UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Emergency Application of Shineco, Inc. For Review and Stay of Regulatory Action by The Nasdaq Stock Market LLC	Admin. Proc. File No. 3-22553 **REPLY IN SUPPORT OF SHINECO, INC.'S MOTION FOR AN EMERGENCY STAY PURSUANT TO SEC RULE OF PRACTICE 401**

Dated: November 5, 2025

Jacob S. Frenkel, Esq.
Gregory L. Ewing, Esq.
Brian S. Yu, Esq.
DICKINSON WRIGHT PLLC
International Square Bldg.
1825 I St. N.W., Suite 900
Washington, D.C. 20006
Tel: (202) 466-5953 | Fax: (844) 670-6009
JFrenkel@dickinsonwright.com
GEwing@dickinsonwright.com
BYu@dickinsonwright.com

OS Received 11/05/2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Thank you, Mr. Chairman, and Commissioners.

Since June 23, 2025, the day on which Shineco Inc. ("Shineco") paid Nasdaq its abusive and extortionate "fee for a hearing [of] $20,000" to be "heard," it is only now before the Commission that Shineco will be heard. Hearing Shineco truly did not happen at any stage of the outcome-predetermined "star chamber" "review process" at Nasdaq. No more compelling evidence of the opaque Nasdaq "review process" is the length to which Nasdaq needed to go in its opposition to justify its lack of transparency, lack of notice and lack of due process. For a regulated entity, Nasdaq, to need to explain and justify to its regulator its review process speaks loudly as to the problems amplified in Nasdaq's grievous mishandling of Shineco's listing.

Meanwhile, the Commission, in ordering expedited briefing made one overriding request – explain irreparable harm. Nasdaq understandably ignored that aspect of the Commission's Order for the simple reason that its component "review 'pay-to-pretend-to-listen' bodies" also ignored the bona fide business developments at Shineco and the irreparable consequences of delisting Shineco's securities. Not only did Shineco set forth in detail the anticipated irreparable harm to the company and its shareholders in its detailed Motion for Emergency Stay, but also – and sadly, Shineco herein shares with the Commission the real-time actual ongoing irreparable harm. Thank you for listening, and thank you for caring about protecting Shineco's investors in the face of an imminent delisting, where Nasdaq did not and does not.

SUMMARY OF IRREPARABLE HARM TO SHINECO

The irreparable harm Shineco and its shareholders will suffer as a result of delisting is no less than the irretrievable loss of its business. In connection with the trading suspension that took effect on October 7, 2025, Shineco's business and even its personnel have already suffered grave harm beyond the impacts raised in Shineco's underlying Emergency Motion:

- Threats of physical harm against the CEO;
- Investors' forced entry on the company's premises with threats of gang violence;
- Contrived police investigation with a 12-hour interrogation without food or water;
- Express language in a transaction "Termination" that reads "[a]s … Shineco … has been required to delist from NASDAQ, the equity acquisition transaction contemplated under the original agreement can no longer proceed as agreed;" Ex. 3 (Decl. of J. Zhan) ¶ 22.
- 21 employee resignations, including theft of funds upon exit;
- Loss of revenue streams from strategic partnerships;
- Subsidiaries depriving the Shineco-parent of operating revenue;
- Contract default risks; and
- Significant loss of shareholder value.

The Commission recognizes that economic harm may be irreparable where the result is the loss of a business's ability to operate in its current form or of irreplaceable strategic opportunities. Shineco is now on that precipice as a direct result of Nasdaq's unwarranted precipitous actions. Shineco was compliant with Nasdaq's minimum bid price requirement when the trading suspension crippled Shineco's stock price. While Nasdaq blithely claims Shineco simply can reapply for listing when it is compliant, which it has been, Nasdaq seeks to harm Shineco irreparably such that no company will exist to reapply.

THE COMMISSION IS SHINECO'S AND ITS SHAREHOLDERS' LAST HOPE

The Nasdaq Stock Market LLC's ("Nasdaq") decision to delist (the "Delisting Determination") Shineco's securities on the Nasdaq Capital Market was wrongful, and its worst effects soon will become irreparable if not arrested by an emergency stay. Since Shineco submitted its *Motion for An Emergency Stay Pursuant to SEC Rule of Practice 401* (the "Motion") on October 17, 2025, Nasdaq implemented final steps to delist Shineco's stock. On October 29, 2025, counsel

for Nasdaq notified Shineco of the Nasdaq Board of Directors' (the "Nasdaq Board") decision not to call for review the latest decision in Nasdaq's defective review process to affirm the Delisting Determination. Within hours of filing its Opposition, Nasdaq notified Shineco that in two days – Friday, November 7th – Nasdaq will announce publicly delisting of Shineco's stock. There are no coincidences in Nasdaq's vindictive timing.

Nasdaq, as a self-regulatory organization ("SRO") under the Securities Exchange Act of 1934 (the "Exchange Act"), must provide a fair procedure in the conduct of disciplinary actions to prohibit or limit persons from accessing services offered by an exchange. 15 U.S.C. § 78f(b)(7). Every stage of Nasdaq's deficient review evidenced a reviewing panel or council demonstrating a willful disregard of critical facts and lack of interest in reasoned analysis. This is not a complaint based on mere disagreement with the adjudicators' reasoning leading to an unfavorable outcome. At the first stage of review, the Nasdaq Hearings Panel did not provide any reasoning to support its decision. Next, the Listing and Hearing Review Council (the "Listing Council") devoted more of its decision to justifying that lack of analysis than to analysis of its own. Even if the substance of the initial June 16, 2025 Delisting Determination had been legally sound (it was not), Nasdaq's subsequent failure to adhere to essential principles of fairness in its review was not.

