BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of the Application for Review of

Entrex Carbon Market, Inc. (f/k/a UHF Logistics Group, Inc.) Shareholders

File No. 3-22473

FINRA'S REPLY TO SHAREHOLDERS' OPPOSITION TO 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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MISCELLANEOUS

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I. INTRODUCTION

In its 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, FINRA argued that the application filed by six shareholders ("Shareholders") of Entrex Carbon Market, Inc. ("Entrex" or "the issuer") should be dismissed for three reasons. First, FINRA argued, and as the Shareholders previously conceded in their Opposition to FINRA's Motion to Extend, Entrex received a determination to process its corporate actions requests ("Company-Related Actions"), therefore this aspect of the Shareholders' application for review is moot. Second, FINRA argued that these six Shareholders were not the certified "duly authorized representative[s]" of the issuer in its application for FINRA to process Entex's Company-Related Actions under FINRA Rule 6490; therefore, these Shareholders are not a proper party before the Commission. Third, FINRA argued that the Commission lacks a statutory basis to exercise jurisdiction under Section 19(d) of the Securities Exchange Act of 1934 ("Exchange Act") over any aspect of the Shareholders' application for review.

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The Shareholders, in their opposition to FINRA's motion to dismiss, disavow their prior concession that this matter is moot and are unable to articulate a proper jurisdictional basis for the Commission to consider their application. The Shareholders attempt to force their complaints about the duration of FINRA's review of the Company-Related Actions under Rule 6490 into a Section 19(d) application for review. But complaints about a FINRA process under its rules do not create jurisdiction when none exists. *See WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 SEC LEXIS 3699, at *1-2, *11 (Sept. 9, 2015).

The Shareholders conceded in a prior filing with the Commission that FINRA's Department of Market Operations ("Operations") decision to process documentation related to Entrex's three Company-Related Actions moots the primary aspect of the Shareholders' application for review. Opp'n to Mot. to Extend at unnumbered pages 3, 6. Regardless of the Shareholders' ever-shifting positions, Operations' processing of the Company-Related Actions definitively moots this proceeding and otherwise falls within none of the categories of actions subject to Commission review. The Shareholders have inserted themselves into this process—without authority from the issuer whose Company-Related Actions requests have been fully processed by FINRA—seeking to unwind administrative finality. They offer no apposite authority for disrupting FINRA's orderly procedures under FINRA Rule 6490 and petitioning the Commission for extraordinary relief.

Moreover, in an attempt to overcome this matter's mootness, the Shareholders hurl unfounded accusations against FINRA that the processing of Entrex's Company-Related Actions was an "attempt to evade Commission oversight" and "sidestep the SEC." Opp'n to Mot. to Dismiss at 5, 10. These baseless assertions are merely an effort to create controversy where none exists. The simple fact remains: because Operations processed Entrex's three Company-Related

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Actions, this matter is moot, and no statutory basis exists for the Commission to exercise its jurisdiction. The Commission, therefore, should dismiss the Shareholders' application for review.[1]

[1] As FINRA described in its April 21, 2025 Motion to Extend, its April 24, 2025 Reply to Shareholders' Opposition to that motion, and FINRA's May 2, 2025 Motion to Dismiss, pursuant to Commission Rule of Practice 161, FINRA has requested 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 FINRA's Motion to Dismiss is pending. The Shareholders contend that by moving to stay the deadline for filing the record and index, FINRA is somehow violating the Commission's rules and obstructing the Commission's review. Opp'n to Mot. to Dismiss at 12-13. The Commission's rules, however, allow for parties to file motions like FINRA's. *See* 17 C.F.R. § 201.161 (permitting motions and requests for extensions of time, postponements, and adjournments); 17 C.F.R. § 201.154 (permitting motions generally).

