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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JEFFREY ALAN STANLEY (CRD No. 4645288), Respondent.	Disciplinary Proceeding No. 2023080111701 Hearing Officer–BDC

ORDER DENYING RESPONDENT'S MOTION TO DISMISS ON CONSTITUTIONAL GROUNDS AND DEMAND FOR TRIAL BY JURY

I. Background

The Department of Enforcement filed a Complaint against Respondent Jeffrey Alan Stanley alleging that he violated FINRA Rules 3110 and 2010 by failing to reasonably supervise the cash management business of the FINRA member firm with which Respondent was associated. The hearing in this disciplinary proceeding is scheduled for June 8–18, 2026.

On April 8, 2026, Respondent filed two motions titled "Respondent's Motion to Dismiss on Constitutional Grounds" ("Motion to Dismiss") and "Emergency Motion for Recusal of Hearing Officer and All FINRA Adjudicators Due to Structural Financial Bias Under FINRA Rule 8320(a)" ("Recusal Motion"). He also filed a document titled "Respondent's Demand for Trial by Jury" ("Jury Trial Demand"). Each of the filings raises similar constitutional arguments and seeks similar remedies, including dismissal of this proceeding or, in the alternative, a stay of the proceeding pending resolution of the constitutional issues Respondent raised.

In the Motion to Dismiss, Respondent primarily argues he is entitled to a jury trial under the Seventh Amendment and alleges Fifth Amendment due process violations based on, among other things, his assertion that FINRA employees cannot be neutral adjudicators because of a structural bias.[1] The Motion to Dismiss also alleges additional constitutional violations, including alleged violations of the Appointments Clause and private non-delegation doctrine.[2] In

[1] Motion ("Mot.") to Dismiss at 4–7. Respondent also raises the Seventh Amendment argument in his Jury Trial Demand. *See* Jury Trial Demand at 1–2.

[2] Mot. to Dismiss at 11–14.

the Recusal Motion, Respondent again alleges a violation of Fifth Amendment due process protections based on a purported bias due to FINRA's structure.

On April 22, 2026, the Department of Enforcement filed an omnibus opposition to Respondent's Motion to Dismiss, Jury Trial Demand, and Recusal Motion. Enforcement argues, as a threshold matter, that the Motion to Dismiss should be denied due to "procedural inconsistencies and errors."[3] Enforcement also argues, among other things, that Respondent is not entitled to a jury trial under the Seventh Amendment;[4] FINRA disciplinary proceedings are not unconstitutional under the private non-delegation doctrine;[5] Respondent's Fifth Amendment due process rights are not violated;[6] and the Appointments Clause does not apply to FINRA.[7]

For the reasons discussed below, Respondent's Motion to Dismiss and Jury Trial Demand are **DENIED**.[8]

II. Discussion

A. Respondent's Motion to Dismiss Is Untimely and Procedurally Improper

FINRA's Code of Procedure does not provide for a motion to dismiss. Instead, the Office of Hearing Officers has treated such motions as motions for summary disposition under FINRA Rule 9264.[9] Under Rule 9264(d), a party moving for summary disposition must support the motion with a statement of undisputed facts and "affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein." Respondent's Motion to Dismiss does not include a statement of undisputed facts. Nor does he include any affidavits, declarations, or other supporting materials. In addition, the Case Management and Scheduling Order issued in this case set a deadline of February 27, 2026 for filing motions for summary disposition.[10] Respondent filed his motion on April 8, 2026, nearly six weeks after the deadline in the Case Management

[3] Opposition ("Opp'n") at 1–3.

[4] Opp'n at 3–6.

[5] Opp'n at 7–9.

[6] Opp'n at 9–14.

[7] Opp'n at 14–15.

[8] As required under FINRA Rule 9233, the Recusal Motion was decided by the Chief Hearing Officer in an order issued on May 6, 2026.

[9] *See Dep't of Enforcement v. Perles*, No. CAF980005, 2000 NASD Discip. LEXIS 9, at *19 (NAC Aug. 16, 2000) (finding it appropriate to treat a motion to dismiss as a motion for summary disposition), *aff'd*, Exchange Act Release No. 45691, 2002 SEC LEXIS 3395 (Apr. 4, 2002); OHO Order 22-05 (2019060648701), at 4 (Mar. 2, 2022), https://www.finra.org/sites/default/files/2022-05/22-05-StockKings-Order-Denying-Respondents-Motion-to-Dismiss-Complaint.pdf.

[10] Case Management and Scheduling Order at 2.

and Scheduling Order. And Respondent did not seek an extension of time prior to filing the motion. Thus, the Motion to Dismiss is untimely.

