UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of JOHN F. MANGAN, JR., CRD #125558 For Review of Action Taken by Self-Regulatory Organization,	File No. 3-22478

MANGAN'S OPPOSITION TO FINRA'S MOTION TO DISMISS AND TO STAY BRIEFING

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I. INTRODUCTION

This proceeding arises from the unrestrained imposition of disproportionate punishment of Mr. John F. Mangan, Jr. ("Mangan") by FINRA. In 2001, Mr. Mangan was involved in trades related to the private investment in a public equity ("PIPE") offering of stock by CompuDyne Corporation ("CDCY") which FINRA[1] determined were improper. At that time, the SEC and FINRA were pursuing enforcement actions involving short sales in PIPE transactions, but multiple district courts rejected this theory of liability, including the action filed against Mr. Mangan. Prior to those decisions being issued, however, Mr. Mangan, on the advice of conflicted counsel, entered into a Letter of Acceptance, Waiver and Consent (the "AWC") in 2005, which imposed a permanent bar against him from associating with any FINRA member firm (the

[1] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA"), in connection with the consolidation of the member firm regulatory functions of NASO and NYSE Regulation, Inc. *See* Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517, 517. For clarity, the designation FINRA is used throughout this Motion.

"AWC Bar").[2] Mr. Mangan then hired his own independent counsel and has been trying to clear his name ever since.

Shortly after Mr. Mangan signed the AWC, the U.S. Securities and Exchange Commission filed a complaint in the Federal District Court for the Western District of North Carolina for the same conduct and legal theories. On August 20, 2008, that court determined Mr. Mangan's 2001 trades to be without fault, granting summary judgment in Mr. Mangan's favor. Mr. Mangan and his new counsel repeatedly met with FINRA in light of the district court's dismissal, seeking to vacate the AWC or, at the least, lift the AWC Bar. He attempted to pursue the review procedures recommended *by FINRA* without effect. Finally, on October 17, 2024, Mr. Mangan filed a Petition to Vacate the AWC and the AWC Bar ("Mangan's Petition"). Approximately seven months later, FINRA responded with a two sentence denial of Mr. Mangan's petition ("FINRA's Denial Letter") with absolutely no explanation or analysis. Accordingly, Mr. Mangan seeks a legitimate review of his case.

FINRA again attempts to obstruct Mr. Mangan's path to any meaningful review and seeks to evade providing the appropriate justification for its determinations. FINRA, through its Motion to Dismiss and Stay Briefing ("FINRA's Motion"), attempts to recast the determination at issue in this application. FINRA's claim that Mr. Mangan is time-barred because he seeks Commission review of his initial AWC is both disingenuous and mistaken. First, FINRA's own index of the record filed with the Commission reveals that they believe the relevant proceeding under review here to be their May 6, 2025, Denial Letter of Mr. Mangan's Petition to Vacate. This is consistent with Mr. Mangan's Application for Review ("Application"), which clearly

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[2] A copy of the AWC was filed as Exhibit B to Mr. Mangan's Application for Review. Exhibit B to John F. Mangan's Index of Attachments, at 3, Mangan, No. 3-22478 (May 23, 2025) ("AWC"). Page number references to the AWC refer to internal pagination within the document.

"requests the Commission grant review of this petition to vacate."[3] FINRA's index contained only the AWC and documents produced well *after* the AWC was executed. If FINRA believed that this application was seeking a review of the 2005 AWC, it would have submitted an index containing the evidentiary record supporting that AWC. Most importantly, FINRA argues that the Commission lacks jurisdiction to review FINRA's determination. This is contrary to the plain language of Section 19(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), which grants the Commission authority to review FINRA actions. Moreover, the extraordinary circumstances here, namely FINRA's continued enforcement of an AWC that has been discredited by a district court, warrants a closer look.

Accordingly Pursuant to title 17 of the Code of Federal Regulations Section 201.154, Mr. Mangan opposes FINRA's Motion and respectfully requests the Commission deny it and issue a briefing schedule so that he may, finally, receive the fair review of his case that he has been denied.

II. PROCEDURAL AND FACTUAL BACKGROUND

Mr. Mangan is a longtime investment professional, having practiced in the securities industries for over four decades. Mr. Mangan began his career in 1983 after graduating from the University of Georgia. Exhibit A to John F. Mangan's Index of Attachments, at 3, *Mangan*, No. 3-22478 (May 23, 2025) ("Ex. A.").[4] Mr. Mangan currently serves as the CEO of JFM Capital, a private investment firm based in Charlotte, North Carolina that manages capital primarily in US Markets. *Id.* at 4. Aside from the regulatory action discussed in this Application, Mr. Mangan has

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[3] *See Application for Review*, No. 3-22478, at 2 (May 23, 2024) ("Mangan respectfully requests the Commission grant **review of this petition to vacate** the AWC for the reasons that follow.") (emphasis added).

[4] Page references for Ex. A refer to internal page references within that exhibit.

never been the subject of any other regulatory or compliance proceeding. *Id.* at 12.

