BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of
DreamFunded Marketplace, LLC, and Manuel Fernandez
For Review of Disciplinary Action Taken by FINRA
File No. 3-20639

APPLICANTS' CORRECTED REPLY TO FINRA'S CONSOLIDATED RESPONSE TO APPLICANTS' APRIL 6, 2026 FILINGS

NOTE REGARDING CORRECTED FILING

Applicants file this Corrected Reply to replace the version filed and served on April 24, 2026. The original filing contained a summation error in Section V in which certain arguments were inadvertently omitted or incompletely stated due to a word-processing compilation error during final assembly of the document. The substance of all other sections is identical to the version filed and served on April 24, 2026. Applicants apologize for any inconvenience and respectfully request that the Commission accept this corrected version as the operative filing.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

FINRA's Consolidated Response asks the Commission to reject Applicants' filing concerning *Smith v. SEC*, to partially strike Section IV of Applicants' Motion for Immediate Ruling, and to hold that Applicants forfeited their constitutional objections. Each request rests on a mischaracterization of the record and of the procedural posture of this case.

First, Applicants' filing concerning *Smith* is a proper Notice of Supplemental Authority that identifies a recent appellate decision addressing the precise procedural question now before the Commission: whether constitutional objections raised through Commission Rule of Practice 421(b) after an intervening Supreme Court decision are preserved for review.

Second, Section IV of Applicants' Motion for Immediate Ruling supplies the procedural and factual context necessary to evaluate whether continued delay is unreasonable under 5 U.S.C. § 555(b) and Rule of Practice 900(a). Striking it would render the motion facially deficient by stripping from it the very showing Applicants are required to make.

Third, FINRA's sweeping waiver theory collapses four distinct categories of objection—authority, due process, private nondelegation, and the Seventh Amendment—into a single undifferentiated claim allegedly raised for the first time after *Jarkesy*. The certified record refutes that framing. Applicants raised structural constitutional objections before the complaint was filed, during the hearing, before the NAC, and before the Commission. The Seventh Amendment issue sharpened by *Jarkesy* is not a new claim; it is a concrete application of those same preserved structural objections to the specific punitive sanctions imposed here.

A one-paragraph summary of the preservation record makes the point at a glance:

> October 2017–February 2018: written pre-complaint objections to FINRA's asserted authority (CX-35, CX-40–CX-47, RX-6). September–October 2018: hearing-level due process objections (RP 000525, 000817, 001077; Zuckerbrod letter of Oct. 5, 2018). August 2019: NAC Opening Brief expressly invoking private nondelegation, Fifth Amendment due process, and limits on SEC delegation to SROs—by name. June 2022: SEC-level authority challenge that FINRA answered on the merits in August 2022. August–November 2024: Commission-authorized Rule 421(b) supplemental briefing following *Jarkesy* (Release No. 101438).

For the reasons set forth below, and as demonstrated by the certified record, the Commission should (i) deny FINRA's request to reject Applicants' filing concerning *Smith v. SEC*; (ii) deny FINRA's motion to partially strike Section IV of Applicants' Motion for Immediate Ruling; (iii) deny FINRA's request to stay briefing on Applicants' Motion for Immediate Ruling; (iv) consider *Smith v. SEC* in resolving the pending application for review; and (v) grant Applicants' Motion for Immediate Ruling.

II. GOVERNING STANDARDS

A. Rule 421(b) and Supplemental Briefing

Commission Rule of Practice 421(b) provides that the Commission "may at any time prior to issuance of its decision … consider any matter that it deems material," and that "an opportunity for supplemental briefing … shall be given where the Commission believes that such briefing would significantly aid the decisional process." 17 C.F.R. § 201.421(b). The Commission exercises broad discretion under this rule, including in this very proceeding. *See DreamFunded Marketplace, LLC*, Exchange Act Release No. 101438 (Oct. 25, 2024) (granting Applicants' Rule 421(b) motion and construing their August 2024 filing as a supplemental brief on *Jarkesy*).

B. Notices of Supplemental Authority

A notice of supplemental authority properly contains "citation to and a brief description of a new case, and notice of the claims or arguments to which it is relevant." *Nordstrom v. Thornell*, No. CV-20-248-TUC-RCC, 2025 U.S. Dist. LEXIS 196175, at *2–3 (D. Ariz. Oct. 3, 2025). Such notices may not be used to "mak[e] additional arguments or … rais[e] points clarifying [a] brief or oral argument." *United States v. Shelton*, No. 24-2101, 2025 U.S. App. LEXIS 33160, at *8 n.3 (2d Cir. Dec. 19, 2025). Where a filing exceeds the bounds of a notice of supplemental authority, the Commission has discretion under Rule 421(b) to construe it as a motion for supplemental briefing. *See* Release No. 101438.

