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 the Financial Industry Regulatory Authority	File No. 3-22478

PETITIONER MANGAN'S REPLY BRIEF IN FURTHER SUPPORT OF HIS APPLICATION FOR REVIEW OF ACTION TAKEN BY THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

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I. INTRODUCTION

For nearly two decades, FINRA has refused to act in good faith to lift this unwarranted bar and AWC and now contends that its regulator lacks the authority to step in to do what FINRA failed to do. FINRA asks the Commission to join them in disregarding the extraordinary circumstances here because they are worried that other petitioners might also hold them accountable.

FINRA extracted an AWC from Mr. Mangan who was later exonerated in federal district court on the same facts and the same core theories. FINRA then used finality as a shield to preserve a permanent bar that no longer has any factual, legal, or equitable justification, despite countless opportunities to remedy this injustice in the last 20 years when Mr. Mangan approached FINRA senior management in 2010, 2013, 2019, 2020, and 2024. FINRA then had another opportunity in 2025 when it denied his formal petition, but it issued only a two-sentence denial without analysis. Even after the Commission's urging, FINRA refused to engage in any reasonable negotiations to settle the matter.

FINRA's Opposition Brief does not defend the bar and AWC on the merits: it does not explain why a lifetime exclusion remains necessary; it does not identify any investor-protection rationale for continuing to publish and enforce findings that the judicial record has undermined; instead, it asks only that the Commission protect FINRA's AWC program from scrutiny.

FINRA's floodgates argument fares no better. FINRA asserts that granting Mr. Mangan the relief he seeks would open floodgates to "countless" other respondents who would seek review. FINRA's Opposition Brief ("Oppo.") at 15. If there are countless other AWCs that FINRA has compelled respondents to sign that are contrary to subsequent findings by a district court, then the Commission should open those floodgates. If FINRA's contention is that they routinely extract settlements based on legally and factually unsound theories, which a district court later rejects, this is a much graver problem that demands an opening of the

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floodgates. In reality, we're asking the Commission to intervene under the extraordinary circumstances here. We know of no other similarly situated applicant like Mr. Mangan and FINRA's opposition has not cited one.

FINRA concedes that it actually reviews requests to vacate or modify settlements for "compelling or extraordinary circumstances." Oppo. at 31. FINRA concedes that, in appropriate circumstances, FINRA itself has vacated a settlement imposing a bar. *Id*. at 25. FINRA also concedes that its AWCs and settlements are filed with the Commission and subject to the Commission's review authority under Section 19(d)(2). *Id*. at 42 n.20. Those concessions defeat FINRA's effort to portray this proceeding as an unprecedented collateral attack beyond the Commission's reach. In other words, FINRA's own brief concedes the key legal point: under appropriate circumstances, both FINRA and the SEC have appropriate mechanisms and procedures to overturn settlements. The only question is whether the circumstances here are extraordinary. They are.

The facts in the SEC action and the FINRA matter are exactly aligned in all respects that matter. Both proceedings arose from the same CompuDyne PIPE, the same short sales, the same alleged use of PIPE shares to cover those short sales, and the same theory that Mr. Mangan's trading was deceptive and unlawful. FINRA's attempt to slice the AWC into different NASD rule labels does not change the substance. The SEC litigated the same conduct in federal court and lost. FINRA cannot preserve a permanent bar by relabeling a rejected Section 5 and fraud theory as violations of NASD Rules 2110, 2120, 2330(f), and 3370.

An honest evaluation of the circumstances surrounding FINRA's imposition of the AWC and the bar upon Mr. Mangan would lead to only one conclusion: the Commission must provide equitable relief from this unjust and unsupported bar and AWC. The Commission should not allow FINRA to strip the Commission of the opportunity to conduct such evaluation

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after FINRA left Mr. Mangan no option other than to ask for the Commission to intervene in the face of FINRA's dereliction of their own duties for nearly 20 years.[1]

II. ARGUMENT

A. FINRA's Opposition Only Confirms That the Commission Has Jurisdiction to Review its Actions

1. FINRA is subject to the private non-delegation doctrine.

FINRA argues that its relationship with the Commission satisfies constitutional requirements and that *Alpine* is distinguishable. But FINRA's own conduct in this case demonstrates precisely the constitutional infirmity *Alpine* identified: a private organization wielding the unilateral, unreviewable power to permanently exclude an individual from the securities industry. FINRA argues that the Commission's "pervasive supervisory authority" satisfies constitutional requirements. But supervisory authority is meaningless if the Commission declines to exercise it. The entire purpose of Mr. Mangan's application is to invoke the very governmental superintendence that the Constitution requires. If the Commission dismisses this application, the result is that FINRA will have imposed and maintained a permanent bar for over twenty years—based on theories rejected by a federal court—without any governmental body ever reviewing the merits. That is precisely the scenario the *Alpine* court warned against.