A. The CDCY PIPE Offering[5]

In 1992, Mr. Mangan became an Executive Vice President, Managing Director, and registered representative at Friedman, Billings, Ramsey ("FBR"), a broker-dealer registered with the Commission. Ex. A, at 3; Complaint ¶ 9, ECF No. 1, *S.E.C. v. Mangan*, No. 6-cv-531 (W.D.N.C. Dec. 28, 2006) ("Compl."). In 2001, FBR was retained by CDCY to act as the financial advisor and underwriter for a PIPE offering. Compl. ¶ 15. Investors in the CDCY PIPE did not pay for the stock (and hence were not issued shares) until the closing of the transaction, which was set to be publicly announced on October 9, 2001. *Id.* ¶¶ 31–32.

Mr. Mangan and his business partner Hugh McColl decided to participate in the PIPE through an account held solely by Mr. McColl, HLM Securities, LLC ("HLM"). *Id.* ¶ 39. On October 8, Mr. Mangan notified FBR that HLM was interested in purchasing 80,000 shares of CDCY from the PIPE offering and FBR informed Mr. Mangan that HLM had been allocated 80,000 shares. *Id.* ¶¶ 39–40.

Before the markets opened on October 9, 2001, Mr. Mangan directed a trade to sell short 25,000 shares of CDCY common stock for the HLM account and these trades were executed by 9:54 a.m. that day. *Id.* ¶¶ 45, 47. At the time Mr. Mangan directed the trades, he reasonably believed that CDCY would announce the PIPE before the market opened. Mangan's Brief in Support of His Motion for Summary Judgment, at 1–2, ECF No. 42, *SEC v. Mangan*, No. 6-cv-531 (W.D.N.C. Apr. 16, 2008) ("MSJ"). However, the PIPE offering announcement was unexpectedly delayed and the PIPE was not publicly announced until 11:44 a.m. *Id.* at 5; Compl.

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[5] Given the lack of a substantive record from FINRA, the facts herein are drawn primarily from briefings in *S.E.C. v. Mangan*, No. 6-cv-00531 (W.D.N.C.).

¶ 31. After the announcement, Mr. Mangan directed a trade to sell short 25,000 more shares. MSJ, at 28. On October 12, 2001, Mr. Mangan again directed a trade to sell short an additional 30,000 shares. *Id.* On October 29, 2001, the SEC declared the resale registration statement for the CDCY PIPE effective, at which time CDCY issued physical shares of PIPE stock. *Id.* HLM's October 9 and 12, 2001 short sales were covered with shares HLM received from the PIPE after the resale registration statement became effective. *Id.* at 4.

B. The SEC and FINRA Investigated FBR and Mr. Mangan and the SEC Filed Suit Against Mr. Mangan

The SEC and FINRA began investigating FBR's conduct in connection with the CDCY PIPE in or around 2002. *See In the Matter of Friedman, Billings, Ramsey & Company, Inc.*, SEC Investigation P-0966-A; *In the Matter of CompuDyne Corporation*, NASD Investigation, File No. 9E04BEE. Mr. Mangan testified in the SEC's investigation in February 2003 where he was represented by Mr. Wallace Timmeny, Jr., who also served as FBR's outside counsel and a was a FBR board member. Ex. A at 2, 2 n.2; ECF Nos. 40-14 at 2, 40-21 at 1, *Mangan*, No. 6-cv-531 (W.D.N.C. Apr. 16, 2008). Mr. Timmeny and FBR selected Mr. Lionel Pashkoff to represent Mr. Mangan in the SEC Investigation and in March of 2003, Mr. Pashkoff became Mr. Mangan's lead counsel and continued to serve in that role throughout the NASD and SEC investigations. Ex. A at 2 n.2. On August 5, 2005, NASD provided an opportunity for Mr. Mangan to produce a Wells Submission and informed him that it intended to file allegations of violations of Section 10(b) of the Exchange Act, Section 5 of the Securities Act, and various Rules of Conduct. *Id.* at 5–6. After receiving Mr. Mangan's Wells Submission, FINRA determined to move forward with charges without allowing for the SEC to conclude its investigation. *Id.* at 6. FINRA threatened to charge Mr. Mangan with insider trading among other allegations if he did not settle in a limited time frame, depriving Mr. Mangan of the ability to resolve both investigations into the same

exact underlying conduct. Ex. A at 6. On the advice of Mr. Timmeny and Mr. Pashkoff, Mr. Mangan signed the AWC in November 2005. *Id.* at 2, 6.

During this time, FBR covered all of Mr. Timmeny's and Mr. Pashkoff's legal fees in representing Mr. Mangan. Mr. Pashkoff made certain that Mr. Timmeny and FBR's legal department were regularly apprised of the status of the SEC and NASD inquiries, even sharing copies of Mr. Mangan's submission. FBR had conflicting interests to those of Mr. Mangan and strong incentives to ensure that the FINRA and SEC investigations ended with charges against Mr. Mangan and not the firm itself. Despite the fact that Mr. Pashkoff was selected by, paid by, and reported directly to FBR, Mr. Mangan was never asked to waive this conflict of interest.