If the Commission declines to stay the suspension and delisting, then the harm to shareholders no longer will be temporary or recoverable, or as simple as replacing lost contracts or seeking a non-prejudiced exchange. Shineco has negotiated complex and critical transactions to restructure its major investments and lines of business, which rely on Shineco's continued listing. Delisting also will trigger conditions of Shineco's financing agreements that will subject Shineco to financial hardship to the likely point of bankruptcy. Shineco's workforce and investor relations depend on the success of the company's ongoing restructuring. Nasdaq has deigned to impose on

Shineco's business the bleak future Nasdaq predicted in its delisting decisions.

The United States District Court for the Southern District of New York opined that only the Commission or the United States Court of Appeals can provide relief. The United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") opined that the Commission is the proper forum in which Shineco must seek emergency relief. To avoid the irreparable injury from which Shineco cannot recover, the Commission is Shineco's first and last hope to stay delisting *before* it goes into effect. Doing so will give Shineco its first shot at a fair hearing and to demonstrate its ability to maintain compliance with Nasdaq listing qualifications before Nasdaq eliminates that possibility through its ill-considered rulings.

BACKGROUND

Shineco recounted fully in the Motion the factual and procedural history leading up to this review; therefore, it is not necessary to restate the facts at length in this Reply. In summary, the critical points in Nasdaq's wrongfully instigated delisting process ties to Nasdaq Staff's first issuing the wrongful Delisting Determination, based on retroactive application of a not yet in effect Listing Rule, and the subsequent decisions by the Nasdaq Hearings Panel and the Listing Council to affirm the Delisting Determination.

The October 1, 2025 Listing Council Decision precipitated the suspension of trading of Shineco's stock, effective October 7. The Listing Council Decision itself did not provide the date the trading suspension would take effect, as it is customary to do. Recognizing that the ongoing Federal government shutdown would limit the Commission's capacity to render timely relief, Shineco sought emergency relief in the courts, which effectively referred Shineco back to the Commission before considering the merits. *See* Motion at 7. Since Shineco submitted its application for review to the Commission, accompanied by the Motion, the urgency of Shineco's predicament only heightened.

On October 29, 2025, counsel for Nasdaq notified Shineco of the Nasdaq Board's decision not to review *sua sponte* the Listing Council's decision, eliminating Shineco's last hope that Nasdaq would revise or even once give full and fair consideration to its own decision. Ex. 1 (Nasdaq Board Notice). That letter did not inform Shineco of the date of the Nasdaq Board's decision. Because the Nasdaq Board refused review, Shineco's delisting following public notice and Nasdaq's delisting filing to the Commission is imminent.

On November 3, 2025, Nasdaq notified Shineco that Nasdaq intended to issue public notice of delisting on November 7th. Ex. 2 (Draft Press Release). Nasdaq argues in its Opposition that this appeal is premature because Nasdaq must file its Form 25 with the Commission to render its decision final. The Courts already have said otherwise, that is seek relief from the Commission. Here too Nasdaq games timing of a critical action in this delisting review to coincide inconveniently with a potential challenge. *See* Motion at 6 n. 2 (recounting Nasdaq's suspicious and pernicious delay between the Listing Council Decision finalized early afternoon of October 1, according to metadata, but transmitting more than six hours later that night after the beginning of Yom Kippur religious observance knowing that Shineco's undersigned lead counsel would not be able to view the filing or advise his client for another 24 hours).

Shineco herewith relies on the Commission to end delay and decide Shineco's Motion as the last possible measure to protect Shineco's investors by staying the suspension and delisting and averting immediate, catastrophic damage to Shineco's business.

ARGUMENT

The Commission's October 30 Order Directing Briefing on the Motion articulates the standard for whether a stay is warranted under Exchange Act Section 19(d)(2) and Rule of Practice 401(d). *Minim, Inc.*, Exchange Act Rel. No. 102482, 2025 WL 606061, at *2 (Feb. 25, 2025). The Commission considers (i) the likelihood that the moving party eventually will succeed on the

merits of the appeal; (ii) the likelihood that the moving party will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of a stay; and (iv) a stay's impact on the public interest. *See id.* (citing *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018))). Analysis of each of these four criteria favor Shineco.

The circumstances, especially the imminent threat of irreparable harm from delisting, persuasively favor granting a stay. Despite the clarity of the Commission's October 30 Order to focus on irreparable harm from the October 7 *trading suspension*, Nasdaq focused on the finality of delisting with patent indifference to irreparable harm. Shineco, in this Reply, provides further evidence of irreparable harm resulting from the suspension, which will continue to result from delisting. Shineco requests that the Commission reject Nasdaq's novel arguments and grant an emergency stay to hear the appeal.

