be considered final. Moreover, the Shareholders are not the proper party to seek Commission review because the Issuers have not designated them as “duly authorized” under FINRA Rule 6490, nor have the Shareholders demonstrated that FINRA has limited their access to a service that FINRA offers.

Finally, the Commission lacks a statutory basis to exercise jurisdiction under Section 19(d) of the Exchange Act over the Shareholders’ demands that the Commission “impose structural reforms on FINRA’s Rule 6490 process” and take certain “oversight-focused steps” to address their constitutional and other challenges to FINRA’s process for review of company-related actions requests.<sup>3</sup>

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<sup>3</sup> The Commission’s authority to review FINRA actions is governed by Section 19(d) of the Exchange Act, which grants the Commission authority to review only four classes of actions by a self-regulatory organization (“SRO”). 15 U.S.C. § 78s(d). Specifically, Section 19(d) authorizes Commission review of an SRO action only if that action: (1) imposes any final disciplinary sanction on any member (or person associated with a member) of the SRO or participant therein; (2) denies membership or participation to any applicant; (3) prohibits or limits any person in respect to access to services offered by such organization or member thereof; or (4) bars any person from becoming associated with a member. 15 U.S.C. § 78s(d)(1), (2). “A challenge to the implementation or application of a rule must fall within a grant of jurisdiction provided to the Commission under the Exchange Act.” *Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 SEC LEXIS 2464, at \*25 (July 15, 2016). That this matter “involves a rule [Rule 6490], or [an] SRO [FINRA] subject to Commission review does not automatically mean jurisdiction exists,” which it does not here as described in this motion to dismiss. *See id.* The Commission, moreover, has already reviewed (and approved) FINRA Rule 6490. *See Order Approving Proposed FINRA Rule 6490 (Processing of Company-Related Actions) (“Approval Order”)*, Exchange Act Release No. 62434, 2010 SEC LEXIS 2186, at \*2-3 (July 1, 2010). The Commission also has authority to amend FINRA Rule 6490 “as the Commission deems necessary or appropriate”—not through appellate review of a deficiency determination, but, for example, through its rule-making process. 15 U.S.C. § 78s(c). In addition, the Commission has authority to oversee FINRA’s review and processing of Company-Related Actions under Rule 6490 through the Commission’s general oversight examination program, FINRA and Securities Industry Oversight (FSIO). *See SEC Division of Examinations – Offices and Program Areas*, <https://www.sec.gov/about/divisions-offices/division-examinations/about-division-examinations> (last visited Dec. 24, 2025).

For these reasons, the Commission should dismiss the Shareholders' application for review.<sup>4</sup>

## II. BACKGROUND

### A. FINRA's Processing of Corporate Actions Under FINRA Rule 6490

#### 1. FINRA's Review of Requests to Process Documentation of Company-Related Actions

The Commission approved FINRA Rule 6490 in July 2010 to facilitate FINRA's critical functions in the over-the-counter ("OTC") market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*2-3; *see Positron Corp.*, Exchange Act Release No. 74216, 2015 SEC LEXIS 442, at \*4 (Feb. 5, 2015). The review, processing, and announcement of certain actions taken by issuers of OTC securities are included among FINRA's functions in the OTC market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*2-3. Specifically, FINRA reviews and processes documents relating to announcements for two categories of issuer actions: actions related to announcements required under Exchange Act Rule 10b-17 and "Other Company-Related Actions" (collectively, "Company-Related Actions").<sup>5</sup> FINRA Rule 6490(a). These Company-Related Actions include,

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<sup>4</sup> FINRA requests, pursuant to Commission Rule of Practice 161, that the Commission stay the deadline for the certification and filing of the record and index and stay the issuance of a briefing schedule while this motion to dismiss is pending. *See* 17 C.F.R. § 201.161. The Commission should first evaluate FINRA's dispositive arguments that the Shareholders' application for review should be dismissed for failure to exhaust administrative remedies and because the Shareholders are not the proper party to seek review, and that the Commission lacks jurisdiction over the Shareholders' remaining demands, before it reviews the entirety of the record and briefs on the merits in this matter.

<sup>5</sup> In addition to state corporate law requirements, an issuer with a class of publicly traded securities must comply with Exchange Act Rule 10b-17. *See Approval Order*, 2010 SEC LEXIS 2186, at \*3-4 & n.6. Exchange Act Rule 10b-17 requires that an issuer provide FINRA with notice of proposed Company-Related Actions when its securities are not listed on a national securities exchange, or the Commission has not issued an exemption. *See* 17 C.F.R. § 240.10b-17(a), (b)(2), (3).

among others, stock splits, reverse stock splits, and any issuance or change to an issuer's symbol or name. FINRA Rule 6490(a)(2); *Positron*, 2015 SEC LEXIS 442, at \*4.