C. The Theory of Liability Against Mr. Mangan Is Rejected by Multiple District Courts

Mr. Mangan is burdened with the continued enforcement of the AWC, despite multiple courts rejecting the theory of liability that was pursued against him by both FINRA and the SEC. On December 28, 2008, the SEC filed a civil action against Mr. Mangan in the Federal Court for the Western District of North Carolina. Compl. The SEC brought the claims FINRA had threatened to bring: insider trading and unlawfully trading unregistered stocks, and it based these claims on the same alleged facts. *Id.* When these facts and claims were put to the test in front of a Federal District Court, however, the SEC failed. On October 24, 2007, the court granted Mr. Mangan's motion to dismiss the SEC's Section 5 claim.[6] On August 20, 2008, the court granted Mr. Mangan's motion for summary judgment dismissing the SEC's remaining fraud claims.[7]

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[6] Tr. of Proceedings Held on Oct. 24, 2007, ECF No. 28, *SEC. v. Mangan*, No. 6-cv-531 (W.D.N.C. Nov. 2, 2007).

[7] Order Granting Motion for Summary Judgment, ECF No. 51, *SEC v. Mangan*, No. 6-cv-531 (W.D.N.C. Aug. 20, 2008).

At the same time that the SEC and FINRA were pursuing Mr. Mangan for various alleged violations, the SEC was also unsuccessfully litigating another similar matter. On January 2, 2008, a judge in the Federal District Court for the Southern District of New York granted a motion to dismiss the SEC's allegations of a Section 5 violation and related fraud charges in connection with short sales of PIPE shares. Opinion Regarding Motion to Dismiss, at 16–25, ECF No. 17, *SEC v. Lyon*, 6-cv-14338 (S.D.N.Y. Jan. 2. 2008).

D. Mr. Mangan Seeks to Vacate FINRA's AWC and Bar

In the intervening years between the multiple courts rejecting the SEC's pursuit of enforcement actions based on these facts, Mr. Mangan has repeatedly sought relief from FINRA's actions without success. Specifically, Mr. Mangan approached FINRA senior management requesting it withdraw the AWC and bar in 2010, 2013, 2019, 2020, and 2024. Ex. A, at 2. FINRA consistently stated it was not willing to provide the requested relief. FINRA encouraged Mr. Mangan to apply for association through the MC-400 process, but such "relief" is not realistic. *Id.* Firms that were interested in engaging Mr. Mangan explained that if he were hired, the firm would become subject to significantly heightened regulatory scrutiny and expense. *Id.* at 2, 2–3 n.3.

Left with no further alternatives, Mr. Mangan filed a formal petition to vacate the AWC and the permanent bar on October 17, 2024. Ex. A. On May 6, 2025, nearly seven months later, FINRA responded with a two-sentence determination denying his request. Exhibit C Mangan's Index of Attachments, *Mangan*, No. 3-22478 (May 23, 2025) ("Ex. C."). Senior FINRA personnel met repeatedly with Mr. Mangan and his counsel, expressing concern that to vacate their AWC would open the floodgates, but encouraging the present Application to seek an SEC order for FINRA to do so. Ex. A, at 2, 3, 8. Mr. Mangan accordingly timely filed the Application to the Commission.

III. ARGUMENT

A. The FINRA Action at Issue Is Its May 2025 Denial of Mangan's Petition to Vacate

FINRA's arguments are premised on the erroneous proposition that the FINRA action at issue in this matter is the AWC. This is, at best, incorrect and, at worst, a deliberate attempt to mislead the Commission. Instead, the final determination at issue is FINRA's May 6, 2025 denial of Mr. Mangan's Petition, as is clear in Mr. Mangan's Application. Application at 2. This denial, as explained *infra* in Sections III.A, III.B.1, was a final determination by a self-regulatory organization ("SRO"), which is reviewable by the Commission.

That FINRA's Denial Letter is the action at issue is bolstered by FINRA's own subsequent filing in this matter. Under 17 C.F.R. Section 201.420(e), FINRA must certify and file electronically an unredacted copy of the record upon which the action complained of was taken. On June 5, 2025, FINRA filed such a record, but it only included the three documents: the AWC, Mangan's Petition, and FINRA's Denial Letter. *See* Certification of the Record, *In the Matter of the Application of John F. Mangan*, No. 3-22478 (June 5, 2025). Two of these three documents were generated well *after* the AWC was executed and certainly could not have formed the record for the AWC action. This is because the action at issue here is FINRA's two-sentence May 6, 2025 Denial Letter.[8]

FINRA's preference is understandable – it will be difficult to explain and justify a two-

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[8] Mr. Mangan contests FINRA's assertion that its Denial Letter was not disciplinary. *See In the Matter of the Application of Frank R. Rubba*, No. 3-9480, 1998 WL 404640, at *2 (July 21, 1998) (finding a FINRA letter denying a request to lift a previously imposed sanction to be a reviewable SRO action). FINRA does not contest that its Denial Letter fell short of the statutory mandate for FINRA to "provide a fair procedure" and the Commission should hold that FINRA has waived its right to contest the fairness of FINRA's procedure should the Commission find the Denial Letter to be disciplinary. 15 U.S.C. § 78o-3(b)(8); FINRA Motion at 6 n.3; *see, e.g.*, *In Re Kingate Mgmt. Ltd. Litig.*, 746 Fed. Appx 40, 43 (2nd Cir. 2018).

sentence decision that lacks any analysis or justification. This lack of process and consideration is precisely why the Commission should exercise its oversight authority to demand that FINRA explain why it continues to enforce the AWC in light of the extraordinary circumstances present.