C. Waiver and Forfeiture

Constitutional claims are subject to ordinary principles of waiver and forfeiture. *Silver Leaf Partners, LLC*, Exchange Act Release No. 102538, 2025 SEC LEXIS 649, at *24 & n.44 (Mar. 7, 2025). Those principles are inherently record-specific. An objection is preserved when it is raised at each available stage of the proceeding, and supplemental briefing under Rule 421(b) is a recognized mechanism for presenting a later-arising constitutional application of objections already preserved. The question is not whether waiver doctrine applies, but how it applies to this record.

III. APPLICANTS' CONSTITUTIONAL OBJECTIONS WERE PRESERVED AT EVERY STAGE OF THE PROCEEDING

FINRA's waiver theory rises and falls on a single factual premise: that Applicants never raised their constitutional objections before FINRA or the Commission until after *Jarkesy*. The certified record refutes that premise at every stage.

A. Pre-Complaint Objections to FINRA's Asserted Authority

Before FINRA filed its complaint, Applicants—through counsel Scott M. Andersen, a former FINRA Enforcement attorney—submitted written objections challenging FINRA's authority to demand information relating to conduct outside the period of DreamFunded's registered funding-portal activity. CX-35 (RP 003179); RX-6 (RP 003939–003948); CX-40 through CX-47 (RP 003195–003218). Counsel stated: “My understanding of SEC final rules on Regulation Crowdfunding and FINRA's own rules limit FINRA's authority to activities undertaken by registered funding portals. FINRA has no authority to explore events occurring years before DreamFunded became a registered funding portal.”

FINRA rejected that objection on the record: “We are not obligated to explain the relevance of information and documents requested pursuant to FINRA Rule 8210.” RP 003204. The dispute over FINRA's asserted authority was thus joined on the record before any complaint was filed.

B. Hearing-Level Due Process Objections

During the September 24–26, 2018 hearing sessions, Applicants raised objections concerning FINRA Enforcement's conduct of the proceeding. RP 000525, 000817, 001077. On October 5, 2018, counsel Todd Zuckerbrod wrote to FINRA Senior Counsel Edwin Aradi objecting to FINRA Enforcement's proposal to deem certain hearing objections waived, stating that the proposed approach would give FINRA Enforcement "the unfettered ability to do anything it wanted without consequence … that is exactly what the right to due process protects against." That correspondence reflects a hearing-level due process objection to the conduct of the proceeding, raised in the vocabulary then available to Applicants.

C. Structural Constitutional Objections Before the NAC

Applicants' Opening Brief to the NAC, filed August 23, 2019 through counsel Todd A. Zuckerbrod, expressly raised—by name—the constitutional structural doctrines FINRA now contends were never preserved.

First, it challenged FINRA's asserted authority: "Finra's 8210 request dated October 24, 2017, exceeded the scope of Finra's authority (i.e. jurisdiction) as so limited by the lawful restraints imposed by the Federal Government." NAC Opening Br. at 5.

Second, it expressly invoked the private nondelegation doctrine: "The SEC cannot delegate to a national securities exchange or self-regulatory organization ('SRO') powers or authorization which the Congress of the United States did not grant to the SEC itself. In interpreting the Supreme Court's private non-delegation doctrine …." *Id.* at 8.

Third, it invoked the Fifth Amendment Due Process Clause: "The Fifth Amendment Due Process Clause ensures that the actors in each department cannot evade the Framers' carefully constructed regulatory scheme by delegating their federal lawmaking power to unaccountable private parties, individuals beyond the direct legal and political control of superior federal officials and the electorate." *Id.*

Fourth, it concluded that "the U.S. Constitution, federal law and the limits of authority of federal agencies imposed thereby precludes FINRA from broadening the interpretation of its delegated authority beyond the plain language of the governing rules."

Those passages invoke, by name, (i) the private nondelegation doctrine; (ii) the Fifth Amendment Due Process Clause; and (iii) constitutional limits on SEC delegation of authority to SROs. Applicants therefore preserved structural constitutional objections at the FINRA level more than five years before *Alpine Securities Corp. v. FINRA*, 121 F.4th 1314 (D.C. Cir. 2024), and more than four years before *Jarkesy*.

