UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF THE APPLICATION OF **DNA BRANDS, INC. (DNAX) AND ZA GROUP, INC. (ZAAG) SHAREHOLDERS** **FOR REVIEW OF ACTION TAKEN BY** **FINRA**	**ADMINISTRATIVE PROCEEDING** **File No.: 3-22572**

OPPOSITION TO FINRA'S MOTION TO DISMISS SHAREHOLDERS' APPLICATION FOR REVIEW AND TO STAY THE DEADLINE FOR FILING THE CERTIFIED RECORD AND INDEX

OS Received 01/05/2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. INTRODUCTION 1

II. ARGUMENT 4

A. FINRA's Unauthorized Expansion of Rule 6490 4

B. Section 19 Review Cannot Be Defeated by an Unavailable, Issuer-Only Appeal 7

1. Exhaustion is Prudential and Does Not Bar Review Where SRO Remedies are Unavailable 7

2. Rule 6490's UPCC Appeal is Issuer-Only, Seven Days, Non-Refundable, and Unavailable to Applicants 8

C. FINRA Cannot Use Internal Notice Rules to Strip Shareholders of Statutory Standing 9

1. The Statutory "Any Person Aggrieved" Standard Supersedes FINRA's Narrow Interpretation 10

2. FINRA's "Authorized Representative" Filing Procedures Cannot Strip Aggrieved Shareholders of Standing 10

3. FINRA's Obstruction Directly Injures Shareholders by Impairing Their Equity Interests 11

D. FINRA Takes Contradictory Positions That Prevent Anyone From Exercising Oversight 12

E. The Commission Must Correct FINRA's Arbitrary Misuse of Gatekeeping Power 14

OS Received 01/05/2026

1. FINRA's "Rulemaking" And "Oversight Examination" Defenses are Transparent Attempts to Evade Commission Review of Concrete Misconduct 15

2. The Commission Must Exercise its Oversight Duty to Police FINRA's Process Abuses ……………………………………………………………………………………… 15

3. FINRA's Application of Rule 6490 Impermissibly Exceeds the Authority Granted by the Commission in its Approval Order 16

III. Conclusion 17

OS Received 01/05/2026

TABLE OF AUTHORITIES

Cases

Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., 561 U.S. 477 (2010) 14

Mathews v. Eldridge, 424 U.S. 319 (1976) 14

MFS Sec. Corp. v. NYSE, 277 F.3d 613 (2d Cir. 2002) 6

MFS Sec. Corp. v. SEC, 380 F.3d 611 (2d Cir. 2004) 8

Statutes

15 U.S.C. § 78s .... passim

15 U.S.C. § 78s(d)(1) 5, 10

15 U.S.C. § 78s(e) 16, 17

Administrative and Court Filings

Black v. FINRA, No. 3:23-cv-00709-MEO-DCK (W.D.N.C. Dec. 23, 2025), ECF No. 80 13

Entrex Carbon Market, Inc. (f/k/a Universal Health Freehold, Inc.), Exchange Act Release No. 104535 (Jan. 2, 2026) 5, 10, 14, 18

FINRA Motion to Dismiss, File No. 3-22572 (Dec. 26, 2025) .... passim

Hicks v. FINRA, No. 1:25-cv-03598 (D.D.C. Dec. 4, 2025), ECF No. 8 13

In re Gregory Acosta, Exchange Act Rel. No. 89121 (June 22, 2020) 5

In re Ronald Moschetta, Exchange Act Rel. No. 104151 (Sept. 30, 2025) 7

In re Shlomo Sharbat, Exchange Act Rel. No. 93757 (Dec. 13, 2021) 8

In re Entrex Carbon Market, Inc., File No. 3-22473 (May 9, 2025) 6

SEC Approval Order, Rel. No. 34-62434 (July 1, 2010) 2010 SEC LEXIS 2186 17

Order Approving Proposed Rule Change Relating to Improved Nasdaq Opening Process, Exchange Act Rel. No. 34-50405 (Sep. 16, 2004) 6

OS Received 01/05/2026

Rules

17 C.F.R. § 201.420 .... 5, 9, 10, 16

17 C.F.R. § 201.420(a) 5, 9, 10

17 C.F.R. § 201.420(a)(3) 5

OS Received 01/05/2026

Shareholders oppose FINRA's attempt to evade Commission oversight of its sixteen-month obstruction of valid corporate actions, which represents an impermissible expansion of Rule 6490 authority and a reviewable limitation of access to essential market services. Because Shareholders are "aggrieved persons" under Section 19(d), and the Commission has the express authority to set aside ongoing SRO denials, FINRA's motion to dismiss and stay must be denied.