Further, if the determination at issue were, as FINRA argues, the AWC itself, FINRA has not submitted the record for this determination as required by 420(e). Mr. Mangan is aware of the time-consuming investigative process conducted by FINRA twenty years ago because he was an active participant in it. For instance, on June 22, 2004, Mr. Mangan provided testimony in the FINRA investigation regarding the 2001 transaction.[9] On September 28, 2005, Mr. Mangan provided a Wells Submission to FINRA.[10] Certainly the information provided by Mr. Mangan in these documents informed FINRA's 2005 determination. Yet FINRA did not submit these documents in its required index.

B. <u>The Commission Has Jurisdiction Over This Matter.</u>

1. The Commission Has Jurisdiction Over FINRA's Denial of Mr. Mangan's 2025 Petition.

Section 19(d) of the Exchange Act grants the Commission the authority to review any action of FINRA that imposes (1) a final disciplinary sanction on a person associated with a member; (2) denies membership to any applicant; (3) prohibits or limits access to services offered by the organization or any of its members to any person; or (4) bars any person from associating with a member. 15 U.S.C. § 78s(d)(1). FINRA's denial of Mr. Mangan's Petition

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[9] *S.E.C. v. Mangan*, Exhibits Accompanying the Memorandum in Support of the Motion of the SEC for Summary Judgment, ECF No. 40-21 (Excerpts of Mr. Mangan's Investigative Transcript before NASD), No. 6-cv-531 (W.D.N.C. Apr. 16, 2008).
[10] *Id.* ECF No. 40-40 (redacted excerpts of Mr. Mangan's Wells Submission).

denied him membership and barred him from associating with a member.[11] Further, the denial letter prohibited and limited access to the disciplinary hearing service offered by FINRA.[12] The Commission therefore has the authority to review Mr. Mangan's application.

As a threshold matter, Section 19(d) of the Exchange Act grants the Commission the authority to review FINRA denial letters that maintain a previously imposed bar on an individual's association with a member. In *Rubba*, the Commission considered whether it had the authority to review a NASD letter that denied a member's request to lift a bar on his license. Opinion of the Commission, *In the Matter of the Application of Frank R. Rubba*, No. 3-9480, 1998 WL 404640 (July 21, 1998). Mr. Rubba had entered into an AWC wherein he agreed to pay a fine which he ultimately failed to timely pay. *Id.* at *1. NASD subsequently revoked Mr. Rubba's registration. *Id.* When Mr. Rubba discovered his registration had been revoked, he submitted a written request to NASD seeking reinstatement of his license, which NASD denied. *Id.* at *2. NASD argued that its denial letter merely maintained the status quo and did not independently bar Rubba's association with a member. *Id.* The Commission disagreed, holding that NASD's denial letter had the effect of barring Mr. Rubba from associating with any NASD member and therefore the Commission had jurisdiction. *Id.* The opinion of the Commission in *Rubba* demonstrates that denial letters refusing to revisit underlying disciplinary actions can be independent from the underlying disciplinary action. Further, these denial letters are subject to the Commission's jurisdiction.

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[11] Mr. Mangan does not waive the argument that the Commission has jurisdiction over this action as a final disciplinary sanction and reserves the right to substantively address this point in future briefing.

[12] *See* FINRA, *By-laws*, Article XII Sec. 2 (1997), available at https://www.finra.org/rules-guidance/rulebooks/corporate-organization/article-xii-disciplinary-proceedings (providing the FINRA service of providing an opportunity for a hearing at which such member or person associated with a member shall be entitled to be heard).

FINRA argues that its May 6, 2025 Denial Letter "cannot properly be characterized as any sort of FINRA sanction, denial of membership, limitation of access to FINRA services, or bar." FINRA's Motion, at 6. However, SRO actions "**having the effect of** 'barring' an individual from association with the SRO's members—whether the individual is formally barred or not—[are] reviewable under Section 19(d)." *In the Matter of the Application of Gregory Acosta for Review of Action Taken by FINRA*, No. 3-18637, 2020 WL 3428890, at *4 (June 22, 2020) (emphasis added). In *Acosta*, the Commission held it had jurisdiction over a FINRA action disqualifying an applicant from associating with any FINRA members despite the fact that FINRA had not formally imposed a "bar." *Id.* at *5. FINRA's action meant that the applicant was not free to begin associating with any member firm unless he first persuaded a member firm to sponsor him in a MC-400 application that FINRA would then need to approve. *Id.* *5. The Commission held this decision therefore had the effect of a bar and, as such, was reviewable. *Id.* FINRA's Denial Letter has the same effect for Mr. Mangan; this letter has the effect of both denying Mr. Mangan's membership and barring his association with a member. By doing so without providing any substantive engagement or analysis, this Denial Letter also has the effect of limiting or prohibiting Mr. Mangan's access to a FINRA service.

