SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 106028 / August 3, 2026

Admin. Proc. File No. 3-20639

In the Matter of the Application of

DREAMFUNDED MARKETPLACE, LLC and
MANUEL FERNANDEZ

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDING

FINRA found that a former funding portal member and its owner failed to respond fully and completely to requests for information; made false, exaggerated, and misleading statements to investors; and failed to meet their gatekeeping, investor protection, and supervisory obligations. For these violations, FINRA imposed three expulsions on the firm from funding portal membership and three bars on the owner from associating with a funding portal member. *Held*, FINRA's findings of violations are *sustained*, and FINRA's findings of sanctions are *sustained in part* and *set aside in part*.

APPEARANCES:

Manuel Fernandez, *pro se* and for DreamFunded Marketplace, LLC.

Michael Garawski, Jante Turner, and *Michael M. Smith* for FINRA.

Appeal filed: October 28, 2021
Last brief received: December 20, 2024

DreamFunded Marketplace, LLC ("DreamFunded"), a former FINRA funding portal member, and Manuel Fernandez, the portal's founder, chief executive officer, chief financial officer, and chief compliance officer (together, "Applicants"), seek review of FINRA disciplinary action.[1] FINRA found that Applicants violated Commission and FINRA rules by (1) failing to fully respond to a FINRA information request, (2) misrepresenting material facts to investors, and (3) failing to adequately supervise their business. For those violations, FINRA imposed three independent expulsions of DreamFunded from membership as a FINRA funding portal and three independent bars on Fernandez from associating with a FINRA funding portal member. We sustain FINRA's findings of violations against Applicants and sustain in part and set aside in part its imposition of sanctions.

I. Background

Crowdfunding is a method of raising capital via the internet in which an issuer seeks small contributions from a large number of investors. Congress sought to facilitate such offerings through the Jumpstart Our Business Startups Act ("JOBS Act"),[2] which created an exemption from Securities Act registration for certain crowdfunding offerings[3] and established a category of registered intermediaries—"funding portals"—to facilitate those offerings. To conduct offerings under this exemption, issuers must use a Commission-registered broker-dealer or funding portal.[4] Under its rulemaking authority, the Commission subsequently adopted Regulation Crowdfunding in 2015.[5] FINRA also adopted its own Funding Portal Rules, which the Commission approved in January 2016.[6]

Fernandez established DreamFunded in March 2016 as an online funding portal through DreamFunded.com. DreamFunded registered with the Commission as a funding portal and obtained FINRA funding portal membership in July 2016. As DreamFunded's sole officer, Fernandez was an associated person of DreamFunded.[7]

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1 *Dept. of Enf't v. DreamFunded Marketplace, LLC*, Compl. No. 2017053428201, 2021 WL 4909882 (NAC Sept. 27, 2021).

2 JOBS Act Sections 301–05, Pub. L. No. 112-106, 126 Stat. 306 (2012).

3 *See generally id.* §§ 301–05, 126 Stat. at 315–23.

4 *See* Securities Act Section 4(a)(6)(C), 15 U.S.C. § 77d(a)(6)(C) (exempting certain offers and sales from registration requirements).

5 *See* Crowdfunding [Regulation Crowdfunding Adopting Release], Exchange Act Release No. 76324, 2015 WL 7273273, at *4 (Oct. 30, 2015). All references in this Opinion to rules under Regulation Crowdfunding will conform to the following format: Crowdfunding Rule [number of rule].

6 *See* Commission Approval of FINRA Funding Portal Rules, Exchange Act Release No. 76970, 2016 WL 286421, at *1, *20 (Jan. 22, 2016).

7 FINRA Funding Portal Rule 100(b)(1) (defining an "associated person of a funding portal member" to include any officer of a funding portal).

DreamFunded operated as a FINRA funding portal member for approximately 15 months, during which it served as the intermediary for 15 crowdfunding securities offerings. In October 2017, DreamFunded withdrew its Commission registration and, in November 2017, FINRA terminated DreamFunded's status as a funding portal member.

II. Procedural History

In February 2018, FINRA's Department of Enforcement ("Enforcement") filed a complaint against Applicants alleging violations related to (1) failure to respond fully to FINRA's request for information; (2) misrepresentations of material facts; and (3) supervisory failures.

In June 2019, a FINRA hearing panel found Applicants liable on the first two groups of charges and imposed two independent expulsions on DreamFunded and two bars on Fernandez for those violations. The Hearing Panel also found Applicants liable for most of the alleged supervisory-related violations and assessed, but did not impose, sanctions for those violations. Applicants appealed to FINRA's National Adjudicatory Council ("NAC"), and Enforcement cross-appealed.

On September 27, 2021, the NAC affirmed the Hearing Panel's findings of violations and the expulsions and bars for the first two groups of violations. Unlike the Hearing Panel, however, the NAC imposed a third expulsion of DreamFunded and a third bar on Fernandez for Applicants' supervisory-related violations. This appeal followed.

On November 12, 2021, the Commission denied Applicants' motion to stay the expulsions and bars pending the Commission's review of the merits.[8] On May 8, 2026, the Commission granted Applicants' renewed motion to stay the expulsions of DreamFunded pending our review.[9] Because we now consider the merits of Applicants' appeal, we terminate that stay of DreamFunded's expulsions and dismiss as moot Applicants' motion for an immediate ruling and renewed motion to stay Fernandez's bars.[10]

III. Violations

We review FINRA disciplinary action to determine whether (1) an applicant engaged in the conduct FINRA found, (2) that conduct violated the provisions specified in FINRA's determination, and (3) those provisions are, and were applied in a manner, consistent with the

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8 *See DreamFunded Marketplace, LLC*, Exchange Act Release No. 93566, 2021 WL 5311630 (Nov. 12, 2021).

9 *See DreamFunded Marketplace, LLC*, Exchange Act Release No. 105425, 2026 WL 1284739 (May 8, 2026).

10 *Cf. Good Vibration Shoes, Inc.*, Exchange Act Release No. 86574, 2019 WL 3554331, at *1 n.1 (Aug. 5, 2019) (denying motion to stay FINRA action as moot upon dismissing underlying petition for review).

purposes of the Exchange Act.[11] Our review is de novo, and we apply a preponderance of the evidence standard.[12] Applying this standard, we sustain FINRA's findings of violations.

A. We sustain FINRA's findings that Applicants violated FINRA Rule 8210 and FINRA Funding Portal Rules 800(a) and 200(a).

FINRA found that Applicants violated FINRA Rule 8210 and FINRA Funding Portal Rules 800(a) and 200(a) by not fully responding to a FINRA request for information. We sustain those findings.

1. Applicants engaged in the conduct FINRA found.

On October 20, 2017, during on-the-record testimony ("OTR") about DreamFunded's crowdfunding operations, Fernandez testified that, of $1 million he raised from investors to start DreamFunded, only $100 remained; that he had paid independent contractors with cash based on his "memory" of "verbal agreements," rather than written contracts; and that he had paid his wife and daughter approximately $40,000 to help with social media and online marketing. That testimony raised questions about Applicants' use of investor funds, prompting FINRA to send Fernandez a document request under FINRA Rule 8210 on October 24, 2017. Among other things, the request asked for (1) all monthly bank statements for DreamFunded, its parent, and Fernandez personally from January 1, 2014, through October 24, 2017, and (2) all accounting or bookkeeping records maintained by DreamFunded and its parent for the same period.[13] Applicants' response was due November 7, 2017.