An issuer or a duly authorized representative of the issuer may request that FINRA process documentation related to an announcement of a Company-Related Action. FINRA Rule 6490(b)(1). FINRA Rule 6490 then permits Operations to exercise its judgment regarding whether to process and announce an issuer's request.<sup>6</sup> See *Approval Order*, 2010 SEC LEXIS 2186, at \*7. In approving Rule 6490, the Commission found the rule "consistent with the [Exchange] Act," and stated that "if FINRA believes that one of the enumerated factors [under Rule 6490(d)(3)] has been triggered[,] FINRA staff would conduct an in-depth review and follow up with the issuer to seek additional information or documentation." *Approval Order*, 2010 SEC LEXIS 2186, at \*15, 20-21.

In its Approval Order, the Commission highlighted the rule's vital purpose: "to encourage issuers and their agents to provide complete, accurate and timely information to FINRA concerning Company-Related Actions involving OTC Securities, and thereby to prevent fraudulent and manipulative acts and practices with respect to these securities." *Id.* at \*16-17.

Unless Operations finds the request deficient under the enumerated factors, FINRA thereafter will post the action on its website in a document known as the "Daily List," which announces the action to the OTC market. *Approval Order*, 2010 SEC LEXIS 2186, at \*4 n.7; *mPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at \*4 (Feb. 2,

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<sup>6</sup> As part of its consideration of an issuer's request to process a Company-Related Action, Operations may request additional information "as may be necessary" to complete its review and "verify the accuracy of the information submitted." See FINRA Rule 6490(b)(4); *Approval Order*, 2010 SEC LEXIS 2186, at \*9; see also *Positron*, 2015 SEC LEXIS 442, at \*6 (highlighting that Rule 6490 particularly authorizes Operations "to conduct in-depth reviews of issuers' requests").

2015); FINRA, *Over-the-Counter-Equities Daily List*, <https://otce.finra.org/otce/dailyList> (last visited Dec. 23, 2025).

## 2. Deficiency Determinations Under FINRA Rule 6490

In certain circumstances, FINRA may determine that it is necessary to deem a request to process and announce Company-Related Action deficient, in which case documentation related to the Company-Related Action will not be processed. FINRA Rule 6490(d)(3); *Approval Order*, 2010 SEC LEXIS 2186, at \*9 (“[I]f a request to process a Company-Related Action is deficient, and [FINRA] determines that it is necessary for the protection of investors and the public interest and to maintain fair and orderly markets, [FINRA] may determine that documentation related to a Company-Related Action *shall not* be processed.”) (emphasis added). FINRA may determine that an issuer’s application to process and announce a Company-Related Action is deficient based on five specific factors. *See* FINRA Rule 6490(d)(3). It is subsection three, FINRA Rule 6490(d)(3)(3), which is the focus of the Shareholders’ application for review.<sup>7</sup>

Operations must provide the issuer with written notice of a deficiency determination, identifying the specific factors on which the determination is based.<sup>8</sup> *See* FINRA Rule 6490(d)(4); *Approval Order*, 2010 SEC LEXIS 2186, at \*11. Once an issuer’s request is deemed

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<sup>7</sup> The rule states in relevant part that FINRA may decline to process a Company-Related Action when FINRA determines that it is “necessary for the protection of investors, the public interest and to maintain fair and orderly markets” and FINRA “has actual knowledge that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected to the issuer or the SEA Rule 10b-17 Action or Other Company-Related Action are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations.” FINRA Rule 6490(d)(3)(3).

<sup>8</sup> Notice must be provided “by facsimile or electronic mail, or pursuant to paragraphs (a) and (b) of Rule 9134.” FINRA Rule 6490(d)(5).

deficient, FINRA will not process the issuer's documentation for the proposed Company-Related Action or announce the Company-Related Action to the OTC market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*11.