Even if Respondent had filed a timely motion for summary disposition in accordance with FINRA Rule 9264(d), the motion still must be denied because the constitutional arguments raised in the motion are meritless, as discussed below.[11]

B. Respondent's Claims of Alleged Fifth Amendment Due Process Violations Are Without Merit

Constitutional rights are protected from infringement by government entities and those who, in certain circumstances, may be deemed state actors because of their close connection to government entities.[12] Thus, the issue to be decided before any of Respondent's constitutional due process claims can even be considered is whether FINRA is a state actor.[13] "Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes state action."[14]

FINRA is a private membership organization, a not-for-profit corporation organized under Delaware law.[15] It serves the securities brokerage industry as a self-regulatory organization ("SRO") and is the modern descendant of SROs dating back to the 1790s, when private actors voluntarily formed and operated securities exchanges.[16]

A private entity can nevertheless be seen as a part of government under certain circumstances. The Supreme Court held in *Lebron v. National Railroad Passenger Corporation* that an entity is a part of the government if the government (i) creates a corporation by special law, for the furtherance of governmental objectives, and (ii) retains for itself permanent authority

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[11] A Hearing Panel may grant a motion for summary disposition only if there are no genuine issues with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. OHO Order 25-06 (2022075597101), https://www.finra.org/sites/default/files/2025-08/25-06-2022075597101-Lowry-Monchik-20250602.pdf. A Hearing Officer may promptly deny a motion for summary disposition. *See* FINRA Rule 9264(e) ("The Hearing Officer may promptly deny or defer decisions on any motion for summary disposition . . . .").

[12] *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982) (most rights secured by the Constitution are protected only against infringement by governments).

[13] *Santos-Buch v. FINRA*, 32 F. Supp. 3d 475, 484 (S.D.N.Y. 2014) (FINRA is not a state actor), *aff'd*, 591 F. App'x 32 (2d Cir. 2015); *accord D.L. Cromwell Invs., Inc. v. NASD Reg., Inc*., 279 F.3d 155, 161 (2d Cir. 2002) (stating that "'the Fifth Amendment restricts only governmental conduct, and will constrain a private entity only insofar as its actions are found to be 'fairly attributable' to the government'").

[14] *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) (quoting *United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am*., 941 F.2d 1292, 1295–96 (2d Cir. 1991)).

[15] *Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314, 1319–22 (D.C. Cir. 2024).

[16] *See Kim v. FINRA*, 698 F. Supp. 3d 147, 155–57 (D.D.C. 2023) (detailing history of self-regulation in the securities industry).

to appoint a majority of the directors of that corporation.[17] Following that decision, the courts have applied the *Lebron* test in analyzing whether the actions of a private entity are subject to constitutional challenge.[18]

In this case, "[u]nder [the *Lebron*] standard, the question is not close: FINRA is a private entity, not a part of the Government subject to the structural demands of the Constitution."[19] FINRA "was not created by the government and its leaders are not chosen by the government."[20] As one federal district court stated:

> It is beyond cavil that the NASD [now FINRA] is not a government agency; it is a private, not-for-profit corporation. It was not created by statute. None of its directors or executives are government officials or appointees. It receives no government funding, and not being a part of the government or owing its existence to the government, its actions cannot be imputed to the government nor can its agents bind the government.[21]

Because FINRA is a private membership organization and not part of the government, the next question is whether there is a connection between FINRA and the SEC that would still justify treating FINRA as a state actor for at least some constitutional purposes. There are a "few limited circumstances"[22] in which the conduct of a private entity qualifies as state action such that it is subject to constitutional requirements. But this proceeding is not one of them.

As the SEC recently explained, "courts have held that the requirements of constitutional due process . . . do not apply to FINRA (or its predecessor), because it is not a state actor."[23] In fact, "every court to examine the issue has held that FINRA is not a state actor."[24] While the SEC

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[17] 513 U.S. 374, 400 (1995).

[18] *See*, *e.g.*, *Kim*, 698 F. Supp. 3d at 161–63; *Herron v. Fannie Mae*, 861 F.3d 160, 168 (D.C. Cir. 2017).

[19] *Scottsdale Cap. Advisors Corp. v. FINRA*, No. 23-1506 (BAH), slip op. at 38 (D.D.C. Apr. 23, 2026).

[20] *William Joseph Kielczewski*, Exchange Act Release No. 104352, 2025 SEC LEXIS 3108, at *33 (Dec. 9, 2025), *petition for review filed*, No. 26-1006 (D.C. Cir. Jan. 8, 2026); *accord Silver Leaf Partners, LLC*, Exchange Act Release No. 102538, 2025 SEC LEXIS 649, at *26 (Mar. 7, 2025), *petition for review filed*, No. 25-1171 (2d Cir. May 2, 2025).

[21] *United States v. Shvarts*, 90 F. Supp. 2d 219, 222 (E.D.N.Y. 2000).

