BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application for Review of

DNA Brands, Inc. (DNAX) and ZA Group, Inc. (ZAAG) Shareholders

File No. 3-22572

FINRA'S REPLY TO SHAREHOLDERS' OPPOSITION TO FINRA'S MOTION TO DISMISS THE APPLICATION FOR REVIEW AND TO STAY THE DEADLINE FOR FILING OF THE CERTIFIED RECORD AND INDEX AND THE ISSUANCE OF A BRIEFING SCHEDULE

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I. INTRODUCTION

In its Motion to Dismiss, FINRA argued that the application filed by two individual shareholders ("Shareholders"), one of ZA Group, Inc. ("ZAAG") and one of DNA Brands, Inc. ("DNAX") (together, "Issuers") should be dismissed for three reasons. First, FINRA argued that the Issuers failed to exhaust their administrative remedies in accordance with FINRA Rule 6490(e) because they did not appeal FINRA's determinations that the Issuers' requests to process documentation related to certain corporate actions ("Company-Related Actions") were deficient to FINRA's Uniform Practice Code Committee ("UPCC"). Second, FINRA argued that the Shareholders were not the "duly authorized representative[s]" of the Issuers under FINRA Rule 6490, nor had the Shareholders demonstrated that they are subject to an actual limitation or prohibition of access to FINRA's service of processing Company-Related Actions requests; therefore, the Shareholders are not a proper party before the Commission. Third, FINRA argued that the Commission lacks a statutory basis to exercise jurisdiction under Section 19(d) of the Securities Exchange Act of 1934 ("Exchange Act") over the Shareholders' demand that the

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Commission impose structural reforms and oversight measures to address their constitutional and other challenges to FINRA's Company-Related Actions process.

In their Opposition to FINRA's Motion to Dismiss, the Shareholders conflate the bases on which FINRA moves to dismiss their application for review and attempt to deflect from multiple dispositive defects by asserting, among other things, that FINRA's actions represent "an impermissible expansion of [its] Rule 6490 authority," "create a regulatory black hole for investors . . . [that] evade[s] any meaningful Commission review," and are "a calculated attempt to evade Commission oversight through procedural maneuvering." Opp'n to Mot. to Dismiss at 1-2, 17. But FINRA has an orderly appeal process for the UPCC to review FINRA's Department of Market Operations' ("Operations") determination not to process an issuer's documentation and announce a Company-Related Action that, if exhausted, allows the issuer to seek Commission review. *See* FINRA Rule 6490(e). Here, more than four months after the Issuers chose not to challenge FINRA's deficiency determinations, the Shareholders have inserted themselves into this process, seeking to unwind the administrative finality created by the Issuers' choice. The Issuers' decision not to avail themselves of the UPCC appeal process does not now create an avenue for these Shareholders to obtain Commission review that circumvents the orderly administrative process that was available to the Issuers.

The Shareholders also make the unsupported claim that the Commission's exhaustion requirement and jurisdictional constraints do not apply to their application for review because, as they concede, FINRA's internal review of deficiency determinations under FINRA Rule 6490 is not available to them. Opp'n to Mot. to Dismiss at 8-9. This argument in fact supports FINRA's position as it is, essentially, a dispositive concession that the service FINRA offers under Rule 6490 is for issuers, not shareholders who are not an issuer's duly authorized representative, and

the Commission therefore lacks jurisdiction under Section 19(d) of the Exchange Act. The Shareholders' complaints about FINRA's process, including that it is unavailable to the Shareholders, do not create a path to Commission review where none exists.[1] *See, e.g.*, *Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 SEC LEXIS 3464, at *10 (July 7, 2020) (finding that the absence of a mechanism to seek relief from agency action does not by itself provide a basis on which to grant appellate review); *WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 SEC LEXIS 3699, at *1-2, *11 (Sept. 9, 2015) (finding lack of jurisdiction over challenges to FINRA's membership application process when the firm withdrew its membership application before FINRA issued its final disposition).