FINRA's attempt to cabin *Alpine* to "expedited expulsion proceedings" misses the broader principle the D.C. Circuit articulated: that a private self-regulatory organization may not exercise "unilateral" power to bar or expel someone from the industry "all without

[1] FINRA's conduct here is consistent with the observation memorialized in Project 2025 that pushes the need for changes: "FINRA have proved to be ineffective, costly, opaque, and largely impervious to reform. To reduce costs and improve transparency, due process, congressional oversight, and responsiveness, [. . .] FINRA should be abolished, and their regulatory functions should be merged into the SEC." *Mandate for Leadership, The Conservative Promise,* PROJECT 2025, PRESIDENTIAL TRANSITION PROJECT at 830 (2023), available at https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf

governmental superintendence or control." *Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314, 1324 (D.C. Cir. 2024). The mechanism by which FINRA achieves the permanent exclusion—whether through expedited expulsion or perpetual enforcement of a twenty-year-old AWC—does not alter the constitutional concern.

2. FINRA concedes that its AWCs and settlements are subject to the Commission's review and that its own vacatur precedent undermines its finality argument.

Notably, FINRA itself concedes that "[a]s required by Section 19(d)(1) of the Exchange Act . . . FINRA files with the Commission notice of the AWCs and settlements that it enters into." Oppo. at 43, n.20. FINRA further concedes that its AWCs "are thus subject to the Commission's review authority under Section 19(d)(2) of the Exchange Act," which provides that any action for which notice is required "shall be subject to review by the appropriate regulatory agency . . . on its own motion." 15 U.S.C. § 78s(d)(2). The Commission may therefore review the AWC on its own motion at any time. FINRA cannot simultaneously acknowledge this authority and argue that the Commission is powerless to review the continuing enforcement of the very AWC over which it retains supervisory jurisdiction.

FINRA further concedes that it has, on at least one occasion, vacated a bar contained in a settlement. Oppo. at 25. Specifically, FINRA's Review Subcommittee, acting *sua sponte* on behalf of FINRA's National Adjudicatory Council, vacated an Order Accepting Offer of Settlement "such that the order had no force or effect and was vacated ab initio, in circumstances where the fairness of the FINRA Hearing Officer in the proceeding might have reasonably been questioned." *Id*. Notably, FINRA does not provide the case name, the date, or the specific rule or procedure under which this vacatur was effectuated. This omission is telling. FINRA wants the Commission to accept its claim that vacatur is virtually unprecedented without permitting scrutiny of the occasion on which FINRA exercised that very authority.

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Regardless, this admission is fatal to FINRA's jurisdictional and merits arguments. First, it confirms that FINRA has an appropriate mechanism and procedure to vacate settlements when circumstances warrant relief. Second, it confirms that FINRA's professed commitment to settlement finality is not absolute. Third, if concerns that a FINRA Hearing Officer's fairness "might have reasonably been questioned" justify vacatur *ab initio*, then the actual judicial rejection of the legal and factual theories underlying Mr. Mangan's permanent bar is at least as compelling. FINRA cannot concede the power to vacate settlements in the abstract while denying that power in the one case where equity most demands its use.

3. FINRA's authorities are inapposite.

FINRA characterizes Mr. Mangan's appeal as "collateral to the underlying disciplinary action." Oppo. at 17. But none of the cases FINRA cites for this proposition involve intervening judicial determination undermining the settlement's foundations. **Mr. Mangan's case is categorically different: a federal court has spoken on the merits and rejected the very theories on which FINRA's AWC rests. This is not a disappointed litigant seeking a second bite at the apple; it is a vindicated individual asking why a private regulator continues to enforce a punishment that the federal judicial system has determined was unwarranted**.

FINRA relies principally on *Proman* and *Varma* for its jurisdictional argument. Oppo. at 8, 11, 15-17, 22. Both cases are distinguishable on a critical ground that FINRA ignores: neither involved an intervening determination by a federal district court rejecting the factual and legal theories underlying the settled matter.

