UNITED STATES OF AMERICA

BEFORE THE UNITED STATES SECURITIES & EXCHANGE COMMISSION

In the Matter of the Application of Wilson-Davis & Co., Inc. (CRD No. 3777) and Byron B. Barkley's (CRD No. 12469) For Review of Disciplinary Action Taken by FINRA Administrative Proceeding No. 3-22506	NAC Decision on Remand: July 10, 2025 SEC Order: Dec. 28, 2023 (Admin. Proc. File No. 3-19666) NAC Decision: Dec. 19, 2019 FINRA Hearing Panel Decision: Feb. 27, 2018 FINRA Complaint No. 2012032731802

REPLY BRIEF FOR APPEAL OF WILSON-DAVIS & CO., INC. AND BYRON B. BARKLEY

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INTRODUCTION

FINRA's Opposition Brief[1] still has no answer for the Commission's remand. The NAC's $180,000 Reg SHO fine and $310,000 supervisory/AML penalty remain untethered to any remedial basis or Sanctions Guidelines-based methodology. The range for a broker-dealer's first Reg SHO sanction is $5,000 to $16,000, yet FINRA never justifies its elevenfold leap to $180,000. Meanwhile, the record reflects, and the Opposition does not meaningfully dispute, that the short selling at issue ended more than a decade ago, the only trader at issue left the firm, the firm suffered a $4.2 million loss, firm ownership changed, and an independent consultant helped reinforce the firm's AML compliance program. The Opposition simply brushes these facts aside despite their obvious relevance to the central question—whether the fines imposed are remedial.

The Commission requested an explanation showing how the NAC's fine amount protects investors and serves a remedial purpose. FINRA again offers only ipse dixit – "because we say so" – to justify the significant fines. The Commission should again vacate or substantially reduce the fines and direct FINRA to tie any sanction to the Sanctions Guidelines and identify the demonstrated risk that the firm presents, instead of engaging in rhetoric, ignoring the record, and punitive punishment.

ARGUMENT

I. The NAC, and the Opposition, Failed to Explain How the Penalties are Remedial.

a. The NAC Failed to Consider Mitigating Factors Despite the Commission's Explicit Instruction.

The Commission's remand opinion required FINRA to provide the missing "explanation and analysis" so that the Commission could discern how FINRA's sanctions are remedial as

[1] Referred to throughout as the "Opposition" or the "Opp." Defined terms in this brief mirror those in Wilson-Davis's Opening Brief.

opposed to punitive, excessive, or oppressive. R. 8759; Opening Brief ("Op. Br.") at 4 (citing R. 8761, 8764, 8806). But the NAC's post-remand decision, and the Opposition, still do not provide that explanation. Instead, they argue that because the NAC determined that aggravating factors prevailed and rejected or ignored Wilson-Davis's arguments in favor of mitigation, this is sufficient to characterize the sanctions as remedial. *See* Opp. at 19-26. And, other than relying on those same aggravating factors, at no point does the Opposition explain *how or why* a $180,000 fine for a violation of Reg SHO and a $310,000 fine for AML violations protects the investing public.

In reviewing FINRA decisions, the Commission considers two things: first, the relevant aggravating and mitigating factors, and second, "whether the sanctions imposed are remedial or impermissibly punitive." R. 8757-58 (citing one case in support of each consideration). Here, however, the NAC and the Opposition conflate these two considerations by reasoning that, if there are enough aggravating factors, and if the NAC itself determines that no mitigating factors are relevant, the penalty cannot be punitive. But this reasoning is legally and logically erroneous by treating those aggravating factors as dispositive of the penalties' remedial nature, rather than separately showing *why and how* the penalties are necessary to protect investors. *See PAZ Sec. v. SEC*, 494 F.3d 1059, 1061-64 (D.C. Cir. 2007) (remanding where agency "did not identify any remedial—as opposed to punitive—purpose" and merely said "in effect, petitioners are bad and must be punished"); *PAZ Sec. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009) (affirming agency action after explanation of "a clear risk of future misconduct").

For example, the Opposition argues that the NAC was correct to ignore mitigating facts that Wilson-Davis raised. Such facts include that eleven years have passed since Wilson-Davis suspended the short selling at issue and the trader left the firm, the firm is under new ownership

and leadership than when the short selling occurred, and the firm worked with independent consultants who substantially bolstered the firm's AML and compliance profile. *See* Op. Br. at 10-11, 14 n.8. But while the Opposition argues that the NAC was correct to ignore those mitigating facts, it did nothing to explain how these facts bore on whether the penalties are remedial in the first instance.