The Shareholders offer no apposite authority for disrupting FINRA's orderly procedures under FINRA Rule 6490, undoing the administrative finality that resulted from the Issuer's failure to appeal to the UPCC, and petitioning the Commission for extraordinary relief. Their baseless assertions that FINRA has exceeded its authority under Rule 6490 and is attempting to

[1] The Shareholders argue that FINRA's position in this case is inconsistent with its position in litigation against FINRA filed by Stephen Hicks, who is a convertible note holder, in the name of Trillium Partners, L.P., of both ZAAG and DNAX. Opp'n to Mot. to Dismiss at 12-14. In that case, Hicks seeks equitable and monetary relief to address purported injuries to DNAX and ZAAG based on allegations that FINRA misapplied FINRA Rule 6490. *Stephen Hicks v. FINRA*, FINRA's Motion to Dismiss for Lack of Subject-Matter Jurisdiction and Failure to State a Claim for Relief, No. 1:25-cv-03598-EGS, at 12 (D.D.C. Dec. 4, 2025). FINRA argued that the "affected parties . . . deci[ded] not to seek review under the process required by the Exchange Act and the plaintiffs "lack[ed] standing to challenge the FINRA Rule 6490 deficiency notices because they did not make the requests that were found deficient, and they do not represent the companies that did make the request." *Id.* at 13. Thus, FINRA's position in this matter and the litigation brought by Hicks are wholly consistent. Both maintain that Commission review is appropriate only when the proper party follows the Rule 6490 process by appealing Operations' deficiency determination to the UPCC. *See, e.g.*, *mPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *34 (Feb. 2, 2015) (reviewing FINRA's deficiency determination only after the issuer followed FINRA's internal review process by appealing to the UPCC).

evade Commission review of its Company-Related Actions process are a red herring.[2] The simple facts remain: the Issuers chose not to pursue their administrative remedies before FINRA, the Shareholders are not proper parties before the Commission, and no statutory basis exists for the Commission to exercise its jurisdiction over the Shareholders' remaining requests for relief. *See Entrex Carbon Mkt., Inc.*, Exchange Act Release No. 104535, 2026 SEC LEXIS 13, at *3 (Jan. 2, 2026) (confirming that "a review proceeding . . . governed by Exchange Act Section 19(d) and (f) does not provide a means for [the Commission] to . . . review . . . FINRA's company-related action process)." The Commission, therefore, should dismiss the Shareholders' application for review.[3]

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[2] The only basis the Shareholders provide for challenging Operations' deficiency determinations, other than their structural and process complaints, is their assertion that the deficiency notices set forth "no issuer-level defect." Shareholders' Br. in Support of Appl. for Reviews at 17, 19; Opp'n to Mot. to Dismiss at 1, 2, 15, 17. But, as explained in FINRA's Motion to Dismiss, this is a misapplication of FINRA's rules, which state that FINRA "may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to such SEA Rule 10b-17 Action or Other Company-Related Action will not be processed," when FINRA has actual knowledge, as it does here, that a person connected to the issuer (in this case, Stephen Hicks) is the "subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations." *See, e.g.*, *mPhase Techs.*, 2015 SEC LEXIS 398, at *1-2, 18-23 (finding that FINRA properly declined to process a Company-Related Actions request under Rule 6490(d)(3) when the issuer's chief executive and chief operating officers were the subject of a settled regulatory action related to securities laws violations); FINRA's Mot. to Dismiss at 10 n.13.

[3] As FINRA described in its Motion to Dismiss, pursuant to Commission Rule of Practice 161, FINRA has requested that the Commission stay the deadline for the certification and filing of the record and index and stay the issuance of a briefing schedule while FINRA's Motion to Dismiss is pending. The Shareholders contend that by moving to stay the deadline for filing the record and index, FINRA is somehow violating the Commission's rules and obstructing the Commission's review. Opp'n to Mot. to Dismiss at 4. The Commission's rules, however, allow for parties to file motions like FINRA's. *See* 17 C.F.R. § 201.161 (permitting motions and requests for extensions of time, postponements, and adjournments); 17 C.F.R. § 201.154 (permitting motions generally).