FINRA argues that Mr. Mangan's Application is a "thinly disguised attempt to turn back the clock and appeal the AWC[.]" FINRA Motion, at 6. FINRA encourages the Commission to follow a series of cases that it claims are on point, but which are, in reality, quite distinguishable, and none of which present the extraordinary circumstances present in Mr. Mangan's Application.[13] Further, *Rubba* and *Acosta* demonstrate that the Commission has found that it has

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[13] In *Varma*, the Commission found that the Applicant had not established, and had not even claimed, how FINRA provides a service through which one can expunge information about an AWC from the CDR and BrokerCheck and therefore the NAC dismissal did not fall within one

the authority to review the types of SRO actions that FINRA argues are collateral to an underlying unreviewable sanction. Most importantly, none of these cases raise the extraordinary circumstances of conflicted counsel and *res judicata* which, Mr. Mangan argues, justify review. *See infra* Section III.B.2. These extraordinary circumstances allow the Commission to exercise its authority to review FINRA's actions.

2. If the Action at Issue Were the AWC, The Commission Would Still Have Jurisdiction Due to Exceptional Circumstances.

FINRA does not contest that if the applicable action under review in this matter is the AWC, the AWC falls clearly into the plain text of reviewable actions under Section 19(d) of the Exchange Act.[14] Rather, it argues that the AWC is not reviewable because Mr. Mangan, through

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of the four Section 19(d) categories. Opinion of the Commission, *In the Matter of the Application of Varma for Review of Action Taken by FINRA*, No. 3-20317, 2023 WL 5152648, at *2 (Aug. 10, 2023). Mr. Mangan has found that FINRA does provide a service to hear appeals and provide hearings in FINRA's bylaws. *See supra* p. 10 n.12. In *Proman*, the Commission considered an appeal from a bar imposed by an Offer of Settlement that the Applicant had voluntarily submitted to NASD. Order Dismissing Application for Review, *In the Matter of the Application of Proman For Review of Action Taken by NASD*, No. 3-12729, 2008 SEC LEXIS 956, at *2 (Apr. 30, 2008). Here, Mr. Mangan did not voluntarily submit an offer to settle FINRA's investigation; FINRA approached Mr. Mangan with this offer and he was advised by conflicted counsel to sign the AWC under duress. The Commission should interpret *Van Alstyne* and *Minton* narrowly to apply to the Commissions inability to review NASD's denial of requests to set aside default judgments because, in these cases, unlike in Mr. Mangan's case, the applicants had not participated in NASD's underlying investigation. Opinion of the Commission, *In the Matter of the Application of Van Alstyne For Review of Action Taken by NASD*, No. 40738, 53 S.E.C. 1093 (Dec. 2, 1998); *In the Matter of the Application of Minton for Review of Action Taken by NASD*, No. 3-10636, 55 S.E.C. 1170 (Oct. 23, 2002). Further, the Commission found that, unlike in Mangan's case, in *Van Asltyne* and *Minton*, there were no extraordinary circumstances authorizing review of a late appeal. 53 S.E.C. 1093, at 1099; 55 S.E.C. 1170, at 1176–79. In *Saylor*, the applicant not only filed his initial Motion to Vacate Order Imposing Principal Bar well after NASD's imposition of discipline, but also filed his application for review to the Commission over thirty days after NASD issued its denial to of the applicant's motion. *In the Matter of the Application of Saylor For Review of Action Taken by NASD*, No. 3-11733, 58 S.E.C. 586, 589 (June 30, 2005).

[14] Mr. Mangan disagrees with FINRA's assertion that the action at issue in this matter is the AWC. However, Mr. Mangan argues that the Commission should still exercise jurisdiction over his Application if it determines the AWC is the action at issue in this matter.

the AWC, waived his right to appeal and his appeal was untimely. As explained *infra* in Section III.C, Mr. Mangan's Application was timely. Further, the Commission has left open the question of "whether an AWC may ever be challenged as unenforceable." *In The Matter Of the App. Of Zipper for Rev. of Action Taken By FINRA*, SEC Release No. 81788, 2017 WL 4335072, at *3, *3 n.9 (2017). Indeed, Federal Courts will set aside settlement agreements when there is evidence of fraud, coercion, duress, or a serious mistake that renders the terms fundamentally unfair or invalid and may grant relief from a final judgment in exceptional circumstances. *See generally Andrew v. Century Sur. Co.*, 134 F.Supp.3d 1249, 1265–70 (D. Nev. 2015); *Kelly v. Provident Life and Acc. Ins. Co.*, 734 F.Supp.2d 1085, 1099–1104 (S.D. Cal. 2010). The Commission, should it deem the AWC to be the SRO action at issue in this matter, should find the AWC and its accompanying waiver, unenforceable. Mr. Mangan was advised by conflicted counsel and FINRA is barred through *res judicata* from continuing to enforce an AWC based on facts and claims that an Article III court found meritless. These represent exceptional circumstances justifying relief from the AWC.

