BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C.

In the Matter of the Application of

John F. Mangan

For Review of Action

Taken by

FINRA

File No. 3-22478

FINRA'S MOTION TO DISMISS JOHN F. MANGAN'S APPLICATION FOR REVIEW AND TO STAY BRIEFING

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FINRA'S MOTION TO DISMISS JOHN F. MANGAN'S APPLICATION FOR REVIEW AND TO STAY BRIEFING

I. INTRODUCTION

On May 23, 2025, John F. Mangan ("Mangan") filed an application requesting that the Securities and Exchange Commission ("Commission") review a twenty-year-old Letter of Acceptance, Waiver and Consent ("AWC") that Mangan entered into with FINRA to settle allegations that he violated FINRA rules. RP 27-29.[1] Specifically, Mangan challenges FINRA's May 6, 2025 denial of his petition to vacate his AWC ("Petition")—an AWC that he knowingly and voluntarily accepted in November 2005.

The Commission should dismiss Mangan's appeal. First, FINRA's denial of Mangan's Petition does not involve any of the bases for jurisdiction under Section 19(d) of the Securities

[1] "RP __" refers to the page numbers in the certified record that FINRA filed with the Commission on June 5, 2025.

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Exchange Act of 1934 (the "Exchange Act"). Mangan's current appeal is nothing more than a collateral attack on a disciplinary settlement that Mangan agreed to.

Second, under the express terms of the AWC he accepted, Mangan "specifically and voluntarily" waived his right to appeal FINRA's action to a higher jurisdictive authority, including the Commission. Mangan's AWC is valid and binding, and the relief that Mangan requests is accordingly foreclosed to him.

In addition, although the statutory period to appeal a final FINRA action does not apply to an AWC containing a binding appeal waiver, Mangan's application for review is clearly untimely. The time for Mangan to attempt an appeal of the AWC passed nearly two decades ago, and he has not shown that extraordinary circumstances exist to excuse his delay. For these reasons, the Commission should dismiss Mangan's application for review.

Finally, and prior to requiring the parties to brief this matter on the merits, FINRA requests that the Commission first resolve the threshold issue of whether it has jurisdiction to consider Mangan's application. Because, as set forth herein, FINRA has demonstrated that the denial of the Mangan's Petition is not reviewable, it is highly likely that the Commission will not address the substance of his appeal. Thus, pursuant to SEC Rule of Practice 161, FINRA requests that the Commission postpone issuance of the briefing schedule in this case until it resolves this motion.[2]

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[2] SEC Rule of Practice 161 permits the Commission to postpone issuing the briefing schedule after considering the length of the proceeding to date, the number of previous postponements, the stage of the proceedings, the impact of the request on the Commission's ability to timely complete the proceeding, and any other matters as justice requires. Consideration of these factors weighs in favor of granting FINRA's request. 17 CFR 201.161.

[Footnote continued on next page]

II. PROCEDURAL AND FACTUAL BACKGROUND

On November 16, 2005, Mangan executed the AWC, in which he agreed to a permanent bar and a $125,000 fine. RP 1-7. Mangan accepted and consented to findings that, while associated with Friedman, Billings & Ramsey & Co. ("FBR"), he violated (i) NASD Rules 2110 and 2120, by effecting and inducing the purchase and sale of shares of a company, CompuDyne Corporation ("CompuDyne"), by means of a deceptive device or contrivance; (ii) NASD Rule 2330(f), by sharing profits with a customer of a member firm without securing the prior written authorization of his employer; and (iii) NASD Rules 2110 and 3370, by causing shares in CompuDyne to be sold short without the required affirmative determinations that the shares were available for settlement.

In the AWC, Mangan confirmed his understandings that, among other things, his submission of the AWC was "voluntary," the AWC "will become part of my permanent disciplinary records," the AWC "will be made available through NASD's disclosure program in response to public inquiries about my disciplinary record," and that he "may not take any action . . . denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis." In addition, Mangan certified that "I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce me to submit it." Mangan also waived the right to defend

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[cont'd]

No other postponements have been granted or requested to date and these proceedings are in the initial stages. Further, the interests of judicial economy support resolving the potentially dispositive issues prior to addressing the merits, thereby conserving the Commission's resources.

himself in a disciplinary hearing before FINRA's hearing officers, or to appeal to FINRA's National Adjudicatory Council ("NAC"), the Commission, or a U.S. Court of Appeals. RP 2.