[Footnote cont'd on next page]

II. ARGUMENT

A. The Commission Should Dismiss the Shareholders' Application for Review of FINRA's Deficiency Determinations

1. The Issuers Failed to Exhaust Their Administrative Remedies

The process under FINRA Rule 6490 for an issuer to appeal a deficiency determination is in no way, as the Shareholders argue, "opaque." *See* Opp'n to Mot. to Dismiss at 2. To the contrary, FINRA Rule 6490 expressly states that the issuer or a duly authorized representative of the issuer must file a written request for UPCC review within seven calendar days after service of Operations' deficiency notice. *See* FINRA Rule 6490(e). If the issuer or its representative

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[cont'd]

FINRA's requests in this case align with others in which the Commission granted FINRA's dispositive motion to dismiss. *See, e.g.*, *Entrex Carbon Mkt.*, 2026 SEC LEXIS 13, at *3, 4 n.12 (granting FINRA's motion to dismiss shareholders' application for review without issuing a briefing schedule or requiring FINRA to file a certified record and, accordingly, denying as moot FINRA's motions to stay the deadline for the certification and filing of the record and index and stay the issuance of a briefing schedule); *Michael A. Sparks*, Exchange Act Release No. 81787, 2017 SEC LEXIS 3106, at *2 & n.1 (Sept. 29, 2017) (granting FINRA's motion to dismiss the proceeding as moot and, based on that disposition, also denying as moot FINRA's requests that the Commission stay the requirement to file a certified record and index and stay the issuance of a briefing schedule). As in *Entrex* and *Sparks*, there is nothing untoward about FINRA's motions here asking the Commission to first evaluate FINRA's dispositive arguments before it reviews the entirety of the record and briefs on the merits in this matter.

The Shareholders contend that FINRA is "denying . . . Shareholders of the certified record essential to evaluating the nature and extent of FINRA's delay." Opp'n to Mot. to Dismiss at 4. A self-regulatory organization ("SRO") does not serve an applicant in an appeal of an SRO action under Section 19(d) with a copy of the certified record. *See* 17 C.F.R. § 201.420(e). When an SRO files a copy of the certified record and index with the Commission, the Rules of Practice require only that the SRO serve the applicant with a copy of the index. *Id.* If the Commission orders FINRA to file a certified copy of the record and index under Rule of Practice 420(e), FINRA will of course do so. But as FINRA requested in its Motion to Dismiss, FINRA moves under Rule of Practice Rule 322 for a protective order to limit from disclosure to the Shareholders the index of the record in this matter should FINRA be required to file one. FINRA's Mot. to Dismiss at 20 n.19.

fails to do so, then Operations' deficiency determination constitutes FINRA's final action. *See id.* The deficiency notices Operations sent the Issuers clearly set forth the steps the Issuers needed to take to challenge Operations' determinations. *See* Shareholders' Br. in Support of Appl. for Review, Exhibit 2 at 3-4 & Exhibit 4 at 3-5. As the Commission previously emphasized, "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing the review." *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at *9 (Apr. 10, 2014) (internal quotation omitted) (dismissing appeal for failure to exhaust FINRA's review procedures). The Shareholders concede—as they must—that the Issuers never appealed FINRA's deficiency determinations. Opp'n to Mot. to Dismiss at 7. Because the Issuers did not exhaust their administrative remedies, Commission review of Operations' deficiency determinations is foreclosed. *See Ronald Moschetta*, Exchange Act Release No. 104151, 2025 SEC LEXIS 2830, at *3 (Sept. 30, 2025).

As FINRA explained in its Motion to Dismiss, the Commission's precedent requiring parties to avail themselves of FINRA's procedures for internal review of FINRA actions is well-settled, and the Commission has consistently dismissed applications for review when, as here, there was a failure to exhaust administrative remedies under FINRA rules. *See, e.g.*, *Moschetta*, 2025 SEC LEXIS 2830, at *3 (dismissing application for review when applicant failed to appeal a FINRA hearing panel decision to FINRA's appellate council, and stating, "[w]e will not review [FINRA] action . . . if the applicant failed to exhaust [FINRA's] administrative remedies"); *Edward J. Jakubik*, Exchange Act Release No. 61541, 2010 SEC LEXIS 1014, at *13 (Feb. 18, 2010) (stating the Commission does "not consider an application for review if the applicant failed to follow [FINRA] procedures" and dismissing application for review of a default decision