D. Renewal of Authority Objections Before the Commission

Applicants' June 9, 2022 Opening Brief to the Commission expressly stated (at 12): "Regarding 8210, Fernandez acted in good faith and used his best effort(s) to produce all documents required. FINRA did not have the right to ask for the documents." (citing RP 003204) (emphasis added). FINRA's own August 9, 2022 brief acknowledged the argument and responded on the merits in a section titled "FINRA Had Authority to Request the Records." FINRA Br. at 20 (Aug. 9, 2022). Having joined issue on that point before the Commission in 2022, FINRA cannot persuasively recast the authority question in 2026 as though it had never been raised.

E. The Seventh Amendment Issue Was Timely Presented Through Rule 421(b)

Following *SEC v. Jarkesy*, 603 U.S. 109 (2024), Applicants moved under Rule 421(b) for leave to submit supplemental briefing on constitutional issues. The Commission granted that motion and expressly construed Applicants' filing as a supplemental brief. *DreamFunded Marketplace, LLC*, Exchange Act Release No. 101438 (Oct. 25, 2024). Applicants filed their supplemental brief on November 11, 2024; FINRA responded on December 20, 2024. The Commission itself thus authorized briefing on the specific Seventh Amendment issue that *Jarkesy* sharpened.

F. The Seventh Amendment Objection Is an Application of Preserved Structural Objections, Not a New Claim

FINRA's footnote 4 argues, citing *Smith*, that *Jarkesy* was not an intervening change in law and therefore provides no excuse for raising the Seventh Amendment issue later. That argument misapprehends Applicants' position. Applicants do not need *Jarkesy* to be an intervening change in law. The structural objections—authority, private nondelegation, Fifth Amendment due process—were preserved before the NAC in 2019. *Jarkesy* sharpened the application of those preserved objections to the specific punitive sanctions imposed here by clarifying that administrative proceedings imposing legal remedies implicate the Seventh Amendment. 603 U.S. at 109.

That sharpening is precisely what Rule 421(b) supplemental briefing is for. The Commission recognized as much when it granted Applicants' Rule 421(b) motion. Release No. 101438. The *Alpine Securities* decision reinforces the point: the D.C. Circuit has expressly questioned FINRA's constitutional authority to impose expulsions—the very sanction at issue here—under private nondelegation principles. *Alpine Securities Corp. v. FINRA*, 121 F.4th 1314 (D.C. Cir. 2024). Applicants' preserved structural objections track the *Alpine* framework directly. The Seventh Amendment question now before the Commission is not a standalone claim untethered from the record; it is the Seventh Amendment application of preserved structural objections to the lifetime bars FINRA imposed.

The sanctions at issue here are punitive, not remedial, and thus squarely within *Jarkesy*'s scope. *Jarkesy* turned on the distinction between legal remedies (which implicate the Seventh Amendment) and equitable remedies (which do not). 603 U.S. at 120–24; *see also Tull v. United States*, 481 U.S. 412, 422 (1987) (civil penalties designed to punish are legal relief). FINRA imposed three expulsions against DreamFunded and three lifetime bars against Fernandez personally. These sanctions do not compensate any investor, do not disgorge any gain, do not restore any loss. They end careers and extinguish businesses. That is the textbook definition of punitive relief under *Tull* and *Jarkesy*. The Seventh Amendment's application to

such sanctions is not a speculative question; it is the precise question *Jarkesy* resolved.

Taken together, this history defeats FINRA's broad claim that Applicants failed to present these matters to the Commission.

IV. *SMITH v. SEC* IS RELEVANT TO THE PRESERVATION QUESTION AND WOULD AID THE DECISIONAL PROCESS

FINRA makes three arguments for rejecting Applicants' filing concerning *Smith*: that it is unauthorized supplemental merits briefing; that *Smith*'s Seventh Amendment discussion is dicta; and that consideration of *Smith* would not significantly aid the decisional process. FINRA Consol. Resp. at 7–10. Each argument fails. The threshold point, however, is simpler than any of them: the Commission itself has already granted leave to brief the very constitutional issues FINRA now claims were waived.