Notwithstanding the express terms of the AWC, on October 17, 2024, Mangan sent FINRA the Petition to vacate the AWC. RP 10-23. Mangan maintained that the facts as described in the AWC are not accurate, that he executed the AWC under duress and upon the advice of counsel not of his choosing, and that the findings of violation are unsupported by the facts and the law and have been rejected by a federal court and two U.S. attorneys. He further argued that the bar was excessive and oppressive, and that it should be vacated based on the age of the bar and his disciplinary record, age, and industry experience. Although Mangan claimed that he does not want to work in the brokerage industry, he sought to vacate the AWC and the bar "because of its significant effect on his ability to expand his business opportunities and, most importantly, to rehabilitate his good name and reputation." RP 12.

On May 6, 2025, FINRA responded to Mangan's Petition, denying his request to vacate his AWC. RP 25. This appeal followed.

III. ARGUMENT

Three independent grounds support the Commission's dismissal of Mangan's application for review. First, Section 19(d) of the Exchange Act grants no jurisdiction for this matter. Second, Mangan waived his right to appeal his AWC to the Commission. And finally, Mangan's application for review is untimely. The Commission should not permit applicants, such as Mangan, to vacate long-settled disciplinary matters for which they knowingly waived all rights to appeal.

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A. The Commission Lacks Jurisdiction Over Mangan's Appeal

The Commission's authority to review FINRA action is governed by Section 19(d) of the Exchange Act. *See Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 SEC LEXIS 956, *3 (Apr. 30, 2008) ("Our authority to review an action of a self-regulatory organization ("SRO"), including [FINRA], is governed by Section 19(d) of the Securities Exchange Act of 1934."). "Exchange Act Section 19(d) authorizes [the Commission] to review an action taken by a self-regulatory organization ("SRO") only in specific circumstances." *Sandeep Varma*, Exchange Act Release No. 98102, 2023 SEC LEXIS 2001, *3 (Aug. 10, 2023). Section 19(d) authorizes the Commission to review an SRO action only in instances that the SRO: (1) imposes any final disciplinary sanction on any member or person associated with a member; (2) denies membership or participation to any applicant; (3) prohibits or limits any person in respect to access to services offered by such organization or member thereof; or (4) bars any person from becoming associated with a member. 15 U.S.C. § 78s(d).

If the Commission lacks jurisdiction under Section 19(d), it must dismiss the proceedings. *See Proman*, 2008 SEC LEXIS 956, at *3-4 ("If we find that we do not have jurisdiction [under Section 19(d)], we must dismiss the proceeding."); *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)"); *see also Joseph Dillon & Co.*, 54 S.E.C. 960, 962-63 (2000) (finding that the Commission lacked jurisdiction over an appeal of NASD action where the action did not fall within any of the four jurisdictional bases of Section 19(d)).

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Mangan's application does not involve any of the bases for jurisdiction under Section 19(d) of the Exchange Act. The May 6, 2025 denial letter from which Mangan seeks relief cannot properly be characterized as any sort of FINRA sanction, denial of membership, limitation of access to FINRA services, or bar. *See Proman*, 2008 SEC LEXIS 956, at *5-8.

Rather, FINRA simply declined to grant Mangan the extraordinary relief requested in his Petition, and no change was effected in the underlying AWC. Mangan's present application is a thinly disguised attempt to turn back the clock and appeal the AWC to which he consented and in which he waived all rights to appeal. The Commission should not allow Mangan to circumvent the finality of the AWC. Thus, as a matter of law and of sound public policy, the Commission must dismiss the instant application.[3]

Several previous Commission decisions are directly on point and the Commission should follow them here. In *Varma*, the Commission dismissed, for lack of jurisdiction, an application for review of FINRA's denial of Varma's request to expunge information about his AWC from FINRA's Central Registration Depository ("CRD"), noting that collateral challenges to the AWC do not create jurisdiction under Section 19(d). *Varma*, 2023 SEC LEXIS 2001, *5. Similarly, in *Proman*, the Commission dismissed, for lack of jurisdiction, an application for review from FINRA's denial of Proman's request for relief from a bar imposed on him pursuant to a