barring the applicant). A broad consensus of federal courts agrees with the Commission's application of the failure to exhaust administrative remedies doctrine to FINRA proceedings. *See MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004) ("Administrative exhaustion requirements promote[] the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review."); *see also Lang v. French*, 154 F.3d 217, 220 (5th Cir. 1998) (holding that "[NASD] disciplinary orders are reviewable by the [Commission] after administrative remedies within the NASD are exhausted"); *Swirsky v. NASD*, 124 F.3d 59, 62 (1st Cir. 1997) (and cases cited therein); *First Jersey Sec., Inc. v. Bergen*, 605 F.2d 690, 696 (3d Cir. 1979). To be sure, the policy reasons supporting the exhaustion doctrine apply with equal force here.

The Shareholders nonetheless assert that the Commission's exhaustion requirement is "discretionary" and need not apply when, as here, the party entitled to appeal through FINRA's Rule 6490 process chose not to do so.[4] Opp'n to Mot. to Dismiss at 8. FINRA rules do not allow for a subset of individual shareholders, or even an aggrieved issuer, to appeal directly to the Commission from Operations' deficiency determination that has become FINRA's "final action" by virtue of the issuer's failure to appeal to FINRA's UPCC. *See* FINRA Rule 6490(e); *cf. Jakubik*, 2010 SEC LEXIS 1014, at *13 (refusing to consider application when applicant failed to exhaust administrative remedies by following SRO process for appellate review). Rather, an issuer may appeal to the UPCC, and it is the UPCC's decision that becomes FINRA's final action for Commission review. FINRA Rule 6490(e); *Positron Corp.*, Exchange Act

[4] Contrary to the Shareholders' assertions, FINRA's seven-day window and appeal fee do not excuse the Issuers' failure to exhaust. *See, e.g.*, *Graham*, 2020 SEC LEXIS 3464, at *9 (that fact that the appeal process "may be complicated, expensive, and time-consuming" does not provide a basis on which to grant appellate review that would otherwise be prohibited).

Release No. 74216, 2015 SEC LEXIS 442, at *7 (Feb. 5, 2015). The Shareholders are attempting to disrupt the designated process under Rule 6490 by circumventing the UPCC's review and appealing directly to the Commission irrespective of FINRA's rules that provide the Issuers with a specific process for appellate review. But this is plainly not the Commission's role. *See, e.g.*, *Jakubik*, 2010 SEC LEXIS 1014, at *13. To allow these Shareholders a basis to bypass the rule-based FINRA review and appeals process that the Issuers chose not to pursue "would fly in the face of the long-standing Commission precedent" that requires the exhaustion of administrative remedies. *See Florence Sarah Pollard*, Exchange Act Release No. 55978, 2007 SEC LEXIS 1430 at *6 (June 28, 2007); *cf., e.g.*, *Gremo Invs., Inc.*, Exchange Act Release No. 64481, 2011 SEC LEXIS 1695, at *9-10 (May 12, 2011) (rejecting FINRA member firm's request that the Commission retroactively approve non-party accounting firm's registration when accounting firm could have appealed the denial of its registration but declined to do so).

The Shareholders admit that they are not the "Requesting Party" under Rule 6490 and "therefore cannot file a UPCC appeal in their own right." Opp'n to Mot. to Dismiss at 8-9. The Shareholders simply cannot rely on the fact that they are not a party to FINRA's Company-Related Actions process to bypass the Commission's exhaustion requirement and FINRA Rule 6490, which specifically provides for additional review of Operations' deficiency determinations. *See Mullins*, 2014 SEC LEXIS 1268, at *9; *Sky Cap., LLC*, Exchange Act Release No. 55828, 2007 SEC LEXIS 1179, at *16 (May 30, 2007) (explaining that FINRA's actions generally may not be appealed to the Commission until they have been reviewed by FINRA's appellate review process).