FINRA's requests in this case align with others in which the Commission granted FINRA's dispositive motion to dismiss. For example, in *Michael A. Sparks*, FINRA filed a motion to dismiss the proceeding as moot, stay the requirement to file a certified record and index, and stay the issuance of a briefing schedule. Exchange Act Release No. 81787, 2017 SEC LEXIS 3106, at *1-2 (Sept. 29, 2017). The Commission granted FINRA's motion to dismiss, and because of that disposition, it also denied as moot FINRA's requests that the Commission stay the requirement to file a certified record and index and stay the issuance of a briefing schedule. *Id.* at *2 & n.1. Thus, in *Sparks*, FINRA was not required to file a record. Likewise, there is nothing untoward about FINRA's motions here asking the Commission to first evaluate FINRA's dispositive arguments before it reviews the entirety of the record and briefs on the merits in this matter.

Contrary to the Shareholders' assertions (Opp'n to Mot. to Dismiss at 12-13), a self-regulatory organization ("SRO") does not serve an applicant in an appeal of an SRO action under Section 19(d) with a copy of the certified record. *See* 17 C.F.R. § 201.420(e). When an SRO files a copy of the certified record and index with the Commission, the Rules of Practice require only that the SRO serve the applicant with a copy of the index. *Id.* If the Commission orders FINRA to file a certified copy of the record and index under Rule of Practice 420(e), FINRA will of course do so. But as FINRA requested in its Motion to Dismiss, FINRA moves under Rule of Practice Rule 322 for a protective order to limit from disclosure to the Shareholders the index of the record in this matter should FINRA be required to file one. FINRA's Mot. to Dismiss at 16 n.8.

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II. ARGUMENT

A. The Commission Should Dismiss the Shareholders' Application for Review Because Their Demand for Operations to Issue a Decision Is Moot and the Shareholders Are Not a Proper Party

1. The Shareholders' Demand for the Processing of Entrex's Company-Related Actions Is Moot

The Shareholders in their application for review asked the Commission to order FINRA to issue a final determination on Entrex's Company-Related Actions requests. Shareholders' Appl. for Review and Br. The Shareholders concede—as they must—that Operations, on April 21, 2025, issued a determination to process Entrex's requests for a name and symbol change and a 1:20 reverse stock split. Opp'n to Mot. to Extend at unnumbered page 3 & Exhibit 1. FINRA thereafter announced on the Daily List the name and symbol changes on April 21, 2025, and the reverse stock split on April 24, 2025. FINRA's Mot. to Dismiss Exhibits 1 & 2 ("FINRA's Exhibits").

It is well settled that an application for review is moot when "even a favorable decision by the Commission would entitle [the applicant] to no relief." *Marshall Fin., Inc.*, 57 S.E.C. 869, 877 (2004). Because the Shareholders have received the specific relief that they seek in the form of FINRA processing Entrex's Company-Related Actions, the Commission should dismiss this aspect of their application for review based on mootness. *See Alpine Sec. Corp.*, Exchange Act Release No. 98868, 2023 SEC LEXIS 3223, at *22-24 (Nov. 6, 2023) (dismissing appeal for mootness when there was "no effective relief" the Commission could grant); *Burst.Com, Inc.*, Exchange Act Release No. 43198, 2000 SEC LEXIS 1735, at *1 (Aug. 23, 2000) (dismissing as moot applicant's appeal of NASD's decision to remove quotations of the applicant's securities from the OTC Bulletin Board when, after reissuing the decision, NASD found that applicant met the requirements for being listed). The Shareholders expressly conceded this point to the

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Commission in a prior filing in this matter: "FINRA's April 21, 2025, confirmation email to [Entrex] approving the corporate action renders much of this proceeding moot. The primary relief sought by the Shareholders—processing of corporate actions—has now been granted . . . ." Opp'n to Mot. to Extend at unnumbered page 3.