[22] *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019).

[23] *Kielczewski*, 2025 SEC LEXIS 3108, at *34 (citing, inter alia, *Santos-Buch v. FINRA*, 591 F. App'x 32, 33–34 (2d Cir. 2015); *Epstein v. SEC*, 416 F. App'x 142, 148 (3d Cir. 2010); *Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999)).

[24] *Weber v. PNC Invs. LLC*, No. 2:19-cv-00704, 2020 U.S. Dist. LEXIS 18723, at *38 (W.D. Pa. Feb. 5, 2020); *see Scottsdale Cap. Advisors Corp.*, slip op. at 42 ("plaintiffs have failed to state a claim that FINRA engaged in state action and is therefore subject to the strictures of the Fifth Amendment's due process clause"); *Kim*, 698 F. Supp. 3d at 165 ("For these reasons, courts in this District and elsewhere have repeatedly rejected arguments that FINRA (or its predecessor entity, NASD) engages in state action."); *Traudt v. Rubenstein*, No. 2:24-cv-782, 2025 U.S. Dist. LEXIS 123280, at *17–18 (D. Vt. June 30, 2025) (FINRA and its employees are not state actors); *see also Edward Beyn*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980, at *40 (Apr. 19, 2023) ("Constitutional due process

reviews and approves FINRA's rules, oversees FINRA's activities, and, if a Hearing Panel decision is appealed to the National Adjudicatory Council ("NAC"), the SEC may afterward review any NAC decision appealed to the SEC, that does not show that FINRA is a state actor. As the Second Circuit has stated, "the fact that a business entity is subject to extensive and detailed state regulation does not convert that organization's actions into those of the state."[25] "[A] state is responsible for a private decision only where it exercised coercive power or provided significant encouragement."[26] FINRA disciplinary proceedings are independent of any such governmental coercion or encouragement. Indeed, the SEC has no role to play in a FINRA disciplinary proceeding, except to the extent that the proceeding might eventually lead to a petition for SEC review.[27]

Because the requirements of constitutional due process do not apply to FINRA, Respondent's arguments about what constitutional due process requires in this proceeding are unavailing, including Respondent's principal arguments about structural bias of FINRA adjudicators due to their FINRA employment and that unrepresented respondents are at a "systematic disadvantage."[28] In any event, even if FINRA were a state actor—which it is not—Respondent's arguments about Fifth Amendment due process violations are not persuasive. I address below the two primary alleged violations.[29]

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does not apply to FINRA proceedings." (citing *William H. Murphy & Co., Inc.*, Exchange Act Release No. 90759, 2020 SEC LEXIS 5218, at *41 (Dec. 21, 2020))); *Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *19 (Sept. 30, 2016) ("Because FINRA is not a state actor, however, the constitutional requirements of due process do not apply in FINRA proceedings." (citing *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *15 n.35 (July 27, 2015))).

[25] *Desiderio*, 191 F.3d at 206 (internal quotation marks omitted); *see also Scottsdale Cap. Advisors Corp.*, slip op. at 40 ("This allegation falls far short of meeting the requisite test to show that FINRA's disciplinary proceedings are somehow converted into 'state action,' for reasons already explained in the D.C. Circuit's opinion in *Alpine*.").

[26] *Desiderio*, 191 F.3d at 206 (internal quotation marks and emphasis omitted).

[27] *Scottsdale Cap. Advisors Corp.*, slip op. at 41 ("Binding precedent instructs that a private action, which may eventually be ratified and adopted by the government, does not constitute state action.").

[28] Mot. to Dismiss at 6–10.

[29] Respondent also argues that his substantive due process rights are being violated because FINRA purportedly is seeking a bar, which would prevent him from pursuing his chosen profession. Assuming FINRA is seeking a bar, such a sanction would not prevent Respondent from working in the securities industry in some other capacity that does not require FINRA registration or association with a FINRA member. *Hu v. City of New York*, 927 F.3d 81, 102 (2d Cir. 2019) ("the Supreme Court, this Circuit, and the other Circuits addressing the issue have all indicated that the right of occupational choice is afforded Due Process protection only when a plaintiff is complete[ly] prohibit[ed] from engaging in his or her chosen profession.") (alteration in original) (internal quotation marks omitted).