Nor have the Shareholders demonstrated that the sensible objectives served by the Commission's exhaustion requirement—such as efficient resolution of disputes and development

of a record in the appropriate forum[5]—are somehow less important in the context here, when the Issuers, who made the Company-Related Actions requests that were the subjects of FINRA's deficiency determinations and who are therefore the proper party to challenge them, declined to appeal to the UPCC, and the Shareholders, who do not represent the Issuers, unilaterally seek the Commission's review of the deficiency determinations more than four months after the Issuers' failed to appeal. *See, e.g.*, *mPhase Techs.*, 2015 SEC LEXIS 398, at *34 (finding that the issuer's appeal to the UPCC of FINRA's deficiency determination provided the issuer the "opportunity to dispute" Operations' findings before the UPCC); *Positron*, 2015 SEC LEXIS 442, at *28 (affirming FINRA's deficiency determination and citing, in support of the determination, the UPCC's findings on appeal).

In sum, the Shareholders have not articulated any legitimate basis upon which to set aside the "long-standing Commission precedent" requiring exhaustion of administrative remedies and, for that reason alone, their application for review should be dismissed. *See Pollard*, 2007 SEC LEXIS 1430, at *6.

2. The Shareholders Are Not a Proper Party Before the Commission

The Shareholders are precluded from bringing this application for review. As FINRA explained in its Motion to Dismiss, FINRA has an orderly process whereby only "[a]n issuer or other duly authorized representative of the issuer may request that FINRA process documentation related to" Company-Related Actions, appeal Operations' deficiency

[5] Administrative exhaustion "promotes the efficient resolution" of disputes between SROs and its members and "promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review." *Shlomo Sharbat*, Exchange Act Release No. 93757, 2021 SEC LEXIS 3647, at *8 (Dec. 13, 2021) (quoting *MFS Sec. Corp.*, 380 F.3d at 621).

determination to the UPCC, and thereafter appeal the UPCC's determination to the Commission.[6] FINRA Rule 6490(b)(1), (e).

The Shareholders admit that they are not "duly authorized representative[s]" of the Issuers and are therefore precluded from appealing FINRA's deficiency determinations pursuant to FINRA Rule 6490(e), but they nonetheless contend that their application is permissible because they are purportedly "aggrieved" by FINRA's Rule 6490 process and Operations' determinations not to process and announce the Issuers' Company-Related Actions requests.[7] Opp'n to Mot. to Dismiss at 8-9. The Exchange Act's "aggrieved person" language, however, cannot be read in a vacuum. A person claiming to be "aggrieved" by FINRA's actions must also demonstrate one of the four statutory bases for Commission review under Section 19(d) of the Exchange Act. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 962-63 (2000); *see also WD Clearing, LLC*, 2015 SEC LEXIS 3699, at *10-19 (dismissing application when none of the four bases for the Commission's jurisdiction existed). As is relevant here, the Shareholders must demonstrate

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[6] The Shareholders claim that FINRA's statement that there are "limited circumstances" in which "certain third parties may submit a request" under Rule 6490(b) is a concession that Rule 6490 is "not a jurisdictional fence around Commission review." Opp'n to Mot. to Dismiss at 11. FINRA Rule 6490, however, specifically lists the parties other than the issuer or the issuer's duly authorized representative that may, in certain circumstances, seek relief from the UPCC, and, in turn, the Commission, and the parties specified do not include shareholders of the issuer. *See* FINRA Rule 6490.02.

[7] The Shareholders claim that the Commission's opinion in *Entrex*, by "addressing the merits" of the shareholders' application for review, "effectively recognized" shareholders' standing to challenge determinations issued under FINRA Rule 6490. Opp'n to Mot. to Dismiss at 10. The Shareholders misread the Commission's opinion. The Commission never addressed the merits of the shareholders' claims in *Entrex*; rather, it dismissed the shareholders' application for review because FINRA processed and announced the Company-Related Actions at issue. *Entrex Carbon Mkt.*, 2026 SEC LEXIS 13, at *2. The Commission determined that "Exchange Act Section 19(d) does not authorize the Commission to provide the remedies the Shareholders request[ed] and "dismiss[ed] the Shareholders' request that the Commission review FINRA's alleged delay in processing Entrex's company-related actions." *Id.* at *1, 3.

that Operations' determination not to process and announce the Issuers' requests "prohibits or limits [the Shareholders] in respect to services" FINRA offers. 15 U.S.C. § 78s(d)(1). The Shareholders have failed to do so.