[3] Mangan argues that the "imposition of the AWC and subsequent rejection of [his] Petition . . . did not meet the statutory mandate to 'provide a fair procedure for disciplining its members.'" RP 28. This argument is immaterial because the SEC lacks appellate jurisdiction. In any event, FINRA's action in denying the petition to vacate Mangan's bar was not disciplinary. *See Proman*, 2008 SEC LEXIS, at *4 (explaining that FINRA action refusing to vacate a bar is "not disciplinary" but "collateral to the underlying disciplinary action").

settlement agreement he entered into with FINRA. The Commission concluded that FINRA "did not invoke its disciplinary procedures, did not determine that Proman had violated a statute or rule, and did not impose a final disciplinary sanction on him. These actions occurred in the [settlement], to which Proman consented. [] Proman's request to vacate the bar is collateral to the underlying disciplinary action." *Proman*, 2008 SEC LEXIS, at *5.

In *Van Alstyne*, 53 S.E.C. 1093, the Commission dismissed, for lack of jurisdiction, an application to review a default decision. In that case, NASD issued a default decision against respondent after properly serving him with the complaint pursuant to NASD rules. *Id.* at 1096. The respondent did not appeal to the NAC. Five months after the default decision was issued and served on respondent, respondent filed a motion with the NAC to set aside the decision. *Id*. The NAC denied respondent's motion and he filed an application for review with the Commission. *Id*. at 1097. The Commission dismissed the action for want of jurisdiction. In so doing, the Commission stated that although the default decision imposed disciplinary sanctions on respondent, his "appeal to us is from the NAC's denial of his motion to set aside default. We lack 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)." *Id*.

Similarly, in *Warren B. Minton, Jr.*, 55 S.E.C. 1170 (2002), a Hearing Officer entered a default decision against respondent which barred him from associating with any member firm for violating NASD Rules 8210 and 2110. More than two years after entry of the decision, respondent sought to set aside the decision. A Hearing Officer denied respondent's request, and respondent filed a notice of appeal. NASD rejected respondent's appeal and concluded that the Hearing Officer's denial of the motion to vacate was a denial of extraordinary relief and not an

appealable order. On further appeal, the Commission found that it did not have jurisdiction to review NASD's denial under Section 19(d), stating that:

> The NASD's denial of Minton's motion to set aside his default did not impose any disciplinary sanctions on Minton. Nor did it deny him membership, bar him from association, or limit his access to NASD services. The NASD imposed disciplinary sanctions on Minton in its 1999 default order. When it denied Minton's motion to set aside the default, the NASD merely rejected Minton's collateral attack on the NASD's 1999 disciplinary action against him. We have previously held that, even if an applicant is adversely affected by the NASD's denial of a motion to set aside a default, that fact does not transform the denial into a reviewable NASD order.

Id. at 1176 (internal quotations omitted).

In *Larry A. Saylor*, 58 S.E.C. 586, 590 (2005), a respondent sought review of NASD's denial of a motion to vacate a bar entered approximately 32 years prior. The Commission concluded that respondent's appeal did not fall within any of the four categories set forth in Section 19(d) and dismissed the appeal for lack of jurisdiction. The Commission stated that "[a]s was the case in *Van Alstyne*, NASD's denial of Saylor's Motion to vacate NASD's thirty-two-year-old principal bar is collateral to the underlying disciplinary action in which Saylor has already been sanctioned." *Id.* at *591.

These cases are indistinguishable from Mangan's current application and control the outcome of this appeal. Mangan appeals from the May 2025 letter denying the extraordinary relief sought by his Petition (i.e., to vacate the bar he agreed to twenty years ago). As the Commission properly found in *Varma*, *Proman*, *Van Alstyne*, *Minton*, and *Saylor*, FINRA's denial of Mangan's Petition is collateral to the underlying disciplinary action in which Mangan voluntarily agreed to be barred from the industry. FINRA's denial does not fall within any of the

four categories set forth in Section 19(d) of the Exchange Act, and the Commission should dismiss the application for lack of jurisdiction.