I. SHINECO IS LIKELY TO SUCCEED ON THE MERITS OF ITS APPEAL.

As set forth in the Motion, Shineco's appeal challenges the delisting on Nasdaq's multiple failures leading to this point, which Nasdaq's Opposition to Shineco's Motion for a Stay (the "Opposition") doesn't even dispute. In fact, the Opposition calls attention to one last unfair procedural act of delay by Nasdaq in its challenge to the Motion's timeliness.

At each internal phase of presumed review, Nasdaq simply signed off on the defective or non-existent reasoning of its lower-tier decision. Now that Nasdaq is subject to external review by the Commission, it must try to justify the scant documentation of its arbitrary and capricious decision-making processes, which it cannot do.

To avoid this impossible task, Nasdaq simply argues that this appeal is premature and arrogantly admonishes the Commission for wrongfully seeking briefing. First, the Exchange Act

and SEC Rules of Practice permit the Commission to review a trading suspension and do not require the Commission or Shineco to wait for Nasdaq while it finalizes delisting. Second, the timing of delisting has been within Nasdaq's control; the Commission's Briefing Order rejects Nasdaq's disruptive delay tactics and recognizes the timeliness of this Motion.

Shineco is likely to succeed on the merits not only because the Nasdaq Staff retroactively applied a then recently revised Listing Rule in violation of the Exchange Act's fundamental fairness requirement to a reverse stock split, but also because the unreasoned decisions of Nasdaq's inferior forums further deprived Shineco of a fair procedure.

The Listing Council's decision failed on multiple points; the Commission should note that most of that decision prioritized explaining what the Hearings Panel's reasoning *probably* was and why the Hearings Panel was not obligated to explain that for itself. Actual analysis of the substantive issues were cursory. No reframing on appeal can shroud the fact that the majority of the Listing Council's decision effectively amounted to an argument that Nasdaq is entitled to conduct an arbitrary and capricious disciplinary process. The Listing Council thus compounded Hearings Panel and Nasdaq Staff's prior failures to afford Shineco a fair procedure.

A. Shineco's Application for Review Is Timely.

Shineco timely filed its Application for Review and Motion seeking this stay. On October 30, the Commission judiciously ordered Nasdaq and Shineco to brief their positions on the stay of the trading suspension, fully aware that a suspension and delisting are not the same. Nasdaq's Opposition patronizingly tells the Commission it must wait.

1. Shineco's Appeal is not Premature.

In its Opposition, Nasdaq does not identify a single reason why a trading suspension is not a "prohibition or *limitation* in respect to access to services offered by" Nasdaq that the Commission may review. *See* 17 C.F.R. § 201.420(a)(3). As Nasdaq has *limited* Shineco's access to the Nasdaq

Market since October 7th, the plain language of the Rule is clear that the Commission may review the trading suspension. Facilitating trading on its exchanges is the primary service Nasdaq offers, and, since the Listing Council Decision adversely impacted the trading of its securities, Shineco's access has been limited since.

Against the plain language of SEC Rule of Practice 420, Nasdaq attempts to argue backwards that because Nasdaq does not file notices to the Commission for a trading suspension under Exchange Act § 19(d)(1), a trading suspension must not be a determination covered by the Rule. Nasdaq's "it's above the law" argument fails, first, because Exchange Act § 19(d)(2) contains no limiting language, nor is it the only statutory authority for the Commission to stay a Nasdaq disciplinary action. *See* 15 U.S.C. § 78f(d)(3). Nasdaq further gives away the proper reading of the Commission's Rule of Practice by linking Exchange Act § 19(d)(1) to the Commission's regulation requiring Form 25 for notice of a "limitation or prohibition of access to services by delisting of security." 17 C.F.R. § 201.19d-1(j)-(k). That regulation specifies that delisting is the *type* of limitation or prohibition of access to services that calls for Form 25 notice, while SEC Rules of Practice speak more generally to the actions the Commission will review.

Nasdaq's interpretation would further work an absurd result, which is on display in this very appeal. There is no limit to the amount of time that may elapse between a trading suspension and the issuance of public notice and Form 25 filing by Nasdaq. Thus, according to Nasdaq, a company could remain suspended indefinitely while Nasdaq takes its time to effect final delisting procedures. Here, Nasdaq intentionally delays its public notice announcing Shineco's delisting until after briefing on the Motion is complete and could delay indefinitely its Form 25 filing. Under Nasdaq Listing Rule 5830, public notice of delisting may occur no *less* than 10 days before the delisting takes effect, but there is no limit to how many days more it may take.

Nasdaq asks the Commission to eternalize Shineco's limbo state until Nasdaq finalizes the delisting of Shineco's securities, without providing a date when that will occur. On October 29, 2025, Shineco received notice of the Nasdaq Board's decision not to call this matter for review. That letter does not state the date of the Nasdaq Board's decision to assure the Commission and Shineco that notice of the decision was provided promptly, nor did it state when Nasdaq would issue either a public notice or Form 25. Nor does the draft press release Shineco received on November 3 explain why it will take until November 7 to issue, nor when Nasdaq will file a Form 25. Nasdaq's history of questionable timing should put the Commission on alert not to accept Nasdaq's absurd interpretation of the Commission's scope of review and only provides further real evidence of the necessity of an emergency stay.