Pursuant to the Exchange Act § 19(e)(2), the Commission may sustain sanctions only if, "having due regard for the public interest and the protection of investors," the sanctions are not excessive or oppressive. Courts have long construed this to mean that sanctions must be forward-looking and cannot be levied solely to punish past acts. For example, in *PAZ I*, the D.C. Circuit remanded the agency action because it "did not identify any remedial—as opposed to punitive—purpose for the sanctions" and rejected the reasoning that merely "say[s], in effect, petitioners are bad and must be punished." 494 F.3d 1059, 1064 (D.C. Cir. 2007). Yet here, the NAC and the Opposition rely wholly on ipse dixit to support the rationale that the penalties are remedial and supply no other explanation of how "harm to the public and a clear risk of future misconduct" exists, instead intentionally burying its head in the sand when confronted with facts indicating the opposite. *Cf. PAZ II*, 566 F.3d 1172, 1176 (D.C. Cir. 2009). Accordingly, the NAC and the Opposition failed to explain why the sanctions are remedial and necessary to protect investors, which as the Opposition recognizes, is the "sole issue on appeal." Opp. at 4.

Moreover, the Commission recognized that Wilson-Davis lost over $4 million because of Kerrigone's short selling, that Kerrigone resigned, and that the loss led directly to the firm's suspending its short selling practices altogether. R. 8742. The Commission further sustained the structural and systemic requirement that the firm utilize an independent consultant as an appropriate remedial measure. R. 8756. But the NAC and the Opposition never explain why, given

the independent consultant undertaking, coupled with the undisputed non-recurrence of short selling practices at the firm for *over eleven years*, the particular penalties the NAC selected remain necessary to protect investors.[2] The firm's $4 million loss, and the firm's immediate cessation of the challenged short selling business, is a factor that must be taken into consideration by FINRA when considering whether the firm truly poses a risk of future misconduct. The NAC and the Opposition's failure to address these facts acknowledges that the penalty was impermissibly and punitively applied in the first place.[3] *See Saad v. SEC*, 873 F.3d 297, 306 (D.C. Cir. 2017) (Kavanaugh, J., concurring) (stating that "FINRA … will have to reasonably explain in each individual case why a [penalty] serves the purposes of punishment and is not excessive or oppressive. Over time, a fairer, more equitable, and less arbitrary system of FINRA … sanctions should ensue.").

b. The Opposition Improperly Smears the Firm.

Without citing any record evidence, the Opposition attempts to tar Wilson-Davis with the argument, not raised in the NAC Decision, that the firm's supposed "failure to accept responsibility and acknowledge wrongdoing" is "probative of the likelihood of recurrence, because it suggests that the underlying culture remains unchanged and that the firm views regulatory constraints as obstacles rather than rules to embrace." Opp. at 31. Putting aside that the Opposition does not endeavor to engage with relevant mitigating factors, this new argument is both devoid of

[2] Case law, and FINRA's own Sanctions Guidelines, recognize that sanction amounts are remedial when they protect investors today. *See, e.g.*, *West v. SEC*, 641 F. App'x 27, 31 (2d Cir. 2016) (recognizing that the "risk of future violations" is relevant to whether a sanction is remedial rather than punitive and excessive or oppressive).

[3] Otherwise, if record evidence did support the penalty, the Opposition would have described it in detail, like it does in describing the alleged aggravating factors (spanning over ten pages of its brief), even though those allegations having no bearing or relevance to the discrete issue raised in this appeal. *See* Opp. at 4-17.

evidentiary support and legally meritless. The Opposition cites nothing to suggest, let alone demonstrate, that by merely defending itself and arguing through counsel that it complied with the bona fide market making exception to Reg SHO, the firm poses an ongoing risk to the public. *See id.* The Opposition instead cites three cases, all more than 17 years old and highly factually distinguishable from this one, and none of which supports the Opposition's position that good faith and intended compliance, even if mistaken, evinces malicious intent and a shirking of regulatory responsibility.