I. INTRODUCTION

For roughly sixteen months, FINRA has held two issuers and their shareholders in regulatory limbo by refusing to process properly submitted company-related actions under FINRA Rule 6490. ZA Group, Inc. ("ZAAG") submitted its notification through FINRA's Gateway on March 22, 2024, seeking a 1-for-1,000 reverse split, a name change to Goliath National, Inc., and a corresponding symbol change. DNA Brands, Inc. ("DNAX") similarly commenced an action seeking a 1-for-500 reverse split with an anticipated effective date of October 9, 2024. Yet, in both cases, FINRA allowed these requests to languish well beyond their targeted effective dates, leaving shareholders in an uncertain limbo and denying them the stated purpose of Rule 6490: a timely and reviewable determination on a ministerial market-notification process.

Only after months of silence did FINRA issue deficiency determinations. FINRA issued deficiency determinations on July 18, 2025 (ZAAG) and August 1, 2025 (DNAX), invoking Rule 6490 on both occasions. Neither determination identified an issuer-level defect, nor did they point to any current misconduct by either issuer. Rather, FINRA's stated basis for denial was that a convertible noteholder in both companies, Stephen M. Hicks, through Trillium Partners LP ("Trillium"), was previously the subject of an enforcement action by the Securities and Exchange Commission and that Trillium's conversions could represent up to 71.8% of ZAAG's common

OS Received 01/05/2026

stock and 17% of DNAX's common stock. Essentially, FINRA repurposed Rule 6490 from a narrow documentation and notification rule into a *de facto* sanctioning tool, a tool that effectively freezes state-law corporate actions and punishes innocent shareholders based on the unrelated history of a third party.

FINRA now asks the Commission to dismiss the Shareholders' Application for Review at the outset and to stay the deadline for FINRA to file the certified record and index for the issuance of a briefing schedule while its motion is pending. Its motion advances three main themes: (1) that the Commission should dismiss because the Issuers (not the Shareholder applicants in this proceeding) supposedly failed to exhaust administrative remedies; (2) that the Shareholders are not a proper party because they are not "duly authorized" under FINRA Rule 6490 and purportedly have not shown that FINRA limited their access to a service; and (3) that the Commission lacks jurisdiction under Securities Exchange Act of 1934 ("Exchange Act") Section 19(d) to consider the Shareholders' requested relief, particularly the proposed structural and oversight-focused remedies. FINRA's motion should be denied. *See* FINRA Motion at 12-13; 16-17; 20.

Essentially, FINRA's position would create a regulatory black hole for investors: FINRA could delay processing Rule 6490 submissions indefinitely, issue belated deficiency determinations untethered to any issuer-level defect, and subsequently evade any meaningful Commission review by insisting that only the Issuers, after paying substantial fees and navigating an opaque process, may seek relief, while any shareholders must simply remain aggrieved and subject to market uncertainty and economic harm. *See* FINRA Motion at 16-17. This is not the intended function of Section 19 of the Exchange Act, and it is not consistent with the Commission's oversight role as it pertains to SROs. Here, FINRA's actions amount to

OS Received 01/05/2026

constructive denial, effectively limiting access to a service and inflicting concrete harm upon investors.

The Shareholders are "aggrieved" persons within the meaning of Section 19(d)(2) of the Exchange Act because FINRA's handling of ZAAG's and DNAX's corporate actions directly impacts the accuracy of share counts and trading identity in the OTC market, depresses shareholder value through prolonged uncertainty, and effectively nullifies corporate actions that are already valid under state law. FINRA's motion attempts to reframe this issue as a private dispute between FINRA and the Issuers. However, the practical consequences of FINRA's conduct fall squarely on shareholders, whom FINRA and the federal securities laws are supposed to protect. The Commission's jurisdiction cannot be defeated by FINRA's insistence that only an issuer may complain about an investor-facing harm.

FINRA cannot shield its conduct behind a self-imposed requirement that issuers exhaust administrative remedies with FINRA before shareholders may seek relief from the Commission. The record demonstrates that FINRA's ministerial Rule 6490 has been transformed into an indefinite, substantive veto over state-effective corporate actions, imposed not for any deficiency in the issuer documentation, but imposed because FINRA disapproves of the enforcement history of a creditor of the issuer. Here, the challenged conduct is the very architecture of delay and obstruction that deprives the shareholders of a timely and reviewable determination. The Commission has ample authority to address constructive denials and procedural abuses such as the current case. FINRA's conduct has effectively limited access to services, and the asserted "remedy" is a costly and issuer-controlled internal process that in no way cures the injury inflicted upon the shareholders of ZAAG and DNAX.