To try to surmount their dispositive concession, the Shareholders now contend that despite Operations' processing of Extrex's Company-Related Actions, this matter is not moot because of the purported "delay" by Operations during its review, which could be repeated in future matters absent Commission review now. Opp'n to Mot. to Dismiss at 8-10. The Shareholders, in essence, are asking the Commission to review the Rule 6490 process and FINRA's role in it. But as FINRA explained in its Motion to Dismiss and now in this Reply, Section 19(d) does not give the Commission jurisdiction to review such requests. *See Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 SEC LEXIS 1284, at *17 (June 3, 2019) (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); *Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 SEC LEXIS 956, at *9 n.15 (Apr. 30, 2008) (explaining that 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"); *infra* Part II.B.2.

The Commission should dismiss this aspect of the Shareholders' application based on mootness. Even if the Commission were to rule in the Shareholders' favor, which it should not,

there is no relief that it can provide to the Shareholders because FINRA processed Entrex's Company-Related Actions.[2] *See Alpine Sec. Corp.*, 2023 SEC LEXIS 3223, at *22-23.

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. As FINRA explained in its Motion to Dismiss, FINRA has an orderly process whereby only "[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 Uniform Practice Code Committee ("UPCC"), and thereafter appeal a denial by the UPCC to the Commission. 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 Entrex's two requests submitted to Operations, these Shareholders do not constitute the "duly authorized representative" of Entrex. FINRA Rule 6490(b)(1); Shareholders' Br. in Support of Appl. for Review, Exhibits 1 & 2 at unnumbered pages 2, 7

[2] The Shareholders rely on *Interactive Brokers*, Exchange Act Release No. 80164, 2017 SEC LEXIS 701 (Mar. 6, 2017), and *Beatrice J. Feins & Jonathan Feins*, 51 S.E.C. 918 (1993), to sway the Commission away from dismissing their application on mootness grounds. Opp'n to Mot. to Dismiss at 9-10. The Commission's evaluation of these matters, however, turned on whether the Commission had jurisdiction to consider them under Section 19(d). In *Interactive Brokers*, the Commission dismissed the appeal for lack of jurisdiction. 2017 SEC LEXIS 701, at *1. In *Feins*, the SRO did not move to dismiss Beatrice Fein's appeal as moot. 51 S.E.C.at 920 n.8. The Commission considered Beatrice Feins's application under Section 19(d) because the SRO did not approve Beatrice's request for a transfer of membership, unlike here where the requested action of processing the Company-Related Actions was granted. *Id.* at 920. The Commission dismissed Jonathan Feins's application for lack of jurisdiction. *Id.* at 921.

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(listing "Jim Byrd" or "James S. Byrd" as Entrex's duly authorized representative and certifying Byrd as the person on Entrex's behalf who has "all necessary authority" of the issuer).

The Shareholders may not insert themselves into a proceeding when they do not have the necessary authority of the issuer for purposes of this application for review.[3] The Commission has 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).

Moreover, because FINRA processed the Company-Related Actions, even a "duly authorized representative" of Entrex as the applicant under FINRA Rule 6490 and who requested that FINRA process the Company-Related Actions cannot appeal FINRA's processing of the Company-Related Actions to the Commission under Section 19(d) of the Exchange Act and Commission Rule of Practice 420(a). Of course, it stands to reason that these Shareholders, as a third party, are precluded as well. "[A]n applicant must still be subject to an SRO action that actually *limits* its access to SRO services." *Sec. Indus. & Fin. Mkts. Ass'n*, 2014 SEC LEXIS 1686, 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 processing Company-Related Actions. *See id.* at *35.

[3] The Shareholders erroneously rely on FINRA Rule 1019 for support of their position that they are "aggrieved" and the proper party to seek review of a matter under FINRA Rule 6490. Opp'n to Mot. to Dismiss at 11. 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. Rule 6490, not Rule 1019, controls who on behalf of the issuer may participate in the Company-Related Actions process.

