UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF THE APPLICATION OF **UHF LOGISTICS GROUP, INC. (OTC:RGLG) SHAREHOLDERS** **FOR REVIEW OF ACTION TAKEN BY** **FINRA**	**ADMINISTRATIVE PROCEEDING** **File No.: 3-22473**

OPPOSITION TO FINRA'S MOTION TO DISMISS SHAREHOLDERS' APPLICATION FOR REVIEW AND TO STAY THE DEADLINE FOR FILING THE CERTIFIED RECORD AND INDEX

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I. INTRODUCTION

For more than 15 months, FINRA's Department of Market Operations held the corporate future of Entrex Carbon Market, Inc. ("Entrex") in regulatory limbo, refusing to process properly filed Corporate Actions under Rule 6490. Only after the Shareholders filed their Application for SEC Review did FINRA suddenly issue its determination—a transparent attempt to evade Commission oversight that lays bare FINRA's contempt for both its regulatory obligations and the investors it purports to protect.

FINRA now asks this Commission to ignore its constitutional duty of oversight, arguing that FINRA's calculated last-minute approval renders this matter "moot" and that the Commission lacks jurisdiction to review FINRA's systemic failures. This position creates an untenable regulatory black hole: FINRA can indefinitely delay processing requests with no consequences, leaving affected parties with no recourse until FINRA deigns to act. Such a scheme directly contradicts Section 19 ("Section 19") of the Securities Exchange Act of 1934 ("Exchange Act"), which explicitly authorizes review when FINRA's actions—or strategic inactions—effectively deny access to services.

The Commission's oversight authority is not limited to reviewing final determinations but extends to constructive denials and procedural abuses that harm market participants. As established in *Gregory Acosta* and *MFS Securities Corp.* (discussed in greater detail below), actions "having the effect" of limiting services are reviewable regardless of whether a formal denial was issued. FINRA's 15-month obstruction precisely fits this standard, preventing Entrex from pursuing any administrative remedy while subjecting Shareholders to ongoing regulatory uncertainty, market confusion, and conflicts with state authorities.

Most troublingly, FINRA's attempt to strip Shareholders of standing directly contradicts both Section 19's explicit protection of "any person aggrieved" and FINRA's own professed 85-year mission to "protect investors." By claiming only issuers—not their shareholders—can challenge its actions, FINRA seeks to insulate itself from accountability to the very stakeholders it claims to safeguard.

FINRA's continuing obstructionism is further evidenced by its refusal to produce the certified record required under Commission Rule 420(e), while simultaneously claiming this matter is "more complicated" despite having these documents in its possession for over a year. This tactical withholding of evidence only underscores the need for Commission intervention.

Ultimately, FINRA presents a constitutional paradox: either the SEC possesses authority to sanction FINRA for its flagrant misconduct, or FINRA is exercising governmental power without constitutional accountability—a clear violation of the private nondelegation doctrine recently reaffirmed in *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314 (D.C. Cir. 2024). FINRA cannot claim both immunity from oversight and constitutional legitimacy.

For these reasons, FINRA's motion must be denied. The Shareholders are entitled to meaningful review of FINRA's constructive denial and to appropriate regulatory reforms that prevent future abuses of FINRA's delegated authority.

II. ARGUMENT

A. The SEC Has Broad Authority to Review FINRA's Actions, Inactions, and Constructive Denials that Limit Access to Services.

The SEC is charged with comprehensive oversight of FINRA by virtue of its delegation of duties to FINRA, a private SRO whose powers exist solely according to the mandate of the SEC. Section 19 of the Exchange Act, 15 U.S.C. § 78s. The SEC's oversight authority is not narrowly limited to review of FINRA's *affirmative* actions under its rules, but extends to failures to adhere

to procedural duties, unreasonable delays, and constructive denials of services under Rule 6490. Entrex's Shareholders are entitled to timely processing of documentation under Rule 6490 and to a determination approving or denying the request—otherwise, Rule 6490 would serve no purpose and should not remain on the books.

The SEC has consistently recognized its authority to review actions that effectively deny services, even when no formal denial has been issued. As the Commission has explained in *Gregory Acosta*, SRO action "having the effect" of limiting services—"whether formally [denied] or not"—is reviewable under Section 19(d). *Gregory Acosta,* Exchange Act Release No. 89121, 2020 WL 3428890, at *4 & n.15 (June 22, 2020). Similarly, in *MFS Securities Corp.*, the Second Circuit confirmed that actions that "manifestly limited" access to services were reviewable by the SEC under Section 19(d)(2), recognizing the substance of the denial rather than its form. *MFS Sec. Corp. v. New York Stock Exchange*, 277 F.3d 613, 620 (2d Cir. 2002).