OS Received 01/05/2026

Finally, FINRA's request for a stay demonstrates why dismissal is inappropriate. FINRA, currently in violation of Commission rules, asks the Commission to pause the record-certification and briefing process while it litigates threshold defenses, apparently content to remain in violation until the Commission rules on its request, all the while denying the Commission and Shareholders of the certified record essential to evaluating the nature and extent of FINRA's delay. The Commission should not allow FINRA to seek termination of the review on the theory that the case is not properly before the Commission, nor should it allow the record necessary for the Commission to test FINRA's assertions to be delayed.

This matter represents a basic question with significant implications: whether FINRA may convert Rule 6490 into an unreviewable, months-long (or perhaps years-long) blockade of lawful corporate actions, imposed because of FINRA's disapproval of a third party, while simultaneously asserting that injured shareholders have no seat before the Commission. The Exchange Act does not support this position. As such, FINRA's Motion to Dismiss and Motion to Stay should be denied.

II. <u>ARGUMENT</u>

A. <u>FINRA's Unauthorized Expansion of Rule 6490</u>

The SEC is charged with comprehensive oversight of FINRA by virtue of its delegation of duties to FINRA, a private SRO whose powers exist solely according to the mandate of the SEC. *See* 15 U.S.C. § 78s. The SEC's oversight authority is not narrowly limited to review of FINRA's affirmative actions under its rules, but extends to failures to adhere to procedural duties, unreasonable delays, and constructive denials of services under Rule 6490. ZAAG's and DNAX's Shareholders are entitled to timely processing of documentation under Rule 6490 and to a determination approving or denying the request.

OS Received 01/05/2026

FINRA's motion asks the Commission to accept a jurisdictional theory that would create precisely the regulatory black hole for investors Section 19 was designed to prevent: FINRA could slow-walk Rule 6490 processing for months, distort the rights of issuers and investors, and avoid review by characterizing the resulting harm as an unreviewable "process" dispute. This is inconsistent with the Exchange Act and inconsistent with the Commission's own Rules of Practice. *See* 15 U.S.C. § 78s(d)(1); *see also* 17 C.F.R. § 201.420(a)(3). The Commission recently reaffirmed this jurisdictional scope in *Entrex Carbon Market, Inc. (f/k/a Universal Health Freehold, Inc.)*, Exchange Act Release No. 104535 (Jan. 2, 2026). In *Entrex*, the Commission noted that while it could not provide a remedy for a delay that had already ended (because FINRA had processed the corporate actions after the Entrex Shareholders filed an application with the Commission), Section 19 expressly authorizes the Commission to 'set aside' an SRO's action and 'grant access to services offered' by the SRO where a limitation is active. *Id*. at 2. Unlike the applicants in *Entrex*, Shareholders here face a continuing and prospective denial of service, making the exercise of the Commission's 'set aside' authority both necessary and appropriate.

FINRA effectively concedes the applicable jurisdictional framework, acknowledging in its own Motion to Dismiss Section 19(d)'s "prohibits or limits" prong while arguing that Shareholders cannot satisfy it here. *See* FINRA Motion to Dismiss, File No. 3-22572 (Dec. 26, 2025) (hereafter "FINRA Motion") at 3 fn 3. Despite what FINRA argues, the Commission's precedent is clear: reviewability turns on the substance of a matter: SRO conduct that effectively limits services is reviewable whether the effect is formally intended or not. *See In re Gregory Acosta*, Exchange Act Rel. No. 89121 (June 22, 2020) ("We have held previously that 'SRO

OS Received 01/05/2026

action having [an] effect . . . whether the [effect is formal] or not—is reviewable under Section 19(d).'").

Elsewhere, in the similar *Entrex Shareholder* matter, FINRA has argued that "Operations' determination to process" corporate actions did not fall within Section 19(d), essentially stating that delay or post-action filing could evade review. *See In re Entrex Carbon Market, Inc.*, File No. 3-22473 (May 9, 2025).[1] The Commission's determination in *Acosta* rejects this elevation of form over substance. Further, the Second Circuit has made clear that actions which "manifestly [limit]" access to SRO services are reviewable under Section 19(d), because the statute looks to what essentially amounts to functional deprivation, not the SRO's preferred characterization. *See MFS Sec. Corp. v. NYSE*, 277 F.3d 613, 620 (2d Cir. 2002).