As highlighted above, the Shareholders, who are not disputing that they lack authority to act on the Issuers' behalf, cannot insert themselves into this proceeding based solely on purported harm from FINRA's determinations that the Issuers' Company-Related Actions requests were deficient. "'SRO action is not reviewable merely because it adversely affects the applicant.'" *Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *19 (Sept. 30, 2016) (quoting *Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 SEC LEXIS 2464, at *5 (July 15, 2016)). The fact that FINRA's internal appellate process provides no path for *shareholders* to appeal deficiency determinations made in connection with an *issuer's* Company-Related Actions request (unless a shareholder is also a duly authorized representative of the issuer, which is not the case here) does not confer on these Shareholders the ability to seek Commission review under Section 19(d). *Cf. Graham*, 2020 SEC LEXIS 3464, at *10 (finding that the absence of a mechanism to seek relief from agency action does not by itself provide a basis on which to grant appellate review). "[T]he contours of [the Commission's] jurisdiction are not limitless, and we do not mean to suggest that anyone may bring an application for review of SRO action that prohibits or limits any other person's access to SRO services." *Sec. Indus. & Fin. Mkts. Ass'n*, Exchange Act Release No. 72182, 2014 SEC LEXIS 1686, at *28-29 (May 16, 2014) (defining limited circumstances not applicable to this matter in which an industry trade group acting *in a representative capacity* may have standing). The Shareholders cannot identify a FINRA service that FINRA offers to them in which their access was prohibited or limited, and, consequently, they are not entitled to appellate review under

Section 19(d) of the Exchange Act.[8] *See id.* at *33 ("[A]n applicant must still be subject to an SRO action that actually *limits* its access to SRO services.").

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[8] The Shareholders' reliance on the Commission's decision in *Gregory Acosta* to argue that their access to FINRA services was limited is misplaced. *See* Opp'n to Mot. to Dismiss at 5-6. The Commission in *Acosta* found it had jurisdiction under Section 19(d) of the Exchange Act because FINRA's determination that an associated person was statutorily disqualified, under the unique circumstances of that case, effectively barred the individual from associating with a member firm, and thereby subjected that individual to one of the four prongs authorizing Commission review of an SRO action. *See Gregory Acosta*, Exchange Act Release No. 89121, 2020 SEC LEXIS 3470, at *9, 15 (June 22, 2020); 15 U.S.C. § 78s(d)(1) (providing that SRO action that "bars any person from becoming associated with a member" is subject to review). The circumstances here are wholly distinguishable. The Shareholders make a strained attempt to invoke Section 19(d)'s prong requiring a prohibition or limitation on access to services, arguing that Operations' determinations with respect to the *Issuers'* Company-Related Actions requests were an effective limitation on the *Shareholders'* access to services. But the service in question here is specifically for issuers, or their duly authorized representative, and the Shareholders cannot establish a limitation on a service FINRA does not offer them. The Shareholders' assertion that the Commission's review exclusively "turns on the substance of a matter" under Section 19(d) ignores the necessary administrative process under Rule 6490 that precedes that review—an appeal process that the Issuers undeniably chose not to pursue—and the requirement that the proper party seek that review. Opp'n to Mot. to Dismiss at 5-6.

The Shareholders' reliance on *MFS Secs. Corp. v. NYSE* supports FINRA's position: Following administrative exhaustion by the proper party, Commission review of an SRO action that results in a denial or limitation of access to services offered by the SRO is available. 277 F.3d 613, 620 (2d Cir. 2002) ("The NYSE's revocation of MFS's membership and its actions to cut off phone service manifestly limited MFS's access to services. Accordingly, SEC review was available to MFS."). Unlike in *MFS*, FINRA has not prohibited or limited the Shareholders' access to services. Although FINRA provides its service of reviewing Company-Related Actions requests to issuers, it does not offer any such service to shareholders unless that shareholder is also a duly authorized representative of the issuer. *See* FINRA Rule 6490.