A. The Commission Has Already Granted Leave to Brief These Issues; FINRA's Waiver Argument Asks the Commission to Contradict Its Own Prior Order

FINRA's waiver theory cannot be reconciled with the procedural history of this very proceeding. On October 25, 2024, the Commission issued Exchange Act Release No. 101438, expressly construing Applicants' August 2024 filing as "both a supplemental brief and a motion to submit supplemental briefing," and granting the motion. *DreamFunded Marketplace, LLC*, Exchange Act Release No. 101438, 2024 SEC LEXIS 2883, at *1 (Oct. 25, 2024). The Commission thus made two determinations directly contrary to FINRA's current position: (i) Applicants' constitutional arguments following *Jarkesy* were properly before the Commission as supplemental briefing, and (ii) those arguments warranted FINRA's response on the merits, which FINRA filed on December 20, 2024.

FINRA now asks the Commission to treat those same arguments as waived. That request asks the Commission to contradict its own October 2024 order. It also asks the Commission to hold that Applicants waived arguments the Commission itself invited them to brief. That is not how waiver doctrine operates. The Commission having granted leave under

Rule 421(b), the question of whether Applicants properly presented the Seventh Amendment issue is settled as a procedural matter. FINRA's remaining arguments about *Smith* go to weight, not to preservation.

B. The Dispositive Waiver Mechanism in *Smith* Footnote 4 Is Absent Here

FINRA relies heavily on *Smith* footnote 4 for the proposition that even if *Jarkesy* were an intervening departure from precedent, Smith would still have waived his Seventh Amendment argument because he "failed to ask for supplemental briefing on the Seventh Amendment before the Commission decided his case." 2026 U.S. App. LEXIS 8983, at *19. FINRA Consol. Resp. at 8 n.4.

That footnote cuts decisively in Applicants' favor. Applicants did exactly what Smith failed to do. Promptly after *Jarkesy* was decided, Applicants moved under Rule 421(b) for leave to submit supplemental briefing on the Seventh Amendment issue. The Commission granted that motion. Release No. 101438. The parties completed supplemental briefing in December 2024. The waiver mechanism the Sixth Circuit identified as dispositive in *Smith*—failure to seek Rule 421(b) supplemental briefing—is categorically inapplicable to Applicants' record. FINRA's own citation to footnote 4 proves too much: it confirms that Applicants used the precise mechanism the Sixth Circuit identified as sufficient for preservation. FINRA's reliance on *Smith* fundamentally ignores the record in this case.

C. *Smith* Addresses the Procedural Path Applicants Followed

Applicants do not suggest the Commission is bound by the Sixth Circuit's nonbinding merits discussion, and the Commission will independently address any Seventh Amendment question under *Jarkesy*. *Smith* is offered because it illustrates the procedural path Applicants followed—Rule 421(b) supplemental briefing—and identifies the preservation inquiry now at the center of this dispute. The procedural relevance of *Smith* does not depend on the precedential weight of its merits dicta.

Even accepting, for argument's sake, FINRA's characterization of the Seventh Amendment discussion as dicta, *Smith* would significantly aid the decisional process for three procedural reasons. *First*, it highlights preservation as the central procedural issue in a constitutional challenge arising in SEC review of FINRA-related sanctions. *Second*, it identifies Rule 421(b) supplemental briefing as the appropriate vehicle for presenting a later-arising constitutional issue to the Commission—the same procedural course Applicants followed here. *See Smith*, 2026 U.S. App. LEXIS 8983, at *12–13. *Third*, it provides recent appellate discussion of how forfeiture principles interact with constitutional arguments presented to the Commission after *Jarkesy*. Each reason is procedural, not dependent on merits dicta, and directly relevant to arguments now before the Commission.

D. Judge Bloomekatz's Concurrence Does Not Help FINRA

FINRA points to Judge Bloomekatz's concurrence as support for ignoring *Smith*. FINRA Consol. Resp. at 9. The concurrence cuts the other way. Judge Bloomekatz declined to join the majority's discussion of the unpreserved Seventh Amendment claim. *Smith*, 2026 U.S. App. LEXIS 8983, at *40. Applicants' posture is the opposite: Applicants' Seventh Amendment argument is preserved—through both the NAC-level structural objections preserved in 2019 and the Rule 421(b) supplemental briefing the Commission authorized in 2024. Nothing in Judge Bloomekatz's concurrence suggests that a court should decline to consider an appellate decision that bears on the procedural question of preservation itself.

E. Further Briefing on the Preservation Question Would Aid the Decisional Process

FINRA argues that "nothing would be gained by further briefing" because the parties already completed supplemental briefing on *Jarkesy*. FINRA Consol. Resp. at 8. That misstates what *Smith* adds. The prior briefing addressed the Seventh Amendment question on the merits under *Jarkesy*. *Smith* addresses something different: how preservation and Rule 421(b) interact when a Supreme Court decision sharpens a constitutional application during the pendency of a Commission review. That is the exact procedural question now before the

Commission in this matter. Recent appellate guidance on that procedural question cannot be duplicative of prior merits briefing.

