

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

In the Matter of the Application of

Paul Eric Flesche

For Review of Action Taken by

FINRA

File No. 3-20647

FINRA'S RESPONSE TO FLESCHÉ'S MOTION TO DISMISS

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August 1, 2025

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Paul Eric Flesche asks the Commission to dismiss a FINRA disciplinary matter that the Commission ordered remanded to FINRA for further proceedings.¹ The remanded proceeding, however, is currently before FINRA’s National Adjudicatory Council (“NAC”), and FINRA has not yet issued a decision constituting final FINRA action in the matter under FINRA Rule 9370. The Commission therefore lacks a statutory basis to exercise jurisdiction under Section 19(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) over the proceeding that Flesche

¹ Flesche’s motion is dated July 10, 2025, and appears to have been filed with the Commission that day. The motion nevertheless is not accompanied by a certificate of service, as required under Rule 151(d) of the Commission’s Rules of Practice, 17 C.F.R. § 201.151(d), and FINRA has no evidence that the motion was served on it in accordance with that rule. FINRA first learned of the motion when Flesche’s counsel emailed a copy of it to an attorney in FINRA’s Office of General Counsel on July 28, 2025. The attorney to which the motion was emailed is not the FINRA attorney who filed a notice of appearance in this matter. Because FINRA was not served with a copy of Flesche’s motion until July 28, 2025, FINRA’s response is timely pursuant to Rule of Practice 154(b), which provides that an opposition to a motion shall be filed within five days after service of the motion. 17 C.F.R. § 201.154(b).

requests that the Commission dismiss. Accordingly, the Commission should deny Flesche's motion.²

I. BACKGROUND

In October 2021, FINRA issued a final disciplinary decision that found Flesche liable for certain supervisory failures and imposed a fine and a 30-business-day suspension as sanctions. Flesche subsequently appealed FINRA's decision to the Commission.³ In December 2024, the Commission issued an opinion remanding the matter to FINRA for further proceedings. *Paul Eric Flesche*, Exchange Act Release No. 101991, 2024 SEC LEXIS 3549, at *7 (Dec. 19, 2024). In its opinion, the Commission did not review the merits of FINRA's findings or the sanctions it imposed. Rather, the Commission remanded the case to FINRA because it found that the record did not contain an adequate basis for it to determine whether the proceedings were fair. *Id.* at *9.

II. ARGUMENT

The Commission should dismiss Flesche's motion to dismiss because it lacks a statutory basis for exercising jurisdiction at this point in the proceedings. Exchange Act Section 19(d) establishes the scope of the Commission's jurisdiction to review the actions of self-regulatory organizations ("SROs") such as FINRA. 15 U.S.C. § 78s(d). Section 19(d)(1) authorizes the Commission to review a final FINRA action only if it 1) imposes any final disciplinary sanction

² The Commission should address FINRA's dispositive motion before addressing any of the merits-based arguments Flesche advances. *See Lance E. Van Alstyne*, 53 S.E.C. 1093, 1100 n.20 (1998) (declining to consider the merits of the allegations concerning rule violations because the Commission lacks jurisdiction to review the application for review). FINRA requests additional briefing on the merits (and reserves its arguments on the merits) should the Commission find that it does have jurisdiction to decide Flesche's motion.

³ Because Flesche timely appealed FINRA's decision to the Commission, the sanctions FINRA imposed have been and continue to be stayed. *See* FINRA Rule 9370 (providing that an application for review by the Commission shall stay the effectiveness of any sanction of an individual other than a bar).

on any member or person associated with a member; 2) denies membership or participation to any applicant; 3) prohibits or limits any person in respect to services offered by the SRO; or 4) bars any person from being associated with a member. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 962 (2000) (finding the Commission lacked jurisdiction over the appeal of an NASD action when the action did not fall within any of the four jurisdictional bases of Section 19(d)).

As the Commission has explained, for it to exercise jurisdiction there must be a final determination by FINRA that meets one of the four prongs of Exchange Act Section 19(d). *See Interactive Brokers*, Exchange Act Release No. 80164, 2017 SEC LEXIS 701, at *6-7 (Mar. 6, 2017) (finding that because “FINRA has not yet made a final determination” on a continuing membership application, the Commission did not have jurisdiction under any of the prongs of Exchange Act Section 19(d)); *Anthony Johnson*, 58 S.E.C. 756, 757 (2005) (finding that the Commission lacked jurisdiction under Section 19(d) and explaining that “[i]t would be premature and inappropriate for [the Commission] to intervene in [the] proceeding before NASD has rendered a final decision”).

Flesche acknowledges in his motion that there is no final FINRA action that has resulted from the Commission’s remand here. Thus, Flesche does not—and indeed cannot—cite any basis under Exchange Act Section 19(d) for the Commission to exercise jurisdiction to grant his motion to dismiss.

The Commission’s remand order is currently being considered by the NAC, and the NAC will deliberate the remanded proceeding at its next meeting scheduled for August 21, 2025. The NAC can dismiss, modify, reverse, or remand the case to the Office of Hearing Officers for further proceedings. *See* FINRA Rule 9348. When the NAC decides upon a proposed decision,

the matter may then be called for discretionary review by FINRA's Board of Governors.⁴ *See* FINRA Rules 9349(c), 9351. Thus, FINRA has not yet issued any final decision or taken any final action pursuant to the Commission's remand order, and the Commission lacks jurisdiction under Section 19(d) of the Exchange Act to review Flesche's motion.

IV. CONCLUSION

The Commission should deny Flesche's motion to dismiss because, under Section 19(d) of the Exchange Act, the Commission lacks jurisdiction to hear it. There is no final FINRA action for the Commission to review. This case is pending on the NAC's docket and will be considered at its next scheduled meeting on August 21, 2025.

Respectfully submitted,

/s/ Celia Passaro

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August 1, 2025

⁴ If the Board does not call the NAC's decision for review, it will be issued after the expiration of the call for review period and will constitute FINRA's final decision, unless the NAC remands the proceeding. *See* FINRA Rule 9349(c).

CERTIFICATE OF COMPLIANCE

I, Celia Passaro, certify that this motion complies with the Commission's Rules of Practice by filing a motion that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

/s/ Celia L. Passaro

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CERTIFICATE OF SERVICE

I, Celia Passaro, certify that on this 1st day of August 2025, I caused a copy of the foregoing FINRA's Response to Flesche's Motion to Dismiss, in the matter of Application for Review of Paul Eric Flesche, Administrative Proceeding File No. 3-20647, to be filed through the SEC's eFAP system.

And served by electronic mail on:

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Respectfully submitted,

/s/ Celia Passaro

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