First, in *Jason Craig*, the respondent omitted highly material information on his Form U4, including information that would have triggered a statutory disqualification, and then attempted to later justify the omission by averring that he did not have the information needed to make the submission and arguing that someone else told Craig to just "complete the form to the best of his ability." *In re Jason Craig*, 2008 LEXIS 2844, at *22 (Dec. 22, 2008). Craig's failure to accept responsibility for his own actions is a far cry from making the legal argument that Kerrigone was a bona fide market maker, especially when Kerrigone was providing liquidity where the market needed it—whether on the offer side when supply was short, or on the buy side when sellers were abundant. *See* R. 8576-84. Second, in *Santhianathan*, the respondent attempted to argue mitigation by blaming his former employer for his actions when customers suffered "substantial losses" due to his wrongful conduct. *In re Raghavan Santhianathan*, 2006 SEC LEXIS 2572, at *43-44 (Nov. 8, 2006). Respondents here have never tried to blame anyone else, and there is no evidence of any customer harm (which the Opposition does not dispute).[4] Third, in *Tretiak*, the respondent argued that his fraudulent sales of securities in violations of numerous statutes and rules were "merely

[4] In fact, the Opposition suggests that the absence of customer harm was considered by the NAC within the "NAC's careful reasoning." Opp. at 26. Yet the Opposition cites to nothing in support of that statement. That is because no such statement or discussion exists. *See* R. 8737-64.

technical, the result of clerical errors" and otherwise excusable. *In re Robert Tretiak*, 2003 LEXIS 653, at *28 (Mar. 19, 2003). Here, there has been no evidence or finding of any fraud, and the firm is certainly entitled to raise good faith legal arguments without being punished for doing so. Similar to the NAC's heavy-handed attempt to craft sanctions supposedly reflective of the Sanctions Guidelines, the inferences drawn from the Opposition's cases are equally misplaced and emblematic of how far FINRA must stretch to justify the NAC's ruling.

II. The Reg SHO Fine is Punitive and Unsupported by the Record.

a. FINRA Failed to Provide a Transparent and Guidelines Based Methodology for the Reg SHO Fine.

With respect to the Reg SHO penalty that the NAC initially imposed, the Commission remanded the NAC's decision explicitly because the NAC failed to provide the proper "explanation or analysis" to discern how the firm's conduct supported the penalty. R. 8759. The Opposition defends the NAC's second attempt to fabricate a penalty under Reg SHO by arguing that FINRA's interpretation of its own Sanctions Guidelines is not required to be "formulaic or mathematically precise" despite existing to provide "recommended ranges to promote consistency." Opp. at 27-29. Aside from being selected by the NAC as the supposed figure appropriately reflecting the firm's conduct (and arguing that, because FINRA has such discretion, the fine amount is appropriate), the Opposition does nothing further to explain how the $180,000 fine for Reg SHO is tied to the Sanctions Guidelines and the facts underlying the short selling. Nor can it, because the NAC also ignored this obligation.

The Commission has explained that it uses the Sanctions Guidelines "as a benchmark," noted that the Sanctions Guidelines recommended "a fine of $5,000 to $16,000 for a first action concerning short sale violations," and that absent an understanding of the alleged reckless conduct, remanded so that FINRA could "provide such *analysis* in the first instance." R. 8758-59 (emphasis

added).

b. The Issue is Ripe for the Commission's Consideration.

Without citing any legal authority in support of its argument, the Opposition avers that Wilson-Davis waived and "cannot rely" on the tiered analysis of the Sanctions Guidelines in considering whether the Reg SHO action is the first, second, or subsequent action against the firm or why batching is appropriate. *See* Opp. at 27, n.14. The Opposition's argument fails for two reasons.

First, the Commission's remand expressly opened the door to this inquiry by directing FINRA to reconsider its penalties and recognizing the use of the Sanctions Guidelines as a benchmark. Identifying whether its enforcement proceeding against the firm was a first, second, or subsequent action is not a new claim but a core methodological step inherent in applying the Sanctions Guidelines that cannot be waived. The Commission expected new arguments on remand for why a given sanction is appropriate, such as the "appropriate fine given the firm's size and the aggregate fines imposed, for FINRA to consider *in the first instance*." R. 8895, n.23 (emphasis added). This necessarily includes how the Sanctions Guidelines' tiering and batching features may be applied.