2. Shineco's Appeal is Not Late.

Strangely, Nasdaq argues that Shineco's appeal is both premature and late in the same Opposition, and the Commission may consider that audacity as part of the context of this appeal. In its argument on the injunctive relief element of public interest, Nasdaq claims that the to consider Shineco's Application for Review, filed 16 days after Nasdaq counsel's Listing Council Decision notice, would thwart the public interest in prompt enforcement. Opp. at 19.

Nasdaq does not contend that the appeal and Motion are late under the Commission's Rules of Practice, as a Motion within 10 days of the effectiveness of an action is timely beyond doubt under the Rules. 17 C.F.R. § 201.401(d)(3). Instead, Nasdaq simply asks why Shineco could not have filed earlier. Nasdaq knows why.

Shineco did not receive a denial and "redirect" from the D.C. Circuit until October 6, 2025, leaving the Commission as the appropriate forum for review. Nasdaq knows that Shineco sought relief in the courts first, understanding that under a shutdown the Commission might not view or

consider an emergency stay application before the October 7 effective date of suspension. At the same time, Nasdaq suggests that the value of prompt enforcement called for Shineco to seek emergency relief from *the fact of a government shutdown*, apparently to stay the Commission's October 1 administrative order and make the Commission consider this appeal.

Shineco submitted its reply in the Listing Council proceedings on September 2, 2025. Why it took 29 days -- until the first day of a government shutdown -- for Nasdaq to prepare its decision (or whether it really took that long) is unclear. Whatever the explanation, Shineco did not delay in bringing this appeal in the midst of difficult current circumstances.

B. Nasdaq Fails to Dispute the Unfairness of Its Retroactive Listing Rule Enforcement Because It is Constitutionally Indefensible.

The issue of the Staff's retroactive application of Nasdaq Listing Rule 5810(c)(3)(A)(iv) was the only issue on which the Listing Council offered any substantive analysis. Motion Ex. 10 (Listing Council Decision) at 10. In this appeal, Shineco not only has challenged Nasdaq staff's retroactive application of what Nasdaq subsequently termed the "Excessive Split Rule," but also Nasdaq's failure of a reasonable explanation of the Staff's actions. Nasdaq's arguments in this appeal not only fail to dispute that its actions were in fact retroactive, but it also outright ignores the deficiencies in the Listing Council's reasoning because they are unsupportable.

In this brief analysis, the Listing Council claimed that Shineco actually had notice of the revised Nasdaq Listing Rule because Nasdaq had already proposed the rule in August 2024, despite Nasdaq not having adopted the revised rule until January 2025, months after Shineco's reverse stock split. *Id.* While a conceptual rulemaking proposal may have existed at the time of Shineco's November 12, 2024 reverse stock split, the Commission had not even issued its Federal Register notice seeking public comment until November 20, 2024, after the reverse stock split. There certainly was no effective Rule, which would not even be forthcoming until January 2025.

When Shineco effected the 2024 reverse stock split, despite Nasdaq presuming notice of the Rule proposal, Shineco just as reasonably could have believed that the proposal would not become a final Rule or undergo further amendment, rather than believe that the proposed Rule would become effective. The Listing Council's presumptuous position is that the public comment process is a mere formality and the Commission's obligatory service to Nasdaq necessitated approval of any proposed Nasdaq Listing Rule as a foregone conclusion. Nasdaq actually restated this position in its Opposition. Opp. at 14. The Listing Council essentially gave another example of how it did not consider Listing Rules truly to be rules, by reasoning that Shineco should have complied with a proposal that was not even subject to public notice, instead of relying on the Listing Rules as then in existence.

Retroactive enforcement of a rule without notice of intent violates procedural due process standards to which Nasdaq is subject under Exchange Act fair procedures provisions. Nasdaq's arbitrary and capricious internal review process further violated the Exchange Act's requirement for SROs to provide fair procedures in the conduct of disciplinary action under the Exchange Act. *See* 15 U.S.C. § 78f(b)(7). The "call for review" process, such as it was, involved conduct casting doubt on the objectivity of Listing Council's administrative counsel and culminated in the extraordinary claim by the Listing Council in its Decision that Nasdaq is not bound by its own rules in determining to delist a company. *See* Listing Council Decision at 7.

The Listing Council further dismissively hand-waved away the notion that fair procedures under the Exchange Act are comparable to constitutional due process requirements that would require fair notice of enforcement. In its Opposition, Nasdaq does not offer a viable explanation of this failure or alternative to various Courts of Appeals' rulings that the fair procedures provisions of the Exchange Act implicate due process requirements, regardless of whether a court

regards Nasdaq as a quasi-governmental entity. *See Cody v. SEC*, 693 F.3d 251, 257 (1st Cir. 2012) (analogizing Exchange Act "fair procedure" requirement to constitutional due process); *Gold v. SEC*, 48 F.3d 987, 991 (7th Cir. 1995) ("This statutory fairness requirement is closely related to the fairness requirements derived from the Fifth Amendment's Due Process Clause. We have therefore assessed the fairness of the [exchange's] jurisdictional rules and enforcement action against [petitioner] by relying on traditional due process principles.")

C. Nasdaq's Failure to Document Its Reasoning Resulted in An Arbitrary and Capricious Delisting Review Process.

Following the Staff's unfair failure to notice Nasdaq's intent to enforce the Excessive Stock Split retroactively, Shineco sought an extension to show compliance with the Minimum Bid Price Requirement under the Hearings Panel's own discretion. The Hearings Panel's complete lack of analysis underlying its refusal to consider an extension is evident on its face, and the Listing Council's outright authorization for the Hearings Panel to issue a decision without rationale, is shocking.