FINRA Rule 6490 also outlines the process an issuer must follow to appeal Operations' deficiency determination, which requires the issuer to seek review by a subcommittee of the Uniform Practice Code Committee ("UPCC"). *See* FINRA Rule 6490(e).<sup>9</sup> A subcommittee of the UPCC, comprised of current or former industry members of the UPCC, reviews and decides all appeals.<sup>10</sup> *See id.* The UPCC subcommittee meets monthly, as needed, and considers appeals received during the prior month. *See id.* The UPCC subcommittee issues a written decision within three business days of its consideration of an appeal. *See id.* If the issuer or other duly authorized representative of the issuer fails to file a written request for an appeal to the UPCC within seven calendar days after service of Operations' notice, then Operations' determination constitutes a final action by FINRA. *See id.*

**B. FINRA Issues Deficiency Determinations Related to the Issuers' Company-Related Actions Requests**

1. ZAAG's Company-Related Actions Request

On March 22, 2024, ZAAG submitted a Company-Related Actions request, asking Operations to process documentation related to a 1:1,000 reverse stock split and a proposed name and symbol change. ZAAG's Company-Related Actions request, attached as FINRA's

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<sup>9</sup> Had the Issuers appealed the deficiency determinations to the UPCC, they also would have had the opportunity to submit additional supporting documentation "up until the time the appeal [wa]s considered by the subcommittee." FINRA Rule 6490(e). The Issuers chose not to avail themselves of this opportunity.

<sup>10</sup> The Uniform Practice Code provides the framework of rules governing broker-dealers for the settlement of non-exchange listed securities quoted or traded in the OTC market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*6 n.8.

Exhibit A, at 1, 4, 8. ZAAG's request provided contact information for "Jonathan Leinwand," ZAAG's attorney, and for "Jeffrey Michael Canouse," the company's CEO. Exhibit A at 2-3. ZAAG certified that Leinwand was the person on its behalf that had "all necessary authority to submit this form on behalf of the named Issuer and to respond to communications related to this form." Exhibit A at 8.

Operations reviewed ZAAG's request and, on July 18, 2025, sent ZAAG via email a deficiency notice ("ZAAG Notice"), advising that FINRA had deemed the request deficient under FINRA Rule 6490(d)(3)(3). Shareholders' Br., Exhibit 4. Operations explained that FINRA had actual knowledge that Stephen M. Hicks, who is a convertible note holder of ZAAG in the name of Trillium Partners LP ("Trillium"), was the subject of actions brought by the Commission and the Connecticut Department of Banking for securities-related violations in connection with hedge funds Hicks managed, and that the Connecticut Department of Banking had permanently revoked Hicks's firm's broker-dealer license based on, among other things, allegations that Hicks was acting as an unregistered principal of the broker-dealer. Shareholders' Br., Exhibit 4 at 1-3. The ZAAG Notice further explained that, as a convertible note holder, Hicks (in the name of Trillium), could convert more than 24 billion ZAAG common shares, at which point Hicks would control 71.8% of ZAAG's total shares outstanding. Shareholders' Br., Exhibit 4 at 3.

Citing Hicks's status as a convertible note holder and the actions against him by the Commission and the State of Connecticut, the ZAAG Notice informed the company of FINRA's determination that it was necessary for the protection of investors and the public interest, and to maintain fair and orderly markets, that documentation related to ZAAG's Company-Related Actions request would not be processed. Shareholders' Br., Exhibit 4 at 3-4. In accordance with the procedures set forth in FINRA Rule 6490(e), the ZAAG Notice further informed ZAAG that

it could appeal FINRA’s deficiency determination by submitting a written notice of appeal accompanied by proof of payment of a non-refundable \$4,000 appeal fee, after which the appeal would be considered by a three-member subcommittee of the UPCC. Shareholders’ Br., Exhibit 4 at 3-4. The ZAAG Notice also notified the company that the deficiency determination would become final if ZAAG failed to file a notice of appeal to the UPCC within seven days after service of the notice. Shareholders’ Br., Exhibit 4 at 5. ZAAG failed to appeal to the UPCC.

## 2. DNAX’s Company-Related Actions Request

On December 5, 2024, DNAX submitted its Company-Related Actions request, asking Operations to process documentation related to a 1:500 reverse stock split. DNAX’s Company-Related Actions request, attached as FINRA’s Exhibit B, at 1, 4, 7. In its request, DNAX provided contact information for Leinwand and its CEO, “James P. Canouse.” Exhibit B at 2-3. Like ZAAG, DNAX certified that Leinwand was the person on its behalf that had “all necessary authority to submit this form on behalf of the named Issuer and to respond to communications related to this form.”<sup>11</sup> Exhibit B at 7.

On August 1, 2025, following its review of DNAX’s request, Operations sent via email a deficiency notice (“DNAX Notice”) in which it advised DNAX that FINRA had deemed the request deficient under FINRA Rule 6490(d)(3)(3), based on Hicks’s status as a convertible note holder and the Commission and State of Connecticut actions against him.<sup>12</sup> Shareholders’ Br.,

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<sup>11</sup> The version of DNAX’s request for company-related actions that the Shareholders provided as Exhibit 3 to their supporting brief does not reflect the complete application, as the page on which DNAX certified a person with “all necessary authority” on DNAX’s behalf was blank. Shareholders’ Br., Exhibit 3 at unnumbered page 7.