FINRA's systematic and unexplained 15-month delay in processing Entrex's Corporate Actions constitutes precisely such a constructive denial. The SEC itself has recognized this principle in its own rulemaking, noting that the exclusion of electronic communication networks would be a "constructive denial of access" to Nasdaq's service. Exchange Act Release No. 50405 (Jan. 14, 2004), 99 SEC Docket 387. Here, FINRA's egregious delay in acting on the Rule 6490 request prevented Entrex from pursuing any administrative remedy and effectively denied Entrex and its Shareholders access to a critical service.

FINRA's argument that "Operations' determination to process the Corporate Actions requests does not fall within the jurisdictional prongs under which an application for review is available" defies logic and undermines the Commission's oversight role. (FINRA Reply in Support of Motion to Extend Time at 3). In no rational system would a party be prevented from challenging

unreasonable delay merely because the regulator finally acted after an application for review was filed. By withholding a determination for more than 15 months, FINRA denied Entrex and the Shareholders the right to be "heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The timing of FINRA's belated approval—coming only after the filing of the Shareholders' Application—clearly demonstrates a calculated attempt to evade Commission review.

This Application is properly made by the Shareholders precisely because FINRA's inexcusable delay in processing the Rule 6490 requests prevented Entrex from pursuing any other administrative remedy from FINRA. FINRA's theory would create a regulatory black hole: without a final determination, there can be no appeal under FINRA's own rules, yet FINRA now argues its delay is unreviewable. This interpretation would grant FINRA unfettered discretion to delay indefinitely with no recourse for affected parties—a position utterly at odds with the Commission's statutory oversight responsibility. The Shareholders have been severely prejudiced by FINRA's inaction, and the SEC has both the authority and the duty to review this constructive denial under Exchange Act Section 19.

B. FINRA's Eleventh-Hour Approval Cannot Moot this Proceeding and Permit FINRA's Systemic Delays to Evade Review and Harm Investors

FINRA's pattern of systemic delays in processing Rule 6490 requests represents a controversy that is "capable of repetition, yet evading review" -- a practice that cannot be rendered moot simply through last-minute approvals. By issuing determinations only after legal challenges are filed, FINRA creates a troubling precedent that undermines proper oversight and accountability. This tactical approach is exemplified in Entrex's case, where FINRA provided no explanation for its inexcusable delay, yet now argues that Shareholders' Application could not be filed because "there was no final determination by FINRA." (FINRA Reply in Support of Motion

to Extend Time at 1). FINRA's last-minute determination under Rule 6490—conspicuously timed only after Shareholders filed their Application—only makes matters worse.

The Supreme Court has established that a controversy is not moot when the challenged conduct is "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911); *see also SEC v. Sloan*, 436 U.S. 103, 109 (1978) (finding case not moot because there was a "reasonable expectation" that the same party would be subjected to the same action again). FINRA's pattern of delay in processing corporate actions perfectly fits this description. Like the EPA in *Friends of the Earth, Inc. v. Laidlaw Environmental Services*, 528 U.S. 167 (2000), FINRA bears "the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Id*. at 190. FINRA has utterly failed to meet this burden.[1]

The delay at issue here presents significant policy concerns that transcend Entrex's particular case. As the Commission has recognized, issues that "involve important policy considerations" should not be deemed moot even after the specific controversy is resolved. *Interactive Brokers*, Exchange Act Release No. 39765, 1998 WL 117627, at *3 n.14 (Mar. 17, 1998) (Commission exercised discretion to consider an otherwise moot appeal where “important policy questions [were] implicated); *Beatrice J. Feins & Jonathan E. Feins*, Release No. 33374, 1993 WL 538913, at *2 n.8 (Dec. 23, 1993) (Commission determined it was appropriate to resolve

[1] Shareholders understand that unreasonable and inexplicable delays in processing corporate actions by FINRA are distressingly common. As a small example, the following issuers have been waiting more than one year for approval of simple corporate actions (reverse stock splits, specifically): SANP - Santo Mining Corp; DNAX - DNA Brands, Inc.; ZAAG - ZA Group Inc.; and PDPG - Performance Drink Group Inc. This pattern of systemic delay directly harms investors and issuers alike, creating precisely the type of ongoing harm that warrants Commission review regardless of whether FINRA eventually acts in any particular case.

84-year-old grandmother Feins' appeal of AMEX's decision to deny membership application even though Feins was not at that time an applicant for membership).