In this appeal, Nasdaq does not actually defend the indefensible pronouncements of the Listing Council and Hearings Panel; it merely argues that they ultimately decided correctly. This position is mistaken and hazardous, as fair procedure in a disciplinary action requires not only that a disciplinary action ultimately be correct, but that it is not arbitrary or capricious. While this does not require a written decision to have been "a model of analytic precision to survive a challenge," the body issuing the decision must be "reasonable and reasonably explained." *In re NTE Conn., LLC*, 26 F4th 980, 988 (D.C. Cir. 2022) (internal quotation marks omitted). The Hearings Panel thus failed its responsibility by issuing a decision devoid of analysis of facts essential to its decision. The Listing Council was not entitled to excuse the Hearings Panel's lack of analysis, nor

declare a position that Nasdaq is not bound to the letter of its Listing Rules and disclaiming the substance of due process to fair procedure under the Exchange Act.

D. Nasdaq's Conduct of The Delisting Decision Breached The Listing Agreement.

In its Opposition, Nasdaq asserts that it performed adequately under its Listing Agreement, merely because it went through the motions of its review process. This argument fails because Nasdaq's review process was arbitrary and capricious to the point of the Listing Council proclaiming that Nasdaq had the right to be arbitrary and capricious. Next, "good and workmanlike performance" meant conducting a fair procedure and observing the prohibition against discriminatory application of its rules. *See* 15 U.S.C. § 78f(b)(5) (proscribing registration of a securities exchange unless "[t]he rules of the exchange are designed […] to promote just and equitable principles of trade […] and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers[.]"); *see generally*, 15 U.S.C. § 78cc(b).

Nasdaq challenges that Shineco cannot provide evidence that its performance of the review "was shoddy, unworkmanlike or substandard," when, in its own Opposition, Nasdaq does not defend the Hearings Panel or Listing Council decisions as thorough or well-reasoned. Opp. at 15-16. As discussed above, the Listing Council Decision itself focuses mainly on why the Hearings Panel was not required to document its analysis, explicitly acknowledging that it did not.

An adjudicator of a regulated national securities exchange "of average skill and intelligence" is aware of its duty to render a decision that is "reasonable and reasonably explained." *NTE Conn., LLC*, 26 F4th at 988. Nasdaq's observable failure to do this at multiple levels of review thus breached its Listing Agreement with Shineco.

II. SHINECO WILL SUFFER IRREPARABLE HARM IF NASDAQ DELISTS ITS SECURITIES.

In its Opposition, Nasdaq acknowledges that Shineco will suffer severe injury as a result of the delisting and only offers the absurd rebuttal that Shineco's injury is self-inflicted. The

irreparable harm to Shineco is the result of Nasdaq's decision to suspend and delist Shineco's stock, not from Shineco's decision to execute transactions. This misconceived argument does not even address each irreparable harm Shineco has suffered and will suffer as a result of suspension and delisting, such as accelerated financing obligations, loss of personnel, and the collapse of ongoing agreements and negotiations. For those injuries, Nasdaq simply has nothing to say. Nasdaq flouts the Commission's Order to focus briefing on irreparable harm because it does not have cognizable arguments on this critical element.

A. Nasdaq fails to refute irreparable harm in its Opposition.

Nasdaq states that the irreparable harm to Shineco was self-inflicted because several at-risk transactions raised in Shineco's Motion post-date the adoption of the Excessive Split Rule. This line of argument conveniently omits Nasdaq's actions from the chain of events leading to irreparable harm. At the same time that Nasdaq claims broad discretion to act outside the explicit scope of its Listing Rules, Nasdaq also claims it has no role to play in the results that follow. But neither Shineco nor the sellers at issue consented to delisting subject to the whims of Nasdaq and its defective review processes, and the irreparable injuries to Shineco under appeal very much are inflicted by Nasdaq.

Unsurprisingly, the precedent decisions Nasdaq cites do not support its attempt to stretch the concept of causation beyond common sense. In each of those cases, the appellant from an injunction was a direct contract counterparty claiming negotiated rights. *See Caplan v. Felheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 839 (3d Cir. 1995) (insurance company could not be enjoined from settling claims where insurance policy authorized settlement on behalf of the insured); *Bennett v. Isagenix Int'l LLC*, 118 F.4th 1120, 1129-30 (9th Cir. 2024) (contractually agreed limitation on consequential damages could not form the basis of irreparable harm). Contrary to those cases, in this appeal, Nasdaq and its wrongful actions are an intervening factor

putting Shineco's agreements at risk.

The facts in this appeal do not align with those cases, nor do the principles. It is one thing to allow a party to enjoy its contracted rights without injunction from doing so, while it is an entirely different thing to permit a non-party to the transaction to frustrate the contract's underlying assumptions. To adopt Nasdaq's position would allow bad actors to wreak havoc upon conditions precedent of third-party contracts without limitation by injunction until the damage was done. Relief would only be available as monetary damages, which many plaintiffs would be unable to pursue after the destruction of their companies. This is yet another position in which Nasdaq seeks to be above ultimate accountability, only making a stay to allow review that much more exigent.