During FINRA's investigation and the negotiation of the AWC, Mr. Mangan was represented by counsel that was hired by, paid by, and reported directly to Mr. Mangan's employer. Specifically, FBR and FBR's board member and outside counsel, Mr. Timmeny, selected Mr. Pashkoff to represent Mr. Mangan during FINRA's investigation. Mr. Pashkoff kept FBR fully informed of the facts and circumstances of Mr. Mangan's case despite the fact that FBR had contrary interests to Mr. Mangan and strong incentives to ensure that the FINRA investigation end with charges against Mr. Mangan and not the firm itself. Thus, Mr. Mangan's counsel was clearly conflicted under the plain terms of Rule 1.7 of the ABA's model rules of professional conduct. *See* ABA, *Model Rules of Prof'l Conduct Rule 1.7*, at 1.7(a)

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/ ("[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."). Mr. Mangan did not waive this conflict. Mr. Pashkoff's relationships with FBR and Mr. Timmeny was a clear conflict, and such conflicts can be grounds for overturning a final settlement. *See, e.g.*, *Wood v. Georgia*, 450 U.S. 261, 272–73 (1981) (reversing probation determination where defendants' counsel in their underlying criminal case was hired by defendants' employers and the record suggested that this created the possibility of a conflict); *In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 827 F.3d 223, 240 (2d Cir. 2016) (overturning settlement where counsel for class were conflicted and could not adequately represent the interests of competing class member groups).

Further, FINRA is barred from continuing to enforce the AWC under the doctrine of *res judicata*. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) ("The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, which are collectively referred to as '*res judicata*.' Under the doctrine of claim preclusion, a final judgment forecloses 'successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.' . . . Issue preclusion, in contrast, bars 'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim.") (citations omitted). Contrary to FINRA's assertion that the AWC and the SEC action "involved different theories of liability

based on different factual predicates[,]" there is clear overlap between the facts and claims in these actions. FINRA's Motion, at 9 n.4. In the AWC, FINRA charged Mr. Mangan with violations of NASD Conduct Rules ("NASD Rules") 2110,[15] 2120, 2330(f), and 3370.[16] AWC, at 6. In 2006, the SEC alleged that Mr. Mangan violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 5(a) and (c) of the Securities Act of 1933 (the "Securities Act"). Compl. ¶¶ 69–77. A Federal Court dismissed the SEC's claims, creating a final judgment on the merits that FINRA cannot attempt to circumvent through subsequent and continued enforcement of the AWC.[17]

The SEC alleged that Mr. Mangan violated Sections 5(a) and (c) of the Securities Act, which prohibit the purchase or sale of securities "[u]nless a registration statement is in effect as to a security" and "a registration statement has been filed as to such security." 15 U.S.C. §§ 77e(a), (c). Specifically, the SEC alleged that by covering the October 9 and 12, 2001 short sales of CDCY stock with shares of CDCY stock obtained from the PIPE that were not registered, or delivered, until October 29, Mr. Mangan had "effectively" sold unregistered shares

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[15] Requiring FINRA members to "observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 2110 (Oct. 2001), available at https://my.vitallaw.com/#/read/SecuritiesFederal/6bac10127b6d1000b7b000215ad747900966!csh-da-filter!WKUS-TAL-DOCS-PHC-%7BE1A3601C-22F9-4032-9290-24160AF11293%7D--WKUS_TAL_12571%23teid-1787?searchItemId=&da=WKUS_TAL_12571. The AWC includes a violation of this rule with each of the AWC claims. AWC ¶¶ 26–28.

[16] Mr. Mangan here relies on the text of the NASD Rules that were in effect in October 2001, the time of the trades at issue. *See* VITALLAW, *2001 NASD Rule Archives*, https://my.vitallaw.com/#/read/SecuritiesFederal/6b2493127b6d100088cd00215ad7479006!csh-da-filter!WKUS-TAL-DOCS-PHC-%7BE1A3601C-22F9-4032-9290-24160AF11293%7D--WKUS_TAL_12571%23teid-0?searchItemId=&da=WKUS_TAL_12571 (last accessed June 13, 2025).