F. Applicants' Filing Is a Proper Notice of Supplemental Authority

Applicants' proposed Notice is modest. It cites a new case, briefly describes its relevance, and directs the Commission to a procedural issue already before it. That is a proper use of supplemental authority. *See Nordstrom*, 2025 U.S. Dist. LEXIS 196175, at *2–3. To the extent the Commission concludes the filing exceeds the bounds of a notice—which Applicants do not concede—the Commission has discretion under Rule 421(b) to construe it as a motion for supplemental briefing, as it did with Applicants' August 2024 filing. Release No. 101438. Either way, the Commission should consider *Smith*.

V. *KIELCZEWSKI* AND *SILVER LEAF PARTNERS* DO NOT CONTROL THIS RECORD

FINRA's footnote 3 cites *William Joseph Kielczewski*, Exchange Act Release No. 104352, 2025 SEC LEXIS 3108 (Dec. 9, 2025), for the proposition that constitutional jury-trial rights do not apply to FINRA because it is not a state actor. FINRA Consol. Resp. at 8 n.3. *Kielczewski* does not foreclose Applicants' arguments for several independent reasons.

A. Due Process Requires an Opportunity to Respond Before *Kielczewski* Is Applied

Kielczewski issued on December 9, 2025—nearly a year after supplemental *Jarkesy* briefing closed in December 2024. Applicants have had no opportunity to address it in a merits brief. Applying an adverse ruling as dispositive without affording the affected party notice and an opportunity to respond raises the same due process concern that runs throughout this record: that Applicants have been denied a meaningful opportunity to be heard on arguments that determine the outcome of their case. The Commission having issued *Kielczewski* without notice to Applicants or opportunity to respond, applying it as dispositive here would itself raise the due process concern that runs throughout this record. At minimum, if the Commission considers *Kielczewski* dispositive, Applicants respectfully request an opportunity to address it

under Rule 421(b) before the Commission issues its decision.

B. State-Actor Analysis Is Inherently Record-Specific

Kielczewski did not involve the sustained record of structural constitutional objections present here. State-actor analysis is inherently fact-specific. *See Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295–96 (2001). The specific combination of factors here—lifetime bars, mandatory FINRA membership as a practical prerequisite to market participation, enforcement through SEC statutory review, application of SEC-promulgated rules, and three expulsions arising from a jurisdictional Rule 8210 dispute producing zero documented investor harm—requires an independent, record-specific state-actor analysis that *Kielczewski* did not and could not perform on a different record. Applicants' record spans pre-complaint objections to FINRA's asserted authority, hearing-level due process objections, an NAC Opening Brief expressly invoking private nondelegation and Fifth Amendment due process by name, SEC-level authority challenges FINRA answered on the merits in 2022, and Commission-authorized Rule 421(b) supplemental briefing following *Jarkesy*. *Kielczewski*'s state-actor holding arose on a different record and cannot be mechanically applied to displace Applicants' preserved objections here.

C. *Kielczewski* Cannot Be Reconciled With *Alpine* When Applied to This Record

The Commission cannot simultaneously hold that FINRA exercises governmental power sufficient to trigger private nondelegation scrutiny under *Alpine Securities Corp. v. FINRA*, 121 F.4th 1314 (D.C. Cir. 2024), while also holding that FINRA is categorically not a state actor for Seventh Amendment purposes—when both conclusions arise from the identical expulsion authority exercised against the same respondents under the same federally-approved rules. One of those conclusions must yield when applied to the same punitive sanctions at issue in both frameworks.

Alpine identified three features of FINRA's expulsion power that mark it as governmental. *First*, expulsion operates as market exclusion: because FINRA membership is a

practical prerequisite to participating in the securities markets, expulsion strips a firm of the ability to conduct the regulated business entirely. *Alpine*, 121 F.4th at 1322–24. That is a consequence no purely private body can impose—it is the functional equivalent of governmental licensure revocation. *Second*, expulsion is enforced through the SEC's statutory review structure under the Exchange Act, which supplies the federal imprimatur that converts the private decision into a binding governmental one. *Id.* at 1324–26. *Third*, FINRA's rules are promulgated under congressional delegation and approved by the SEC, meaning the substantive standards FINRA enforces are themselves federal law. *Id.*