B. <u>Injuries to Shineco are Great, Certain and Imminent.</u>

In the Motion, Shineco outlined several critical transactions that it initiated before the Delisting Determination to effect a company-level strategic restructuring, the continuation of which relied on Shineco maintaining its listing. The loss of transactions naturally are economic, but as the Commission repeatedly acknowledged, damages awards from later litigation cannot always compensate economic losses.

Since the trading suspension became effective, Shineco and its people have suffered irreparable harms even more dramatic than stated in the Motion. From October 6, 2025 (the day before the suspension took effect), to October 8 (the day after), the closing price per share of Shineco's stock fell from $5.63 to $1.47 and has traded below $1 most days since then. The trading suspension caused the fall in Shineco's stock price, which in turn triggered a wave of negative outcomes that will take further time to reverse.

The tragic personal impacts Shineco's people and shareholders have suffered are an irreversible outcome of the sudden drop in the company's stock price. Acknowledging such unavoidable impacts underscore the seriousness of the stakes in this appeal.

Without a stay, delisting will enshrine those harms that are not already permanent and ensure that those predicted, but not yet realized, will occur. Shineco's projected injuries that are transactional in nature fall within the same circumstances for which the Commission has granted stays in the past, despite their economic nature. The loss of multiple remaining strategic contracts on which Shineco relied to restructure (now to salvage) its business is not only an economic injury. In *Scottsdale Cap. Advisors Corp.*, the Commission held that there was a "credible claim of irreparable harm" where an enforcement action would cause significant divestments from entities necessary for the petitioner to continue a business. Exchange Release No. 83783, 2018 WL 3738189, at *3 (Aug. 6, 2018). Additionally, in that appeal, a manager for portfolio entities declared that the companies would be forced to lay off personnel and risk probable insolvency. *Id.* at *3. In that case, the Commission looked past the fact that these were economic harms, stating that "there would be no practical way to undo th[e] consequences" of the challenged action if it were allowed to go into effect during the appeal. *Id.* As the Commission stated, the "destruction of a business, absent a stay, is more than just 'mere' economic injury, and rises to the level of irreparable injury." *Id.* (quoting *Scattered Corp.*, File No. 3-9212, 1997 SEC LEXIS 2748, at *15 n.15 (Apr. 28, 1997)); *see also NTE Conn.*, 26 F.4th at 48-49 (holding destruction of reliance on a major revenue stream sufficient grounds for finding irreparable harm and granting stay).

Other instances in which an "essentially" economic injury constituted irreparable harm include cases where (1) a petitioner stood permanently to lose customers due to "substantial switching costs" resulting from newly imposed fees, *Bloomberg L.P.*, 2018 WL 3640780, at *10 (finding increased transaction costs "are among the factors that would likely make such a loss of customers permanent" and impose irreparable harm); (2) discontinuation of an agency service would inhibit the petitioner's operation of a line of business, *Bunker Ramo*, Exchange Act Release

No. 14606, 1978 WL 197047, at *4 (S.E.C. Mar. 24, 2018); and (3) a certificate revocation that rendered a petitioner unable to conduct a line of business. *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

1. Shineco Lost and Will Continue to Lose the Benefits of Major, Business-Defining Contracts and Negotiations.

The threats and outcomes of Shineco's present situation are analogous to each of these precedent harms. Major contracts have already fallen through, which may be recoverable if Shineco avoids delisting, but only then. As Shineco's CEO, Jennifer Zhan, attests in her supporting declaration under penalty of perjury, the trading suspension already has rocked the foundations of Shineco's business. *See generally* Ex. 3 (Decl. of J. Zhan). Express language in a transaction "Termination" reads "[a]s … Shineco … has been required to delist from NASDAQ, the equity acquisition transaction contemplated under the original agreement can no longer proceed as agreed." *Id.* at ¶ 22. As of the date of this Reply, at least one recently-acquired entity is demanding separation from the public Shineco entity. *Id.* at ¶ 15. $8.4M in existing contracts with key partners have been rendered unperformable due to loss of public company status. *Id.* at ¶ 11. Because of the dramatic loss of trading value of Shineco's stock, two high-potential, all-stock M&A deals have collapsed, which otherwise could have driven Shineco's growth in European and American markets. *Id.* at ¶ 16-22.

Recounting the at-risk transactions cited in the Motion, Shineco would first suffer particularly from the cancellation of its March 2025 acquisition of Hong Kong FuWang International Limited, as a significant strategic divestment causing a major revenue stream to terminate. This loss would occur on the order of 300 hospital partners and 1,200 medical distributors, along with $8 million in medical device orders. The loss of Shineco's May 2025 agreement with Total World Marketing Co., Ltd. would cost Shineco its entry into the entire

Southeast Asian market expansion. As with the FuWang agreement, delisting would sever Shineco's access to hundreds of clinics, pharmacies, and supermarkets and would cause forfeiture of all prepaid expenses. For now, these particular contracts remain undisturbed and could be saved by a stay of delisting.

These were transactions that Shineco selected carefully to align with a new strategic portfolio to steer the company away from the headwinds it encountered during and since the COVID-19 pandemic. *Id.* at ¶ 23-24. Moreover, each transaction was the product of extended and complex negotiations, the costs of which will be sunk if delisting proceeds.