This principle is not confined to disciplinary or membership contexts. In Commission rulemaking, exclusionary conduct was deemed a "constructive denial of access" to an exchange service, highlighting that in assessing situations such as this, substance matters more than labels. *See Order Approving Proposed Rule Change Relating to Improved Nasdaq Opening Process*, Exchange Act Rel. No. 34-50405 (Sep. 16, 2004) at 4-5. If an SRO can nullify the Commission's oversight simply by substituting indefinite delay for a final order, then the "prohibits or limits" prong collapses into nothing: a regulatory black hole. This is especially true in the context of Rule 6490, where timeliness is essential to the Rule's function and to market integrity overall.

Here, FINRA's Motion to Dismiss adopts the same basic maneuvering the Commission has seen elsewhere: it attempts to convert the Commission's oversight authority into a shield for dilatory behavior by insisting that only a narrow category of "final" issuer-level actions qualifies,

---

[1] https://www.sec.gov/files/litigation/apdocuments/entrex-opposition-finras-motion-dismiss-05092025-3-22473.pdf

OS Received 01/05/2026

that delays and obstructions are non-reviewable, and that the Commission must instead police the problem only through generalized oversight or rulemaking rather than adjudicatory review.

FINRA's motion asks the Commission to accept the dangerous proposition that, by characterizing its own conduct as "non-reviewable," it can insulate that conduct from oversight altogether. Accordingly, to the extent FINRA's Rule 6490 handling of ZAAG's and DNAX's long-pending corporate actions functioned to withhold, delay, and ultimately deny timely access to FINRA's processing and announcement services to Shareholders, that conduct is reviewable as a limitation of access to an SRO service under Section 19(d) and Rule 420, whether or not FINRA prefers to style its conduct as something less than a "denial."

B. Section 19 Review Cannot Be Defeated by an Unavailable, Issuer-Only Appeal

FINRA's motion asks the Commission to dismiss this proceeding on the theory that Applicants (public shareholders) must be turned away because the issuers did not pursue a narrow internal appeal to FINRA's Uniform Practice Code Committee ("UPCC") subcommittee. *See* FINRA Motion at 12-13. That theory fails for three independent reasons: (1) the exhaustion doctrine invoked by FINRA is discretionary and presupposes that the party before the Commission actually had an available SRO remedy to exhaust; (2) Rule 6490's UPCC appeal is an issuer-only, seven-day, non-refundable procedure that Applicants cannot invoke and should not be forced to bankroll through a third party; and (3) even setting standing and availability aside, FINRA's months-long delay and posture are themselves part of the harm, and a short, costly, *post hoc* internal appeal cannot supply a meaningful avenue to prevent or remedy that harm.

1. Exhaustion is Prudential and Does Not Bar Review Where SRO Remedies are Unavailable

In many circumstances, the Commission requires an exhaustion of an SRO's internal appellate process before it will entertain review, particularly disciplinary cases where an

OS Received 01/05/2026

associated person or member simply bypassed FINRA's own appellate path. *See* FINRA Motion at 13; *In re Ronald Moschetta*, Exchange Act Rel. No. 104151 (Sept. 30, 2025) (dismissing where applicant did not appeal to the NAC and the Hearing Panel decision became FINRA's final disciplinary action); *see also In re Shlomo Sharbat*, Exchange Act Rel. No. 93757 (Dec. 13, 2021) (granting FINRA's motion to dismiss on exhaustion/timeliness grounds where applicant defaulted and did not pursue FINRA's internal process).

However, these authorities do not convert exhaustion into a jurisdictional bar that can be wielded against investors who never had the internal remedy in the first place. The Second Circuit explained, "[t]he exhaustion requirement applicable to review of proceedings before SROs is akin to a judicially created exhaustion requirement. It is therefore not mandatory." *See MFS Sec. Corp. v. SEC*, 380 F.3d 611, 623 (2d Cir. 2004). This discretionary exhaustion mechanism affords an SRO the opportunity to correct errors, and helps build an effective record for review, but only under appropriate circumstances; not in circumstances like those in the present proceeding in which investor applicants cannot invoke the SRO process.

FINRA's exhaustion theory is inadequate: Applicants are not seeking to avert a readily available SRO appellate path; they are challenging FINRA's Rule 6490 determinations and processing posture in a context where the only internal appeal FINRA points to is restricted to issuers structurally inadequate to address the specific harms alleged. *See* FINRA Motion at 12-13.