<sup>12</sup> Unlike the ZAAG Notice, the DNAX Notice did not provide details relating to the action by the Connecticut Department of Banking but nonetheless cited to the “state of Connecticut action” as a basis for the deficiency determination. Shareholders’ Br., Exhibit 2 at 3.

Exhibit 2. Based on that, and the fact that Hicks, as a convertible note holder (in the name of Trillium), could convert more than 690 million shares, or 17%, of DNAX's common stock, the DNAX Notice explained that FINRA had determined that it was necessary for the protection of investors and the public interest, and to maintain fair and orderly markets, that documentation related to DNAX's Company-Related Action not be processed.<sup>13</sup> Shareholders' Br., Exhibit 2 at 3. Like the ZAAG Notice, the DNAX Notice informed DNAX of its ability to appeal FINRA's deficiency determination to the UPCC by submitting a written notice of appeal accompanied by proof of payment of a non-refundable \$4,000 appeal fee and that the deficiency determination would become final if DNAX failed to file a notice of appeal to the UPCC within seven days. Shareholders' Br., Exhibit 2 at 4. DNAX failed to appeal to the UPCC.

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<sup>13</sup> The Shareholders assert that Operations' deficiency notices set forth "no issuer-level defect" when declining to process the Company-Related Actions requests. Shareholders' Br. at 17, 19. The Shareholders misunderstand the application of FINRA's rules. As Rule 6490(d)(3)(3) states, when FINRA has actual knowledge, as it does here, that a person (Hicks) connected to the Issuers is the "subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations," FINRA "may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to such SEA Rule 10b-17 Action or Other Company-Related Action will not be processed." *See, e.g., mPhase Techs., Inc.*, 2015 SEC LEXIS 398, at \*1-2, 18-23 (finding FINRA properly declined to process a Company-Related Actions request under Rule 6490(d)(3) when the issuer's chief executive and chief operating officers were the subject of a settled regulatory action related to securities laws violations).

### **C. The Shareholders File an Application for Review with the Commission**

On December 12, 2025, more than four months after Operations issued deficiency determinations related to the Issuers' Company-Related Actions requests (and thus more than three months after the Issuers' deadline to appeal to the UPCC had passed), the Shareholders filed this application for review with the Commission.

As described above, however, the Issuers' requests to FINRA to process their Company-Related Actions each listed just two authorized representatives. Specifically, both requests listed "Jonathan Leinwand" as the attorney for the respective company and the person on its behalf with "all necessary authority" of the issuer, and both requests listed the respective company's CEO: "James P. Canouse," for ZAAG, and "Jeffrey Michael Canouse," for DNAX. Exhibit A at 2-3, 7 & Exhibit B at 2-3, 8. Thus, the Shareholders, who were not named in the requests, do not constitute "duly authorized representative[s]" of the Issuers under FINRA Rule 6490 and for purposes of this application for review.

### **III. ARGUMENT**

The Commission should dismiss the Shareholders' application for review for several reasons. First, the Issuers did not properly exhaust their administrative remedies before FINRA by appealing Operations' deficiency determinations to the UPCC. Moreover, the Shareholders are not "duly authorized representative[s]" of the Issuers in their applications to FINRA to process their Company-Related Actions under FINRA Rule 6490 and, therefore, are not a proper party before the Commission, and they have not demonstrated that FINRA has limited their access to a service that FINRA offers. Finally, the Commission lacks a statutory basis to exercise jurisdiction over the Shareholders' demands for structural reforms and oversight measures.

**A. The Commission Should Dismiss the Shareholders' Application for Review of FINRA's Deficiency Determinations**

The Commission should dismiss the Shareholders' application for review of Operations' deficiency determinations pursuant to FINRA Rule 6490(d)(3) because the Issuers failed to exhaust their administrative remedies and because the Shareholders are not proper parties to seek review of Operations' actions before the Commission.

1. The Issuers Failed to Exhaust Their Administrative Remedies

After Operations provided the Issuers with notice of its deficiency determinations, the Issuers had the opportunity to challenge the determinations under FINRA rules. Pursuant to FINRA Rule 6490(e), the Issuers could have appealed "to a three-member subcommittee composed of current or former industry members of FINRA's [UPCC] in writing . . . within seven calendar days after service of the notice," after which the Issuers would have been entitled to submit any additional supporting documentation for consideration during a review of their appeal by the subcommittee.