The Shareholders also rely on an unrelated rulemaking to support their view that the Commission recognizes the concept of a "constructive denial" of access to services. Opp'n to Mot. to Dismiss at 6. The language relied upon by Shareholders, however, was not that of the Commission, but that of a commenter, and this rulemaking said nothing about the scope of review under Section 19(d). *Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Improved Nasdaq Opening Process*, Exchange Act Release No. 50405, 69 Fed. Reg. 57,118 (Sept. 23, 2004) (SR-NASD-2004-071). *But see, e.g.*, *WD Clearing*, 2015 SEC LEXIS 3699, at *1-2 (rejecting claim of "de facto" denial of access to services under Section 19(d)). In any event, the Shareholders' arguments regarding so-called "constructive denials" of access to service focus on Operations' purported "delay" in considering the Issuers'

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B. The Commission Lacks Jurisdiction in this Action over the Shareholders' Requests for Structural Reforms and Oversight Measures

In their application for review and supporting brief, the Shareholders stated their requests for relief, which include, among other things, demands that the Commission: (1) "impose structural reforms on FINRA's Rule 6490 process," including, among other things, mandatory processing timeframes and an independent internal appeals authority; and (2) take steps to ensure that FINRA's exercise of its authority under FINRA Rule 6490 "remains consistent with the Exchange Act and with the relevant constitutional principles." Shareholders' Br. in Support of Appl. for Review at 18-22.

In their Opposition to FINRA's Motion to Dismiss, and after the Commission issued its opinion in *Entrex* rejecting similar arguments made by shareholders in that matter, the Shareholders now attempt to distance themselves from these requests for relief. *See* Opp'n to Mot. to Dismiss at 14 ("FINRA's motion attempts to convert a straightforward Section 19 review of concrete FINRA actions into an invitation to dismiss because shareholders *purportedly* seek structural reforms and oversight measures.") (emphasis added).[9] Nonetheless, the arguments the

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requests before making its deficiency determinations. Opp'n to Motion to Dismiss at 6. But as *Entrex* reflects, the Commission lacks "statutory authority" to review purported delays that precede a final FINRA 6490 determination. *See Entrex Carbon Mkt.*, 2026 SEC LEXIS 13, at *2.

[9] This inaccurate characterization of FINRA's position in this matter conflates the bases on which FINRA moves to dismiss this application for review. Opp'n to Mot. to Dismiss at 14. FINRA moves to dismiss the Shareholders' request for review of Operations' deficiency determinations in connection with the Issuers' Company-Related Actions requests based on the Issuers' failure to exhaust their administrative remedies under Rule 6490 and the fact that the Shareholders are an improper party before the Commission. FINRA's Mot. to Dismiss at 12-18. Separately, FINRA moves to dismiss with respect to the Shareholders' demands for structural

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Shareholders make in their Opposition to FINRA's Motion to Dismiss primarily revolve around FINRA's process for reviewing documentation relating Company-Related Actions requests under Rule 6490. These arguments are consistent with their initial requests for relief in their application for review and constitute a further attempt to challenge FINRA's Rule 6490 process on constitutional and other grounds—arguments that the Commission expressly rejected when dismissing the application for review in *Entrex*. Opp'n to Mot. to Dismiss at 3-4, 18 (stating, "[h]ere, the challenged conduct is the very architecture of delay and obstruction that deprives the shareholders of a timely and reviewable determination"; defining the issue as "whether FINRA may convert Rule 6490 into an unreviewable, months-long . . . blockade of lawful corporate actions"; and alleging that, by "unilaterally obstruct[ing] market participants' access to essential services without accountability," FINRA "operates as an unconstitutional fourth branch of government" in its processing of Company-Related Actions); *see Entrex Carbon Mkt.*, 2026 SEC LEXIS 13, at *2-3.[10] The Commission in *Entrex* made clear that in a "proceeding such as this

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reforms and oversight measures because those demands do not fall within any of the jurisdictional prongs of Section 19(d). FINRA's Mot. to Dismiss at 18-20.