2. Rule 6490's UPCC Appeal is Issuer-Only, Seven Days, Non-Refundable, and Unavailable to Applicants

According to FINRA, only an "issuer or other duly authorized representative of the issuer" may submit the request for FINRA action under Rule 6490. Further, FINRA expressly limits the appeal right to the "Requesting Party" served with a deficiency notice. That is not

OS Received 01/05/2026

Applicants. In the current case, Applicants are shareholders, but they are not the "Requesting Party" and therefore cannot file a UPCC appeal in their own right.

FINRA's own communications underscore how narrow and costly this issuer-only "remedy" is. This appeal has a seven-day window and requires a non-refundable fee. The exhaustion doctrine is not an instrument for compelling a non-party to finance, control, and fully litigate through a third party's optional internal appeals process, especially where that third party is not the applicant before the Commission, and where the internal procedure was not designed to be available to shareholders at all. FINRA's argument would effectively allow an SRO to defeat Rule 420's "any person aggrieved" pathway by restricting "aggrieved persons" to issuers who successfully navigate FINRA's internal procedures. *See* 17 C.F.R. § 201.420(a). This is inconsistent with the concept of Section 19 oversight.

C. FINRA Cannot Use Internal Notice Rules to Strip Shareholders of Statutory Standing

Standing here is not conferred by FINRA's internal rulebook labels; it is conferred by concrete injury to shareholders from FINRA's refusal to process corporate actions that govern trading identity and capitalization. FINRA's "proper party" argument is not a merits defense; it is instead an attempt to erase this proceeding by redefining who Congress permitted to invoke Commission review. FINRA contends the application must be dismissed because Applicants were not listed as the issuers' "duly authorized representative[s]" in the Rule 6490 submissions and therefore may not insert themselves into a proceeding seeking review of FINRA's deficiency determinations. This position is plainly contradicted by the Exchange Act and the appropriate Commission rules. *See* 15 U.S.C. § 78s; *see also* 17 C.F.R. § 201.420. FINRA cannot contract a statutory pathway by pointing to a separate, issuer-facing processing rule that merely governs how corporate action documentation is submitted to FINRA in the first place.

OS Received 01/05/2026

1. The Statutory “Any Person Aggrieved” Standard Supersedes FINRA’s Narrow Interpretation

Congress used expansive language in Section 19(d)(2): SRO actions specified in Section 19(d)(1) “shall be subject to review” by the Commission “upon application by any person aggrieved thereby.” *See* 15 U.S.C. § 78s(d)(1)-(2). The Commission implemented that mandate in Rule 420, which likewise provides that an application for review “may be filed by any person who is aggrieved by a determination of a [SRO],” including determinations involving a “prohibition or limitation in respect to access to services offered by” the SRO. *See* 17 C.F.R. § 201.420(a). FINRA’s motion ignores this and attempts to rewrite “any person aggrieved” to mean “only the issuer or its designated representative.” But nothing in Section 19(d) or Rule 420 contains that limitation. Indeed, the Commission’s recent decision in *Entrex* confirms that shareholders are appropriate applicants under Section 19(d) in similar circumstances. The Commission did not dismiss the *Entrex* shareholders for lack of standing or because they were not “issuers;” rather, it dismissed solely because the specific relief sought—including the processing of the corporate actions—had already been granted by FINRA during the pendency of the appeal, rendering the matter moot. *See Entrex Carbon Market, Inc.*, Exchange Act Release No. 104535 (Jan. 2, 2026) at 2. By addressing the merits of a Section 19 application made by shareholders, the Commission has effectively recognized that shareholders may be “aggrieved persons” with standing to challenge FINRA's Rule 6490 determinations.

2. FINRA’s “Authorized Representative” Filing Procedures Cannot Strip Aggrieved Shareholders of Standing

FINRA’s motion conflates two separate questions: (1) who may submit corporate action documentation to FINRA for processing under Rule 6490; and (2) who may seek Commission review under Section 19(d) and Rule 420 after FINRA takes reviewable action.

OS Received 01/05/2026

FINRA Rule 6490(b)(1) answers only the first question by providing that an "issuer or other duly authorized representative of the issuer may request that FINRA process documentation related to" company actions. This is an administrative gatekeeping rule for FINRA's internal workflow and says nothing about who may be "aggrieved" by FINRA's subsequent refusal or failure to process those actions. This is particularly true where the harm falls on shareholders whose equity is directly impaired by the stalled market recognition of state-effective corporate actions.