Notwithstanding the Shareholders' erroneous characterization of deficiency determinations under FINRA Rule 6490(d)(3) as "unreviewable," Shareholders' Br. at 17-18, the Shareholders concede that FINRA Rule 6490 provides an appeal window, and that Operations notified the Issuers that they could challenge the deficiency determinations to a UPCC subcommittee by submitting a written notice of appeal within seven days. Shareholders' Br. at 10, 12, 14.<sup>14</sup> The Issuers, however, never appealed to the UPCC. Instead, more than four

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<sup>14</sup> The Shareholders ask the Commission to order FINRA to vacate Operations' deficiency determinations and produce a "written and reviewable determination under Rule 6490(d)(3) that either announces the corporate actions or articulates a proper rules-based deficiency that can be subjected to Commission review." Shareholders' Br. at 18-19. That is exactly what FINRA did. *See* Shareholders' Br., Exhibits 2, 4. The fact that the Issuers failed to appeal the determinations

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months after Operations issued the deficiency determinations, the Shareholders—and not the Issuers—attempt to bypass the UPCC and FINRA’s procedural rules by appealing the deficiency determinations directly to the Commission.<sup>15</sup>

The Commission has made clear that it “will not review the action of a self-regulatory organization (‘SRO’) like FINRA if the applicant failed to exhaust the SRO’s administrative remedies.” *Ronald Moschetta*, Exchange Act Release No. 104151, 2025 SEC LEXIS 2830, at \*3 (Sept. 30, 2025); *see also Edward J. Jakubik*, Exchange Act Release No. 61541, 2010 SEC LEXIS 1014, at \*13 (Feb. 18, 2010) (stating the Commission does “not consider an application for review if the applicant failed to follow [FINRA] procedures” and dismissing application for review of a default decision barring the applicant).

The Commission’s precedent requiring parties to avail themselves of FINRA’s procedures for internal review of FINRA actions is well-settled, and the Commission has

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to the UPCC as set forth by FINRA rules and described in the notices does not entitle these Shareholders to seek Commission review now.

In the alternative, the Shareholders ask that the Commission treat FINRA’s determinations as a “constructive denial” and process the corporate actions requests. Shareholders’ Br. at 19. Again, the Shareholders’ demand disregards that, *in fact*, Operations determined that the Issuers’ requests were deficient and would not be processed. Shareholders’ Br. at 18-19. Regardless of the Shareholders’ characterization of Operations’ actions, the Issuers failed to exhaust their administrative remedies before FINRA, and the Commission does not review FINRA’s decisions when an applicant fails to appeal internally. *See, e.g., Shlomo Sharbat*, Exchange Act Release No. 93757, 2021 SEC LEXIS 3647, at \*8 (Dec. 13, 2021) (dismissing for failure to exhaust administrative remedies because applicant defaulted before the hearing panel and failed to appeal internally within FINRA).

<sup>15</sup> The Shareholders contend that Operations’ review process somehow “precluded any appeal” by the Issuers “within a reasonable amount of time.” Shareholders’ Br. at 17. The Issuers, by rule, had seven days to appeal to the UPCC but chose not to. *See* FINRA Rule 6490(e).

consistently dismissed applicants' applications for review when, as here, there was a failure to exhaust administrative remedies under FINRA rules. *See, e.g., Bournehill Inv. Servs., Inc.*, Exchange Act Release No. 103369, 2025 SEC LEXIS 1828, at \*2-3 (July 2, 2025) (dismissing application for review of FINRA's action expelling a firm under FINRA Rule 9552 when the firm failed to file its audited annual report, took no action before FINRA to avoid suspension, and "made no effort to prevent its automatic expulsion from FINRA membership"); *Sharbat*, 2021 SEC LEXIS 3647, at \*9 (dismissing application for review of a default decision barring a respondent when the respondent "failed to appeal the default decision to the NAC or file a motion with FINRA to set aside the default decision").

In the context of an issuer's appeal of FINRA's deficiency determinations under Rule 6490, the Commission has reviewed those appeals only after an issuer followed FINRA's review process by appealing to the UPCC, and the UPCC issued a final decision under Rule 6490(e). *See, e.g., mPhase Techs., Inc.*, 2015 SEC LEXIS 398, at \*34 (reviewing FINRA's deficiency determination only after the issuer followed FINRA's internal review process by appealing to the UPCC and noting that the issuer had an "opportunity to dispute" Operations' findings before the UPCC); *Positron*, 2015 SEC LEXIS 442, at \*28 (reviewing FINRA's deficiency determination only after the issuer appealed to the UPCC and the UPCC issued its final decision and citing, in support of FINRA's deficiency determination, the UPCC's findings).