FINRA and Applicants subsequently began discussing a settlement, and FINRA allowed the deadline to pass. After the discussions fell apart in early December, Applicants replaced their counsel. FINRA sent new counsel a copy of the request and agreed to a new deadline of December 29. On December 28, 2017, FINRA agreed to grant Applicants another extension, to January 5, 2018. On that new deadline, Applicants' counsel produced some documents, but none of the requested bank statements or accounting and bookkeeping records.

FINRA subsequently granted Applicants a third extension, to January 19, 2018. On that new deadline, Applicants' counsel produced 16 of the 276 requested bank statements and none of the requested accounting or bookkeeping records. Applicants' counsel asked for a fourth extension, representing that Fernandez had a stomach flu and his physician had prescribed bed rest through the weekend. FINRA agreed to a 10-day extension, to January 29, 2018. Instead of resting in bed, however, Fernandez flew to Utah that weekend to attend a film festival and posted pictures of himself from Utah on his Instagram account.

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11 *Thomas Lee Johnson*, Exchange Act Release No. 99596, 2024 WL 755549, at *5 (Feb. 23, 2024); *see also* Exchange Act Section 19(e)(1)(A), 15 U.S.C. § 78s(e)(1)(A).

12 *See Johnson*, 2024 WL 755549, at *5.

13 DreamFunded was a subsidiary of DreamFunded, Inc., of which Fernandez was the CEO and founder.

On January 25, 2018, Applicants' counsel informed FINRA that he no longer represented them. FINRA emailed Fernandez directly later that day to remind him that the "final deadline" for a "complete response" was January 29, 2018. The next day, Fernandez emailed FINRA, saying he was ill and attaching a doctor's note with a February 5, 2018, return-to-work date. Despite his purported illness, Fernandez again traveled out of town—this time to Las Vegas to attend a concert on January 28, 2018. Fernandez posted a photograph from the concert to his Twitter (now X) account.

On January 29, 2018, FINRA emailed Fernandez to warn him that it would file a complaint against Applicants if they did not produce a full response by February 6, 2018, which represented a fifth extension. On the day his response was due, Fernandez emailed FINRA, claiming that he needed additional time to collect the requested information because his CPA and bookkeeper had the banking records and bookkeeping data.

Fernandez produced nothing further. Combined with 24 bank statements that DreamFunded had previously provided FINRA during the firm's initial funding portal application, Applicants ultimately produced only 40 of the 276 requested bank statements connected to DreamFunded and related entities—14%—and none for Fernandez's personal account. Nor did Applicants ever produce any accounting or bookkeeping records.

2. Applicants' conduct violated FINRA Rule 8210 and FINRA Funding Portal Rules 800(a) and 200(a).

FINRA Rule 8210 requires members and associated persons to provide information with respect to any matter involved in an investigation or examination authorized by FINRA's By-Laws or rules.[14] Funding Portal Rule 800(a) makes funding portal members and their associated persons subject to FINRA Rule 8210.[15] Funding Portal Rule 200(a) requires funding portal members to "observe high standards of commercial honor and just and equitable principles of trade."[16] A violation of Rule 8210 also establishes a violation of Funding Portal Rule 200(a).[17]

Applicants' conduct plainly violated those rules. As noted above, DreamFunded was a funding portal member and Fernandez, as its sole officer, was an associated person of DreamFunded. Applicants therefore were subject to Funding Portal Rule 800(a) and FINRA Rule 8210 and required to provide information to FINRA. In the four months between when FINRA first sent its Rule 8210 request and ultimately filed its complaint, Applicants received five extensions yet ultimately produced only a fraction of the requested bank statements and none of the requested accounting and bookkeeping records. Applicants claim they provided all the requested documents—to either FINRA's Membership Application Program group during

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[14] FINRA Rule 8210(a)(1).

[15] FINRA Funding Portal Rule 800(a).

[16] FINRA Funding Portal Rule 200(a).

[17] *Cf. David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588, at *3 n.10 (July 27, 2015) (holding that a violation of a FINRA rule also violates FINRA Rule 2010). *Compare* FINRA Funding Portal Rule 200(a), *with* FINRA Rule 2010.

DreamFunded's application process or via a Dropbox link Fernandez emailed to his lawyer—but there is no evidence of this. Instead, the record shows that Applicants provided only 24 bank statements during the firm's application process—and those are accounted for in the 40 of 276 bank statements that Applicants produced. And the Dropbox link Applicants provided was to the same small number of documents already produced.

Applicants further contend that they acted in good faith and used best efforts to produce all the documents required by the 8210 request. But Fernandez's repeated personal travel while claiming to be sick—and ultimate production of less than 14% of requested bank records and none of the accounting and bookkeeping records—belie Applicants' claim of best efforts. And, regardless, "scienter is not an element of a Rule 8210 violation."[18] We also find no merit to Applicants' assertion, without citation or explanation, that FINRA did not have the right to ask for the documents.[19] And we reject Applicants' argument that FINRA did not have authority to file a complaint against them because FINRA can file a complaint up to two years after a person's FINRA registration has ended.[20]

B. We sustain FINRA's findings that Applicants violated FINRA Funding Portal Rules through false and misleading statements.

FINRA found that Applicants violated FINRA Funding Portal Rules through three categories of false and misleading statements to investors: (1) a video clip falsely representing that DreamFunded had invested over $100 million in startups and that Fernandez offered to invest $1 million in an issuer on the portal; (2) representations on DreamFunded's website overstating the due diligence Applicants conducted on issuers; and (3) real estate advertisements on DreamFunded's website that misled investors about DreamFunded's business. FINRA found the first two categories violated Rule 200(b), which requires scienter, and the third violated Rule 200(c)(2), which requires only negligence. By violating Funding Portal Rules 200(b) and 200(c)(2), one also violates Funding Portal Rule 200(a).[21]

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18 *Evansen*, 2015 WL 4518588, at *5.

19 *See, e.g.*, *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 WL 2482466, at *5 (Aug. 25, 2006) (explaining that FINRA's Rule 8210 authority "stems from the contractual relationship entered into voluntarily by [FINRA] members and associated persons").

20 *See* FINRA By-Laws Article IV, Section 6 (FINRA members); FINRA By-Laws Article V, Section 4(a) (persons associated with FINRA members); FINRA Funding Portal Rule 100(a) (applying FINRA's By-Laws, including Articles IV and V, to funding portal members and persons associated with funding portal members).

21 *See supra* note 17.

Applicants contest only the video clip-related finding and have forfeited any challenge to the due diligence and real estate findings.[22] We nevertheless review all three findings consistent with our standard of review and sustain them.[23]

1. Applicants engaged in the conduct FINRA found regarding the video clip and Applicants' due diligence representations, and their conduct violated FINRA Funding Portal Rules 200(b) and 200(a).

Funding Portal Rule 200(b)—which is modeled on FINRA Rule 2020—prohibits funding portal members from "effect[ing] any transaction in, or induc[ing] the purchase or sale of, any security by means of, or by aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance."[24] As with Rule 2020, a person can violate Funding Portal Rule 200(b) by committing a deceptive or manipulative act in furtherance of a scheme to defraud with scienter, when in connection with the purchase or sale of a security.[25] Scienter is a "mental state embracing intent to deceive, manipulate, or defraud."[26] A heightened showing of recklessness can also establish scienter.[27] Deceptive or manipulative acts occur in connection with the purchase or sale of a security when they "coincide" with the purchase or sale of a security.[28]

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22 *See Eric S. Smith*, Exchange Act Release No. 100762, 2024 WL 3875989, at *10 (Aug. 19, 2024) (finding that applicant forfeited challenges not raised on appeal to the Commission), *petition denied*, 2026 WL 85080 (6th Cir. Mar. 27, 2026); Rule of Practice 420(c), 17 C.F.R. § 201.420(c) (providing that any exceptions "not supported in an opening brief . . . may, at the discretion of the Commission, be deemed to have been waived").