FINRA acknowledges there are "limited circumstances" where "certain third parties may submit a request" under Rule 6490(b). *See* FINRA Motion at 16. That concession underscores what Section 19(d) and Rule 420 already establish: Rule 6490's submission mechanics are not a jurisdictional fence around Commission review. They are, at most, a procedural description of who can file a corporate action package with FINRA's Department of Market Operations, not a congressional delegation to FINRA to decide which injured investors may invoke the SEC's oversight function.

3. <u>FINRA's Obstruction Directly Injures Shareholders by Impairing Their Equity Interests</u>

FINRA separately argues that Applicants have not shown they are subject to an SRO action that actually limits their access to SRO services. *See* FINRA Motion at 11. This argument collapses once "service" is properly defined.

The relevant service is not an abstract "issuer-only" privilege; it is the market function FINRA provides in processing and announcing corporate actions in a manner that enables broker-dealers, market makers, transfer agents, and trading systems to recognize the post-action security. When FINRA refuses to process a reverse split, name change, or symbol change under Rule 6490, it does not merely inconvenience corporate counsel or the issuer; it prevents the

OS Received 01/05/2026

market from recognizing the corporate action in the ordinary course of business. This is a market-level impairment, and one borne most acutely by shareholders: their holdings trade, or fail to do so, under an outdated identity and capital structure, and the investment remains stuck in uncertainty and confusion. This is precisely the type of "aggrieved" injury that is recognized as Section 19's framework.

Finally, FINRA's "proper party" theory is not only wrong, but also administratively harmful. FINRA holds itself out as an investor-protection organization, yet its motion seeks to deny investors the ability to invoke the Commission's oversight precisely when FINRA's administrative machinery ceases to function for the benefit of investors. The Commission should reject any attempt to manufacture a jurisdictional void. Section 19(d)(2) and Rule 420 are clear: when FINRA's actions or inactions effectively limit or deny access to the services it offers, any person aggrieved, including shareholders, may seek Commission review.

D. FINRA Takes Contradictory Positions to Evade Oversight

In the current instance, FINRA's motion rests on the jurisdictional theory that, if accepted, would leave investors and markets with a glaring accountability gap. FINRA argues that the Commission lacks a "statutory basis" to exercise Section 19(d) jurisdiction over Shareholders' requests that the Commission set aside FINRA's refusal to process company-related actions and address constitutional and process defects, recasting the Application as an impermissible demand for "structural reforms" and oversight-focused steps. *See* FINRA Motion at 11.

Elsewhere, in federal litigation concerning Rule 6490 deficiency determinations, FINRA emphasized that the Exchange Act subjects FINRA to close supervision and comprehensive oversight by the Commission, including the Commission's rule-approval and abrogation powers,

OS Received 01/05/2026

and has argued that the Exchange Act's review framework channels disputes into SEC review rather than private federal-court actions. *See Hicks v. FINRA*, No. 1:25-cv-03598 (D.D.C. Dec. 4, 2025), ECF No. 8 at 22. FINRA's position in the *Hicks* litigation is simply: because Congress supplied an SEC-centered review process, litigants cannot bypass that pathway by suing FINRA directly in federal district court. *See id.*

FINRA has likewise relied on the Commission's oversight role when defending against structural challenges. In *Black v FINRA*, FINRA recently submitted supplemental authority contending that a private nondelegation challenge fails because SROs "[function] subordinately" to a federal regulator and "[remain] 'subject to the [regulator's] "authority and surveillance."'" *See Black v. FINRA*, No. 3:23-cv-00709-MEO-DCK (W.D.N.C. Dec. 23, 2025), ECF No. 80 at 1-2. FINRA emphasized that "the SEC exercises comparable oversight over FINRA" and that, because the Commission "oversees the rulemaking and enforcement," federal courts have upheld this relationship in the face of private nondelegation challenges. *See id.* Put simply, in federal court, FINRA invokes SEC supervision as both a constitutional safety valve and the exclusive mechanism for oversight of FINRA's actions.

FINRA's position in federal courts is inconsistent with FINRA's position in this matter. Here, FINRA asserts that the Commission lacks jurisdiction to provide meaningful review of Rule 6490 deficiency determinations and process abuses when investors seek relief under Section 19(d). *See* FINRA Motion at 17-20. FINRA's position in this matter also contradicts the Commission recent recognition of its broad oversight authority to ensure FINRA complies with the Exchange Act and implementation of rules. *See Entrex Carbon Market, Inc. (f/k/a Universal Health Freehold, Inc.)*, Exchange Act Release No. 104535 (Jan. 2, 2026) at 3. FINRA's recurring insistence in federal court that SEC supervision is central to FINRA's legitimacy and

OS Received 01/05/2026

accountability cannot be reconciled with its position here that the Commission is powerless to address investor grievances concerning process defects and unlawful refusals to process corporate actions.