Proman is readily distinguishable. There, Proman sought relief from a bar imposed in a 1998 NASD settlement after NASD had charged him with arranging for an imposter to take the Series 7 examination on his behalf and failing to respond to NASD information requests. Nine years later, Proman asked NASD to vacate the bar, while expressly stating that he did not

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contest the validity of the settlement and did not intend to re-enter the securities industry. *Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 SEC LEXIS 956, at *2-3 (Apr. 30, 2008). The Commission therefore treated his request as a collateral effort to remove the continuing adverse effect of an old bar, not as a request prompted by any intervening judicial determination undermining the factual or legal basis for the settlement. *Id*. at *5. Mr. Mangan's case is fundamentally different: he does contest the continued validity of the AWC because the SEC later litigated the same CompuDyne PIPE conduct in federal court and lost on the core Section 5 and fraud theories that substantially overlap with FINRA's AWC findings. Unlike *Proman*, this case is not about the reputational inconvenience of an old settlement; it is about FINRA's continuing enforcement of a lifetime bar after a federal district court rejected the legal and factual predicates on which that bar rests.

Varma is equally inapposite. Varma entered into an AWC resolving findings that he made oversimplified and misleading customer presentations about a charitable-remainder-trust estate-planning strategy, and more than three years later he sought removal of AWC information from CRD and BrokerCheck while disclaiming that he was seeking to overturn the AWC itself. *Sandeep Varma*, Exchange Act Release No. 98102, 2023 SEC LEXIS 2001 at *1-*3. The Commission dismissed the appeal because Varma had not shown that FINRA offered a service for expunging AWC information from CRD or BrokerCheck, and because his request was framed as an expungement challenge rather than an appeal from a reviewable disciplinary action. *Id*. at *3-*4. Nothing in *Varma* involved an intervening federal judgment rejecting the same facts and theories underlying the AWC, nor did it involve a permanent industry bar predicated on a coordinated SEC-FINRA enforcement theory later repudiated in federal court. Mr. Mangan's application presents the extraordinary circumstance absent in *Varma*: FINRA continues to enforce a career-ending bar based on the same CompuDyne PIPE transaction,

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short sales, and alleged deceptive trading theory that the SEC litigated unsuccessfully in federal district court.

La. Public Serv. Comm'n v. FCC, 476 U.S. 355 (1986), does not support FINRA's position. That case addressed whether the FCC could preempt state public utility commissions' authority over intrastate telephone depreciation rates—a question about the boundary between federal and state regulatory power under the Communications Act of 1934, which expressly denied the FCC jurisdiction over intrastate service. *Id.* at 358. The Supreme Court held that "an agency literally has no power to act . . . unless and until Congress confers power upon it," and concluded that Congress had withheld from the FCC the authority to override state depreciation practices. *Id.* at 375. That holding has no application here because—unlike the FCC's position in *La. Public Serv. Comm'n*—the Commission's authority is expressly conferred by statute. Section 19 of the Securities Exchange Act of 1934, 15 U.S.C. § 78s, establishes the Commission's comprehensive regulatory oversight of FINRA: the Commission reviews and approves FINRA's proposed rules, id. § 78s(b); the Commission may abrogate, add to, and delete from FINRA's rules, id. § 78s(c); the Commission reviews final disciplinary sanctions and bars imposed by FINRA on members or associated persons, id. § 78s(d); and FINRA must file notice of its AWCs and settlements with the Commission, which may review them on its own motion, id. § 78s(d)(1)–(2). *La. Public Serv. Comm'n* thus stands for the unremarkable proposition that a federal agency cannot act without a statutory grant of power—and here, Congress has expressly granted the Commission that power over FINRA in Section 19.

B. The AWC and the Bar Are Without Merit

1. The Section 5 theory was a misguided enforcement program that the SEC itself abandoned.

FINRA fails to address a central and dispositive fact: the SEC's Section 5 theory in the PIPE enforcement program was a misguided theory of liability that federal courts uniformly

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rejected. The SEC and FINRA jointly developed and pursued a coordinated enforcement theory that covering short sales with unregistered PIPE shares constituted the sale of unregistered securities, which was later rejected by multiple federal district courts. *See* Mangan's Opening Brief ("Br.") at 7 n.4, 21 n.9. Nonetheless, FINRA continues to enforce a permanent bar predicated on that same theory—as if the federal courts had never spoken. A self-regulatory organization should not be permitted to enforce career-ending sanctions based on a theory of liability that its own parent regulator has abandoned because courts deemed it legally untenable.