Those three features are equally the hallmarks of state action under *Brentwood Academy* and *Jackson v. Metro. Edison Co.*, 419 U.S. 345 (1974). The *Alpine* court's reasoning does not distinguish private nondelegation from state-action analysis; both doctrines recognize that when a private body exercises governmental power with governmental consequences, the Constitution constrains that exercise. A categorical rule that FINRA is not a state actor for Seventh Amendment purposes cannot be squared with a parallel rule—established by the same regulated conduct—that FINRA is exercising governmental power for private-nondelegation purposes. The expulsions and lifetime bars imposed on Applicants exhibit each of the governmental-power features *Alpine* identified: market exclusion, SEC review enforcement, and application of federally approved rules. On the *Alpine* analysis, state action is present.

D. *Kielczewski*'s *Alpine* Vulnerability

Kielczewski issued without the benefit of full briefing on *Alpine*'s governmental-power reasoning, as *Alpine* was decided in November 2024—during the same period as the *Jarkesy* supplemental briefing in this proceeding. *Kielczewski*'s state-actor holding may not survive scrutiny under *Alpine*'s framework when applied to expulsion-level sanctions enforced through SEC review, particularly before the D.C. Circuit, which will hear any judicial appeal of this matter and which authored *Alpine* itself. At minimum, *Kielczewski*'s holding cannot be mechanically extended to the specific combination of factors present here: lifetime bars, three

expulsions, enforcement of SEC-promulgated rules, mandatory membership for participation in the regulated market, and a review structure in which the Commission supplies the governmental imprimatur. Applicants further preserve all state-actor and private-nondelegation objections for any further proceedings, including judicial review.

E. Constitutional Avoidance: The Commission Need Not Resolve *Kielczewski* at All

Because the Section 19(e) excessiveness question can be resolved on the present record without reaching any state-actor or Seventh Amendment question, the Commission need not resolve *Kielczewski*'s application to this record. Constitutional avoidance counsels resolving the statutory question first. *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The Commission should do so here—and doing so now, rather than after further procedural delay, is precisely the relief Applicants' Motion for Immediate Ruling requests.

F. *Silver Leaf Partners* Is Consistent with Applicants' Position

Applicants do not dispute *Silver Leaf Partners*' general proposition that constitutional claims are subject to ordinary principles of waiver and forfeiture. 2025 SEC LEXIS 649, at *24 & n.44. The question is how those principles apply to this record—one showing objections raised at every stage from pre-complaint through Commission-authorized Rule 421(b) briefing. Under ordinary waiver principles, that record satisfies preservation. *Silver Leaf Partners* does not support the sweeping forfeiture theory FINRA now advances.

VI. FINRA'S MOTION TO PARTIALLY STRIKE SHOULD BE DENIED

FINRA asks the Commission to partially strike Section IV of Applicants' Motion for Immediate Ruling on the theory that it operates as an unauthorized supplemental merits brief. FINRA Consol. Resp. at 11. Granting that request would render the underlying motion facially deficient and would deprive Applicants of the ability to make the procedural showing required for immediate ruling.

A. A Motion for Immediate Ruling Necessarily Requires Procedural Context

A motion requesting immediate ruling inherently requires a showing of why continued delay is unreasonable. Without context demonstrating the length of the delay, the procedural posture of the case, and the prejudice flowing from continued delay, such a motion would be incomplete on its face. Section IV supplies precisely that context. It does not reopen the merits; it establishes the procedural predicate for the relief requested under 5 U.S.C. § 555(b) and Rule of Practice 900(a).

B. The Practical Prejudice from Continued Delay Is Severe

The sanctions under review include three expulsions against DreamFunded and three bars against Fernandez—lifetime bars that have remained operative throughout this extended proceeding. The parties completed merits briefing in August 2022—more than three and a half years ago. Supplemental briefing following *Jarkesy* closed in December 2024—more than sixteen months ago. The Commission's own docket reflects no fewer than eleven extension orders issued during the pendency of this proceeding. Regardless of the ultimate merits, every additional period of unresolved review compounds the practical finality of sanctions that Applicants have a statutory right to have reviewed. The Commission can evaluate that prejudice without reaching any merits question. Section IV of the Motion supplies the context necessary to make that evaluation.

C. Citation to the Public Docket and to Constitutional Developments Is Not Merits Briefing

Section IV cites the Commission's own public docket and identifies constitutional developments relevant to the unreasonableness of continued delay. Citing the public docket is not unauthorized merits briefing. It is the factual predicate for procedural relief. And referencing constitutional developments during the pendency of the proceeding is not a back-door attempt to relitigate the merits; it is part of the showing required to establish that delay is prejudicial and unreasonable.