The Commission has repeatedly stressed that administrative exhaustion "promotes the efficient resolution" of disputes between SROs and their members and "is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations." *Sharbat*, 2021 SEC LEXIS 3647, at \*8 (quoting *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004)). The administrative-exhaustion requirement "promotes the development of a record in a forum particularly suited to create it, upon which the Commission

and, subsequently, the courts can more effectively conduct their review.” *Id.* If parties were “free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised.” *Id.*

Moreover, as the Commission has emphasized, “[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review.” *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at \*9 (Apr. 10, 2014) (quoting *MFS Secs. Corp.*, Exchange Act Release No. 47626, 2003 SEC LEXIS 789, at \*22 & n.29 (Apr. 3, 2003)). To permit the Issuers, let alone these Shareholders who are not the Issuers’ “duly authorized representative[s],” to bypass FINRA’s internal review process that specifically provides for additional review of Operations’ deficiency determinations “would fly in the face of the long-standing Commission precedent” that requires the exhaustion of administrative remedies.<sup>16</sup> *Florence Sarah Pollard*, Exchange Act Release No. 55978, 2007 SEC LEXIS 1430, at \*6 (June 28, 2007).

In sum, because the Issuers failed to exhaust their administrative remedies, the Commission should dismiss this appeal. In doing so, the Commission should refrain from addressing any of the merits-based arguments that the Shareholders advance. *See Moschetta*, 2025 SEC LEXIS 2830, at \*3 (declining to reach respondent’s merits arguments after dismissing appeal based on, among other things, the respondent’s failure to exhaust); *Sharbat*, 2021 SEC LEXIS 3647, at \*16-17 (declining to reach respondent’s arguments related to Hearing Officer’s

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<sup>16</sup> Indeed, the Shareholders acknowledge that Rule 6490 provides a “seven-day issuer appeal window” but suggest that the Issuers elected not to pursue their appellate rights due to the “small appeal window and significant cost associated with doing so,” specifically “a non-refundable \$4,000 fee.” Shareholders’ Br. at 14, 16; *see also* FINRA Rule 6490(c) (listing the action determination appeal fee). The Issuers’ time or financial constraints do not excuse their failure to exhaust available remedies before FINRA.

decision because respondent “failed to exhaust his administrative remedies before FINRA”); *see also Jakubik*, 2010 SEC LEXIS 1014, at \*16-17 (rejecting applicant’s challenges to the decision in the underlying proceeding when dismissing the application for review for failure to exhaust administrative remedies); *Lance E. Van Alstyne*, 53 S.E.C. 1093, 1100 n.20 (1998) (“Because we lack jurisdiction to review Van Alstyne’s application for review, we do not consider the merits of the allegations concerning rule violations.”).

2. The Shareholders Are Not a Proper Party Before the Commission

The Shareholders’ application for review is not permitted by either FINRA or Commission rules and should be dismissed. FINRA has an orderly process whereby “[a]n issuer or other duly authorized representative of the issuer may request that FINRA process documentation related to” Company-Related Actions, appeal Operations’ deficiency determination to FINRA’s UPCC, and thereafter appeal a decision by the UPCC to the Commission.<sup>17</sup> FINRA Rule 6490(b)(1), (e); *see, e.g., Sky Cap., LLC*, Exchange Act Release No. 55828, 2007 SEC LEXIS 1179, at \*16 (May 30, 2007) (explaining that FINRA’s actions generally may not be appealed to the Commission until they have been reviewed by FINRA’s appellate review process).

As reflected in the Issuers’ Company-Related Actions requests submitted to Operations, these Shareholders are not “duly authorized representative[s]” of either ZAAG or DNAX. FINRA Rule 6490(b)(1); Exhibit A at 2-3, 8 (listing only “Jonathan Leinwand” and “Jeffrey Michael Canouse” as ZAAG’s duly authorized representatives) & Exhibit B at 2-3, 7 (listing

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<sup>17</sup> In limited circumstances not applicable here, and to comply with regulatory reporting requirements, certain third parties may submit a request to process documentation under FINRA Rule 6490(b).

only “Jonathan Leinwand” and “James P. Canouse” as DNAX’s duly authorized representatives). The Shareholders, therefore, do not constitute a “duly authorized representative of the issuer” under FINRA Rule 6490 and for purposes of this application for review.

The Shareholders may not insert themselves into a proceeding when they lack the necessary authority of the Issuers for purposes of this application for review.<sup>18</sup> In a discussion of standing under Section 19(d) of the Exchange Act, the Commission has specifically stated that “the contours of [its] jurisdiction are not limitless, and we do not mean to suggest that anyone may bring an application for review of SRO action that prohibits or limits any other person’s access to SRO services.” *Sec. Indus. & Fin. Mkts. Ass’n*, Exchange Act Release No. 72182, 2014 SEC LEXIS 1686, at \*28 (May 16, 2014) (defining limited circumstances not applicable to this matter in which an industry trade group acting *in a representative capacity* may have standing).