In attempting to argue that Entrex Shareholders' Application is now moot, FINRA utterly disregards the Shareholders' right to relief in the form of the SEC's review of whether FINRA properly executed its duties as delegated and overseen by the SEC. Additionally, it is questionable if such delegation is appropriate, and if FINRA's authority under Rule 6490 violates constitutional limitations for lack of proper oversight. Shareholders will not withdraw the Application because FINRA's approval—prompted only by Shareholders' request for review—did not resolve the questions regarding execution of FINRA's duties under Rule 6490. *Cf. Beatrice J. Feins*, Release No. 33374, 1993 WL 538913, (despite mootness of membership application, Commission found that Feins met all the membership criteria published by AMEX also stated that the factors used by AMEX to deny Feins's membership application were "not identified in AMEX's rules" and had not been uniformly applied by AMEX in the past).

FINRA's attempt to sidestep the SEC is contrary to the responsibility of FINRA. Entrex Shareholders are entitled to an appellate review process, one that FINRA has attempted to eliminate by belatedly processing Corporate Actions that should have been processed long ago. FINRA's suspect timing in processing these long-pending Corporate Actions plainly appears designed to create a lack of appellate jurisdiction and avoid SEC oversight.

C. Entrex Shareholders Have Clear Statutory Standing as Aggrieved Persons Directly Harmed by FINRA's Deliberate Obstruction of Services.

Shareholders seek review and relief from the SEC as Entrex shareholders, under jurisdiction granted by Section 19 of the Exchange Act. 15 U.S.C. § 78s. Shareholders have unquestionable standing to pursue this action as investors directly injured by FINRA's arbitrary and inexcusable delay. Section 19(d)(1) of the Exchange Act explicitly authorizes the SEC review

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"upon application by *any person aggrieved*" by self-regulatory organization actions. 15 U.S.C. § 78s(d)(1) (emphasis added). The Commission's own Rule 420(a)(3) reinforces this right, providing that an application for SEC review "may be filed by *any person who is aggrieved* by a determination of a self-regulatory organization with respect to... [a] prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof." 17 C.F.R. § 201.420. FINRA's own Rule 1019 uses the same "person aggrieved" language to describe who has standing to seek SEC review of FINRA actions and does not restrict SEC review to issuers.

FINRA's attempt to narrowly construe its own Rule 6490 as limiting claims to the issuer alone fundamentally misreads both the Exchange Act and the Commission's rules. Rule 6490(b) merely specifies procedural requirements for submitting documentation—it does not and cannot override the statutory rights of aggrieved persons under Section 19 or SEC Rule 420. The Shareholders' economic and reputational injuries from FINRA's harmful delay provide textbook standing under the Exchange Act's remedial framework.

Most critically, FINRA's argument creates an absurd regulatory loophole: while proudly touting its 85-year mission of "protecting investors," FINRA simultaneously seeks to strip those very investors of their statutory right to SEC review. By asserting that only issuers—not shareholders—can challenge its actions, FINRA attempts to insulate itself from accountability to the precise stakeholders it claims to safeguard. This contradicts both the explicit text of Section 19 and the Exchange Act's fundamental purpose of ensuring that self-regulatory organizations remain answerable to the investing public they serve.

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D. FINRA's Deliberate Withholding of the Certified Record Violates SEC Rules and Obstructs Proper Review

FINRA's flagrant disregard for the SEC's procedural rules represents yet another attempt to obstruct proper review of its actions. The SEC's April 10, 2025, letter copied to FINRA unequivocally states that "within 14 days after it receives your application for review, FINRA must file a certified copy of the record in the proceeding and an index to the record." This clear mandate established April 22, 2025, as FINRA's deadline to comply. FINRA has not complied.

Rather than fulfilling this basic procedural obligation, FINRA instead filed a motion to extend time—a tactic that appears calculated to further delay review of its conduct. The SEC has not ruled on this motion, meaning FINRA remains in direct violation of Commission Rule 420(e). FINRA's non-compliance is particularly egregious given the circumstances of this case, where it has already subjected Entrex and the Shareholders to extraordinary delays spanning more than 15 months.

FINRA now attempts to invert the procedural framework by suggesting in its motion to dismiss that it would prepare the record only "if the SEC were to order FINRA to file a certified copy." FINRA Motion to Dismiss at 16, fn. 8. This position fundamentally misrepresents the regulatory scheme. The Commission's rules do not make record production optional or contingent upon a secondary order—they mandate it as a fundamental component of the review process.