Mangan implies that review by the Commission is appropriate because FINRA's denial letter was only two sentences long and was "rooted in a preference for inaction, with no basis in the law, facts or equity of the matter." RP 28. The reason underlying FINRA's denial, however, is irrelevant to the determination that such denial falls outside of the jurisdiction conferred upon the Commission by Section 19(d). For example, in *Saylor*, 58 S.E.C. at 589, the NAC denied Saylor's request to vacate a bar order entered approximately 32 years earlier. The NAC did not explain its rationale for denying Saylor's request, but simply denied the request in a one-sentence decision without setting forth the reasoning behind its determination. On further appeal, the Commission dismissed Saylor's appeal for lack of jurisdiction, citing to (among other cases) *Van Alstyne*. The rationale underlying the denial of Saylor's motion to vacate was immaterial to the Commission's determination that it lacked jurisdiction over Saylor's appeal pursuant to Section 19(d) of the Exchange Act. Mangan's appeal is no different, and his request is nothing more than a collateral attack on the AWC to which he voluntarily agreed. [4]

[4] Mangan's argument that "continued enforcement of the AWC is precluded by the District Court's decisions in the SEC civil case" is immaterial because the Commission lacks jurisdiction. RP 28. In any event, although both the SEC action and the AWC concern the events surrounding Mangan's short sales of CompuDyne stock, they involved different theories of liability based on different factual predicates, and none of the violations to which Mangan consented in the AWC were repudiated by the federal court in the SEC litigation. Moreover, Mangan elected to settle. *See e.g. Edward I. Frankel*, 52 S.E.C. 1238-39 & n.5 (1997) (rejecting a petition to vacate a bar order where the petitioner contended that the bar order "relied upon erroneous information," because respondent "elected to settle the matter" and thus could not "now complain that the record is inaccurate or incomplete."); *cf. SEC v. Conradt*, 309 F.R.D. 186, 188 (S.D.N.Y. 2015), *aff'd*, 696 F. Appx 46 (2d Cir. 2017) (denying defendants' request to

[Footnote continued on next page]

B. Mangan Waived His Right to Appeal to the Commission

The Commission should also dismiss Mangan's application for review because Mangan waived his right to appeal.[5] The AWC that is the subject of Mangan's application is valid and enforceable, and its appeal waiver provision is binding.[6] *See Zipper,* 2017 SEC LEXIS 3107, at *8) ("We conclude . . . that an appellate waiver in an otherwise valid AWC is presumptively enforceable.").

The record demonstrates that Mangan "specifically and voluntarily" waived his right to appeal the AWC to the Commission. *See United States v. Toth*, 668 F.3d 374, 378 (6th Cir. 2012) ("[A]n appeal waiver is enforceable if the defendant's waiver of his appellate rights was knowing and voluntary."); *cf. United States v. Han Lee*, 888 F.3d 503, 506 (D.C. Cir. 2018)

[cont'd]

vacate their settlement agreements with the SEC based on the subsequent vacatur of guilty pleas in a parallel criminal proceeding, stating that the ability under federal civil procedure rules to seek relief from a final judgment or order "is not intended to allow one side of a settlement agreement to obtain the benefits of finality while placing the other side at risk that future judicial decisions will deprive them of the benefit of their bargain.").

[5] FINRA is not conceding that the Commission has jurisdiction under Section 19(d) of the Exchange Act to hear Mangan's appeal. However, for purposes of addressing issues raised by his application for review, we assume—for purposes of this motion only— that jurisdiction exists. *See Bruce Zipper*, Exchange Act Release No. 81788, 2017 SEC LEXIS 3107, at *10, n. 11 (Sept. 29, 2017).

[6] Mangan's AWC is consistent fully with FINRA rules, which state that a member or associated person who executes an AWC waives the right to any further judicial review or to otherwise challenge the AWC's validity. *See* FINRA Rule 9216(a). When approving these rules, the Commission stated that "[a] respondent may not 'appeal' any final action contained in an AWC . . . that has been accepted by [FINRA]." *Order Approving Proposed Rule Change Regarding Membership Application Procedures, Disciplinary Proceedings, Investigations and Sanctions Procedures*, Exchange Act Release No. 38908, 1997 SEC LEXIS 1617, at *101 n.198 (Aug. 7, 1997) (SR-NASD-97-28).