Second, Wilson-Davis raised both the tiering issue and batching in its post-remand briefing and asked the NAC to apply them. *See, e.gs.*, R. 8807 ("The fine for the Firm's Reg SHO violations should be reduced … for a first action concerning short sale violations"); R. 8809 ("With respect to Reg SHO, the applicable [Sanctions] Guidelines from 2019 recommended a fine between $5,000 and $16,000 for a first violation, which this unquestionably was for Wilson-Davis"); R. 8865 ("Enforcement has been trying in vain for years to explain how a $350,000 fine for Reg SHO violations is remedial given that: (1) the fine is ***22 times*** greater than even the high end of the sanction Guideline for a first offense"); R. 8816 (discussing batching, arguing that "[b]atching of

the 122 short sales at issue is plainly appropriate under the guidance."). Just because the NAC failed to discuss Wilson-Davis's arguments does not mean that the issue is waived. In fact, the NAC's and the Opposition's failure to even consider these arguments further underscores how divorced its $180,000 penalty is from the Sanctions Guidelines and reinforces the firm's position that the penalty is arbitrary and punitive in nature.

c. The $180,000 Penalty is Disproportionate to the Sanctions Guidelines.

The Opposition makes three main arguments to bolster its narrative that a $180,000 Reg SHO fine, a penalty more than eleven times higher than the maximum under the Sanctions Guidelines, is warranted here.

First, the Opposition argues that the $180,000 Reg SHO is "appropriate, reasoned, and grounded in the Guidelines." Opp. at 18. As discussed at length in Wilson-Davis's Opening Brief, this is not the case. *See* Op. Br. at 6-14. The Opposition further argues that the "dearth of mitigating factors warranted a proportionate fine." Opp. at 19. Finally, the Opposition argues that "Wilson-Davis looked the other way" when short selling and that the "number of instances and dollar values" of the trades are aggravating. Opp. at 20, 28. But as described *supra*, pp. 2-5, the Commission required any sanctions to be remedial in nature and supported with a record-specific explanation for the severity imposed, or why a penalty more than eleven times of what the high end of the Sanctions Guidelines is called for. But the Opposition uncritically and summarily accepts the NAC's conclusory aggravators as gospel, never tying them to a Sanctions Guideline or explaining how recklessness or any factor, individually or collectively, necessitates a sanction multiplied by eleven.

FINRA's attempt to minimize the disparity by invoking other matters is unpersuasive and defies the rationale for the Sanctions Guidelines to begin with, which the Opposition concedes is for purposes of consistency. For example, the Opposition's attempt to distinguish *Legacy Trading*

because it involved a significant monetary sanction is unconvincing. *See* Opp. at 30 n.16. The Opposition urges that nothing about the NAC's sanctions in *Legacy Trading* suggests that Wilson-Davis's fine is excessive, oppressive, or punitive. *See id.* But the Opposition omits that *Legacy Trading* imposed "a $907,035.01 fine against respondents for their short-selling violations, consisting of a **$10,000 fine** plus **disgorgement of $897,035.01 in profits** from respondents' violative short sales." 2010 FINRA Discip. LEXIS 20, at *47 (Oct. 8, 2010). The disgorgement amount is not a fine but merely reflects the value of the firm's ill-gotten gain. The $10,000 fine – not disgorgement – is what matters here and demonstrates the massive disparity that Wilson-Davis challenges. *Legacy Trading* also involved 2,192 Reg SHO short sales, netting FINRA a fine of roughly $4.56 per violation, but here, FINRA imposed a $180,000 penalty for 122 trades, yielding approximately $1,475 per violation, more than 327 times *Legacy's* per trade penalty. The Opposition's own authority further confirms that it must take greater care to address disparities and highlight illicit conduct. *See McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (sanction must reflect the seriousness of the misconduct for the respondent and be supported by an individualized analysis); *Korman v. SEC*, 592 F.3d 173, 186 (D.C. Cir. 2010) (reasoned explanation required for heightened sanctions). *Legacy Trading* underscores FINRA's failure here: if hundreds of violations with willfulness and false statements warranted a fine of roughly $4 per trade, FINRA must explain why a first Reg SHO violation spanning 13 days justifies $1,475 per trade. It did not because it cannot.

Second, FINRA argues that the NAC appropriately rejected mitigating factors because time, structural improvements, and monetary losses carry limited weight, relying on *Wedbush Securities* for the proposition that mitigating sanctions are inappropriate where "some" corrective actions were taken only after regulators notified them of the reporting failures. Opp. at 27. But

Wedbush does not absolve FINRA of its responsibility to weigh the fact that eleven years have passed and Wilson-Davis has not resumed similar short selling. Moreover, unlike in *Wedbush,* the record here demonstrates that the firm ceased short-selling activity and did not resume it before the Department of Enforcement began looking into the trades, a critical distinction that the Opposition never addresses. In contrast to Wilson-Davis, *see* R. 8868 (citing R. 1252, Tr. 726), FINRA *not once* identifies any record evidence, including in the Opposition, evincing the opposite. Its failure to do so is dispositive and troublesome considering its representation that the violations are "Supported by the Record." Opp. at 18.