23 *See Smith*, 2024 WL 3875989, at *10; Rule of Practice 420(c), 17 C.F.R. § 201.420(c).

24 Funding Portal Rule 200(b); *see* Commission Approval of Funding Portal Rules, Exchange Act Release No. 76970, 2016 WL 286421, at *4 (Jan. 22, 2016). *Compare* Funding Portal Rule 200(b), *with* FINRA Rule 2020.

25 *Cf. Louis Ottimo*, Exchange Act Release No. 83555, 2018 WL 3155025, at *9 (June 28, 2018) (explaining that a violation of Exchange Act Section 10(b) and Rule 10b-5 thereunder violates Rule 2020); *SEC v. Passos*, 760 F. Supp. 3d 95, 121–22 (S.D.N.Y. 2024) (explaining the elements of Rule 10b-5(a)).

26 *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976).

27 *Gebhart v. SEC*, 595 F.3d 1034, 1040–42 (9th Cir. 2010) (holding that scienter may be established by recklessness); *Dolphin and Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (holding that scienter can be established by "an extreme departure from the standards of ordinary care" presenting an obvious danger of misleading investors (cleaned up)).

28 *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (noting that, to satisfy "in connection with" in Exchange Act Section 10(b) and Rule 10b-5 thereunder, "it is enough that the fraud alleged coincide with a securities transaction" (cleaned up)); *see also SEC v. Zandford*, 535 U.S. 813, 822 (2002) ("It is enough that the scheme to defraud and the sale of securities coincide.").

a. <u>False statements in a video clip about Applicants' purported investments.</u>

In January 2016—before DreamFunded registered as a funding portal—Fernandez and the CEO of a company the NAC referred to as "Issuer C" appeared in a television episode of a program about inventors connecting with potential investors. The episode aired on CNBC on October 6, 2016, three months after DreamFunded became a FINRA-registered funding portal.

A few days after the episode aired, Fernandez posted an approximately seven-minute clip on Twitter to generate publicity for himself and DreamFunded. The clip showed the program's host introducing Fernandez as the CEO of "DreamFunded.com, a crowdfunding platform that's invested over $100 million in startups" and showed Fernandez offering, "on behalf of DreamFunded.com," to invest $1 million in Issuer C—an offer Issuer C's CEO accepted on camera. Fernandez admitted at the hearing that those statements were false: DreamFunded had not invested $100 million in startups, he did not (and never intended to) invest $1 million in Issuer C, and the offer was staged for the program.

According to Fernandez, a FINRA staff member called him a day or two later to express concerns about his posting the clip, at which point he immediately took it down. Fernandez testified that, later in October, he put a shorter version of the clip on DreamFunded's website that did not include the offer to invest. Fernandez introduced no evidence of such a truncated version into the record.

The FINRA staff member testified that she did not recall that conversation with Fernandez, but that she saw the full video clip at various times from October 2016 through September 2017 on DreamFunded's website, DreamFunded's Facebook page, and DreamFunded's YouTube page. She could not recall the specific dates she saw the video clip, but she took a picture of the clip on DreamFunded's Facebook page on February 15, 2017—by which point, Issuer C's offering was live on DreamFunded.

In March 2017, the FINRA staff member emailed Fernandez about having seen the full video clip on DreamFunded's website. Applicants' counsel responded to FINRA in April 2017 that the clip had been removed from DreamFunded's website, without specifying when or by whom. The FINRA staff member took another screen shot of the video clip on DreamFunded's website in September 2017. A second FINRA staff member also took a picture of the video clip on DreamFunded's YouTube page in May 2018.

Fernandez denied that he posted the full video clip on DreamFunded's website or its Facebook or YouTube pages, asserting instead that a former disgruntled employee hacked DreamFunded's pages to post the video clip without his knowledge. But he offers no evidence for this claim. Even if he did not post the clip himself, we find it is unrealistic that Fernandez, who served as DreamFunded's CEO, CFO, and chief compliance officer, would not at least have been aware that the clip was on the company's website—after being expressly warned about it by FINRA.

The video clip plainly misrepresented two material facts. The representation that Applicants had invested $100 million in startups exaggerated Applicants' resources and track record in a way that would give potential investors unwarranted confidence in the platform.[29] The representation that Applicants invested $1 million in Issuer C falsely signaled that Fernandez himself considered Issuer C worth backing with his own capital.

Applicants also acted with at least recklessness.[30] Fernandez admitted knowing that the statements in the video clip were false. FINRA warned him in March 2017 that the clip was on DreamFunded's website. When Applicants' counsel told FINRA that the video clip had been removed by April 2017, counsel did not dispute that it had been on the website or claim that DreamFunded's website had been hacked. Despite counsel's representation, the video clip remained on DreamFunded's website through at least September 2017 and on DreamFunded's YouTube page through May 2018.

Applicants' fraudulent conduct was also in connection with the purchase or sale of a security. Multiple crowdfunding offerings—including Issuer C's, the issuer in the clip—were live on DreamFunded's website when the false clip was uploaded to and available on DreamFunded's website. The clip was also false both when created and at all times when available on DreamFunded's website.[31] Applicants argue that the clip was filmed before DreamFunded existed and that FINRA cannot demonstrate who removed the video clip or when, but neither claim affects the analysis. The violation is premised on Applicants continuing to list offerings while the materially misleading clip was on DreamFunded's website—the same website investors used to make commitments to crowdfunding offerings—not the clip's origin or eventual removal.

b. <u>Investor due diligence misrepresentations.</u>

DreamFunded's website represented that DreamFunded's "screening process is detailed and time consuming"; that the platform followed the Angel Capital Association's ("ACA") "strict due diligence guidelines" to "mitigate investment risk by gaining an understanding of a company and its market"; and that a "due diligence and deal flow screening team screens each company that is applying to be featured on the DreamFunded platform." All these statements were false and materially misleading.

The record contains no evidence that Applicants conducted due diligence on any issuer. When FINRA requested due diligence records, Applicants produced an uncompleted, generic ACA due diligence checklist and no documentation of any due diligence team meetings or findings. Applicants produced only two issuer-specific due diligence documents. But for one issuer, DreamFunded produced a printout of the LinkedIn page of an issuer's founder, with a date that post-dated FINRA's request for information. For another issuer, Applicants produced a

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29 *See Ottimo*, 2018 WL 3155025, at *10 (finding that misrepresentations about management experience abilities were material).

30 DreamFunded acted with scienter based on Fernandez's acts. *See Kirk A. Knapp*, 50 S.E.C. 858, 860 n.7 (1992) (explaining that NASD properly attributed scienter of a firm's owner to the firm).

31 *See supra* note 28.

document with a copyright date of 2017—the year after the issuer filed to conduct an offering on DreamFunded in 2016.

The misrepresentations were material because claiming that Applicants had conducted extensive due diligence—when they in fact conducted little or none—would have provided potential investors with false confidence in the quality of the crowdfunding issuers on DreamFunded's platform.[32] Given that Fernandez himself testified at the hearing that he was centrally involved in Applicants' due diligence, he was at least reckless in not knowing that the diligence conducted did not remotely measure up to the claims on DreamFunded's website. Finally, the misstatements were in connection with the purchase or sale of a security because they appeared on DreamFunded's website while Applicants were soliciting crowdfunding investments through that same website.