D. Striking Section IV Would Prejudice Applicants' Procedural Rights

To strike Section IV would deprive Applicants of the ability to explain why immediate ruling is warranted—a fundamental component of any motion for expedited relief. FINRA's motion effectively asks the Commission to render Applicants' procedural motion incoherent by removing the showing Applicants are required to make. That request should be denied.

E. FINRA's Request to Stay Briefing on the Motion for Immediate Ruling Should Be Denied

FINRA's request that the Commission stay briefing on Applicants' Motion for Immediate Ruling while its partial-strike motion is pending should be denied. The Motion for Immediate Ruling rests on the statutory command of 5 U.S.C. § 555(b) and the Commission's own Rule of Practice 900(a); continued delay is already unreasonable on the present record. Granting a stay would add further procedural delay to a proceeding whose unreasonable length is itself a principal ground for the relief requested. No additional briefing is required for the Commission to rule on the Motion for Immediate Ruling, which turns on the procedural history and posture of this case—both matters of public record before the Commission.

VII. THE PREJUDICE OF CONTINUED DELAY IS COMPOUNDED BY THE COMMISSION'S PENDING STATUTORY DUTY UNDER SECTION 19(e)

The Motion for Immediate Ruling is further supported by the Commission's non-discretionary statutory duty under Exchange Act Section 19(e). That duty provides an independent, non-constitutional basis for immediate ruling and reinforces why continued delay is prejudicial. Section 19(e)(2), 15 U.S.C. § 78s(e)(2), requires the Commission to determine whether FINRA's sanctions are "excessive or oppressive" and whether they impose "an unnecessary or inappropriate burden on competition." The Commission must make this determination independently; it is not a question of deference. *See PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007). Because the Section 19(e) inquiry does not depend on preservation, state-actor doctrine, or any constitutional question, it can be resolved now. Applicants raise the issue here not as a freestanding merits argument but to show why the

procedural relief requested in the Motion for Immediate Ruling is warranted: the longer the Commission defers ruling, the longer it defers performing a statutory duty that the present record compels it to perform.

A. The Disproportion Between Sanction and Documented Harm Is Extreme

DreamFunded operated as a registered funding portal for approximately sixteen months. During that period, the platform intermediated fifteen crowdfunding offerings. Only two closed. The combined capital raised across those two closed offerings was approximately $15,000. No investor filed a complaint alleging financial loss. No FINRA finding identifies any investor who lost money. There is no allegation of fraud in the completed transactions, no allegation of misappropriation of investor funds, no allegation of self-dealing in the use of funds raised. For the thirteen offerings that did not close, Regulation Crowdfunding required that investor commitments be returned in full, and the record contains no contrary finding.

The lifetime bars here arise principally from a jurisdictional dispute over the scope of FINRA's Rule 8210 authority to investigate conduct predating DreamFunded's registered funding-portal activity. Applicants objected to the scope of that request through counsel at the time, and Applicants' June 9, 2022 Opening Brief to the Commission expressly stated that Fernandez "acted in good faith and used his best effort(s) to produce all documents required." That the underlying dispute is jurisdictional in nature—and that it arose on a record showing zero documented investor harm—is directly relevant to the Section 19(e) excessiveness inquiry. The question is not whether some sanction was warranted for a Rule 8210 dispute; the question is whether a lifetime bar and three expulsions are calibrated to the nature of that dispute and the documented harm it produced.

Against that record, FINRA imposed three expulsions and three lifetime bars. The sanctions are not calibrated to the documented harm; they are orders of magnitude beyond it. A lifetime bar is the most severe sanction in FINRA's arsenal. Courts and the Commission have recognized it as the functional equivalent of an economic death penalty. *See PAZ Sec.*, 494

F.3d at 1065 (characterizing a bar as the "ultimate sanction"); *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013) (describing a permanent bar as the "securities industry equivalent of capital punishment"). Courts have found lifetime bars excessive on records showing far greater investor harm than the record here. *See, e.g., Saad v. SEC*, 873 F.3d 297, 304 (D.C. Cir. 2017) (remanding for reconsideration of lifetime bar as potentially excessive). The Section 19(e) question is not whether Applicants' conduct warranted some sanction; it is whether these sanctions, imposed on this record of documented investor harm, are excessive or oppressive. On the documented-harm record, they are.