Third, the Opposition argues that "general deterrence may be considered as part of the overall remedial inquiry," Opp. at 32 n.17, and that *Kokesh* is inapplicable. Opp. at 32-34. It is indisputable that the proposition that Wilson-Davis cited *Kokesh* for (i.e., to quote verbatim that a "pecuniary sanction operates as a penalty only if it is sought for the purposes of punishment") is accurately reflected in the case and has not been later limited. *See* Op. Br. at 5 (citing *Kokesh v. SEC*, 137 S. Ct. 1635, 1638 (2017)). Yet the Opposition argues that "*Kokesh* has no relevance to this appeal" and cites only its own NAC decision in support thereof. *See* Opp. at 32. But *Kokesh* appropriately articulates the boundary between remedial and punitive sanctions, which is the only rationale from the case that Wilson-Davis relied on, and is plainly relevant to this appeal considering that the Commission already remanded the matter for further explanation and/or analysis on why its sanctions are "not punitive or otherwise excessive or oppressive." R. 8761. And because the NAC decision relies so heavily on general deterrence, *see* Op. Br. at 31-32, instead of demonstrating why the $180,000 Reg SHO penalty is necessary to deter Wilson-Davis from future misconduct, *Kokesh* confirms that penalty is punitive rather than remedial because a monetary sanction substantially justified by general deterrence is one sought for the purposes of

punishment. *PAZ I*, 494 F.3d at 1066 ("general deterrence is essentially a rationale for punishment, not for remediation.") (citing *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 12 (1940)).

III. The AML Penalty is Punitive and Unsupported by the Record.

The Opposition makes three points in support of the NAC's decision to impose the maximum $310,000 penalty that the Sanctions Guidelines permits for AML/supervisory violations. None withstand scrutiny.

First, the Opposition posits that supervisory lapses allowed the 122 Reg SHO violations to occur and escape detection and that the number and dollar value of the transactions is "aggravating." Opp. at 34-36. But FINRA points to no record evidence to demonstrate actual harm and identifies no present risk that the firm allegedly poses. In fact, the record demonstrates that there were no failed settlements, every trade executed, no investor injury occurred, and every position was covered and ended flat. *See* Op. Br. at 20 (citing R. 8741-42). The Principal Considerations require assessment of whether misconduct resulted in injury and the nature and extent of the same.[5] The speculative harms that the Opposition posits are insufficient. *In re David B. Tysk*, SEC Release No. 34-91268 (Mar. 5, 2021) ("FINRA cannot base liability on [a suggestion when] it is speculative and has no basis in the record.").

Second, the Opposition argues that "arguments in favor of additional mitigation [are] moot" because it substantially reduced the sanctions it imposed on remand to one within the Sanctions Guidelines. Opp. at 37. The Opposition further argues that there is "no evidence" of the firm's current net capital, as the firm did not seek to "supplement the record" and that the fine "reflects

[5] *See* Principal Consideration No. 11, Sanctions Guidelines, available at https://www.finra.org/sites/default/files/2020-10/2019_Sanctions_Guidelines.pdf (last accessed Jan. 7, 2026) ("With respect to other parties, including the investing public, the member firm with which an individual respondent is associated, and/or other market participants, (a) whether the respondent's misconduct resulted *directly or indirectly in injury to such other parties*, and (b) the nature and extent of the injury.") (emphasis added). FINRA's March 2019 Sanction Guidelines contains identical language.

the firm's five distinct supervisory violations." *Id.* But simply declaring that, because the NAC already reduced the sanctions amount, any additional arguments are "moot" fails to satisfy the Commission's remand instructions that the NAC consider "the appropriate fine given the firm's size and the aggregate fines imposed" in the first instance. R. 8760. Courts consistently hold that it is the regulator's responsibility to provide a reasonable explanation showing why the severity of a punishment is necessary for a given respondent, not simply assert that that because the sanction is lower than before, it no longer needs to do any work. *See, e.g.*, *PAZ Securities v. SEC*, 494 F.3d 1059, 1063 (D.C. Cir. 2007) (vacating and remanding sanctions because agency failed to identify remedial purpose for the sanctions it approved and must give some explanation of mitigating factors). FINRA failed to do so here thereby improperly defying the Commission's remand instructions by stating that it has no obligation to explain the sanction just because the sanction is less than the one it previously imposed.