2. Applicants engaged in the conduct FINRA found regarding real estate advertisements, and their conduct violated FINRA Funding Portal Rules 200(c)(2) and 200(a).

FINRA found that Applicants violated Funding Portal Rule 200(c)(2)(A), and thus also Rule 200(a), by posting certain real estate advertisements on DreamFunded's website. Funding Portal Rule 200(c)(2)(A) prohibits funding portal communications from, among other things, including "any false, exaggerated, unwarranted, promissory or misleading statement or claim."[33] We agree, and Applicants do not dispute, that Applicants violated these rules.

In June 2017, while DreamFunded was still a registered funding portal, DreamFunded posted approximately ten descriptions of real estate deals on its website, with information about how much money each deal raised. These descriptions were misleading because they made it appear that the transactions represented DreamFunded's crowdfunding track record, when in fact the properties were owned by Fernandez personally, the deals predated DreamFunded becoming a registered crowdfunding portal, and they were not crowdfunding transactions at all.

Because Funding Portal Rule 200(c)(2)(A) lacks words indicating knowing or intentional misconduct, such as "manipulative," "device," or "contrivance," negligence is sufficient to establish a violation.[34] Applicants acted at least negligently here by posting the real estate deal descriptions on DreamFunded's website, as a reasonable person would know that investors

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32 *Cf. Blank v. TriPoint Glob. Equities, LLC*, 338 F. Supp. 3d 194, 211 (S.D.N.Y. 2018) (finding that the defendant's misrepresentations about its due diligence were material).

33 Funding Portal Rule 200(c)(2)(A).

34 *See Aaron v. SEC*, 446 U.S. 680, 690–91, 695–96 (1980) (finding that the terms "'manipulative,' 'device,' and 'contrivance'" evidence "knowing or intentional misconduct," while "'by means of any untrue statement of material fact or any omission to state a material fact'" contain no "suggestion whatsoever of a scienter requirement" (cleaned up)); *SEC v. Steadman*, 967 F.2d 636, 643 & n.5 (D.C. Cir. 1992) (recognizing that violations of Securities Act Section 17(a)(2) requires a finding of negligence rather than strict liability). *Compare* Securities Section 17(a)(2), 15 U.S.C. § 77q(a)(2), *with* Funding Portal Rule 200(c)(2)(A).

visiting DreamFunded's website could be misled into believing that the descriptions were part of DreamFunded's crowdfunding activity.

C. We sustain FINRA's findings that Applicants violated gatekeeping, investor protection, and supervisory provisions.

FINRA found that Applicants committed violations of Commission and FINRA funding portal rules governing gatekeeping, investor protection, and supervisory responsibilities. FINRA also found that, by violating those rules, Applicants violated Funding Portal Rule 200(a). Applicants do not challenge those findings, and have thus forfeited those challenges. We nevertheless review FINRA's findings consistent with our standard of review and sustain them.[35]

1. Applicants failed in their gatekeeping obligations.

a. <u>Failure to cancel Issuer A's offering.</u>

Commission Crowdfunding Rule 301(c)(2) requires crowdfunding intermediaries, like DreamFunded, to promptly remove an offering, cancel it, and return investor funds if the intermediary "becomes aware of information . . . that causes it to reasonably believe that the issuer or the offering presents the potential for fraud or otherwise raises concerns about investor protection."[36] Applicants violated this rule in connection with an offering by a company the NAC referred to as Issuer A.

Issuer A was formed in September 2016 and filed a Form C the following month to commence a crowdfunding offering through DreamFunded with a $10,000 target and a September 20, 2017, deadline. On April 30, 2017, Applicants removed Issuer A from DreamFunded's website. But the offering remained open because the deadline had not changed and the offering had not yet reached its target, meaning Issuer A could not yet receive the investor funds held in escrow.[37]

Over the next several weeks, Issuer A's CEO twice emailed Fernandez to ask, without explanation, that Fernandez lower the target offering amount "at [his] earliest convenience" to $4,000—an amount that investors had already committed. The CEO also asked Fernandez to wire the funds to the CEO's personal account, telling Fernandez that his bank account was overdrawn. On June 19, 2017, Issuer A filed an amended Form C with the lower $4,000 target amount. On June 26, 2017, Applicants closed the offering and disbursed the majority of the $4,345 offering proceeds to Issuer A's CEO.

These facts gave Applicants a reasonable basis to conclude that the CEO was trying to defraud investors by gaining personal control of their money to fund his own overdrawn personal

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35 *See Smith*, 2024 WL 3875989, at *10; Rule of Practice 420(c), 17 C.F.R. § 201.420(c).

36 17 C.F.R. § 227.301(c)(2).

37 *See* Crowdfunding Rule 201(g), 17 C.F.R. § 227.201(g) (noting that investment commitments to a crowdfunding offering must be cancelled and committed funds returned to investors if the target offering amount is not reached by the deadline).

account. Under Rule 301(c)(2), Applicants should have cancelled Issuer A's offering and returned investor funds. Instead, they wired the funds to Issuer A's CEO. Applicants thus violated Crowdfunding Rule 301(c)(2) and Funding Portal Rule 200(a).[38]

b. Applicants failed to conduct background checks.

Commission Crowdfunding Rule 301(c)(1) requires crowdfunding intermediaries to deny an issuer access to its crowdfunding platform if the intermediary "[h]as a reasonable basis for believing" that the issuer, any of its officers or directors, or certain beneficial owners is subject to disqualification pursuant to Crowdfunding Rule 503.[39] In evaluating whether any person is subject to disqualification, crowdfunding intermediaries "must, at a minimum, conduct a background and securities enforcement regulatory history check" on each issuer and each of the issuer's officers, directors, and certain beneficial owners.[40] The record contains no evidence that Applicants ran any such checks for any offerings listed on DreamFunded. Applicants thus violated Crowdfunding Rule 301(c)(1) and Funding Portal Rule 200(a).

2. Applicants failed to send required notices to investors.

Applicants either failed to send or sent deficient notices for four categories of notices required by Commission Regulation Crowdfunding.

a. Material-change notices.

Crowdfunding Rule 304(c)(1) requires crowdfunding intermediaries to provide investors with notices if there is "a material change to the terms of an offering or to the information provided by the issuer" so that investors have an opportunity to reconfirm their commitment to invest in the offering.[41] Applicants did not do this for Issuer A's offering. As described above, Issuer A filed an amended Form C to decrease its target offering amount to $4,000. On that amendment, Issuer A indicated that the amendment was "material and investors must reconfirm within five business days." Applicants did not provide investors with the required notices of that material change. Applicants thus violated Crowdfunding Rule 304(c)(1) and Funding Portal Rule 200(a).

b. Early closing notices.

Crowdfunding Rule 304(b)(2) requires crowdfunding intermediaries to send investors notices if an offering is closing early because it reached the target offering amount early.[42] Such

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38 *See supra* note 17; *cf. Robbi J. Jones*, Exchange Act Release No. 104273, 2025 WL 3419593, at *8 & n.23 (Nov. 28, 2025) (concluding that a violation of FINRA and Commission rules "also *per se* constitutes a violation of" FINRA Rule 2010).

39 17 C.F.R. §§ 227.301(c)(1) & .503.