The district court's reasoning in granting Mr. Mangan's motion to dismiss the Section 5 claims is instructive. The court explained that in each short sale, Mr. Mangan borrowed shares from a registered broker-dealer, the broker-dealer delivered fully registered shares to the buyer, and the buyer paid for those registered shares. *See* Br. at 7. This finding effectively permitted an investor to use PIPE shares to cover short without violating Section 5, which directly undermines the legal basis and potential harm of FINRA's allegations of the executing broker's obligation to conduct an affirmative determination. Oppo. at 6.

2. The Commission should review Mr. Mangan's petition de novo.

FINRA's newly disclosed standard is a jurisdictional and merits concession. FINRA states that it reviews requests to vacate or modify AWCs by asking whether the requester has shown "compelling or extraordinary circumstances." Oppo. at 31. That admission matters. It confirms that FINRA has a mechanism for considering such requests; it confirms that FINRA purports to exercise discretion under that mechanism; and it confirms that FINRA's denial here was not ministerial or automatic. FINRA purportedly conducted such a review, however, it never explained its rationale in denying Mr. Mangan's petition. Its May 6, 2025 letter states only that "[a]fter full consideration, FINRA stands behind the terms and provisions of the AWC and denies [Mr. Mangan's] request." Ex. C. There is no application of any standard, no weighing of any factor, and no reasoned explanation for rejecting relief.

The Commission should review FINRA's denial de novo. FINRA cannot disclose a discretionary "extraordinary circumstances" review standard, refuse to explain how it applied that standard, and then insist that the Commission is powerless to review the result. Any honest application of that standard requires relief: a lifetime bar was extracted through an AWC from a conflicted process, the factual and legal predicates were later rejected in federal court, FINRA refused to meaningfully reassess the bar for nearly two decades, and FINRA now seeks to preserve the bar principally to protect the finality of AWCs rather than to protect investors or deliver a just result to Mr. Mangan.

3. The Multi-factor analysis favors Mr. Mangan.

FINRA concedes that the Commission may employ a multi-factor framework when evaluating requests to vacate settlements. Oppo. at 32-33. Each factor supports Mr. Mangan's petition.

First, FINRA mischaracterizes the nature of the settled misconduct as "serious and deliberate." Oppo. at 34. But FINRA conspicuously refuses to defend the substance of the misconduct findings. It describes the "agreed-to findings" without meaningfully addressing the fact that a federal court rejected the legal theories underlying those findings. *Id*. at 28-29. The "nature of the misconduct" must be evaluated in light of intervening judicial determinations—not simply by reciting what a respondent agreed to twenty years ago under pressure from conflicted counsel. The misconduct FINRA describes—effecting transactions "by means of a deceptive device or contrivance"—is precisely the theory the district court rejected on summary judgment when it found no fraud.

Second, FINRA ignores that Mr. Mangan does not rely on passage of nearly twenty years alone—he relies on passage of time combined with complete judicial exoneration, conflicted counsel, and the SEC's abandonment of the enforcement theory. The passage of time here amplifies the injustice; it does not merely mark the calendar.

Third, Mr. Mangan has complied with the bar for nearly twenty years. FINRA argues this is "somewhat circular" because Mr. Mangan was barred from the industry. Oppo. at 34. But compliance is not limited to the absence of regulatory violations. Mr. Mangan has managed capital successfully, compounding at an annual rate exceeding 19% over the last 17 years, with no regulatory or legal issues of any kind. He has demonstrated exactly the kind of responsible conduct that supports reentry.

Fourth, Mr. Mangan has over four decades of securities industry experience with no other regulatory history. This factor supports relief.

Fifth, FINRA asserts that Mr. Mangan has not identified "unanticipated consequences" of the bar. The anticipated consequences are self-evident: he cannot associate with a member firm, his reputation has been destroyed by a publicly available finding of misconduct based on a theory that a federal court rejected, and his ability to expand his business has been materially impaired. As a result of the FINRA settlement, "he had to close a very profitable and successful investment management business begun in 1998 with approximately $6 million in assets and built into a fifteen-person firm managing over a billion dollars." Ex. A at 13. He was managing "many top U.S. college and university endowments, corporations, family offices and high net worth individuals." *Id.* In addition to the loss of income in the hundreds of millions of dollars, these nineteen years have taken an enormous personal toll on him. *Id.* The stigma associated with a permanent bar prevents others from doing business with him and he estimates the lost opportunities during this time at well over $100 million. *Id.*

Sixth, the Division of Enforcement has not opposed Mr. Mangan's petition. The SEC's own abandonment of the PIPE enforcement theory speaks volumes.