FINRA further cites to *ACAP Financial* for the proposition it need not engage in a proportionality analysis because the firm failed to supplement the evidentiary record. Opp. at 37. But ACAP is inapposite. It addresses the evidentiary burden necessary to demonstrate that a firm is unable to pay monetary sanctions. *See ACAP Fin. Inc.*, 2013 SEC LEXIS 2156, at *42-43 (July 26, 2013) ("Third, ACA argues that the NAC should have reduced the sanctions against the firm due to ACAP's *alleged inability to pay the monetary sanctions* … [t]he burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof."). It does not speak to ignoring the Commission's explicit directive to FINRA to consider the firm's size and the aggregate fines imposed. *See* R. 8760. Wilson-Davis supplied a quantified proportionality analysis, but the Opposition did not perform its own or explain why a maximum fine was necessary because of the firm's size. It further failed to consider the sanctions in the aggregate (totaling nearly $500,000).

Third, the Opposition states that the NAC "clearly" distinguished the bases for sanctioning the two sets of violations (the Reg SHO sanction and the AML/supervisory sanction). Opp. at 39-40. This ignores the fact that the NAC itself stated that it necessarily relied on "many of the same facts we considered for the Reg SHO violation" in imposing the AML/supervisory penalty. R. 8891 n.15. The Opposition compounds this error by reciting some of the same facts supporting the Reg SHO violation as the AML/supervisory one. *Compare,* Opp. at 20-21 (relying on non-competitive quotes and settlement risk to market participants in supporting the Reg SHO penalty), *with* Opp. at 34-35 (same). The closest the Opposition comes is by citing the "quality of the firm's supervisory controls" as fundamentally deficient, where "written procedures contained no methodology for determining bona fide market maker status[.]" Opp. at 35. But FINRA overreaches here again and conflates these facts and its analysis with the underlying Reg SHO penalty, arguing in the same paragraph that this allegedly demonstrates that these "aggravating factors predominate across every dimension of the [Sanctions] Guidelines framework." Opp. at 35.

The Commission required that the NAC disaggregate short selling trading conduct from AML and/or supervisory liability. *See* R. 8760; Op. Br. at 17-18. In *Dep't of Enforcement v. Newport Coast Securities*, supervisory sanctions were sustained where the NAC directly tied them to independent control failures rather than reusing the same facts forming the basis of another violation. *See* 2018 FINRA Discip. LEXIS 14, at *228 (May 23, 2018). Here, the NAC did not draw that line, and the Opposition's assurances do not replace the record specific and remedial explanation that the *PAZ* precedents mandate and the Commission required. *See* 494 F.3d at 1064-65; 566 F.3d at 1176.

IV. The Opposition Fails to Meaningfully Address Why Barkley's Sanctions are Appropriate.

Finally, FINRA argues that the Commission should uphold Barkley's sanctions because his alleged "supervisory failures warranted meaningful sanctions … to ensure investor protection." Opp. at 40. But FINRA never fulfills the Commission's mandate that FINRA explain "why the chosen sanctions, considered together, are necessary to protect the public, and are remedial and not punitive or otherwise excessive or oppressive." R. 8761. The Opposition fails to connect the dots on why a six-month principal capacity suspension is necessary, claiming it does not need to so long as it provides a rote recitation of Barkley's conduct. Opp. at 41 n.21. And, the Opposition fails to point to any record evidence or instances where the NAC decision appropriately tied certain requalification categories to any conduct Barkley actually engaged in or supervises today. The record shows that Barkley is winding down his career and is not supervising market making or AML activities. *See* R. 8806-07; 8872. Similarly, requiring requalification in roles not implicated by the underlying facts is facially overbroad.

CONCLUSION

For the reasons stated herein and Wilson-Davis's Opening Brief, the Commission should vacate the NAC's Decision.

Respectfully submitted this 7th day of January 2026.

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CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that on this 7th day of January 2026, a true and correct copy of the foregoing **REPLY BRIEF** was filed via the SEC's Electronic Filings in Administrative Proceedings (eFAP) system and sent via email to:

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CERTIFICATION

Pursuant to Rule 154 of the Commission's Rules of Practice, I hereby certify that the foregoing Reply Brief contains 4,441 words, exclusive of the tables of contents and authorities. This word count was generated using the "word count" function in Microsoft Word.

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