40 Crowdfunding Rule 301(c)(1), 17 C.F.R. § 227.301(c)(1).

41 17 C.F.R. § 227.304(c)(1).

42 *Id*. § 227.304(b)(2).

notices must inform investors of their right to cancel their "investment commitments for any reason up until 48 hours prior to the new offering deadline."[43] Applicants violated this rule as to two different issuers.

Issuer A's offering closed three months earlier than its original closing date, and Applicants disbursed offering proceeds to Issuer A in June 2017. Issuer B also conducted an offering through DreamFunded, and it closed its offering two months early. There is no evidence of Applicants sending early closing notices to investors in either Issuer A or Issuer B. Applicants thus violated Crowdfunding Rule 304(b)(2) and Funding Portal Rule 200(a).

c. Investment commitment notices.

Crowdfunding Rule 303(d) requires crowdfunding intermediaries to promptly provide notices to an investor once that investor makes an investment commitment, and the notice must include "[t]he date and time by which the investor may cancel the investment commitment."[44] Commitment notices that Applicants sent to investors in the offerings of Issuers A and B did not include language advising investors of their right to cancel. Applicants thus violated Crowdfunding Rule 303(d) and Funding Portal Rule 200(a).

d. Investment confirmation notices.

Crowdfunding Rule 303(f) requires crowdfunding intermediaries to provide investors notices confirming the completion of a crowdfunding transaction.[45] Such notices must include, among other things, "[t]he identity, price, and number of securities purchased by the investor, as well as the number of securities sold by the issuer in the transaction and the price(s) at which the securities were sold" and "[t]he source, form and amount of any remuneration received or to be received by the intermediary in connection with the transaction."[46] Confirmation emails that Applicants sent to investors in the offerings of Issuers A and B did not include this required information. Applicants thus violated Crowdfunding Rule 303(f) and Funding Portal Rule 200(a).

3. Applicants failed to implement adequate supervisory procedures.

We sustain FINRA's findings that Applicants violated Commission Crowdfunding Rule 403(a) and FINRA Funding Portal Rule 300(a), and thus also Funding Portal Rule 200(a), by not implementing adequate supervisory procedures. Crowdfunding Rule 403(a) requires funding portals to "implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws."[47] FINRA Funding Portal Rule 300(a)(1) similarly requires funding portals to "establish and maintain a system to supervise the activities of each

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43 Crowdfunding Rule 304(b)(2), 17 C.F.R. § 227.304(b)(2).

44 17 C.F.R. § 227.303(d).

45 *Id*. § 227.303(f).

46 Crowdfunding Rule 303(f), 17 C.F.R. § 227.303(f).

47 17 C.F.R. § 227.403(a).

associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules."[48]

Applicants did not adequately implement their written supervisory procedures ("WSPs"). DreamFunded's WSPs identified Fernandez as the person responsible for implementing them, but he failed to do so. When asked at the hearing how frequently he used the WSPs, for example, Fernandez admitted, "I think infrequently is a pretty good answer." And there is nothing besides his own testimony demonstrating that he performed any of his review responsibilities. For instance, the WSPs required documentation of certain periodic reviews of DreamFunded's emails and website; the collection, retention, protection, and review of investor information; and the prior review of new offerings before listing for potential for fraud. The record contains no such documentation.

D. The provisions FINRA found that Applicants violated are, and were applied in a manner, consistent with the purposes of the Exchange Act.

FINRA Rule 8210 and FINRA Funding Portal Rule 800(a) are consistent with the purposes of the Exchange Act because they are essential to FINRA's ability to investigate possible misconduct by its members and associated persons.[49] Funding Portal Rules 200(b), 200(c)(2), and 200(a) are also consistent with the Exchange Act, which requires FINRA to promulgate rules to "prevent fraudulent and manipulative acts and practices" and "promote just and equitable principles of trade."[50] Commission Crowdfunding Rules 301(c)(1) and (2), 304(c)(1), 304(b)(2), 303(d), 303(f), and 403(a) and Funding Portal Rules 300(a)(1) are similarly consistent with the Exchange Act's investor protection purposes.

FINRA also applied these rules consistently with the Exchange Act's purposes. Applicants' failure to respond to FINRA's Rule 8210 request directly hindered FINRA's ability to investigate possible misappropriation of investor funds. Applicants' misrepresentations to investors—about DreamFunded's investment track record, due diligence practices, and business activities—are the kind of fraudulent and misleading conduct that Funding Portal Rules 200(b) and 200(c)(2) are designed to prevent. And Applicants' gatekeeping, investor protection, and supervisory failures undermined the investor protection framework that Commission Regulation Crowdfunding and the FINRA Funding Portal Rules were designed to establish for registered crowdfunding intermediaries.

IV. Sanctions

Under Exchange Act Section 19(e)(2), we sustain FINRA's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are

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[48] FINRA Funding Portal Rule 300(a)(1).

[49] *See Robert Juan Escobio*, Exchange Act Release No. 97701, 2023 WL 3948218, at *12 (June 12, 2023).

[50] 15 U.S.C. § 78*o*-3(b)(6).

excessive or oppressive or impose an unnecessary or inappropriate burden on competition.[51] In making that assessment, we consider any aggravating or mitigating factors and whether the imposed sanctions are remedial rather than impermissibly punitive.[52]

FINRA's Sanction Guidelines serve as a non-binding benchmark when assessing sanctions imposed on FINRA members and their associated persons.[53] We have not had occasion to determine whether the Guidelines also serve as a benchmark for sanctions imposed on funding portal members and their associated persons, but we conclude that they do. The Guidelines are flexible tools designed to promote consistent and fair sanctions,[54] and they expressly encourage FINRA adjudicators to reference guidelines analogous to the violation at issue where no directly applicable guideline exists.[55]

We sustain the sanctions FINRA imposed for Applicants' failure to respond to FINRA's Rule 8210 request and for their misstatements to investors. We set aside the sanctions FINRA imposed for the gatekeeping, investor protection, and supervisory violations.

A. We sustain the sanctions FINRA imposed on Applicants for their failure to fully comply with FINRA's Rule 8210 request.

For Applicants' failure to fully respond to FINRA's Rule 8210 request, FINRA expelled DreamFunded from FINRA membership as a funding portal and barred Fernandez from association with any FINRA funding portal member. We sustain those sanctions.

For a partial but incomplete Rule 8210 response, the Guidelines recommend a bar for an individual "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[56] For firms, the Guidelines recommend an expulsion

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51 15 U.S.C. § 78*s*(e)(2). The record does not demonstrate, nor do Applicants claim, that FINRA's sanctions impose an unnecessary or inappropriate burden on competition.

52 *See Saad v. SEC*, 718 F.3d 904, 906, 913 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

53 *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 & n.68 (June 14, 2013). We look to the Guidelines in force at the time the FINRA Hearing Panel made its determination in this case, which were the October 2020 Guidelines. *See* FINRA Sanction Guidelines (Oct. 2020), https://www.finra.org/sites/default/files/2021-10/Sanctions_Guidelines_2020.pdf.

54 *See Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *10 n.32 (Jan. 9, 2015) ("FINRA adopted the Sanction Guidelines to ensure greater consistency, uniformity, and fairness in the sanctions that are imposed for violations." (citation omitted)), *petition denied*, 641 F. App'x 27 (2d Cir. 2016); FINRA Sanctions Guidelines, at 1 (noting that the Guidelines "provide direction for Adjudicators in imposing sanctions consistently and fairly").

55 *See* FINRA Sanctions Guidelines, at 1 ("For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.").