[17] The AWC's alleged violations of NASD Rules 2110 and 2330(f) may not be barred by *res judicata*. Mr. Mangan reserves this argument for after he is provided the opportunity to review FINRA's record if such an opportunity is granted. In any event, the imposition of a lifetime bar for violations of these rules is disproportionate and would not support a finding of a "fair procedure" for disciplining members. *See* 15 U.S.C. § 78o-3(b)(8).

of CDCY. Compl. ¶¶ 61–63. The AWC similarly alleges that "[b]etween approximately October 9, 2001, and October 12, 2001, Mangan caused the failure to make and annotate affirmative determinations that 80,000 shares of CDCY were available for delivery by settlement date," in violation of NASD Rule 3370. AWC, at 6. This is precisely the same claim the SEC alleged in its complaint. This was a legal claim expressly repudiated by the court in *Mangan*. Tr. of Proceedings held on Oct. 24, 2007, at 44:3–15, ECF No. 28 (W.D.N.C. Nov. 2, 2007) (granting Mr. Mangan's motion to dismiss the SEC's claims he violated Section 5(a) and (c) of the Securities Act).

The SEC further alleged that Mr. Mangan committed securities fraud by engaging in insider trading in violation of Sections 10(b) of the Exchange Act, Rule 10b-5 promulgated thereunder, and Section 17(a) of the Securities Act. Compl. ¶¶ 69–74.[18] Specifically, the SEC alleged that by "trading in CompuDyne securities on the basis of material, nonpublic information in breach of duties of trust and confidence, Mangan knowingly or recklessly engaged in a device, scheme, artifice, transaction, act, practice or course of business that operated as a fraud and deceit upon other persons." *Id.* at ¶ 58. Likewise, the AWC states that Mr. Mangan violated

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[18] Section 10(b) of the Exchange Act prohibits any person from using or employing "any manipulative or deceptive device or contrivance" in connection with "the purchase or sale of any security." 15 U.S.C. § 78j(b). Rule 10b-5 prohibits any person to "(a) employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 17 C.F.R. § 240.10b-5. Section 17(a) of the Securities Act prohibits any person "(1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser" in connection with the purchase or sale of securities. 15 U.S.C. § 77q(a).

NASD Conduct Rule 2120 through effecting transaction and inducing "the purchase and sale of securities by means of a deceptive device or contrivance." AWC ¶ 26; *see also* NASD Conduct Rule 2120 (Oct. 2021).[19] The court in *Mangan* granted Mr. Mangan's motion for summary judgment on the SEC's fraud claims, denying the SEC's argument that Mr. Mangan's CDCY transactions were made in an "effort to fraudulently take advantage of his knowledge of the PIPE." Order Granting Summary Judgment, at 3, 11, ECF No. 51, *Mangan* (W.D.N.C. Aug. 20, 2008).

Further, finding the AWC unenforceable is in the public interest. The SEC held in *Denha* that lifetime bars, analogous to the bar Mr. Mangan is subject to, are inconsistent with the public interest. *In the Matter of Roger T. Denha*, Advisers Act Release No. 6872, 2025 WL 1091846, at *6 (Apr. 11, 2025). In *Denha*, the Commission considered the application of an investment advisor who, in a 2018 settlement, consented to, among other things, an unqualified bar from associating with any investment advisor which has no stated right to apply for reentry after a specified period of time. *Id.* at *1, *4. This is akin to the permanent bar Mr. Mangan is subject to under the AWC. The 2018 Settlement further ordered that Mr. Denha cease and desist from committing or causing violations or future violations of *inter alia* Section 10(b) of the Exchange Act and Rule 10b-5; two of the claims the SEC tried, and fail, to allege Mr. Mangan had violated. *Denha*, 2025 WL 1091846, at *1; Compl. at 17. In granting Mr. Denha's application for reentry, the court considered it relevant that "over six years [had] elapsed since Mr. Denha's bar" and that "Mr. Denha had complied with his bar since it was entered." *Denha*, 2025 WL 1091846,

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[19] Available at: https://my.vitallaw.com/#/read/SecuritiesFederal/6bac12887b6d10009b3600215ad747900bc4!csh-da-filter!WKUS-TAL-DOCS-PHC-%7BE1A3601C-22F9-4032-9290-24160AF11293%7D--WKUS_TAL_12571%23teid-1789?searchItemId=&da=WKUS_TAL_12571.

at *5. It has been nearly twenty years since Mr. Mangan's bar was imposed and he has never been the subject of any other regulatory or compliance proceeding before or since.

In *Denha*, the Commission held that it would no longer distinguish between qualified and unqualified bars when considering applications for reentry. *Denha*, 2025 WL 1091846, at *4. It did so because the previously applied "extraordinary circumstances" showing an applicant was required to make had the potential to "create an insurmountable hurdle" to applicants and the Commission recognized that "it is in the public interest to allow barred individuals to reenter the industry." *Id.* Without the Commission's intervention, Mr. Mangan and others similarly subject to AWCs and permanent bars face the same "insurmountable hurdle" to reentry that is contrary to the public interest.

C. Mr. Mangan Timely Filed His Application for Review

Exchange Act Section 19(d)(2) provides that appeals from actions of SROs must be filed by the aggrieved person "within thirty days after the date such notice was . . . received by [the] aggrieved person." 15 U.S.C. § 78s(d)(2). Because the FINRA determination at issue took place on May 6, 2025, Mr. Mangan was required to file his Application for Review with the Commission by June 5, 2025. Mr. Mangan filed his Application on May 23, 2025, well within this thirty-day time frame.