First, Respondent's reliance on the Supreme Court decisions in *Tumey v. Ohio*[30] and *Caperton v. A.T. Massey Coal Company*[31] to show bias of FINRA adjudicators is misplaced.[32] Neither case stands for the broad proposition seemingly advanced by Respondent that FINRA adjudicators are unconstitutionally biased simply by virtue of their FINRA employment. The Eleventh Circuit, examining the same Supreme Court cases cited by Respondent in a case involving municipal judges, explained that "[t]he fact that a judge works for a government, which gets a significant portion of its revenues from fines and fees, is not enough to establish an unconstitutional risk of bias on the part of the judge."[33] Similarly, the SEC has also rejected the claim that it is "unfair" for FINRA to allegedly act as the "judge, the prosecutor and the jury" where "there is no evidence that [FINRA] rules were not followed."[34]

Second, although not entirely clear, Respondent appears to argue the fact that he has raised a reliance on counsel defense and does not have counsel to conduct a privilege review creates a constitutional due process issue.[35] But simply because Respondent is proceeding *pro se*, having been previously represented, does not create a constitutional due process issue. In civil cases, parties generally do not have the constitutional right to counsel.[36] And in FINRA

[30] 273 U.S. 510, 535 (1927) ("He seasonably raised the objection and was entitled to halt the trial because of the disqualification of the judge, which existed both because of his direct pecuniary interest in the outcome, and because of his official motive to convict and to graduate the fine to help the financial needs of the village. There were thus presented at the outset both features of the disqualification.").

[31] 556 U.S. 868, 884 (2009) ("We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent. The inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.").

[32] *See* Mot. to Dismiss at 7 ("In *Tumey*, a mayor receiving fees from convictions violated due process. If that financial interest is disqualifying, Hearing Officers whose livelihood depends on FINRA face similar structural concerns. Hearing Officers are FINRA employees who receive salaries from FINRA, are evaluated by FINRA management, have career advancement dependent on FINRA, and work alongside Enforcement in the same organization." (emphasis omitted)).

[33] *Brucker v. City of Doraville*, 38 F.4th 876, 884 (11th Cir. 2022); *see also J.F. v. Adams*, No. 1:21-cv-11150 (ALC), 2024 U.S. Dist. LEXIS 57551, 2024 U.S. Dist. LEXIS 57551, *22 (S.D.N.Y. Mar. 29, 2024) (in case involving "Impartial Hearing Officers" under the Individuals with Disabilities Education Act, holding that the hearing officers were not biased as a matter of law based solely on their employment with New York City).

[34] *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *47–48 (Apr. 3, 2020) (internal quotation marks omitted).

[35] Mot. to Dismiss at 7–10 ("The due process concerns extend beyond structural bias to systematic procedural disadvantage of indigent, unrepresented respondents.").

[36] *Lefiridge v. Conn. State Trooper Officer No. 1283*, 640 F.3d 62, 68–69 (2d Cir. 2011) ("A party has no constitutionally guaranteed right to the assistance of counsel in a civil case.").

disciplinary proceedings in particular, it is well-settled that parties do not have the right to counsel.[37]

C. Respondent Does Not Have a Seventh Amendment Right to a Jury Trial

Respondent's argument that he has a Seventh Amendment right to a jury trial, which he makes in both his Motion to Dismiss[38] and Jury Trial Demand,[39] fails because FINRA is not a state actor, as discussed above. Because FINRA is not a state actor, FINRA's disciplinary proceedings are not subject to the constraints of the Seventh Amendment, as courts have held.[40] In several decisions, the SEC and the NAC have also rejected arguments that FINRA's disciplinary proceedings violate the Seventh Amendment right to a jury trial.[41]

Respondent's reliance on the Supreme Court's decision in *SEC v. Jarkesy*,[42] which held that the Seventh Amendment entitles the defendant to a jury trial when the SEC seeks civil penalties against a defendant for securities fraud, is misplaced.[43] In *Jarkesy*, the Court explained that the jury trial right applies if the claim is "legal in nature," considering "the cause of action and the remedy it provides," where "money damages are the prototypical common law remedy."[44] But as the NAC explained, "*Jarkesy* has no bearing on FINRA disciplinary proceedings."[45] The separation-of-powers principles regarding the exercise of the judicial power at issue in *Jarkesy* does not apply to FINRA, which is a private entity.[46]

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[37] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *49 (Nov. 9, 2012) ("Although FINRA's rules permit the participation of counsel, it is well established that there is no right to counsel in [its] disciplinary proceedings.") (internal quotation marks omitted).

[38] Mot. to Dismiss at 4–6.

[39] Jury Trial Demand at 1–2.

[40] *See Scottsdale Cap. Advisors Corp.*, slip op. at 50 ("The U.S. Constitution simply does not require private membership organizations to conduct jury trials before imposing fine penalties on their members.") (citing *NCAA v. Tarkanian*, 488 U.S. 179, 191 (1988)); *see also Silva v. Swift*, No. 4:19-cv-286-RH/MJF, 2020 U.S. Dist. LEXIS 107624, at *6 (N.D. Fla. June 1, 2020) (ruling that the Seventh Amendment "cannot be violated by private individuals who were not acting under color of state law or in concert with state actors").