56 *Id.* at 33.

for "egregious" cases and a suspension of up to two years if mitigation exists.[57] The partial-response Guideline is the appropriate standard here, as Applicants fell far short of substantially complying with FINRA's request, as they produced only a fraction of the requested bank statements and none of the requested accounting and bookkeeping records.

Turning to whether the conduct was egregious, the Guidelines identify three principal sanction considerations for Rule 8210 violations: (1) the importance of the requested information that was not provided, as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) the reasons offered for the deficiencies in the response.[58]

Here, the information Applicants failed to produce was important. FINRA requested bank, accounting, and bookkeeping records after Fernandez's OTR raised questions about whether Applicants were using investor funds for legitimate purposes. Such records were central to FINRA's ability to investigate Applicants' use of investor funds. FINRA staff also spent significant time and effort attempting to obtain the information, as Applicants did not produce any responsive documents—and then only a small fraction—until after almost two months of FINRA repeatedly requesting the material and granting Applicants repeated extensions.

Applicants also provide no valid reasons for the deficiencies in their response to FINRA's 8210 request. Applicants variously claim that they provided the information to their counsel, that they did not have access to the documents, and that Fernandez was too ill to work on the response during part of the time. But these claims are implausible given Applicants' repeated requests for extensions, the fact that the requested information comprised bank statements and accounting records that Applicants should easily have been able to access, and Fernandez's travel when claiming to be sick.

Applicants also suggest that the lack of evidence that they personally benefited from their misconduct is mitigating. But as the Commission has long explained, a violation of Rule 8210 "will rarely, in itself, result in . . . direct monetary gain for a violator."[59] And here, Applicants' failure to produce the requested records prevented FINRA from investigating whether Applicants actually caused investor losses.

B. We sustain the sanctions FINRA imposed for Applicants' misstatement-related violations.

For Applicants' misstatement-related violations, FINRA expelled DreamFunded from FINRA membership as a funding portal and barred Fernandez from association with any FINRA

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57 *Id.*

58 *Id.*

59 *Escobio*, 2023 WL 3948218, at *16; *see also* FINRA Sanctions Guidelines, at 33 n.2 ("The lack of harm to customers or benefit to a violator does not mitigate a Rule 8210 violation.").

funding portal member. Applicants do not specifically challenge these sanctions, and we sustain them.

FINRA applied the violation-specific Guidelines for FINRA Rule 2020 and Rule 2210(d)(1) because those rules are the models for Funding Portal Rules 200(b) and 200(c)(2), respectively. For Rule 2020 violations, the Guidelines recommend "[s]trongly consider[ing]" a bar for intentional or reckless fraudulent misrepresentations, unless mitigating factors predominate, in which case the Guidelines recommend a suspension of six months to two years.[60] For a firm, the Guidelines recommend a suspension up to two years, unless aggravating factors predominate, in which case the Guidelines recommend expulsion.[61] The Rule 2210 Guidelines for misleading communications suggest suspending an individual for up to 60 days in egregious cases and suspending firms for up to a year in egregious cases.[62] Applying those Guidelines, we agree with FINRA that Applicants' misrepresentations were egregious and that aggravating factors support an expulsion and bar.

The most serious violations are the video clip and due diligence misrepresentations, which fall under the Rule 2020 Guidelines. Fernandez allowed the video clip to remain on DreamFunded's website and its Facebook and YouTube pages for over a year, even though he knew that the clip contained two material misrepresentations: that DreamFunded had invested over $100 million in startups and that he intended to invest $1 million in Issuer C.[63] The due diligence misrepresentations were equally egregious. Applicants represented to potential investors that they conducted rigorous due diligence on issuers listed on DreamFunded, when Applicants could produce no records evidencing any due diligence at all.

The misrepresentations about the real estate advertisements, which fall under Rule 2210, are less serious—they were negligent rather than intentional or reckless—but they are still not acceptable. Those misstatements made it appear to investors that past successful real estate transactions were part of DreamFunded's crowdfunding track record, when they were not.

All the misrepresentations were also widely available to potential investors through DreamFunded's website.[64] They demonstrate a concerning pattern of misrepresentations that

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60 *See* FINRA Sanctions Guidelines, at 89 (Fraud, Misrepresentations or Material Omissions of Fact).

61 *See id.*

62 *See id.*

63 *See id.* at 7 (Principal Guideline No. 9) (whether respondent engaged in misconduct over an extended period).

64 *See id.* at 80 (Late Filing; Failing to File; Failing to Comply with Rule Standards or Use of Misleading Communications) (suggesting consideration of whether the violative communications with the public were circulated widely).

misled investors across a range of topics concerning Applicants' business—including their experience, track record, and due diligence practices.[65]

Applicants argue that, as to all the sanctions FINRA imposed, they deserve no more than a letter of caution, a small fine, or a 30-day suspension because this is a case of first impression applying the JOBS Act, which was created to help entrepreneurs raise capital. In addition to facilitating capital formation, however, the JOBS Act also mandated investor protections—and we agree with FINRA that an expulsion and bar are necessary for investor protection given the scope of Applicants' misconduct—which violated well-established principles of responding to regulatory requests and acting truthfully with investors.[66] Applicants also suggest that FINRA imposed sanctions because Fernandez and the issuers who listed offerings on DreamFunded were minorities and that FINRA staff had a personal bias against Applicants. Applicants point to no evidence of bias, nor can we find any.

Accordingly, we find that the sanctions are remedial—designed to protect investors from a funding portal and its principal who systematically misled them—not punitive.

C. We set aside the sanctions FINRA imposed for Applicants' gatekeeping, investor protection, and supervisory violations.

For Applicants' gatekeeping, investor protection, and supervisory violations, FINRA expelled DreamFunded from funding portal membership and barred Fernandez from associating with any FINRA funding portal member in any capacity after applying the Guidelines for systemic supervisory failures. We set aside those sanctions.

Where aggravating factors predominate, the Guidelines for systemic supervisory failures recommend a wide range of possible sanctions: from a suspension of 10-business days to a bar or expulsion.[67] We agree with FINRA that Applicants' gatekeeping, investor protection, and supervisory failures were sufficiently widespread to be systemic. But the systemic nature of Applicants' failure is only a prerequisite for applying the Guidelines for systemic supervisory failures. FINRA had to, but did not, explain why it was necessary to impose sanctions at the top of a Guidelines range that explicitly contemplates far lesser sanctions.[68]

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65 *See id.* at 7 (Principal Guideline No. 8) (whether respondent engaged in a pattern of misconduct).

66 *See* Crowdfunding, Exchange Act Release No. 70741, 2013 WL 5770346, at *4 (Oct. 23, 2013) (noting that the relevant provisions of the JOBS Act were "designed to help alleviate the funding gap and accompanying regulatory concerns," while also noting that "Congress provided important investor protections for crowdfunding transactions").

67 *See* FINRA Sanctions Guidelines, at 105–06 (Supervision—Systemic Supervisory Failures).

68 *See Wilson-Davis & Co.*, Exchange Act Release No. 99248, 2023 WL 9022658, at *18–20 (Dec. 28, 2023) (setting aside sanctions where FINRA provided an insufficient analysis for how it reached its sanctions conclusions).

Although we could remand to FINRA for further consideration and explanation, we exercise our discretion not to do so given the two other expulsions and bars we sustain above and the time elapsed in this matter.[69] Accordingly, we set aside the expulsion and bar that FINRA imposed for Applicants' gatekeeping, investor protection, and supervisory violations.