Shineco cannot simply locate comparable strategic partners who will offer similar synergies and realignment opportunities without the requirement of a major exchange listing. Given that it took years for Shineco to develop and execute this post-pandemic restructuring, there is every reason to believe that it would take years more to find a different strategy to pursue, if Shineco were to continue as a going concern that long after delisting.

Apart from the crises with which the company is already dealing, the default triggers in each of the acquisition and financing agreements, which Shineco cites in the Motion and this Reply, arise from unambiguous material provisions. Sellers have already expressed concern about the satisfaction of this material condition since Nasdaq's suspension of Shineco's stock trading. Decl. of J. Zhan at ¶ 15; *see also Bloomberg L.P.*, 2018 WL 3640780, at *10 n. 74 (indicating that injury was "actual and imminent" where petitioner had received inquiry suggesting intent to enforce injurious obligations).

2. Shineco Faces Insolvency Based on Material Defaults in Financing Agreements.

In its Motion, Shineco pointed to the further damage from default on financing agreements, as a result of delisting. Shineco quantified these losses definitively as including repayment of

$21.74 million in private placement funding and a $9.6 million balance on an outstanding convertible note, along with $1.44 million in penalties. At Shineco's size, these are not mere financial numbers. These repayments would deplete substantially Shineco's current assets and risk the qualitative impact of insolvency.

The prospect of sudden repayment of tens of millions of dollars from financing agreement defaults are not Shineco's only bankruptcy risks. The loss of significant projected revenue streams resulting from the major strategic partnerships described above would also leave Shineco uncertain of its available income to repay its financial and operating liabilities in the near-to-mid-term. The impact of going to Bankruptcy Court is also more than merely economic, as Shineco would suffer reputational damage, the lost time and legal costs of the proceedings, and more risk that irreplaceable personnel will leave the company.

3. The Delisting Action and Suspension Have Damaged the Core of Shineco's Business—Its People.

Shineco now has suffered an exodus of its entire finance team. Decl. of J. Zhan at ¶ 39. Subsidiaries are refusing to provide financial records to the Shineco parent. *Id.* at ¶ 32. These dynamics impact directly Shineco's consolidation of its financial statements, its audit, and the auditors' ability to complete the audits. Stating the obvious, these abandonments occurred because these personnel and entities fear for the company's future after delisting.

Unlike key scientific personnel identified in major contracts, finance personnel should be able to be rehired. The delayed audit can be completed. These harms, while irreparable, may be ameliorated in time if the Commission preserves the status quo expeditiously.

Most seriously, the ongoing strain on Shineco's stock value and business reputation have resulted in direct, personal threats from investors to Ms. Zhan and a physical invasion by local stockholders of Shineco's headquarters, in which Ms. Zhan was assaulted and injured. *Id.* at ¶ 35-

36. Ms. Zhan was also subject to interrogation by Beijing Shijingshan Economic Crime Investigation due to a bogus report of fraud following the stock collapse. *Id.* at ¶ 38. Understandably, the panic resignations among staff resulted substantially from these events.

4. The Irreparable Harm of Suspension and Delisting is Actual and Certain.

Nasdaq does not dispute that the harms Shineco predicted in its Motion would occur as a result of suspension and delisting, and Nasdaq certainly cannot deny their reality now. Before the suspension took effect, Nasdaq only could argue that these harms are economic in nature, though tragically that is now untrue both in legal concept or concrete experience. Even if Shineco's and its personnel's harms remained "essentially" economic, this superficial retort would not address the longstanding recognition that economic losses are not *merely* economic where they threaten a business's ability to carry out unique transactions, retain major revenue streams, and carry on as a going concern.

As Nasdaq itself noted repeatedly in its internal pursuit of Shineco's delisting, Shineco has struggled since the onset of the COVID-19 pandemic. Nasdaq falsely casts Shineco's recent difficulties as representative of Shineco's entire listing history. It should be easy to understand why a business in the field of biotechnology and medical devices would require years, not weeks or months to restructure its business in the wake of such a cataclysm. Just as Shineco was nearing fruition of those years' of effort, Nasdaq claimed for itself the vision to predict Shineco's failure and the power to ensure it. The Commission should recognize, as it has in the past, that this type of action has caused and will cause irreparable harm that Shineco cannot recover in later monetary damages.

III. NEITHER NASDAQ, NOR ANY OTHER INTERESTED PARTY, WILL SUFFER SUBSTANTIAL HARM AS A RESULT OF A STAY.

Since the trading suspension took effect on October 7, 2025, Shineco's stock has had no

impact on the Nasdaq Market environment. At this point, the only burden to Nasdaq under a stay is that Shineco at last will have a meaningful opportunity to challenge Nasdaq's delisting action. As the Exchange Act requires Nasdaq to follow the SEC appellate process, this is not a burden Nasdaq can avoid lawfully.

Shineco regained and maintained compliance with the Minimum Bid Price requirement for longer than it was "non-compliant," while Nasdaq instituted the stay on suspension for over two months until the Listing Council rendered its decision. Nasdaq suddenly cannot claim urgency now that it is the exchange's turn to have its actions reviewed.

Moreover, as Shineco has already briefed, the adverse impact on Shineco and its shareholders is far disproportionate to any burden to Nasdaq. The balance of the harms therefore falls in favor of a granting Shineco's petition.