B. The Commission Should Dismiss the Shareholders' Application for Review for Lack of Jurisdiction Under Section 19(d) of the Exchange Act

An independent reason to dismiss this application for review is that Section 19(d) of the Exchange Act provides no jurisdictional basis for the Commission's review of the Shareholders' myriad demands. Naturally, if the Commission lacks jurisdiction under Section 19(d), it must dismiss the Shareholders' application for review. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 962-63 (2000); *see also WD Clearing*, 2015 SEC LEXIS 3699, at *10-19 (dismissing application when none of the four bases for the Commission's jurisdiction existed); *Lance E. Van Alstyne*, 53 S.E.C. 1093, 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)").

1. Operations' Processing of Entrex's Company-Related Actions Was Not a "Constructive Denial" of Access to Services

While the Shareholders' application for review has been pending, Operations completed its review and processed Entrex's Company-Related Actions. Opp'n to FINRA's Mot. to Extend, Exhibit 1. Now in a desperate attempt to prevent dismissal of their application for review, the Shareholders assert that Operations' decision to *process* Entrex's Company-Related Actions was a "constructive denial" of access to services based on the duration of FINRA's review—a comprehensive review that is mandated by Rule 6490.[4] Opp'n to FINRA's Mot. to Dismiss at 5, 6, 7, 8, 15. Contrary to the Shareholders' assertion, this provision of Section 19(d)

[4] The importance of FINRA's comprehensive review of Company-Related Actions requests in an effort to prevent fraud and manipulative acts and practices with respect to over-the-counter securities cannot be overstated. *See Order Approving Proposed FINRA Rule 6490 (Processing of Company-Related Actions)* ("*Approval Order*"), Exchange Act Release No. 62434, 2010 SEC LEXIS 2186, at *16-17 (July 1, 2010).

does not authorize the Commission to review Operations' processing of Entrex's Company-Related Actions. The Commission's ample precedent undermines the Shareholders' tortured application of Section 19(d).

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 an SRO. 15 U.S.C. § 78s(d). These four grounds are the only ones upon which a review of FINRA action can occur. *See Allen Douglas Sec., Inc.*, 57 S.E.C. 950, 955 (2004); *see, e.g.*, *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 SEC LEXIS 4189, at *6-7 (Oct. 22, 2019) (dismissing application when none of the four bases for the Commission's jurisdiction existed); *WD Clearing*, 2015 SEC LEXIS 3699, at *2, *10, *20 (dismissing for lack of jurisdiction and no exhaustion of administrative remedies); *Morgan Stanley & Co.*, 53 S.E.C. 379, 382, 384 (1997) (explaining that Section 19(d) authorizes Commission review when FINRA takes action denying or restricting membership or prohibiting or limiting a member firm's access to services offered by FINRA).

As it applies to Commission review of decisions related to Company-Related Actions, Section 19(d) authorizes Commission review of a FINRA action only if that action prohibits or limits access to services offered by FINRA, which necessarily requires that FINRA denies or limits a request to process an action. 15 U.S.C. § 78s(d)(1), (2); *Positron Corp.*, Exchange Act Release No. 74216, 2015 SEC LEXIS 442, at *21 (Feb. 5, 2015) (reviewing denials of issuers' requests to process Company-Related Actions as denials of access to services); *mPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *16 & n.29 (Feb. 2, 2015) (same). Thus, FINRA's processing of Company-Related Actions does not fall within the definition of "denial" or "limitation" of access. And the Commission does not have jurisdiction

simply because an applicant claims "extraordinary circumstances" or "compelling reasons." *Allen Douglas*, 57 S.E.C. at 955 n.14.