V. Constitutional & Procedural Arguments

Applicants also challenge FINRA's proceedings on several constitutional and procedural grounds. Applicants forfeited or waived most of these arguments and, regardless, they fail on the merits.

A. Applicants' constitutional arguments are without merit.

For the first time in their reply brief and subsequent briefs, Applicants argue that FINRA's proceeding and action violated the private non-delegation doctrine, the U.S. Constitution's Seventh Amendment guarantee to a jury trial and the Constitution's Appointments Clause and removal provisions. Challenges premised on constitutional claims are not exempt from "ordinary principles of waiver and forfeiture."[70] Applicants contend that their brief to the NAC preserved their non-delegation challenge, but the relevant passage of that brief argued only that the scope of FINRA Rule 8210 could not exceed the scope of Regulation Crowdfunding—a statutory construction argument, not a structural constitutional one. Raising a related statutory argument does not preserve a distinct constitutional theory. Applicants thus forfeited their constitutional arguments by not raising them before FINRA or in their opening brief to us.[71]

We separately reject these claims on the merits. Applicants' private non-delegation, Seventh Amendment, Appointments Clause, and removal claims are substantively similar to challenges that the Commission and Department of Justice have addressed in other proceedings.[72] We continue to agree with that analysis and to follow the lead set by the courts on these constitutional questions. We therefore explain only briefly why these claims lack merit.

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[69] *See Jason Lynn DiPaola*, Exchange Act Release No. 105568, 2026 WL 1509932, at *12 (May 28, 2026) (adopting a similar approach).

[70] *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) (citation omitted). We reject Applicants' contention that the Commission cannot impose an exhaustion requirement unless FINRA is a government agency, as courts have held that "general administrative exhaustion principles apply to [self-regulatory organizations]." *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 622 (2d Cir. 2004).

[71] *See, e.g.*, *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 WL 1659292, at *16 (Apr. 3, 2020) (finding that applicant's "failure to raise its Appointments Clause argument before FINRA is reason enough for us to reject it now"); *Bruce Zipper*, Exchange Act Release No. 84334, 2018 WL 4727001, at *7 (Oct. 1, 2018) (explaining that "generally 'any argument raised for the first time in a reply brief shall be deemed to have been waived'" (quoting Rule of Practice 450(b), 17 C.F.R. § 201.450(b))).

[72] *See* Br. for Respondent SEC, *Jones v. SEC*, No. 25-60703, ECF No. 71 (5th Cir. July 20, 2026); *see also* Br. for Respondent SEC, *Black v. SEC*, No. 23-2297, ECF No. 45 (4th Cir. July

Private non-delegation doctrine. Applicants argue that FINRA's power to expel DreamFunded and bar Fernandez before any Commission merits review violates the private non-delegation doctrine. The Supreme Court has recognized, however, that Congress may enlist the aid of private organizations in administering federal law without running afoul of the non-delegation doctrine as long as those private actors "function subordinately" to a government agency that exercises "authority and surveillance" over their activities.[73] Courts have repeatedly recognized that the relationship between FINRA and the Commission satisfies these principles, as the Commission exercises supervisory authority over FINRA's disciplinary decisions, including plenary review over its final disciplinary actions such as we exercised here.[74]

Although the D.C. Circuit found that an applicant for a preliminary injunction had demonstrated a likelihood of success on a non-delegation claim in a case where FINRA's expulsion of a member firm was allowed to take effect *before* Commission review was complete, that procedural posture is not present here.[75] DreamFunded's expulsions have been stayed, and we have conducted a full merits review of FINRA's final disciplinary decision, precisely the oversight mechanism that satisfies non-delegation principles.[76]

Seventh Amendment right to a jury trial. Applicants argue that FINRA violated the Seventh Amendment by imposing sanctions without a jury trial. A claim implicates the Seventh

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8, 2024); Def. SEC's Combined Br. in Supp. of Cross-Mot. for Summ. J. & Opp. to Pl.'s Mot. for Summ. J., *Black v. FINRA*, No. 3:23-cv-709-RJC-DCK, ECF No. 51-1 (W.D.N.C. Apr. 4, 2025); Mem. of Law of Intervenor United States in Defense of the Challenged Provisions of the Sec. Laws, *Alpine Sec. Corp. v. Nat'l Sec. Clearing Corp.*, No. 2:23-cv-00782-JNP-JCB, ECF No. 30 (D. Utah Jan. 29, 2024).

[73] *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940); *see also Alpine Sec. Corp. v. Nat'l Sec. Clearing Corp.*, No. 2:23-CV-00782-JNP-JCB, 2025 WL 901847, at *8 (D. Utah Mar. 25, 2025) (dismissing plaintiff's private non-delegation claim as to clearing agency, explaining that clearing agencies "act only as an aid to and function subordinately to the SEC").

[74] *See, e.g.*, *NASD v. SEC*, 431 F.3d 803, 806 (D.C. Cir. 2005) (recognizing that the Exchange Act "provides the Commission with plenary review powers" over self-regulatory organizations' disciplinary sanctions); *Sorrell v. SEC*, 679 F.2d 1323, 1325–26 (9th Cir. 1982) (upholding arrangement against a challenge that Congress unconstitutionally delegated power to self-regulatory organizations to impose disciplinary sanctions).

[75] *See Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314, 1330–31 (D.C. Cir. 2024) (finding likelihood of success on private non-delegation claim where FINRA's expulsion took effect before Commission review was complete).

[76] *Cf. Scottsdale Cap. Advisors Corp. v. FINRA*, Civ. No. 23-1506 (BAH), 2026 WL 1464320, at *21 (D.D.C. Apr. 23, 2026) (rejecting private non-delegation claim by observing 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").

Amendment if it is "legal in nature."[77] That inquiry turns on "the cause of action" and the "remedy" at issue, with the remedy being the "more important" consideration.[78]

As the Supreme Court explained in *SEC v. Jarkesy*, "money damages . . . designed to punish or deter the wrongdoer" rather than "restore the status quo" are the "prototypical common law remedy."[79] The Court thus concluded that a Commission proceeding seeking "civil penalties, a form of monetary relief," implicated the jury-trial right.[80] But no civil penalties—nor any other monetary relief—are at issue here. Instead, FINRA expelled and barred Applicants from the funding portal industry. As the Fifth Circuit explained in its decision that the Supreme Court affirmed in *Jarkesy,* a "ban . . . from participation in securities industry activities" is an "equitable remed[y]," not a legal one.[81] Applicants provide no basis to reach a different conclusion here.

Appointments Clause and removal. Applicants further contend that FINRA's hearing officers and NAC members were not appointed in accord with the Appointments Clause and are not subject to removal in a manner consistent with the Constitution. The Appointments Clause of Article II governs the appointment of people who occupy continuing offices "established by Law" and exercise significant authority that only the government can constitutionally exercise.[82] That Clause is irrelevant here because FINRA hearing officers do not occupy continuing offices established by law and do not exercise authority that only the government can constitutionally exercise.

Applicants' reliance on the Appointments Clause fails at the outset because FINRA hearing officers do not occupy a continuing position "established by Law."[83] "FINRA is a non-profit Delaware corporation that was formed" by private parties when a predecessor self-regulatory organization, NASD, consolidated its member functions with a component of the New York Stock Exchange.[84]

As we have detailed elsewhere, FINRA is part of a self-regulatory tradition in the securities industry that dates to the Founding.[85] That history likewise underscores that FINRA hearing officers do not perform functions that only the government can constitutionally perform. Private, self-regulatory organizations have, since the Founding, conducted their own proceedings

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77 *SEC v. Jarkesy*, 603 U.S. 109, 122 (2024) (quotation marks omitted).