In federal court, FINRA argues that challengers must avail themselves of SEC oversight; in Commission proceedings, FINRA argues that the Commission may not act. These contradictory positions demonstrate that FINRA is trying to insulate itself from oversight altogether. This is incompatible with the Exchange Act's design, which relies on Commission accountability as the backstop against unchecked private regulatory power. *See Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 532-34 (2010) (rejecting arguments that contravene the Constitution's separation of powers); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (explaining that "due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). The Commission should therefore reject FINRA's effort to relabel the current matter as a forbidden rulemaking request and should instead exercise its jurisdiction to set aside and remand FINRA's deficiency determinations and to police process abuses that defeat meaningful review.

E. <u>The Commission Must Correct FINRA's Arbitrary Misuse of Gatekeeping Power</u>

FINRA's motion attempts to convert a straightforward Section 19 review of concrete FINRA actions into an invitation for the Commission to dismiss because shareholders purportedly seek structural reforms and oversight measures outside the four corners of Section 19(d). *See* FINRA Motion at 18-20. This framing is inaccurate and incomplete. The application presents reviewable SRO action that prohibited or limited access to FINRA's corporate action processing service; the Commission therefore has jurisdiction to adjudicate the propriety of FINRA's conduct and, at a minimum, to set aside or remand the challenged determinations for further proceedings consistent with the Exchange Act and the Commission's rules.

OS Received 01/05/2026

1. FINRA's "Rulemaking" And "Oversight Examination" Defenses are Transparent Attempts to Evade Commission Review of Concrete Misconduct

FINRA asserts that because the Commission has already approved Rule 6490 and has authority to amend it via rulemaking, and because the Commission has an oversight examination program, this proceeding is effectively an improper attempt to force "structural reforms" through the wrong channel. *See* FINRA Motion at 18-20. This argument fails for two reasons.

First, this argument is non-responsive to the reviewable controversy presented. The Application does not ask the Commission to "review and re-approve Rule 6490." It asks the Commission to review FINRA's misuse of Rule 6490 in a way that blocked state-law corporate actions, produced year-plus delays, and culminated in deficiency determinations grounded in third-party history rather than issuer-level defects. The Commission's prior approval of Rule 6490 does not immunize FINRA's subsequent application of that rule from Section 19(d) review where FINRA's conduct limits access to SRO services and constitutes a constructive denial.

Second, FINRA's suggestion that the "proper" avenue is rulemaking or examinations effectively asks the Commission to abdicate the appellate oversight Congress created. *See* FINRA Motion at 18-20. The existence of other Commission tools does not negate Section 19 review; rather, it underscores why Section 19(d) exists, which is so that the Commission can correct SRO process failures in concrete cases such as this. *See* 15 U.S.C. § 78s(e); *see also* 17 C.F.R. § 201.420.

2. The Commission Must Exercise its Oversight Duty to Police FINRA's Process Abuses

FINRA leans heavily upon Commission decisions noting that an applicant's efforts to present a claim against FINRA as a constitutional violation do not create authority under Section 19(d) where none otherwise exists. *See* FINRA Motion at 18-20. Shareholders do not dispute that principle. The point here is the opposite: jurisdiction exists because FINRA's conduct limited

OS Received 01/05/2026

access to services and produced reviewable deficiency determinations. Therefore, the Commission may consider the procedural and structural defects that bear directly on whether FINRA's action should be set aside or remanded.

To the extent FINRA argues that any discussion of structural concerns necessarily transforms this matter into a forbidden "rule challenge," that argument too overreaches. Commission review may evaluate whether SRO action was taken consistently with the Exchange Act, Commission Rules, and fair procedure. Where the record shows that delay and posture were part of the harm, and part of the mechanism FINRA used to shield its determinations from meaningful review, the Commission need not blind itself to those facts merely because FINRA labels the requested remedies "oversight-focused."

At a minimum, the appropriate disposition is straightforward: deny FINRA's jurisdictional attack, hold that the challenged deficiency determinations and related constructive denial are reviewable under Section 19(d), and proceed to merits review with the Commission's full remedial authority available, including setting aside the determinations and remanding with instructions to issue a prompt, written, reviewable decision consistent with Rule 6490's proper scope. *See* 15 U.S.C. § 78s(e).