[41] *See Kielczewski*, 2025 SEC LEXIS 3108, at *34 & n.57; *Dep't of Enforcement v. Pelletier*, No. 2021071094401, 2025 FINRA Discip. LEXIS 19, at *45 (NAC Oct. 1, 2025); *Dep't of Enforcement v. Alpine Secs. Corp.*, No. 2019061232601, 2025 FINRA Discip. LEXIS 6, at *115–16 & n.170 (NAC Mar. 25, 2025), *appeal docketed*, No. 3-22471 (SEC Apr. 7, 2025); *Dep't of Enforcement v. Spartan Capital Secs., LLC*, No. 2019061528001, 2024 FINRA Discip. LEXIS 20, at *55–56 & n.31 (NAC Oct. 9, 2024), *appeal docketed*, No. 3-22285 (SEC Nov. 4, 2024); *see also Dep't of Enforcement v. Venturino*, No. 2021070337501, 2026 FINRA Discip. LEXIS 4, at *43 n.72 (NAC Apr. 7, 2026) (finding argument waived and, in any event, rejecting on the merits the Seventh Amendment argument).

[42] *SEC v. Jarkesy*, 603 U.S. 109 (2024).

[43] Mot. to Dismiss at 4–6; Jury Trial Demand at 1–2.

[44] *Jarkesy*, 603 U.S. at 122–123.

[45] *Pelletier*, 2025 FINRA Discip. LEXIS 19, at *46.

[46] *Id.*

Additionally, "disciplining FINRA members and associated persons for violating the professional norms of the securities industry is not 'the stuff of' a suit at common law requiring a jury trial in an Article III court."[47] The FINRA rules at issue in this proceeding fulfill FINRA's obligations under the Exchange Act. "Exchange Act Section 15A(b)(6) requires that FINRA design its rules to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest."[48] FINRA Rule 3110 is "consistent with this mandate because the responsibility of broker-dealers to supervise their employees is a critical component of the federal regulatory scheme. And Rule 2010 is consistent with the mandate that FINRA adopt rules to promote just and equitable principles of trade."[49]

Notably, Respondent does not meaningfully argue that the alleged rule violations are legal in nature considering the cause of action. Instead, Respondent primarily focuses on the remedy when arguing for a jury trial.[50] Specifically, Respondent argues that the potential sanctions in this case, including fine, suspension, and bar, constitute punitive "civil penalties" like in *Jarkesy* that must be tried before a jury. Respondent's argument about potential sanctions is unpersuasive.

"FINRA is generally prohibited [under the Exchange Act] from imposing excessive or oppressive penalties."[51] And courts have construed the statute as authorizing remedial, but not punitive, sanctions.[52] FINRA's Sanction Guidelines specifically state that "[s]anctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct."[53] For example, a bar from associating with a FINRA member firm can be a remedial sanction, not punishment, where the purpose of the bar is to protect the public.[54] We impose bars in all capacities to protect investors and other market participants from potential harm and the risk of repeated misconduct if a respondent is permitted to continue working in the

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[47] *Id.* (quoting *Jarkesy*, 603 U.S. at 127–28); *see also Daniel Turov*, Exchange Act Release No. 31649, 1992 SEC LEXIS 3332, at *8 (Dec. 23, 1992) ("A disciplinary proceeding before a self-regulatory organization is . . . no[t] a 'suit at common law' within the meaning of the Seventh Amendment. The guarantees pertaining to trials by jury . . . are therefore inapposite.").

[48] *Southeast Investments, N.C., Inc.*, Exchange Act Release No. 99118, 2023 SEC LEXIS 3460, at *22–23 (Dec. 7, 2023).

[49] *Id.* at *23 (internal quotation marks omitted).

[50] Mot. to Dismiss at 4–6; Jury Trial Demand at 1–2.

[51] *Springsteen-Abbott v. SEC*, 989 F.3d 4, 9 (D.C. Cir. 2021) (internal quotation marks omitted).

[52] *Siegel v. SEC*, 592 F.3d 147, 157 (D.C. Cir. 2010).

[53] FINRA Sanction Guidelines (2024), https://www.finra.org/rules-guidance/oversightenforcement/sanction-guidelines.