IV. PUBLIC POLICY FAVORS A STAY OF THE DELISTING.

As Nasdaq's delisting of Shineco's stock is imminent, the public interest is best served by restoring the status quo ante at this time, through a stay of the suspension and delisting, permitting trading to resume on the Nasdaq pending the Commission's review of whether Nasdaq conducted the Delisting Determination and review lawfully and equitably.

Nasdaq's cursory argument recites the public interest in its ability to conduct enforcement while making no mention of the public interest in allowing the Commission to do the same. Shineco's appeal focuses on two critical elements of public interest that the Commission recognized in *Minim*. "The public interest . . . favors Nasdaq's compliance with its own rules in enforcing its listing standards and in providing a fair procedure for delisting determinations." *Minim, Inc.*, 2025 WL 606061, at *4 (citing *ABN AMRO Clearing Chicago LLC*, Exchange Act Release No. 83849, 2018 WL 3869452, at *2 (S.E.C. 2018)). As recounted in the Motion and this

Reply, the Listing Council's decision relies substantially on the view that Nasdaq is not truly bound by its written Listing Rules, nor obligated to give full consideration to review disciplinary actions. As the Listing Council openly disclaimed its interest in these fundamental tenets, it falls to the Commission to protect the public by issuing a stay while it considers Shineco's appeal.

CONCLUSION

The notion of a "fair hearing" in Nasdaq's star chamber process is akin to a Major League Baseball player arguing balls and strikes with the home plate umpire -- argue and you're thrown out. Shineco seeks a stay of suspension and delisting by the Commission so that Nasdaq's determination to delist Shineco's stock can undergo meaningful review for the first time. Shineco is likely to succeed on the merits of its appeal because Nasdaq gave no notice before retroactively enforcing a rule not in effect prior to a Shineco reverse stock split, while its failures to provide a fair procedure on review are clear. On the element of irreparable harm, Shineco has presented a clear case of imminent, irreversible injury that outweighs all other elements. The threat of delisting has jeopardized Shineco's strategic efforts; if Nasdaq proceeds with delisting, it will nullify contractually improvements Shineco has taken years to achieve and deplete Shineco's assets to the point of insolvency. Further, Nasdaq has failed to demonstrate any undue burden that will outweigh the injury to Shineco without the requested stay and order to permit resumed trading on the Nasdaq. Last, especially where Nasdaq has made concerning statements that call its accountability and impartiality into question, the public interest favors a stay to allow the Commission to review.

For the foregoing reasons, the Commission should issue an emergency stay of delisting to allow this appeal to proceed, stay the trading suspension and order the restoration of trading on the Nasdaq while the Commission considers the full appeal.

Dated: November 5, 2025

DICKINSON WRIGHT PLLC

s/ *Jacob S. Frenkel*

Jacob S. Frenkel, Esq.
Gregory L. Ewing, Esq.
Brian S. Yu, Esq.
International Square Bldg.
1825 I St. N.W., Suite 900
Washington, D.C. 20006
Tel: (202) 466-5953 | Fax: (844) 670-6009
JFrenkel@dickinsonwright.com
GEwing@dickinsonwright.com
BYu@dickinsonwright.com

Certificate of Document Length

I hereby certify that on November 5, 2025, I used the "Word Count" function in Microsoft Word to determine the word count in this Reply in Support of Shineco Inc.'s Motion for an Emergency Stay Pursuant to SEC Rule of Practice 401 to confirm compliance with the 7000 word limitation set forth in the Order Requesting Additional Submissions. Excluding any declarations, affidavits, attachments, cover page, Table of Contents, Table of Authorities, Statement of Filing by E-mail, this Certificate of Document Length, the Certificate of Service, and counsel's signature block, the word count is 6,993 words.

Dated: November 5, 2025, Washington, DC

s/ *Jacob S. Frenkel*
Jacob S. Frenkel
Dickinson Wright PLLC
International Square Building
1825 I St., N.W., Suite 900
Washington, DC 20006
Phone: (202) 466-5953
E-mail: jfrenkel@dickinsonwright.com
Counsel of Record for Shineco, Inc.

STATEMENT OF ELECTRONIC FILING AND CERTIFICATE OF SERVICE

The undersigned filed electronically with the Commission this Reply in Support of Shineco Inc.'s Motion for an Emergency Stay Pursuant to SEC Rule of Practice 401 via eFAP filing system and served or delivered courtesy copies to the following, parties and other persons entitled to notice in the manner set forth to the right of each served party:

Securities and Exchange Commission
c/o Hon. Vanessa A. Countryman, Secretary (via e-mail to Secretarys-Office@sec.gov)
100 F St., N.E.
Washington, DC 20549

The Nasdaq Stock Market LLC
c/o Alex Gesch, Esq. (via e-mail)
Gibson, Dunn & Crutcher LLP
1700 M St., N.W.
Washington, DC 20036-4504
202.887.3776
Email: agesch@gibsondunn.com

The Nasdaq Stock Market LLC
c/o Amir C. Tayrani, Esq. (via e-mail)
Gibson, Dunn & Crutcher LLP
1700 M St., N.W.
Washington, DC 20036-4504
202.887.3692
Email: atayrani@gibsondunn.com

s/ *Jacob S. Frenkel*
Jacob S. Frenkel
Counsel of Record for Shineco, Inc.