Finally, FINRA argues that vacatur would be inconsistent with investor protection because it would "erase his regulatory record." Oppo. at 35. But maintaining a regulatory record based on rejected legal theories and unsupported factual findings does not protect investors—it perpetuates a false narrative. The public interest is served by accuracy in regulatory records, not by the perpetuation of findings that the judicial system has determined are without merit. Mr. Mangan merely seeks to restore his reputation and remove an unjust stain from his record.

4. FINRA's authorities are inapposite.

SEC v. Conradt, 309 F.R.D. 186 (S.D.N.Y. 2015), actually reinforces Mr. Mangan's position when properly examined. In *Conradt*, two defendants who settled SEC insider trading charges moved to vacate their consent judgments after their guilty pleas in a parallel criminal proceeding were vacated in light of the Second Circuit's decision in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014). The court denied vacatur, finding no exceptional circumstances. But the reasons Conradt failed are precisely the reasons Mr. Mangan's petition should succeed. In *Conradt*, the intervening legal development—*Newman*—was subsequently overturned by the Supreme Court, confirming that the original insider trading theory remained valid. *See Salman v. United States*¸ 580 U.S. 39, 50 (2016). The SEC took two of Conradt's co-defendants to trial and won a jury verdict, demonstrating that the underlying charges were meritorious. *See SEC v. Payton*, 2016 WL 3091219 (S.D.N.Y. 2016). *Conradt* is thus the paradigmatic case of a respondent who settled genuine misconduct charges and then opportunistically seized on a transient appellate development that was later reversed. Mr. Mangan's case is the opposite in every respect: the district court's rulings dismissing the SEC's Section 5 claims and granting summary judgment on the fraud claims have never been reversed—they stand as final judgments decades later. The SEC did not subsequently vindicate its theories at trial; it abandoned them. And the legal theories underlying Mr. Mangan's AWC

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are not merely disfavored by one appellate panel—they were rejected by multiple federal district courts across multiple jurisdictions. If *Conradt* stands for the proposition that settler's remorse based on a later-reversed legal development is not compelling, then Mr. Mangan's case—where the legal development was never reversed and the government itself abandoned the theory—is the compelling counterpart that *Conradt* implicitly contemplates.

In re Richard D. Feldmann, Exchange Act Release No. 77803, 2016 WL 2643450 (May 10, 2016), is inapposite. Feldmann settled Commission charges that he willfully violated the antifraud provisions and Section 5 of the Securities Act by recommending without a reasonable basis, and making misrepresentations and omissions in connection with, the sale of fraudulent note offerings. *Id.* at *1. He later sought to reduce his disgorgement obligations solely because an administrative law judge, in a subsequent initial decision against his non-settling co-respondents, ordered lesser disgorgement for sales occurring after a particular cutoff date. *Id.* at *2. The Commission denied the request, explaining that "in all settlements, a party—by forgoing a trial on the merits—relinquishes any possibility of a more favorable outcome," and that the more favorable result obtained by co-respondents who chose to litigate was a foreseeable risk Feldmann accepted when he settled. *Id.* at *2. Feldmann's case involved nothing more than classic settler's remorse prompted by a better outcome for co-defendants in the same proceeding. No court or other tribunal had rejected the legal theories underlying Feldmann's settlement; indeed, the antifraud and Section 5 violations to which he consented were independently established against his co-respondents at hearing. *Id.* Mr. Mangan's circumstances are fundamentally different: the legal theories underlying his AWC were not vindicated in a subsequent proceeding—they were rejected by a federal district court in a separate action brought by the SEC itself, and the SEC thereafter abandoned those theories entirely.