Even if the action at issue were the AWC, there are extraordinary circumstance justifying the extension of the time period.[20] *See* 17 C.F.R. § 201.420(b). In *PennMont Securities*, the

[20] FINRA summarily claims that Mr. Mangan "has not shown that extraordinary circumstances excuse his delay" but to the extent Mr. Mangan has failed to show these circumstances before this filing, it is because he had not yet been given the opportunity to do so. Mr. Mangan's Application was limited to two pages, double-spaced, and necessarily had to be limited to only the most important arguments for consideration by the Commission. 17 C.F.R. §§ 201.152(b)(5), 201.420(c).

Commission looked to analogous areas of federal law to determine what constitutes "extraordinary circumstances" justifying an extension. Order Granting Motion to Dismiss, *In the Matter of the Application of PennMont Securities For Review*, No. 3-13623, 2010 WL 1638720, at *4 (Apr. 23, 2010). Among such circumstances justifying an extension was "ineffective assistance of counsel." *Id.* at *4 n.24. Mr. Mangan's counsel was conflicted and ineffective, *see supra*, at II.B and III.B.2. Therefore, there are extraordinary circumstances that justify the Commission's consideration of Mr. Mangan's Application should it find the Application to be untimely.

D. The Commission Should Not Stay Briefing

The Commission, "like a trial judge, enjoys broad discretion in deciding whether to grant a continuance." *Dearlove v. S.E.C.*, 573 F.3d 801, 807 (D.C. Cir. 2009). In determining whether to grant a motion for a postponement, the commission should consider, in addition to any other relevant factors: "(i) The length of the proceeding to date; (ii) The number of postponements, adjournments or extensions already granted; (iii) The stage of the proceedings at the time of the request; (iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and (v) Any other such matters as justice may require." 17 C.F.R. § 201.161(b)(1)(i)–(v). In making its decision, the Commission should consider each of the five factors specified in the rules and treat none as dispositive. *Dearlove*, 572 F.3d at 807 (affirming the ALJ's denial of Rule 161 postponement because the "ALJ considered each of the five factors specified in the rules and treated none as dispositive."). The Commission has "a policy of strongly disfavoring such requests." 17 C.F.R. § 201.161(b)(1). To overcome this strong disapproval, the requesting party must make "a strong showing that the denial of the

request or motion would substantially prejudice their case." *Id.*[21] FINRA has not done so.

Instead, FINRA argues that "[c]onsideration of [the SEC Rule of Practice 161] factors weighs in favor of granting FINRA's request" to postpone issuing the briefing schedule. FINRA's Motion at 2 n.2. FINRA notes the preliminary stage of this proceeding, the lack of other prior postponements, and the conservation of the Commission's resources. *Id.* Conservation of the Commission's resources is inapposite to the strong showing FINRA must make as to how *FINRA's* case would be prejudiced by the issuance of a briefing schedule.

Mr. Mangan has been denied the opportunity to have his case reviewed on its merits for nearly two decades and FINRA has failed to provide "a strong showing that the denial of the request or motion would substantially prejudice their case." 17 C.F.R. § 201.161(b)(1). They simply request to continue to deny Mr. Mangan any reasoned consideration of the relevant issues. Mr. Mangan therefore respectfully requests that the Commission deny FINRA's motion to stay briefing and issue a briefing schedule.

IV. CONCLUSION

Pursuant to the foregoing, Mr. Mangan respectfully requests the Commission deny FINRA's Motion and issue a briefing schedule.

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[21] *See also* Order Denying Motion to Stay Issuance of Briefing Schedule, *In the Matter of the Application of Strege for Review of Action Taken By FINRA*, No. 3-22397, 2025 WL 549150, at *1 (Feb. 18, 2025) (denying FINRA's motion to stay briefing because FINRA had not provided an adequate justification to postpone issuance of the briefing schedule).

Dated: June 16, 2025

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

I, A. Kristina Littman, pursuant to 17 C.F.R. Section 154(c), hereby do certify that this Motion of John F. Mangan Jr. In Opposition to FINRA's Motion to Dismiss and Stay Briefing complies with the word limitation set forth in the referenced section. Relying on the word count of a word-processing document program, the word count of this motion, exclusive of the table of contents, table of authorities, and any addendum is 6,736 words.

Dated: June 16, 2025

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CERTIFICATE OF SERVICE

I, A. Kristina Littman, on June 16, 2025, served copies of Mr. John F. Mangan, Jr.'s Opposition to FINRA's Motion to Dismiss and Stay Briefing and the Index of Attachments and Attachments thereto ("Mangan's Opposition Materials") on the Securities and Exchange Commission Office of the Secretary by electronic filing.

On this date, I also served a copies of Mangan's Application for Review Materials on FINRA General Counsel by electronic email to nac.casefilings@finra.org

On this date, I also caused service of Mangan's Opposition Materials on the Securities and Exchange Commission Office of the Secretary and FINRA General Counsel by mail to:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

FINRA - Office of General Counsel
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