

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Admin. Proc. File No. 3-20647

In the Matter of the Application of

PAUL ERIC FLESCHE

For Review of Disciplinary Action Taken by

FINRA

**REPLY IN FURTHER SUPPORT OF
MOTION TO DISMISS FINRA DISCIPLINARY MATTER WITH PREJUDICE**

Paul Eric Flesche, by and through undersigned counsel, respectfully submits this Reply in Further Support of his Motion to Dismiss with Prejudice the above-referenced FINRA disciplinary matter. FINRA’s August 1, 2025, “Response to Flesche’s Motion to Dismiss” (hereinafter “FINRA’s Response”) is a disingenuous attempt to deflect from its prolonged and inexcusable inaction in complying with this Commission’s December 19, 2024, Order of Remand. FINRA’s arguments are devoid of merit and only underscore why the matter must be dismissed.

I. FINRA’s Jurisdictional Argument is a Red Herring

FINRA’s entire opposition hinges on the specious claim that the Commission “lacks a statutory basis to exercise jurisdiction” under Section 19(d) of the Exchange Act because there is no final FINRA action to review. (FINRA’s Response at 2-4). This argument is a blatant misrepresentation of the Commission’s inherent authority and the unique circumstances of this

case. To the extent that there is no final FINRA action to review, that is because refuses to allow there to be a proceeding whereby there could be a final FINRA action to review –in violation of this Commission’s specific Order.

First, FINRA conveniently ignores the fundamental premise of Mr. Flesche’s Motion: it is not an appeal of a new FINRA final action but rather a plea for the Commission to exercise its supervisory authority to *compel agency action unlawfully withheld or unreasonably delayed* under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1). The Commission’s original Remand Order was a definitive directive to FINRA to conduct “further proceedings consistent with this opinion” to address a critical procedural deficiency – the lack of information necessary to determine the fairness of FINRA’s initial proceeding regarding potential bias. FINRA’s subsequent seven months of complete inaction, coupled with its explicit refusal to initiate such proceedings, constitutes a clear unlawful withholding of agency action that falls squarely within the Commission’s power to remedy. To suggest that the Commission is powerless to enforce its own orders when an SRO deliberately defies them is an interesting tactic, and calls into question the entire system of financial regulatory integrity.

Second, FINRA’s reliance on cases like *Interactive Brokers* is inapposite. Those cases dealt with appeals of non-final FINRA actions *where the SRO was actively engaged* in a process that had not yet reached its conclusion. Here, FINRA is *not* actively engaged in the further proceedings ordered by the Commission. Instead, it has deliberately stalled, using the pendency of the matter before its National Adjudicatory Council (“NAC”) as a shield for its non-compliance. The NAC’s deliberation on August 21, 2025, as now belatedly announced by FINRA after the instant motion was filed¹, is utterly irrelevant to the Commission’s directive for *further proceedings* to address

¹ The notion that August 21, 2025 was the first opportunity for the NAC to take this matter up since the Commissioner’s December 19, 2024 Order is absurd. Occam’s razor suggests this is a lame attempt at an excuse for

the fairness issue. The NAC's role is to review existing records or remand for new proceedings; it is not, and cannot be, a substitute for FINRA's obligation to create the record the Commission demanded. FINRA's statement that "the NAC will deliberate the remanded proceeding" (FINRA's Response at p.4 highlights FINRA's deliberate fundamental misunderstanding regarding the purpose of the Commission's remand. The Commission plainly did not remand for the NAC to simply *re-deliberate* on an inadequate record; it remanded for FINRA to *create* an adequate record through further proceedings involving meaningful participation and input. It seems unlikely the Commission did not mean what it wrote.

FINRA's argument that the Commission must wait for a final decision from the NAC, which may then be subject to discretionary review by the FINRA Board of Governors, is a recipe for perpetual delay and does not comply with the Commission's order. This is precisely what Mr. Flesche's motion seeks to end and what Commissioner Uyeda was concerned about in his dissent. If FINRA can indefinitely defer compliance with a Commission order by simply claiming a matter is in progress internally, with no evidence of any actual process, the Commission's appellate review function becomes meaningless. If the Commission is that powerless, Mr. Flesche should be permitted to go to a federal court. If the Commission is not that powerless, then FINRA's opposition fails. Flesche contends that the Commission indeed has the inherent authority to ensure its orders are respected and to prevent an SRO from leveraging its internal processes to frustrate a clear directive.

II. FINRA's Response Confirms Its Unwillingness to Comply with the Remand Order

FINRA's Response, rather than addressing its non-compliance, inadvertently confirms it. FINRA does not deny that it has taken no steps to initiate the further proceedings ordered by the

violating the Order that FINRA came up with only after Flesche filed this motion.

Commission. It offers no explanation for the seven-month delay, nor does it provide a timeline for when it *will* comply. This is a stark admission of its failure to comply with the spirit and letter of the Remand Order. Furthermore, FINRA completely ignores the demonstrable prejudice suffered by Mr. Flesche. FINRA's silence on this critical point speaks volumes and underscores the urgent need for the Commission's intervention.

III. The Commission Must Exercise Its Authority to Preserve Regulatory Integrity

Allowing FINRA's jurisdictional argument to prevail would set a dangerous precedent, signaling to all SROs that they can disregard Commission orders with impunity. The Commission's authority to oversee SROs, as enshrined in the Exchange Act, is not merely advisory. It is a vital mechanism for ensuring fair and expeditious proceedings within the securities industry.

The Commission explicitly stated that "the record before us lacks information necessary to determine the fairness of FINRA's proceeding." FINRA's continued refusal to provide this information, despite a clear directive, warrants the strongest possible response. The inference of bias and conflict, which FINRA is actively attempting to conceal through its inaction, becomes increasingly damning. Dismissal with prejudice is not only warranted but necessary to uphold the principles of due process, prevent further injustice to Mr. Flesche, and preserve the integrity of the Commission's oversight function.

CONCLUSION

For the foregoing reasons, Mr. Flesche respectfully requests that the Commission reject FINRA's baseless arguments and grant his Motion to Dismiss with Prejudice. The time for FINRA to comply with the Commission's Remand Order has long passed.

Therefore, Paul Eric Flesche respectfully requests that the Commission dismiss the FINRA Disciplinary Matter at issue in Admin. Proc. File No. 3-20647 with prejudice.

Dated: New York, New York

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Respectfully submitted,

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