FINRA's review and processing and announcement of Entrex's name and symbol changes and 1:20 reverse split on the Daily List fulfilled FINRA's responsibility under FINRA Rule 6490 and provided Entrex with full access to the service of processing the issuer's Company-Related Actions requests under the rule. *See, e.g.*, *Kincaid*, 2019 SEC LEXIS 4189, at *9 (determining applicant was not limited in his access to FINRA's arbitration forum and therefore the Commission had no jurisdiction under Section 19(d) to address his complaints about the process). FINRA's action agreeing to process the Company-Related Actions was not a "constructive denial" subject to review. Indeed, the Commission has rejected claims like the Shareholders' when an applicant has asserted a "de facto denial" or that FINRA "effectively imposed" a "final disciplinary sanction" in the absence of a FINRA action that is reviewable under Section 19(d). *See WD Clearing*, 2015 SEC LEXIS 3699, at *1-2 (dismissing for lack of jurisdiction after firm withdrew its membership application and finding no "de facto denial"); *Van Alstyne*, 53 S.E.C. at 1097-98 (dismissing for lack of jurisdiction when FINRA denied a motion collateral to an underlying disciplinary action in which the respondent already had been sanctioned).

The Shareholders rely on distinguishable cases to support their contention that the duration of FINRA's review prior to FINRA's action of processing Entrex's Company-Related Actions was "effectively" a denial of access under Section 19(d).[5] Opp'n to Mot. to Dismiss at

[5] The Shareholders contend that the duration of Operations' review "prevented Entrex from pursuing any other administrative remedy from FINRA." Opp'n to Mot. to Dismiss at 7, 8. It is unclear what other administrative remedy Entrex would pursue from FINRA when Operations agreed to process the Company-Related Actions and did not, as the Shareholders

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7-8. In *Gregory Acosta*, FINRA determined that Acosta was subject to a statutory disqualification under the Exchange Act based on a state order revoking his insurance registration. Exchange Act Release No. 89121, 2020 SEC LEXIS 3470, at *6-7 (June 22, 2020). The Commission concluded that because Section 19(d) provides that it may review SRO action that "bars any person from becoming associated with a member," FINRA's determination that Acosta was subject to a statutory disqualification has the same effect. *Id.* at *8-9. Here, FINRA has not effectively barred Entrex from FINRA membership, but instead has provided full access to the service that FINRA offers of processing Company-Related Actions.

The Shareholders' reliance on *MFS Sec. Corp. v. NY Stock Exch., Inc.*, also does not support their point. In that case, the Second Circuit found that the Commission had jurisdiction to review an SRO's revocation of MFS's membership and the SRO's actions to cut off phone service that limited MFS's access to services. 277 F.3d 613, 620 (2d Cir. 2002). As the Commission has explained, a denial of membership or participation "occurs when an SRO denies applications for membership or imposes restrictions on business activities as a condition of membership." *Cristo*, 2019 SEC LEXIS 1284, at *14. It is undisputed that Entrex is not a FINRA member, nor has it applied for FINRA membership, and Operations reviewed and

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characterize, "delay indefinitely" the processing of the actions. *Id.* at 8. Likewise, the Shareholders' contention that FINRA denied the Shareholders and the issuer procedural due process is without merit. *Id.* (relying on a Supreme Court decision discussing constitutional due process in an action where a respondent had sought an evidentiary hearing prior to termination of his Social Security disability benefit payments). Because FINRA is not a state actor, the constitutional requirements of due process do not apply in FINRA proceedings. *Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *19 & n.43 (Sept. 30, 2016). These Shareholders are not the "duly authorized representative" of the issuer and not part of the process under Rule 6490, and Entrex received the process as set forth in Rule 6490.

processed Entrex's Company-Related Actions. Unlike the SRO's actions in *MFS Securities*, FINRA provided Entrex with full access to its processing of Company-Related Actions under Rule 6490. Section 19(d) does not grant the Commission jurisdiction to review actions under Rule 6490 generally, but only those in which FINRA denied processing the Company-Related Actions, and the issuer had exhausted its administrative remedy by appealing to the UPCC. *See mPhase*, 2015 SEC LEXIS 398, at *6, *13-15.