3. <u>FINRA's Application of Rule 6490 Impermissibly Exceeds the Authority Granted by the Commission in its Approval Order</u>

FINRA's current application of Rule 6490 in this matter represents an impermissible expansion of its authority beyond the scope originally authorized by the Commission. When the Commission approved Rule 6490, it explicitly defined the rule's vital purpose as "encourag[ing] issuers and their agents to provide complete, accurate and timely information to FINRA concerning Company-Related Actions . . . and thereby to prevent fraudulent and manipulative acts and practices[.]" *SEC Approval Order*, Rel. No. 34-62434 (July 1, 2010) 2010 SEC LEXIS

OS Received 01/05/2026

2186, at *16-17. The SEC's focus was clearly on the integrity and transparency of the information provided to the market during a corporate action. However, as evidenced by its own motion, FINRA has now repurposed this notice-processing rule into a substantive gatekeeping mechanism. FINRA now asserts a nearly limitless discretion under Rule 6490(d)(3)(3) to decline processing actions whenever it has "actual knowledge" of a "pending, adjudicated or settled regulatory action" involving anyone "connected to the issuer," which FINRA interprets to include third-party noteholders like Stephen Hicks, who are not officers, directors, or Section 16 shareholders. FINRA Motion at 10, fn 13.

By using Rule 6490 to block corporate actions based on the unrelated regulatory history of an issuer's creditor—rather than any deficiency in the 'completeness' or 'accuracy' of the information provided by the Issuers—FINRA has exceeded the mandate given by the Commission in the Approval Order. This *de facto* sanctioning tool effectively nullifies state-law corporate actions and punishes innocent shareholders without a finding of current misconduct by the issuer itself – even when, as here, FINRA does not dispute that the issuer has provided "complete, accurate and timely information." Such a substantive exercise of power transforms a rule designed to encourage timely and accurate information into a mechanism for indefinite regulatory limbo, a result that is fundamentally inconsistent with the ministerial market-notification process the SEC actually approved. The Commission should therefore reject FINRA's attempt to shield this unauthorized expansion of authority from appellate review.

III. <u>Conclusion</u>

FINRA's motion to dismiss represents a calculated attempt to evade Commission oversight through procedural maneuvering. Its prolonged failure to approve ZAAG's and DNAX's corporate actions constitutes a constructive denial of service that is reviewable under Section 19(d), which expressly protects "any person aggrieved" by SRO actions. As the

OS Received 01/05/2026

Commission recently noted in *Entrex Carbon Market, Inc. (f/k/a Universal Health Freehold, Inc.)*, Exchange Act Rel. No. 104535 (Jan. 2, 2026), its statutory mandate under Section 19(f) is to "set aside" an SRO's action and "grant 'access to services offered'" when those services are being improperly withheld. Unlike the applicants in *Entrex*, where the processing of actions during the application rendered the matter moot, Shareholders here face a continuing and prospective denial of service that requires the Commission's intervention.

If FINRA can unilaterally obstruct market participants' access to essential services without accountability, it operates as an unconstitutional fourth branch of government. Either the SEC has authority to sanction FINRA for its misconduct—as precedent and the recent *Entrex* order suggest—or FINRA's actions violate the private nondelegation doctrine federal. The Commission must reject FINRA's jurisdictional arguments, recognize the standing of these aggrieved Shareholders, and exercise its oversight responsibility to ensure FINRA properly executes its delegated duties for the protection of all market participants.

For these reasons, Shareholders respectfully request that the Commission deny FINRA's motion and proceed with full review of this matter.

Dated: January 5, 2026

Respectfully submitted,

/s/ Nicolas Morgan

Nicolas Morgan
INVESTOR CHOICE ADVOCATES NETWORK
453 South Spring Street
Suite 400
Los Angeles, CA 90013
nicolas.morgan@icanlaw.org
Attorney for ZA Group, Inc. and DNA Brands, Inc. Shareholders

OS Received 01/05/2026

CERTIFICATE OF SERVICE

Pursuant to Rule 150, this document has been served on the following individuals by electronic means:

Counsel for FINRA
Elizabeth Sisul
Associate General Counsel
FINRA – Office of General Counsel
1700 K Street, NW
Washington, DC 20006
(202) 728-6936
elizabeth.sisul@finra.org
nac.casefilings@finra.org

OS Received 01/05/2026