[54] *Springsteen-Abbott*, 989 F.3d at 9; *see also Saad v. SEC*, 980 F.3d 103, 107 (D.C. Cir. 2020).

securities industry. A bar from association with any FINRA member firm is remedial "if imposed to protect the public."[55]

Finally, even if Respondent had a constitutional right to a jury trial, the Supreme Court has held that constitutional rights like the right to a jury trial under the Seventh Amendment can be waived.[56] When Respondent became registered with FINRA, he waived any Seventh Amendment right to a jury trial of alleged violations in a disciplinary complaint that he may have had, along with any right to a proceeding governed by the due process requirements of the Fifth Amendment discussed above.[57] What Respondent agreed to instead is a disciplinary process governed by FINRA's rules. FINRA member firms and associated persons registered with FINRA affirmatively agree to abide by FINRA's rules, including its rules regarding disciplinary proceedings, when they join or become registered with FINRA.[58] Thus, when Respondent applied for FINRA registration,[59] he knowingly relinquished any rights he might otherwise have had to defend against alleged violations in a disciplinary complaint before a jury in an Article III court.[60]

D. Respondent's Remaining Constitutional Challenges Are Meritless

Although Respondent's Motion to Dismiss and Jury Trial Demand rely primarily on the Seventh Amendment and Fifth Amendment, Respondent's Motion to Dismiss also raises additional constitutional challenges.[61] None of these additional constitutional challenges have merit.

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[55] *Logan v. U.S. SEC*, No. 24-1095, 2024 U.S. App. LEXIS 32802, at *4 (D.C. Cir. 2024).

[56] *CFTC v. Schor*, 478 U.S. 833, 848 (1986) (Article III and jury-trial rights are "subject to waiver, just as are other personal constitutional rights.").

[57] *See Pelletier*, 2025 FINRA Discip. LEXIS 19, at *49.

[58] *See Spartan Cap. Sec., LLC*, 2024 FINRA Discip. LEXIS 20, at *55 n.31; *see also* FINRA By-Laws Art. V, Sec. 2(a)(1) (requiring that an application by any person for registration with FINRA contain an "agreement to comply" with the federal securities laws, the rules and regulations thereunder, MSRB and FINRA rules, "and all rulings, orders, directions, and decisions issued and sanctions imposed under [FINRA rules]"); FINRA, Uniform Application for Securities Industry Registration or Transfer (Form U-4) sec. 15A, para. 2 ("[I]n consideration of the *jurisdictions* and *SROs* receiving and considering my application, I submit to the authority of the *jurisdictions* and *SROs* and agree to comply with all . . . by-laws and rules and regulations of the *jurisdictions* and *SROs* as they are or may be adopted, or amended from time to time."), *available at* https://www.finra.org/sites/default/files/2026-02/form-u4.pdf (last visited Apr. 30, 2026).

[59] In his answer, Respondent admitted that he registered with FINRA through an association with a FINRA member firm in 2003 and was most recently registered through June 2024. Answer ¶ 16.

[60] *See Spartan Cap. Sec., LLC*, 2024 FINRA Discip. LEXIS 20, at *55 n.31.

[61] Mot. to Dismiss at 11–14.

1. The Appointments Clause Is Not Applicable to FINRA

Respondent is incorrect that the Appointments Clause applies to FINRA[62] because, as discussed above, FINRA is not a part of the government under the *Lebron* standard. Accordingly, "[a]s a private entity (acting subject to the supervision and authority of the Commission), FINRA's processes for hiring or selecting its personnel—including with respect to hearing officers and the composition of hearing panels—are not subject to the Appointments Clause."[63] Several recent federal court decisions have rejected Appointments Clause challenges against FINRA.[64]

2. FINRA-SEC Relationship Does Not Violate Private Non-Delegation Doctrine

Respondent is also mistaken that the relationship between FINRA and the SEC violates the private non-delegation doctrine.[65] "FINRA's subordinate regulatory structure to the SEC is why [i]n case after case, the courts have upheld this arrangement against private nondelegation challenges."[66] "The Supreme Court has recognized that Congress may enlist the aid of a private organization in administering federal law without running afoul of the non-delegation doctrine as long as the private actor 'function[s] subordinately' to a government agency that exercises 'authority and surveillance' over its activities."[67] In the Exchange Act, "Congress gave the Commission pervasive supervisory authority over the rulemaking and enforcement activities of FINRA and other self-regulatory organizations in order to protect the public interest."[68]

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[62] Mot. to Dismiss at 11–12.

[63] *Silver Leaf Partners, LLC*, 2025 SEC LEXIS 649, at *26; *accord Kielczewski*, 2025 SEC LEXIS 3108, at *33–34; *Robbi J. Jones & Kipling Jones & Co., LTD*, Exchange Act Release No. 104273, 2025 SEC LEXIS 3023, at *39 (Nov. 28, 2025), *petition for review filed*, No. 25-60703 (5th Cir. Dec. 22, 2025); *Newport Coast Sec., Inc.*, 2020 SEC LEXIS 917, at *43–44; *Alpine Secs. Corp.*, 2025 FINRA Discip. LEXIS 6, at *116–18; *Spartan Capital Secs., LLC*, 2024 FINRA Discip. LEXIS 20, at *53–54.