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In re Gregory T. Bolan Jr., Exchange Act Release No. 85971, 2019 WL 2324336 (May 30, 2019), is similarly distinguishable. Bolan, a former equity research analyst at Wells Fargo, settled Commission charges that he participated in an insider trading scheme by tipping a co-respondent about forthcoming ratings changes. *Id.* at *1. After the administrative law judge dismissed the proceedings against his non-settling co-respondent Ruggieri—and the Commission subsequently dismissed the case against Ruggieri under Rule of Practice 411(f) because it was evenly divided on the merits—Bolan moved to vacate his settlement on the theory that the Commission had made a "contradictory finding." *Id.* at *2-3. The Commission denied the motion, emphasizing that the dismissal of Ruggieri's case was not a substantive ruling on the merits, that the Commission had made no findings contradicting the settled order against Bolan, and that a co-respondent's more favorable litigation outcome does not constitute compelling circumstances for vacatur. *Id.* at *3-5. Mr. Mangan's case is categorically different. Unlike Bolan, Mr. Mangan does not rely on a procedural dismissal or a co-respondent's outcome in a parallel track of the same proceeding. He relies on a federal district court's affirmative merits rulings in his favor—a motion to dismiss and a summary judgment opinion—rejecting the same core theories of liability in a separate judicial action brought by the SEC against Mr. Mangan himself. The district court's rulings are final judgments on the merits that stand unreversed, not an evenly divided Commission vote resulting in a non-decision.

In re Evan H. Katz, Securities Act Release No. 11422, 2026 WL 1602669 (June 3, 2026), decided just two months ago, is the most recent case FINRA cites—and the most easily distinguishable. Katz settled Commission charges that he, as COO and General Counsel of a currency-trading fund, violated the federal securities laws by providing forged audit materials to prospective investors and failing to take reasonable steps to verify their legitimacy. *Id*. at *1. Katz then moved to vacate his settlement on the ground that it "represents one of the last

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matters from a prior enforcement regime," pointing to the Commission's recent voluntary dismissal of certain unrelated civil enforcement actions in the digital assets area and other contexts. *Id*. The Commission denied the motion, holding that voluntary dismissals in unrelated matters represent neither a change in law nor a factual development that renders a settlement unworkable, substantially more onerous, or contrary to the public interest. *Id*. at *2. Katz's claim was transparent settler's remorse: a respondent who settled genuine fraud charges sought to ride the coattails of a policy shift in entirely different enforcement areas involving entirely different legal theories. Mr. Mangan is not asking the Commission to vacate his AWC because of a general change in enforcement priorities or because unrelated cases were dismissed. He is asking for relief because a federal district court—in a case against him personally, arising from the same conduct and the same theories—affirmatively rejected the factual and legal predicates on which the AWC rests. That is not a shift in enforcement resources and priorities; it is a judicial determination that the theories underlying Mr. Mangan's bar were infirm.

C. FINRA's Factual Recitation Is Incomplete And Misleading

FINRA's recitation of the facts selectively presents the record to make the FINRA matter appear different from the SEC action. Oppo. at 5-6. It is not. The facts are exactly aligned: the same CompuDyne PIPE, the same short sales, the same alleged sharing of profits, the same covering the short position with subsequently registered PIPE shares, and the same claim that Mr. Mangan's participation was deceptive. The only difference is the label FINRA placed on the conduct after the fact. FINRA's case has no factual support, because neither FBR nor the market was deceived.