B. The Sanctions Impose an Unnecessary Burden on Competition

The JOBS Act and Regulation Crowdfunding were designed to expand capital access for small issuers and investors by creating a regulated funding-portal pathway. The sanctions here operate in tension with that congressional purpose. Applicants operated within a nascent segment of the capital-formation market and voluntarily withdrew from registration before any complaint was filed. Permanently excluding Applicants from the industry—in a case where the documented harm is minimal and the regulated conduct occurred during a short initial operating period—imposes a burden on competition that is not necessary to vindicate any regulatory interest the Commission can identify.

C. The Commission May Grant Relief on Statutory Grounds Without Reaching Constitutional Questions

The availability of statutory relief under Section 19(e) is a further reason the Motion for Immediate Ruling should be granted, not a freestanding merits argument. Section 19(e) provides a statutory path to relief that does not require the Commission to resolve the Seventh Amendment, state-actor, or private-nondelegation questions also before it. The Commission has modified or set aside FINRA sanctions on excessiveness grounds in numerous prior proceedings. *See, e.g., Saad v. SEC*, 873 F.3d 297, 304 (D.C. Cir. 2017) (remanding for reconsideration of lifetime bar as excessive). Consistent with the doctrine of constitutional

avoidance, the Commission should consider whether statutory relief is warranted before addressing the constitutional questions. *See Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). At minimum, the Section 19(e) inquiry provides an independent basis for modifying the lifetime bars and expulsions without the Commission needing to resolve any preservation or state-actor dispute—and for doing so now, on the present record, rather than after further delay.

The availability of this statutory path sharpens the case for immediate ruling. The Commission need not wait to resolve constitutional questions to perform its Section 19(e) duty on the record already before it. Every additional extension delays not only a constitutional decision but also a statutory determination the Commission is independently required to make. That is prejudicial delay, and it is a further reason to grant Applicants' Motion for Immediate Ruling.

To the extent the Commission concludes any portion of this Section exceeds the scope of a reply brief—which Applicants do not concede—the Commission has discretion under Rule 421(b) to construe that portion as a motion for supplemental briefing and to treat the present filing as the supplemental brief itself, as it did with Applicants' August 2024 filing following *Jarkesy*. *DreamFunded Marketplace, LLC*, Exchange Act Release No. 101438 (Oct. 25, 2024). That procedural course would conserve Commission and party resources, avoid any further procedural detour on a matter the Commission must in any event resolve, and align with the Commission's prior treatment of substantively similar filings in this very proceeding.

VIII. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission:

1. Deny FINRA's request to reject Applicants' filing concerning *Smith v. SEC*;
2. Deny FINRA's motion to partially strike Section IV of Applicants' Motion for Immediate Ruling;
3. Deny FINRA's request to stay briefing on Applicants' Motion for Immediate Ruling;

4. Consider *Smith v. SEC* in resolving the pending application for review;

5. Grant Applicants' Motion for Immediate Ruling; and

6. In resolving the application for review, independently determine under Exchange Act Section 19(e) whether the sanctions are excessive or oppressive or impose an unnecessary burden on competition.

Respectfully submitted,

/s/ Manuel Fernandez
Manuel Fernandez
Applicants, pro se
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Dated: April 25, 2026

CERTIFICATE OF COMPLIANCE

I, Manuel Fernandez, certify that this corrected reply complies with the Commission's Rules of Practice by omitting or redacting any sensitive personal information described in Rule of Practice 151(e).

/s/ Manuel Fernandez
Manuel Fernandez

CERTIFICATE OF WORD COUNT

I, Manuel Fernandez, certify that this corrected reply complies with the length limitation set forth in SEC Rule of Practice 154(c), 17 C.F.R. § 201.154(c), which limits a reply brief to 7,000 words exclusive of any table of contents or table of authorities. According to the word count of the word-processing system used to prepare this document, this corrected reply contains approximately 5,480 words, exclusive of the caption, signature blocks, and certificates.

/s/ Manuel Fernandez
Manuel Fernandez

CERTIFICATE OF SERVICE

I, Manuel Fernandez, certify under penalty of perjury that on April 25, 2026, I caused a copy of the foregoing Applicants' Corrected Reply to FINRA's Consolidated Response to Applicants' April 6, 2026 Filings, in the matter of the Application for Review of DreamFunded Marketplace, LLC and Manuel Fernandez, Administrative Proceeding File No. 3-20639, to be filed through the SEC's eFAP system and served by electronic mail on:

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