78 *Id.* at 122–23 (quotation marks omitted).

79 *Id.* at 123 (quotation marks omitted).

80 *Id.*

81 *Jarkesy v. SEC*, 34 F.4th 446, 454 (5th Cir. 2022).

82 U.S. Const. art. II, § 2, cl. 2.

83 *Id.*; *see United States v. Germaine*, 99 U.S. 508, 511–12 (1878).

84 *Fiero v. FINRA*, 660 F.3d 569, 571 n.1 (2d Cir. 2011).

85 *See, e.g.*, Br. for Respondent SEC, *Smith v. SEC*, No. 24-3907, ECF No. 40 (6th Cir. July 10, 2025).

to decide whether a member has violated applicable standards and, if so, whether to discipline the member. Self-disciplinary proceedings, by their very nature, have always occurred in front of the organizations' own "governing committee, whose decision, after the trial of a member for offenses under its laws, is final."[86] Thus, to the extent FINRA conducts internal disciplinary proceedings to decide whether to discipline a member or an associated person in the first instance, FINRA performs those functions as "a professional association charged with regulating itself."[87]

Applicants also reference the President's Article II removal power, but that claim is likewise meritless. The President's removal power ensures that the President is "responsible for the actions of the Executive Branch."[88] Applicants' suggestion that, because FINRA hearing officers are "Officers of the United States," they must be removable by the President, rests on the same faulty premise as Applicants' Appointments Clause claim and fails for the same reason.

B. Applicants have not shown that Fernandez was deprived of procedural protections during his hearing testimony or OTR.

Applicants assert that FINRA deprived Fernandez of his right to a fair hearing by failing to accommodate his dyslexia and attention deficit disorder during his hearing testimony and by failing to reschedule OTR testimony (and then admitting the OTR transcript) while Fernandez was allegedly impaired by medication. We reject both claims.

As to the hearing testimony, Applicants assert that Fernandez did not have the ability to consult with or assist his lawyer during the FINRA hearing because he was "unable to have a rational understanding of what was taking place" due to his dyslexia and attention deficit disorder. However, neither Fernandez nor his counsel ever raised these concerns to the Hearing Panel during the many days of hearing testimony. Applicants also identify nothing in the record, and we cannot find anything, to support Applicants' contentions.

As to Applicants' claim that introducing the OTR transcript into evidence was unfair, Applicants' own counsel moved to admit the OTR transcript into evidence. And during the OTR itself, Fernandez was repeatedly asked whether he was suffering from any medical conditions or using any medications or substances that would impair his ability to provide truthful and accurate answers. Fernandez responded that he had taken sleeping medication, but had "drank a Red Bull," "should be fine," and would let staff know if his mind was "too cloudy." A FINRA staffer present at the OTR also testified that Fernandez appeared lucid, that there was nothing strange about his demeanor, and that he did not appear impaired or unable to answer questions. We thus find no basis to conclude that admitting the OTR somehow deprived Applicants of a fair hearing or prejudiced them.

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86 *Belton v. Hatch*, 17 N.E. 225, 227 (N.Y. 1888).

87 *Jones v. SEC*, 115 F.3d 1173, 1182 (4th Cir. 1997).

88 *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 496–97, 501 (2010) (citation omitted).

C. Applicants have not shown that FINRA was unfair or biased.

Applicants assert that FINRA's action was an attack on minority communities and motivated by Fernandez's race and the races and genders of issuers on DreamFunded's portal. They also suggest that FINRA took advantage of Fernandez's dyslexia and that FINRA singled them out for investigation because FINRA's lead investigator had a relative who once worked at DreamFunded before being fired. But FINRA's lead investigator submitted a declaration disputing that he has a relative who was a former DreamFunded employee,[89] and Applicants cite no evidence—other than their own assertions—to support any of these claims. We thus reject them.[90]

Separately, Applicants contend that FINRA's hearing officers are structurally biased because they are employed by the organization that brought the charges. But the Second Circuit has rejected such an argument, finding that a self-regulatory organization hearing officer's employment relationship with the organization that instituted the disciplinary action, standing alone, does not establish bias or partiality.[91] And Applicants identify nothing in the record, nor can we find anything, demonstrating any partiality or bias by FINRA or prejudice to Applicants.

* * *

For the reasons above, we sustain FINRA's findings of violations, sustain two of the three expulsions FINRA imposed on DreamFunded from membership as a FINRA funding portal, sustain two of the three bars FINRA imposed on Fernandez from associating with a FINRA funding portal member, and set aside the third expulsion and bar. And, given that the

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89 We grant FINRA's unopposed motion for leave to adduce the investigator's declaration. *See* Rule of Practice 452, 17 C.F.R. § 201.452 (permitting the Commission to allow additional evidence).

90 *John R. D'Alessio*, Exchange Act Release No. 47627, 2003 WL 1787291, at *13 (Apr. 3, 2003) (explaining that, to establish a selective prosecution claim, a petitioner must show he was unfairly singled out and that the prosecution was motivated by improper considerations such as race, religion, or suppression of a constitutionally protected right), *petition denied*, 380 F.3d 112 (2d Cir. 2004).

91 *See, e.g.*, *D'Alessio v. SEC*, 380 F.3d 112, 122 (2d Cir. 2004) ("Of course an Exchange employee who acts as a hearing officer may want to please his or her superiors who are themselves embroiled in litigation. But we think that that alone is far too attenuated an interest to cast a shadow on the employee's impartiality.").

Commission has completed a full merits review, the stay of DreamFunded's expulsions is terminated.

An appropriate order will issue.[92]

By the Commission (Chairman ATKINS and Commissioners PEIRCE and UYEDA).

Vanessa A. Countryman
Secretary

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92 We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

We grant FINRA's request to strike Applicants' document submitted on March 21, 2025. By including additional merits arguments, that filing constituted an unauthorized brief, and it would not "significantly aid the decisional process." *See* Rules of Practice 421(b) & 450(a), 17 C.F.R. §§ 201.421(b) & .450(a). For the same reason, we strike Applicants' notices of supplemental authority and statements of preserved arguments filed in April 2026, because, in substance, they are also unauthorized briefs and would not significantly aid the decisional process. We also deny Applicants' two motions filed in April 2026 for leave to file notices of supplemental authority because the notices contain legal argument beyond the permissible scope of such notices. *See, e.g.*, *Nordstrom v. Thornell*, No. CV-20-248-TUC-RCC, 2025 WL 2821279, at *1 (D. Ariz. Oct. 3, 2025); *United States v. Shelton*, No. 24-2101, 2025 WL 3687777, at *3 n.3 (2d Cir. Dec. 19, 2025).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 106028 / August 3, 2026

Admin. Proc. File No. 3-20639

In the Matter of the Application of

DREAMFUNDED MARKETPLACE, LLC and
MANUEL FERNANDEZ

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING IN PART AND SETTING ASIDE IN PART DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that FINRA's findings of violations against DreamFunded Marketplace, LLC and Manuel Fernandez are sustained; it is further

ORDERED that the sanctions imposed by FINRA against DreamFunded Marketplace, LLC and Manuel Fernandez are sustained in part and set aside in part as set forth in the Commission's opinion; and it is further

ORDERED that the Commission stay of DreamFunded Marketplace, LLC's expulsions is terminated.

By the Commission.

Vanessa A. Countryman
Secretary