The core reasoning behind FINRA's refusal to vacate the AWC and lift the bar hinges upon the theory of "fraud": Mr. Mangan's "settled misconduct" involved "Mangan's effecting transactions in and inducing the purchase and sale of securities by means of a deceptive device or contrivance." Oppo. at 34; *see also* Oppo. at 4, 28. This framing simply cannot stand. The evidence in the SEC Action, including the depositions of FBR's Chief Executive Officer Emanuel J. Friedman and Chief Compliance Officer Nicholas Nichols, established that there was no prohibition within FBR on proprietary accounts purchasing shares in a PIPE. Additionally, after "initially being told that the M&M accounts could not purchase in the PIPE offering, Mr. Mangan took no further action." Ex. A at 11. The record before the Commission clearly shows that FBR reached out to Mr. Mangan because it needed more investors to complete the fund raise. *See id*. at 11 ("It was only after FBR reached out to Mr. Mangan in a need for more investors (Mr. Friedman called Mr. Mangan 17 times) that Mr. Mangan discussed the purchase of the PIPE with Mr. McColl."); Transcript of Deposition of Emanuel J. Friedman held on Feb. 15, 2008 at 79:20-23, *SEC v. Mangan*, No. 3:06-cv-531 (W.D.N.C. May 5, 2008), ECF No. 45-4 ("I called John and said, you know, we needed to get more orders for CompuDyne, you know, did he have accounts that could do CompuDyne."). FBR had knowledge of Mr. Mangan using HLM to effect the investment in the offering and the account through which the investment was put in. *See* Ex. A at 8 ("FBR treated all the McColl companies as proprietary because of Mr. Mangan's interest. HLM was one of those companies."); Ex. A at 11 ("No effort was made to conceal that it was the HLM account that was investing in the PIPE. The check and the paperwork clearly indicated that HLM was the purchaser"; "Mr. Friedman testified that he saw HLM in the pot book"; "HLM was clearly identified on all the documentation involved in the purchase including the method of payment. HLM was a company FBR had been doing business with the prior three years. FBR knew of HLM's relationship with, and possessed documentation of, Mr. Mangan's relationship with all the McColl and Mangan companies, including HLM."). HLM rented office space and paid other expenses for FBR's office in Charlotte, NC, which were reimbursed via check by FBR and reflected on Form 1099-MISC sent by FBR to HLM and the IRS. *Id*. at 11. In fact, "Mangan produced to FBR documentation for the years 1999 to 2011 regarding the business relationship between FBR, HLM, M&M Partners LLC and Mangan & McColl Partners LLC." *Id*. at 12. Mr. Nichols testified FBR could take interest from proprietary accounts: "If the offering was soft, was not going well, we didn't have sufficient bona fide public orders, on occasion it was indicated in the document that FBR and/or its affiliates may participate, not always, on that basis we had, we made the decision over the years on a very limited basis and did allow it." *Id*. at 10-11 citing Transcript of Deposition of Nicholas J. Nichols held on Jan. 29, 2008 at 158:16-22, *SEC v. Mangan*, No. 3:06-cv-531 (W.D.N.C. Dec. 28, 2006). And even after all this "deceit," FBR never disciplined Mr. Mangan. *Id*. at 8.

The AWC and the bar cannot possibly stand because there is no evidence of fraud.

D. FINRA Misrepresents The Settlement Negotiations

FINRA attempts to characterize the settlement negotiations as a good-faith bilateral process that broke down due to Mr. Mangan's intransigence. Oppo. at 12-13 n.6. This is a misrepresentation.

Mr. Mangan through his counsel had several settlement negotiations with FINRA on May 21, May 22, June 2, and June 9, 2026. FINRA raised the "counteroffer," requiring Mr. Mangan to: (1) dismiss his application with prejudice; (2) agree to a confidential settlement in which he would promise not to become an associated person with a FINRA member firm; and (3) promise not to engage in any professional activities involving any financial assets—including securities, commodities, crypto assets, derivatives, banking, currency, real estate, or insurance—on behalf of others. This proposal would have imposed restrictions far broader than the existing AWC's bar from association with FINRA member firms. It would have secretly barred Mr. Mangan from virtually all financial professional activity—including activities entirely outside FINRA's regulatory jurisdiction.

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Despite the absurdity of this so-called "counteroffer," Mr. Mangan's counsel conferred with Mr. Mangan and considered this proposal. On June 2, 2026, Mr. Mangan's counsel offered that Mr. Mangan could agree to a time-limited bar with notice of any reapplication to FINRA in exchange for modifying the AWC to remove any fraud-related statement. But FINRA refused to make any compromise. On June 9, 2026, FINRA responded that they would not touch the AWC and nothing short of a permanent secret bar would be considered.

FINRA's characterization of this as a "reasonable" proposal that "coupled extraordinary relief from a bar imposed in an AWC with conditions . . . tailored . . . to protect investors" is disingenuous. There is nothing tailored about a blanket prohibition on all financial activities, including those over which FINRA has no regulatory authority. FINRA's negotiating posture confirms that its objective was not to achieve a just resolution but to maintain the functional equivalent of the bar while creating the illusion of compromise.

E. FINRA's Other Arguments Are Unavailing

1. Ineffective assistance of counsel

FINRA cites several cases holding that ineffective assistance of counsel does not provide a basis for disturbing a settlement. *See* Oppo. at 30-31 citing *Dep't of Enf't v. Love*, Compl. No. C3A010009, 2003 NASD Discip. LEXIS 17 (May 19, 2003); *Matter of Varma*, Exchange Act Release No. 98102, 2023 SEC LEXIS 2001 (Aug. 10, 2023); *Matter of Graham*, Exchange Act Release No. 84106, 2018 SEC LEXIS 2266 (Sept. 12, 2018); *Bell v. Eastman Kodak Co*., 214 F.3d 798 (7th Cir. 2000). These cases are not applicable because Mr. Mangan's argument is not a generic claim of ineffective assistance. It is a claim of actual conflict of interest—where counsel was selected by, paid by, and reported to an entity (FBR) whose interests were directly adverse to Mr. Mangan's.