("We have held that a waiver of the right to appeal a sentence is presumptively valid and is enforceable if the defendant's decision is knowing, intelligent, and voluntary."). When he executed the AWC, Mangan explicitly certified that he read and understood all of its provisions, was given a full opportunity to ask questions about it, agreed to its provisions voluntarily, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in the AWC, had been made to induce him to submit it. RP 7. And the AWC provided, in clear and unambiguous terms, that Mangan "specifically and voluntarily" waived his right to appeal to the NAC, "and then to the [Commission] and a U.S. Court of Appeals." RP 2. Mangan's cursory assertions of attorney conflict and coercion ring hollow given these unquestionable facts.[7]

For these reasons, the Commission should decline to consider Mangan's application for review and dismiss it. *See Zipper*, 2017 SEC LEXIS 3107, at *10 ("We find that Zipper's AWC is binding and that he waived his right to appeal to the Commission."); *see also United States v.*

[7] Mangan's "suggestion that he had ineffective assistance of counsel is not a basis for disturbing such a settlement." *Varma*, 2023 SEC LEXIS 2001, at *6. Moreover, Mangan received the benefits contemplated by the execution of an AWC. Mangan was able to avoid litigation and negotiate the terms of his settlement, and FINRA achieved finality in connection with the allegations raised by the complaint. *See, id*. ("Varma, like other settling parties, thus 'relinquishe[d] any possibility of a more favorable outcome' in order to 'achieve the certainty of avoiding a potentially worse outcome."), *citing Richard D. Feldmann*, Exchange Act Release No. 77803, 2016 SEC LEXIS 1734, at *8 (May 10, 2016). Indeed, the Commission has noted its "strong interest" in the finality of settlement orders. *See David C. Ho*, Exchange Act Release No. 54481, 2006 SEC LEXIS 2100, at *24 (Sept. 22, 2006), *aff'd*, 2007 U.S. App. LEXIS 9882 (7th Cir. Apr. 18, 2007). Permitting Mangan to challenge sanctions years after he voluntarily agreed to such sanctions and waived all rights to appeal would severely undercut these sound policy considerations, which are equally as applicable to FINRA proceedings. *See Ho*, 2006 SEC LEXIS 2100, at *24 (holding that Chicago Board of Exchange has a strong interest in the finality of its settlement orders). Indeed, there would be little incentive for FINRA or respondents to settle contested matters if the finality of such agreements could be challenged years after the fact. Consequently, the Commission should dismiss this appeal.

Harris, 628 F.3d 1203, 1205 (9th Cir. 2011) ("Where an appeal raises issues encompassed by a valid, enforceable appellate waiver, the appeal generally must be dismissed.").

C. Mangan's Application for Review is Untimely

Finally, Mangan's untimely filing of his application for review provides an additional independent basis for dismissing his appeal. *See Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 SEC LEXIS 464, at *17 (Feb. 8, 2016) (dismissing application for review as untimely as well as for the "independent" reason that the applicant failed to exhaust administrative remedies before FINRA). Exchange Act Section 19(d)(2) provides that appeals from actions of self-regulatory organizations must be filed by the aggrieved person "within thirty days after the date such notice was . . . received by [the] aggrieved person, or within such longer period as [the Commission] may determine." Rule of Practice 420(b) provides that the Commission "will not extend this 30-day period, absent a showing of extraordinary circumstances."

Mangan did not file his application for review within thirty days after receiving notice that FINRA had accepted the AWC— which occurred on November 21, 2005. *See Zipper*, 2017 SEC LEXIS 3107, at *15 (rejecting application for review as untimely where it was filed nearly one year after applicant received notice that FINRA had accepted his AWC). As the Commission has repeatedly observed, "'strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.' Unmet deadlines may cut off substantive rights to review, but this is their function." *Id*. Because Mangan has not shown that extraordinary circumstances excuse his delay, the Commission should dismiss his application for review as untimely.

IV. CONCLUSION

The Commission does not have jurisdiction over Mangan's appeal under Section 19 of the Exchange Act. Further, Mangan's attempt to vacate the AWC, the terms of which he voluntarily agreed to twenty years ago, should be summarily denied as waived and untimely. The Commission should therefore dismiss Mangan's application for review. Finally, the Commission should resolve the jurisdictional issues raised by this motion before issuing any briefing schedule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this June 9, 2025, I caused a copy of the foregoing Motion to Dismiss John F. Mangan's Application for Review and Stay Briefing, In the Matter of the Application of John F. Mangan, Administrative Proceeding File No. 3-22478, to be filed through the SEC's eFAP system on:

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CERTIFICATE OF COMPLIANCE

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

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