The Commission should dismiss this application for review because it does not seek review of a FINRA action that limited or denied access to services within the meaning of Section 19(d).[6]

2. The Commission Does Not Have Jurisdiction Under Section 19(d) to Address the Shareholders' Remaining Demands

In an attempt to create Section 19(d) jurisdiction—and controversy—where none exists, the Shareholders proclaim that unless the Commission has jurisdiction to "sanction" FINRA and address the Shareholders' demands for disgorgement of nonrefundable processing fees under Rule 6490 and reforms of Rule 6490, and various challenges to the Rule 6490 process, FINRA is "asserti[ng] . . . immunity from SEC oversight."[7] Opp'n to Mot. to Dismiss at 13-14. According

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[6] The Shareholders also cite to an unrelated rulemaking to support their view that the Commission "recognize[s]" the concept of a "constructive denial" of access to services. Opp'n to Mot. to Dismiss at 7. The language, however, upon which the Shareholders highlight was not that of the Commission, but that of a commenter, and this rulemaking said nothing about the scope of review under Section 19(d). *Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Improved Nasdaq Opening Process*, 69 Fed. Reg. 57,118, 57,119 (Sept. 23, 2004). *But see, e.g.*, *WD Clearing*, 2015 SEC LEXIS 3699, at *1-2 (rejecting claim of "de facto" denial of access to services under Section 19(d)).

[7] The Shareholders contend that "[i]f FINRA can unilaterally deny services to the detriment of shareholders [and] issuers, and market integrity without any potential for SEC redress," FINRA would "operate" as a "fourth branch of the government." Opp'n to Mot. to Dismiss at 14. The Shareholders' contention disregards the process under Rule 6490. Under

[Footnote cont'd on next page]

to the Shareholders' reasoning, this purported lack of accountability to the Commission is a "flagrant[] violat[ion] of the private nondelegation doctrine." *Id.* at 14. The Shareholders' strawman argument misrepresents FINRA's position entirely as explained in FINRA's Motion to Dismiss and conveniently ignores the Commission's precedent that FINRA relies on to support the key point that the Shareholders' demands fall within none of the four prongs of jurisdiction under Section 19(d). FINRA's Mot. to Dismiss at 10-15.

As FINRA described in its Motion to Dismiss, Section 19(h) of the Exchange Act authorizes the Commission to institute proceedings to determine whether an SRO "has violated . . . any provision of . . . its own rules" and to take appropriate remedial action in response. But as the Commission has explained, Section 19(h) does not provide for the Commission's jurisdiction over demands like those made by the Shareholders. *See, e.g.*, *Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 SEC LEXIS 2464, at *5 (July 15, 2016) (finding that the Commission's discretionary authority to bring an administrative proceeding against an SRO under Exchange Act Section 19(h)(1), even if exercised, would not confer jurisdiction over a petition for an administrative remedy); *Kincaid*, 2019 SEC LEXIS 4189, at *14 & *16-17 n.28 (rejecting respondent's call for the Commission to exercise jurisdiction based on the Commission's SRO oversight role and other statutory authorities); *Orbixa Techs., Inc.*, Exchange Act Release No. 70893, 2013 SEC LEXIS 3588, at *17 & n.20 (Nov. 15, 2013) (recognizing

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Rule 6490, an issuer properly can appeal to the Commission after FINRA declines to process a Company-Related Action and the issuer has exhausted its administrative remedies under Rule 6490(e). *See mPhase*, 2015 SEC LEXIS 398, at *6, *13-15. Here, FINRA did not "deny services" when it processed Entrex's requests.

that, because the Commission lacked jurisdiction under Section 19(d), it lacked the ability to review applicant's contention that the SRO violated Exchange Act rules).

The Shareholders have made no effort to distinguish this controlling precedent because they cannot. Instead, the settled matter upon which Shareholders rely supports FINRA's position because it reflects the Commission's authority under Section 19(h), rather than conferring the Commission's jurisdiction under Section 19(d). Opp'n to Mot. to Dismiss at 14 (relying on *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*, Exchange Act Release No. 43268, 2000 SEC LEXIS 1881 (Sept. 11, 2000) (resulting settlement order from Section 19(h) proceedings)).