[64] *See Scottsdale Cap. Advisors Corp.*, slip op. at 39 ("This forecloses plaintiffs' arguments under the Appointments Clause, presidential removal power, and Take Care and Vesting Clauses. Counts I, II, and III are accordingly dismissed."); *Pease v. SEC*, No. MO:24-CV-00322-DC-RCG, 2026 U.S. Dist. LEXIS 19383, at *29 (W.D. Tex. Jan. 30, 2026) ("Because FINRA is not part of the federal government under *Lebron*, Article II's Appointments Clause does not apply, and Plaintiff's Appointments Clause claim should be dismissed."), *report and recommendation adopted*, No. MO:24-CV-00322-DC, 2026 U.S. Dist. LEXIS 38926 (W.D. Tex. Feb. 25, 2026).

[65] Mot. to Dismiss at 13–14.

[66] *Kim*, 698 F. Supp. 3d at 166 (alteration in original) (internal quotation marks omitted); *see, e.g.*, *Sorrell v. SEC*, 679 F.2d 1323, 1325–26 (9th Cir. 1982); *First Jersey Sec., Inc. v. Bergen*, 605 F.2d 690, 697 (3d Cir. 1979); *R. H. Johnson & Co. v. SEC*, 198 F.2d 690, 695 (2d Cir. 1952); *Scottsdale Cap. Advisors Corp.*, slip op. at 45; *Mansour v. Morgan Stanley*, No. 4:24-cv-459, 2025 U.S. Dist. LEXIS 158309, at *59 (E.D. Tex. Aug. 15, 2025).

[67] *Kielczewski*, 2025 SEC LEXIS 3108, at *31 (quoting *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940)); *Silver Leaf Partners, LLC*, 2025 SEC LEXIS 649, at *25–26 (rejecting challenge based on non-delegation doctrine challenge); *Robbi J. Jones & Kipling Jones & Co., LTD*, 2025 SEC LEXIS 3023, at *38 (rejecting challenge based on private non-delegation doctrine).

[68] *Kielczewski*, 2025 SEC LEXIS 3108, at *38 (internal quotation marks omitted).

Respondent relies heavily on the D.C. Circuit decision in *Alpine Securities Corporation v. FINRA*,[69] in which the member firm seeking preliminary injunctive relief demonstrated a likelihood of success as to a private non-delegation doctrine challenge. However, the D.C. Circuit's decision was "narrow and limited to expedited expulsion proceedings, where the irreversible nature of the underlying sanctions prevents review on the merits by the SEC."[70] Moreover, the *Alpine* lower court recently rejected the private non-delegation challenge on the merits in that case, explaining that, "[a]t every turn, FINRA is subordinate to the SEC, and many of its actions have no legal effect without the SEC's stamp of approval,"[71] and the court dismissed the complaint. Here, Respondent has not shown that there is even the potential for sanctions that would prevent review on the merits by the SEC. Because of the narrow and limited circumstances at issue in the D.C. Circuit's *Alpine* decision, the NAC has found that non-delegation doctrine challenges that relied on *Alpine* were distinguishable, as is the case here.[72]

3. FINRA's Structure Does Not Violate Respondent's First Amendment Rights

Respondent briefly argues in his Motion to Dismiss that FINRA's "structure raises concerns under the First Amendment,"[73] primarily relying on the Supreme Court's decision in *Janus v. AFSCME*.[74] Respondent appears to be making a First Amendment challenge to an alleged requirement to register with FINRA. Respondent's challenge is similar to other First Amendment challenges raised by parties in federal courts, which have rejected the arguments.[75] For example, in *Kim*, the federal district court explained that the right to eschew association for expressive purposes is not absolute and "[i]nfringements . . . may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms."[76] Here, like the plaintiff in *Kim*, Respondent "does not identify how his associational rights are implicated in any

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[69] 121 F.4th 1314 (D.C. Cir. 2024).

[70] *Id.* at 1330.

[71] *Scottsdale Cap. Advisors Corp.*, slip op. at 45.

[72] *See, e.g.*, *Silver Leaf Partners, LLC*, 2025 SEC LEXIS 649, at *26 n.51 ("We acknowledge, but do not find applicable to this proceeding, the D.C. Circuit's finding in *Alpine Securities* that the applicant had demonstrated a likelihood of success as to its private nondelegation claim under the narrow circumstances where FINRA expelled the applicant in an expedited proceeding and the expulsion was allowed to take effect before the completion of Commission review proceedings.").

[73] Mot. to Dismiss at 14.

[74] *Janus v. AFSCME*, 585 U.S. 878 (2018).

[75] *See, e.g.*, *Scottsdale Cap. Advisors Corp.*, slip op. at 52 (noting that plaintiffs' argument flew in the face of "well-established" precedent that mandatory membership in a union or integrated state bar does not violate the First Amendment (citing *Keller v. State Bar of Cal.*, 496 U.S. 1, 13 (1990)).