FINRA's assertion that the Rule 6490 requests make it a "more complicated" case is disingenuous. FINRA has had many of the documents constituting the record in its possession for over 15 months—ample time to compile and organize them for review. FINRA apparently already knows that the record “will include, among other things, sensitive information about, and in support of, the issuer’s Company-Related Actions requests and information related to corporate governance and transactions that are sensitive to the issue,” and FINRA has already determined

that disclosing the record to Shareholders will cause "harm." FINRA Motion to Dismiss at 16, fn. 8. If the documents are readily available for FINRA to make these determinations, they should have been produced as required.

Most troublingly, FINRA's refusal to file the record severely prejudices both the Shareholders and the SEC itself. The Shareholders must now respond to FINRA's motion to dismiss without access to the very record that would substantiate their claims about FINRA's improper delays and conduct. The SEC is similarly handicapped in evaluating FINRA's assertions without the complete administrative record. This tactical withholding of information further demonstrates FINRA's pattern of evading proper oversight. The Motion to Dismiss should be denied.

FINRA's claim that the case is moot because it finally approved the Corporate Actions—only after the Application was filed—is directly contradicted by its failure to provide the record that would reveal the timeline and reasoning for this suspiciously timed decision. This continued obstruction further supports Shareholders' contention that FINRA is engaged in a coordinated effort to evade Commission review and frustrate regulatory oversight.

E. Either the SEC Has Authority to Sanction FINRA, or FINRA has Exercised Unconstitutionally Delegated Powers

FINRA's motion to dismiss presents a constitutional paradox that reveals the fundamental flaw in its position. FINRA boldly claims the SEC lacks jurisdiction to order disgorgement of fees, impose reforms on its corporate action processing, or even evaluate the constitutionality of that process. Motion to Dismiss at 10-15. Remarkably, FINRA fails to identify any sanction—monetary or otherwise—that the SEC could impose for FINRA's clear dereliction of duty in this matter.

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This assertion of immunity from SEC oversight is not only legally incorrect but constitutionally untenable. The SEC unquestionably possesses broad authority to discipline self-regulatory organizations like FINRA. *See*, *e.g.*, *In re Certain Activities of Options Exchanges*, Exchange Act Release No. 43,268, 2000 SEC LEXIS 1957 (Sept. 11, 2000) (censuring and imposing comprehensive sanctions against SROs under Section 19 of the Exchange Act for impeding options market operations).

However, if the Commission were to accept FINRA's extraordinary claim that it cannot be sanctioned, then FINRA's conduct would flagrantly violate the private nondelegation doctrine. The D.C. Circuit recently reaffirmed this fundamental principle: a private SRO like FINRA may "act only as an aid to an accountable government agency that retains the ultimate authority to approve[], disapprove[], or modif[y] the private entity's actions and decisions on delegated matters." *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1325 (D.C. Cir. 2024).

The constitutional requirement is unambiguous—"a private entity may wield government power only if it functions subordinately to an agency with authority and surveillance over it." *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 107 F.4th 415, 423 (5th Cir. 2024). If FINRA can unilaterally deny services to the detriment of shareholders, issuers, and market integrity without any potential for SEC redress, it would operate as an unaccountable fourth branch of government—precisely the constitutional violation that the private nondelegation doctrine prohibits.

FINRA cannot have it both ways. Either the SEC possesses the authority to sanction FINRA for its misconduct, or FINRA is exercising governmental power without constitutional accountability. The former interpretation preserves FINRA's constitutional role; the latter renders its actions unconstitutional.

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III. CONCLUSION

FINRA's motion to dismiss represents a calculated attempt to evade Commission oversight through procedural maneuvering. Its belated approval of Entrex's Corporate Actions—after 15 months of unexplained delay and only following Shareholders' Application—cannot render this matter moot when such conduct is "capable of repetition, yet evading review." The Commission has both the authority and the duty to review FINRA's constructive denial of services under Section 19, which expressly protects "any person aggrieved" by SRO actions.

If FINRA can unilaterally obstruct market participants' access to essential services without accountability, it operates as an unconstitutional fourth branch of government. Either the SEC has authority to sanction FINRA for its misconduct—as precedent clearly establishes—or FINRA's actions violate the private nondelegation doctrine recently reaffirmed by federal courts. The Commission must reject FINRA's jurisdictional arguments and exercise its oversight responsibility to ensure FINRA properly executes its delegated duties for the protection of all market participants.

For these reasons, Shareholders respectfully request that the Commission deny FINRA's motion and proceed with full review of this matter.

Dated: May 9, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

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