[10] The Shareholders repeatedly misconstrue FINRA's arguments, alleging that FINRA claims its Rule 6490 deficiency determinations are unreviewable. Opp'n to Mot. to Dismiss at 5 ("FINRA's motion asks the Commission to accept the dangerous proposition that, by characterizing its own conduct as 'non-reviewable,' it can insulate that conduct from oversight altogether."). This mischaracterizes FINRA's position. As discussed at length in FINRA's Motion to Dismiss and in this Reply, under Rule 6490, an issuer properly can appeal to the Commission after FINRA determines a Company-Related Action request to be deficient and the issuer has exhausted its administrative remedies by appealing to the UPCC under Rule 6490(e). *See, e.g.*, *mPhase Techs.*, 2015 SEC LEXIS 398, at *34 (reviewing FINRA's deficiency determination after the issuer followed FINRA's internal review process by appealing to the UPCC); *Positron*, 2015 SEC LEXIS 442, at *28 (same). That the procedural steps necessary to obtain such review did not occur here does not negate the existence of that review process. *See MFS Sec. Corp.*, 277 F.3d at 619-20.

governed by Exchange Act Section 19(d) and (f)," the Exchange Act "does not provide a means for [the Commission] to order disgorgement or award damages, to direct FINRA to amend its rules, or to review or issue guidance regarding FINRA's company-related action process." *Id.* at *3. Moreover, as the Commission explained, the fact that the Shareholders' requests for structural reforms and oversight measures are not reviewable under Exchange Act Section 19(d) "in no way limits the Commission's broad oversight under the Exchange Act to ensure that FINRA abides by the Exchange Act and rules and regulations promulgated thereunder," including through Section 19(h) and the Commission's general oversight examination program. *Id.*; FINRA's Mot. to Dismiss at 3 n.3. Nor do the Shareholders' efforts "to present [their] claim against FINRA as a constitutional violation [] create authority for [the Commission] under Exchange Act Section 19(d) to entertain [an] application for review of the actions FINRA took." *BlackBook Cap., Inc.*, Exchange Act Release No. 97027, 2023 SEC LEXIS 524, at *10 (Mar. 2, 2023); *see also Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 SEC LEXIS 1284, at *20 (June 3, 2019).

In sum, and as FINRA thoroughly explained in its Motion to Dismiss, the Commission should dismiss the Shareholders' requests for process reforms and oversight measures because none of the jurisdictional prongs of Exchange Act Section 19(d) apply and there is no relief that the Commission can grant the Shareholders under Section 19(f). *See Entrex Carbon Mkt.*, 2026 SEC LEXIS 13, at *2-3.

III. CONCLUSION

It is undisputed that the Issuers failed to exhaust their administrative remedies to challenge Operations' deficiency determinations under FINRA 6490, and the Shareholders are not a proper party before the Commission. Moreover, none of the four possible grounds for

Commission jurisdiction set forth by Exchange Act Section 19(d) applies to the Shareholders' requests for structural reforms and oversight measures, including those related to their constitutional claims. The Commission should follow its well-established precedent related to exhaustion and its jurisdiction and dismiss the Shareholders' application for review.

Respectfully submitted,

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January 8, 2026

CERTIFICATE OF COMPLIANCE

I, Elizabeth Sisul, certify that:

(1) FINRA's Reply to Shareholders' Opposition to FINRA's Motion to Dismiss the Application for Review and to Stay the Deadline for Filing of the Certified Record and Index and the Issuance of a Briefing Schedule complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information; and

(2) FINRA's Reply to Shareholders' Opposition to FINRA's Motion to Dismiss the Application for Review and to Stay the Deadline for Filing of the Certified Record and Index and Issuance of a Briefing Schedule complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 5,466 words.

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Dated: January 8, 2026

CERTIFICATE OF SERVICE

I, Elizabeth Sisul, certify that on this 8th day of January 2026, I caused a copy of the foregoing Reply to Shareholders' Opposition to Motion to Dismiss and to Stay the Deadline for Filing of the Certified Record and Index and the Issuance of a Briefing Schedule, in the matter of Application for Review of DNA Brands, Inc. (DNAX) and ZA Group, Inc. (ZAAG) Shareholders, Administrative Proceeding File No. 3-22572, to be filed through the SEC's eFAP system.

And served by electronic mail on:

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