In *Citadel*, the Commission explained the differences in its oversight jurisdiction under Sections 19(h) and (d) of the Exchange Act:

> Section 19(h)(1) does not authorize claims by private parties against [self-regulatory organizations] SROs. Unlike Section 19(d), which authorizes an aggrieved person to initiate an administrative review proceeding by filing an application for review, Section 19(h)(1) exclusively authorizes "the appropriate regulatory authority," i.e., the Commission, in its discretion, to commence an administrative disciplinary action against an SRO. Were we to commence a litigated proceeding under Section 19(h)(1), that litigation would not be an adversarial proceeding between the Market Makers and the Exchanges. The parties to the proceeding would be the Exchanges and our Division of Enforcement, which would pursue claims against them, and the case initiating document would be our order instituting proceedings, not the Petition that the Market Makers have filed. . . . Section 19(h)(1) . . . does not provide for Commission jurisdiction over lawsuits initiated by and between private parties.

2016 SEC LEXIS 2464, at *18-19. The Commission went on to explain what remedial action it may impose against an SRO in a proceeding initiated under Section 19(h). *Id.* at *20-21. For example, Section 19(h)(1) contains "no mention of damages or restitution." *Id.*at *20. Rather, "Section 19(h)(1) authorizes [the Commission], among other remedial action, only to suspend

and/or impose limitations upon an SRO found in violation, not to award damages." *Id.* at *20-21; *see* 15 U.S.C. § 78s(h)(1). As accurately reflected in FINRA's Motion to Dismiss, FINRA made no assertion that the Commission lacks oversight authority of FINRA under Section 19(h).[8]

The Shareholders' demand for the Commission's review and amendment of Rule 6490 and attendant "policy concerns" are likewise not reviewable under Section 19(d). Opp'n to Mot. to Dismiss at 9, 13. "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.*, 2016 SEC LEXIS 2464, at *25. 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 FINRA's Motion to Dismiss. *Id.*; FINRA's Mot. to Dismiss at 10-15; *see also Cristo*, 2019 SEC LEXIS 1284, at *17 (initiating rulemaking proceedings would not create the Commission's jurisdiction under Section 19(d) over an application for review of SRO action). "SRO action is not reviewable merely because it adversely affects the applicant." *Citadel Sec.*, 2016 SEC LEXIS 2464, at *25; *see also Morgan Stanley*, 53 S.E.C. at 385 (explaining that allegation that SRO action "had a negative impact on . . . firm's business" is not sufficient to establish Commission jurisdiction). The Commission does not have jurisdiction to review the Shareholders' complaints about the process under Rule 6490 now simply because the

[8] 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 May 14, 2025).

Shareholders claim that process "adversely affects" them or issuers.[9] *See WD Clearing*, 2015 SEC LEXIS 3699, at *10.

In addition, the Shareholders' claim that FINRA's moving to dismiss their application for review for lack of jurisdiction under Section 19(d) implicates the private nondelegation doctrine is a non sequitur. Opp'n to Mot. to Dismiss at 6, 13-14, 15. Again, the Shareholders disregard the Commission's precedent relevant to its jurisdiction over constitutional claims and the authority that is appropriately delegated to FINRA. First, 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.

Second, regarding delegation of FINRA's authority, the Commission recently stated after the D.C. Circuit decided *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1310 (D.C. Cir.

[9] The Shareholders point to other issuers who purportedly are awaiting a determination on the processing of Company-Related Actions. Opp'n to Mot. to Dismiss at 9 n.1. The extent of FINRA's review, processing, and announcement of other issuers' Company-Related Actions requests has no bearing on the Shareholders' application for review and FINRA's determination to process Entrex's requests. Operations' thorough consideration of an issuer's request to process Company-Related Actions under Rule 6490 is tailored to the specific facts of each request. 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 *5-6 (highlighting that Rule 6490 particularly authorizes Operations "to conduct in-depth reviews of issuers' requests"); *see also, e.g.*, *Approval Order*, 2010 SEC LEXIS 2186, at *7, *15, *20-21 ("[I]f 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.").