Moreover, to appeal a determination by an SRO, “an applicant must still be subject to an SRO action that actually *limits* its access to SRO services.” *Id.* at \*33. The Shareholders have not established, nor can they establish, that *they* are subject to an actual limitation or prohibition of access to FINRA’s service of reviewing and processing issuers’ requests for Company-Related Actions. *See id.* at \*35; *cf. Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 SEC LEXIS 1284, at \*13 (June 3, 2019) (rejecting respondent’s argument “fault[ing]

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<sup>18</sup> The Shareholders erroneously rely on FINRA Rule 1019 for support for their position that they are “aggrieved” and the proper party to seek review of a matter under FINRA Rule 6490. Shareholders’ Br. at 14-15. FINRA Rule 1019 expressly governs only applications for Commission review of final FINRA actions concerning applications for FINRA membership and registration of associated persons under the FINRA Rule 1000 Series. FINRA Rule 6490, not FINRA Rule 1019, controls who on behalf of the issuer may participate in the Company-Related Actions process.

FINRA for failing to provide access to a service it does not offer”). That access, which FINRA provided consistent with Rule 6490, rests with the Issuers. *See* FINRA Rule 6490(b)(1), (e) (stating that the defined “Requesting Party” may request that FINRA process documentation related to Company-Related Actions and appeal deficiency determinations). The Issuers could have pursued their appellate rights under Rule 6490(e) but instead chose to forgo that process. Thus, the Commission should dismiss the Shareholders’ application for review of Operations’ deficiency determinations denying the Issuers’ requests to process Company-Related Actions.

**B. The Commission Lacks Jurisdiction over the Shareholders’ Requests for Structural Reforms and Oversight Measures**

With respect to the Shareholders’ demands for structural reforms and oversight measures, the Commission should also dismiss the Shareholders’ application for review because the Commission lacks a statutory basis under Section 19(d) of the Exchange Act to exercise jurisdiction over those requests for relief. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 962-63 (2000); *see also WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 SEC LEXIS 3699, at \*10-19 (Sept. 9, 2015) (dismissing application when none of the four bases for the Commission’s jurisdiction existed); *Van Alstyne*, 53 S.E.C. at 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)”).

The Shareholders specifically demand that the Commission “impose structural reforms on FINRA’s Rule 6490 process” and “take . . . oversight-focused steps to ensure . . . consisten[cy] with the Exchange Act and with the relevant constitutional principles.” Shareholders’ Br. at 19-22. The Commission has previously dismissed the application of a respondent challenging FINRA rules, including various constitutional challenges, for lack of

jurisdiction. *See Cristo*, 2019 SEC LEXIS 1284, at \*17, 20. The Commission explained that “[e]ven if the Commission instituted rulemaking proceedings, under Section 19(c), that would not create jurisdiction under Section 19(d) over [the respondent’s] application for review.” *Id.* at \*17; *cf. Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 SEC LEXIS 956, at \*9 n.15 (Apr. 30, 2008) (explaining that Exchange Act Section 19(d) did not permit the Commission to direct FINRA “to establish prospectively a formal procedure” for barred individuals to request that FINRA vacate their sanctions; “Exchange Act Section 19(d) does not provide for such relief”). Moreover, the Commission approved the provisions about which the Shareholders complain. *See Approval Order*, 2010 SEC LEXIS 2186, at \*15, 20-21; *see, e.g., Cristo*, 2019 SEC LEXIS 1284, at \*17 (highlighting the Commission’s approval of the rules about which respondent complained and dismissing application for lack of jurisdiction over respondent’s request for Commission review of FINRA rules).

The Commission has held that “an applicant’s efforts to present a claim against FINRA as a constitutional violation do[es] not create authority for [the Commission] under Exchange Act Section 19(d) to entertain [an] application for review of the actions FINRA took.” *BlackBook Cap., Inc.*, Exchange Act Release No. 97027, 2023 SEC LEXIS 524, at \*10 (Mar. 2, 2023); *see also Cristo*, 2019 SEC LEXIS 1284, at \*20. Irrespective of the Shareholders’ complaints about Operations’ review process, the Commission does not have jurisdiction to review that process simply based on claimed harm it inflicts on the Shareholders. *See WD Clearing*, 2015 SEC LEXIS 3699, at \*10. The Commission has held “that SRO action is not reviewable merely because it adversely affects the applicant.” *Joseph Dillon*, 54 S.E.C. at 964. The Commission should therefore find it does not have jurisdiction to review the Shareholders’ claims regarding FINRA’s process for review of Company-Related Actions under FINRA Rule 6490.