[76] *Kim*, 698 F. Supp. 3d at 167 (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984)) (alteration in original).

intelligible way."[77] And as the *Kim* court noted, "In any event, the Exchange Act provides several compelling interests to justify regulation."[78]

4. The Major Questions Doctrine Is Not Applicable

Respondent argues that dismissal of this proceeding is warranted under the major questions doctrine because FINRA is exercising transformative power without clear authorization.[79] But that doctrine only applies in "extraordinary cases" in which an agency asserts "an unheralded power representing a transformative expansion in [its] regulatory authority" by means of "a radical or fundamental change to a statutory scheme."[80] This proceeding is not one of those extraordinary cases.

FINRA is an association of securities broker-dealers registered with the SEC pursuant to Section 15A(a) of the Exchange Act.[81] It is an SRO empowered under the Exchange Act to adopt rules governing the conduct of its members and of persons associated with its members.[82] FINRA enforces compliance with its rules by bringing disciplinary proceedings to adjudicate violations, which are subject to review by the SEC.[83] Contrary to Respondent's argument, the hearing of a disciplinary matter before a FINRA Hearing Panel is exactly what Congress authorized under the Exchange Act.[84] This proceeding does not constitute a transformative expansion of FINRA's regulatory authority or a fundamental change to the regulatory scheme governing FINRA. Thus, the major questions doctrine is not applicable.

E. Respondent's Alternative Forms of Relief Are Denied

In addition to dismissal, Respondent also requests alternative relief, including a stay of this proceeding until the constitutional issues raised by Respondent are decided.[85] For the reasons explained below, I deny Respondent's requests for the alternative forms of relief.

To the extent Respondent requests a stay pending an order on the Motion to Dismiss and Jury Trial Demand, such a request is moot in light of this order. To the extent Respondent requests that I "stay this proceeding pending resolution of constitutional questions in federal

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[77] *Id.*

[78] *Id.*

[79] Mot. to Dismiss at 14–15.

[80] *West Virginia v. EPA*, 597 U.S. 697, 722–25 (2022).

[81] 15 U.S.C. § 78o-3(a); *see Saad v. SEC*, 718 F.3d 904, 907 (D.C. Cir. 2013).

[82] 15 U.S.C. § 78o-3(a).

[83] *See generally Scottsdale Cap. Advisors Corp.*, slip op. at 5–7 (describing FINRA proceedings).

[84] *See Scottsdale Capital Advisors Corp. v. FINRA*, 390 F. Supp. 3d 72, 76 (2019) ("When FINRA believes a member has violated any of its rules, it can initiate a disciplinary proceeding against the member through a Hearing Panel and impose sanctions on violators." (citing 15 U.S.C. § 78o-3(h)), *aff'd*, 811 Fed. App'x 667 (2020).

[85] Mot. to Dismiss at 17–18; Jury Trial Demand at 1–2.

court" and "refer constitutional questions to federal court for determination,"[86] FINRA rules do not provide for such referrals to federal court.[87] Additionally, "[a]n indefinite stay, as requested by Respondent, is not authorized by FINRA's rules for proceedings like this. The Office of Hearing Officers has repeatedly denied requests for indefinite stays, finding them improper and inconsistent with FINRA's regulatory mission."[88]

Respondent also requests "certif[ication of] these constitutional questions for immediate appellate review given their case-determinative nature."[89] However, FINRA rules do not provide for interlocutory review, except under limited circumstances not applicable here.[90]

III. Order

For the reasons stated above, Respondent's Motion to Dismiss and Jury Trial Demand are **DENIED**.

SO ORDERED.

Brian D. Craig
Hearing Officer

Dated: May 6, 2026

Copies to:

Jeffrey Alan Stanley, Respondent (via OHO Docket Portal)
Tina Lawrence, Esq., FINRA Enforcement (via OHO Docket Portal)
John Luburic, Esq., FINRA Enforcement (via OHO Docket Portal)
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[86] Mot. to Dismiss at 17–18.

[87] FINRA rules also do not provide for referral to federal court for a jury trial, as requested by Respondent in the Jury Trial Demand. And in any event, as discussed *infra* at 7–9, Respondent is not entitled to a jury trial of the violations alleged in the Complaint.

[88] OHO Order 25-04 (2022073425001) (Mar. 17, 2025), at 3 (footnotes omitted), https://www.finra.org/sites/default/files/2025-05/25-04-2022073425001-Lukezic-20250317.pdf.

[89] Mot. to Dismiss at 18.

[90] *See* FINRA Rule 9148 ("Except as provided in Rule 9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by the Code.").