2024), *petition for cert. filed*, No.24-904 (Feb. 20, 2025),[10] that "the relationship between FINRA and the Commission satisfies private-nondelegation principles, as the courts of appeals have repeatedly recognized." *Silver Leaf Partners*, 2025 SEC LEXIS 649, at *26 & n.52 (collecting cases).

In sum, and as FINRA thoroughly explained in its Motion to Dismiss, the Commission should dismiss the Shareholders' requests to disgorge non-refundable fees and for rulemaking and process reforms because none of Section 19(d)'s jurisdictional grounds apply.

III. CONCLUSION

Operations agreed to process Entrex's Company-Related Actions requests and announced those three actions on the Daily List. Therefore, the Shareholders' demand for FINRA to issue a determination is moot. The Shareholders' brief in opposition makes even clearer that there is no

[10] In *Alpine*, the court of appeals reversed in part a district court's denial of a preliminary injunction. 121 F.4th 1314, 1337. In a "narrow and limited" opinion that was "necessarily preliminary" and based on a "limited record," the court concluded that Alpine had shown a likelihood of success on a single point: that, under the private-nondelegation doctrine, Alpine is entitled to an opportunity for full Commission review before it is expelled from FINRA in an expedited disciplinary proceeding. *Id.* at 1330-31, 1337. The facts here could not be more different from those in *Alpine*. This is not an expedited disciplinary matter seeking to expel a FINRA member. Rather, an issuer, that is not a FINRA member, sought to have documentation related to a name and symbol change and a 1:20 reverse split processed and announced on the Daily List. And consistent with the process set forth under FINRA Rule 6490, Operations processed those requests and announced on the Daily List the Company-Related Actions on April 21, and 24, 2025. *See* FINRA's Exhibits 1 & 2.

In addressing the D.C. Circuit's holding in *Alpine*, the Commission emphasized that "through the Exchange Act, Congress gave the Commission pervasive supervisory authority over the rulemaking and enforcement activities of FINRA and other self-regulatory organizations in order to protect the public interest." *Silver Leaf Partners, LLC*, Exchange Act Release No. 102538, 2025 SEC LEXIS 649, at *25 (Mar. 7, 2025). "For example, FINRA's proposed rules for its members generally only take effect if the Commission approves the rules after public notice and comment." *Id.*; *see* 15 U.S.C. § 78s(b)(1), (2)(C), (c). That is precisely what occurred with the Commission's approval of FINRA Rule 6490. *Approval Order*, 2010 SEC LEXIS 2186.

jurisdictional basis for the Commission to entertain the Shareholders' application for review. There is no FINRA action that is "subject to review" under Section 19(d) of the Exchange Act. Thus, none of the four possible grounds for Commission jurisdiction set forth by Exchange Act Section 19(d) applies to this case. The Commission should follow its well-established precedent related to mootness and its jurisdiction and dismiss the Shareholders' application for review.

Respectfully submitted,

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May 14, 2025

CERTIFICATE OF COMPLIANCE

I, Jennifer Brooks, certify that:

(1) FINRA's Reply to Shareholders' Opposition to 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 Reply to Shareholders' Opposition to 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 5,810 words.

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Dated: May 14, 2025

CERTIFICATE OF SERVICE

I, Jennifer Brooks, certify that on this 14th day of May 2025, I caused a copy of the foregoing FINRA's Reply to Shareholders' Opposition to FINRA's 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 Entrex Carbon Market, Inc. (f/k/a UHF Logistics Group, Inc.) Shareholders, Administrative Proceeding File No. 3-22473, to be filed through the SEC's eFAP system.

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