#### IV. CONCLUSION

The Commission should dismiss the Shareholders' application for review because the Issuers did not exhaust FINRA's administrative remedies, and the Shareholders are not a proper party before the Commission. Moreover, the Commission lacks jurisdiction over the Shareholders' requests for structural reforms and myriad oversight measures, including those related to their constitutional claims.

While the Commission resolves the preliminary issues raised by this motion, it should stay the deadline for the certification and filing of the record and index.<sup>19</sup> It should also stay the issuance of a briefing schedule while this motion is pending.<sup>20</sup>

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<sup>19</sup> Should the Commission order FINRA to file a certified copy of the record and index under Commission Rule of Practice 420(e), FINRA moves under Commission Rule of Practice Rule 322 for a protective order to limit from disclosure to the Shareholders the index of the record in this matter. Under Commission Rule of Practice 322, parties may seek to "limit from disclosure to other parties or to the public documents or testimony that contain confidential information." The Commission grants a motion for a protective order "only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure." 17 C.F.R. § 201.322(c). The harm that could result from disclosure of the index to the Shareholders substantially outweighs the benefits of disclosure. These Shareholders are not the "duly authorized representative[s]" of the Issuers under Rule 6490. The index will include, among other things, sensitive information about, and in support of, the Issuers' Company-Related Actions requests and information related to corporate governance and transactions that are sensitive to the Issuers and to which these Shareholders are not entitled.

In previous matters in which the Commission has granted a motion for a protective order, the Commission has stressed the sensitive nature of the information the movant sought to protect. *See, e.g., Paul L. Chancey, Jr., CPA*, Exchange Act Release No. 92734, 2021 SEC LEXIS 2381, at \*1-2 (Aug. 23, 2021) (finding that documents reflecting proprietary sales practices met the standard for a protective order); *Laurie Bebo*, Exchange Release No. 77204, 2016 SEC LEXIS 654, at \*1 (Feb. 22, 2016) (granting motion to protect a financial disclosure document because it contained confidential financial information and personally identifiable information such as movant's social security number and address); *Nature's Sunshine Products, Inc.*, Exchange Act Release No. 59181, 2008 SEC LEXIS 2846, at \*2 (Dec. 30, 2008) (granting motion to protect "sensitive information concerning a[n] [ongoing] law enforcement investigation" against one of the parties). The Commission should not require FINRA to provide a copy of the index to these Shareholders when they are not the "duly authorized representative[s]" of the Issuers as set forth in the Issuers' requests to Operations for processing of the Issuers' Company-Related Actions,

[Footnote cont'd on next page]

Respectfully submitted,

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and they are not entitled to this information. *See* Commission Rule of Practice 420(e), 17 C.F.R. § 201.420(e); FINRA Rule 6490(b); Exhibit A at 2-3, 8 & Exhibit B at 2-3, 7.

<sup>20</sup> The Commission should deny the Shareholders' request for oral argument because the Commission's "decisional process would" not "be significantly aided by oral argument." *See* SEC Rule of Practice 451(a), 17 C.F.R. § 201.451(a); *see, e.g., Cristo*, 2019 SEC LEXIS 1284, at \*2 n.1 (denying request for oral argument). The issues raised in the pending application can be determined based on the papers filed by the parties, without the Commission hearing oral argument. *See, e.g., mPhase Techs., Inc.*, Exchange Act Release No. 72076, 2014 SEC LEXIS 1495, at \*1 (May 1, 2014) (denying request for oral argument in appeal by an issuer in a FINRA Rule 6490 case).

## CERTIFICATE OF COMPLIANCE

I, Elizabeth Sisul, certify that:

- (1) FINRA's Motion to Dismiss the Application for Review and to Stay the Deadline for Filing of the Certified Record and Index and the Issuance of a Briefing Schedule complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information; and
- (2) FINRA's Motion to Dismiss the Application for Review and to Stay the Deadline for Filing of the Certified Record and Index and Issuance of a Briefing Schedule complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 6,653 words.

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**CERTIFICATE OF SERVICE**

I, Elizabeth Sisul, certify that on this 26th day of December 2025, I caused a copy of the foregoing Motion to Dismiss and to Stay the Deadline for Filing of the Certified Record and Index and the Issuance of a Briefing Schedule, in the matter of Application for Review of DNA Brands, Inc. (DNAX) and ZA Group, Inc. (ZAAG) Shareholders, Administrative Proceeding File No. 3-22572, to be filed through the SEC's eFAP system.

And served by electronic mail on:

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