The distinction matters. In *Love*, the respondent stated that conflicted counsel provided ineffective assistance due to his failure to call a witness who was involved in the transaction at issue. *See In re Love*, Exchange Act Release No. 49248, 2004 SEC LEXIS 318 (Feb. 13, 2004). There, the witness was represented by counsel in wholly unrelated criminal proceedings that were already adjudicated by the time of Love's hearing. This is inapposite to the facts here, where FBR had a vested interest in Mangan agreeing to the terms of the AWC and wiping its hands clean of the alleged violations. In *Varma*, *Graham* and *Bell*, the claims are similarly generic and incomparable. Mr. Mangan's situation involved structural conflict: FBR had every incentive to direct responsibility toward Mr. Mangan to resolve FINRA's investigation of the firm. Counsel's dual loyalty to FBR and Mr. Mangan is not a mere "performance" issue—it goes to the fundamental voluntariness of the settlement itself.

FINRA dismisses *Wood v. Georgia*, 450 U.S. 261 (1981), and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 827 F.3d 223 (2d Cir. 2016), by noting they involved criminal proceedings and class actions, respectively. Oppo. at 31 n.13. But the principle these cases establish is not limited to those contexts: when counsel's loyalties are divided in a way that undermines the integrity of the proceeding, the resulting outcome may be disturbed. Although FINRA disciplinary proceedings are not criminal proceedings, they impose sanctions every bit as career-ending—and the conflict here is every bit as structural.

2. *The rule 60(b)(5) framework supports vacatur.*

FINRA argues that the Federal Rule of Civil Procedure 60(b)(5) framework does not support vacatur. FINRA is wrong on every element.

First, there has been a significant change in factual conditions. When Mr. Mangan signed the AWC in November 2005, the SEC's enforcement action was pending and untested. After the AWC was signed, the district court dismissed the Section 5 claims in October 2007 and granted summary judgment to Mr. Mangan on the fraud claims in August 2008. These judicial determinations materially changed the factual and legal landscape—the AWC's theories were discredited by a federal court.

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Second, continued enforcement is detrimental to the public interest. Maintaining a regulatory record that contradicts the findings of a federal court undermines public confidence in the integrity of the regulatory process. The public interest is not served by a system in which a private regulator can permanently brand an individual based on theories that the government's own judicial proceedings rejected.

Third, there has been a significant change in law. NASD Rule 3370 has been superseded. The SEC has abandoned the PIPE enforcement theory that has been rejected by multiple federal district courts. *See supra* at 8-9; Br. at 7 n.4, 21 n.9. The Commission has rescinded its no-deny policy. Br. at 23. The D.C. Circuit's decision in *Alpine* has clarified the constitutional limits on FINRA's unilateral power. Collectively, these developments constitute significant changes in the legal landscape since 2005.

III. CONCLUSION

For the foregoing reasons, Mr. Mangan respectfully requests that the Commission deny FINRA's request to dismiss, grant his application for review, vacate the AWC and permanent bar, strike the AWC from FINRA's website and the BrokerCheck system, and grant such other relief as the Commission deems just and appropriate.

Dated: August 17, 2026

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I, A. Kristina Littman, pursuant to 17 C.F.R. § 201.450(c), hereby do certify that Petitioner Mangan's Reply Brief In Further Support Of His Application For Review Of Action Taken By The Financial Industry Regulatory Authority 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 brief, exclusive of the table of contents, table of authorities, and any addendum, is 6,031 words.

Dated: August 17, 2026

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CERTIFICATE OF SERVICE

I, A. Kristina Littman, on August 17, 2026, served copies of Petitioner Mangan's Reply Brief In Further Support Of His Application For Review Of Action Taken By The Financial Industry Regulatory Authority ("Mangan's Reply Brief") on the Securities and Exchange Commission Office of the Secretary by electronic filing. On this date, I also served copies of Mangan's Reply Brief on FINRA General Counsel by electronic email to nac.casefilings@finra.org.

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

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