No. 23-2297

In the United States Court of Appeals for the Fourth Circuit

FRANK HARMON BLACK AND
SOUTHEAST INVESTMENTS, N.C., INC.,
Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent,

AND

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,
Intervenor.

On Petition for Review of the Decision and Order of the Securities and Exchange Commission Under 15 U.S.C. § 78y(a)(1)

BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, *amicus curiae* the New Civil Liberties Alliance states that it is a nonprofit organization under the laws of the District of Columbia; that it has no parent corporation and no publicly held corporation owns 10 percent or more of its stock; and that, to its knowledge, no publicly held corporation is a party to this case or has any direct financial interest in its outcome.

April 22, 2024

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INTEREST OF *AMICUS CURIAE*

The New Civil Liberties Alliance ("NCLA") is a nonpartisan, nonprofit civil rights organization devoted to defending constitutional freedoms from the administrative state's depredations. The "civil liberties" of the organization's name include rights at least as old as the U.S. Constitution itself: jury trial, due process of law, the right to live under laws made by the nation's elected lawmakers through constitutionally prescribed channels, and the right to have executive powers exercised only by actors accountable to the President, some of which are at stake in this appeal. Yet these selfsame rights are also very contemporary—and in dire need of renewed vindication—because Congress, federal administrative agencies, and even sometimes the courts have neglected them for so long.

NCLA defends civil liberties primarily by asserting constitutional constraints on the administrative state. Although Americans still enjoy the shell of their Republic, there has developed within it a very different sort of government—a type, in fact, that the Constitution was designed to prevent. This unconstitutional administrative state is the focus of NCLA's concern.

NCLA is particularly disturbed when the government empowers private actors with vast executive discretion and muscle to enforce federal law through investigation, prosecution, and punishment, but does not ensure that these private actors are answerable to the President. That situation exists here, where Congress and Respondent Securities and Exchange Commission ("SEC") have empowered the Financial Industry Regulatory Authority ("FINRA"), the Intervenor herein, to investigate, prosecute, and punish securities brokers and firms for violating federal securities laws and rules without any meaningful direction or supervision by even SEC, much less the President. As explained herein, this empowerment of private law enforcement without close supervision by accountable Executive Branch officers violates Article II of the Constitution, deeply conflicts with our constitutional design, and presents a grave threat to civil liberties.

INTRODUCTION

The purpose of this brief is to underscore the absence of any meaningful, real-time SEC direction and supervision of FINRA when FINRA exercises the quintessential executive powers of investigating, prosecuting, and punishing alleged violators of federal securities laws

and rules.[1] That void stands in contrast with SEC's more meaningful direction and supervision of FINRA's less prolific exercises of *legislative* power through rulemaking. The distinction is critical here because FINRA's exercise of core executive power—not its exercise of legislative power—is the focus of Petitioners' constitutional claims. Even if FINRA's rulemaking powers pass constitutional muster—a point as to which this brief takes no position other than to say it is irrelevant—FINRA's enforcement powers do not.

As explained herein, FINRA investigates, fines, and strips the chosen livelihoods of hundreds of securities brokers and firms each year—discretionary and consequential exercises of core executive power typically performed by governmental actors—without any accountability to the President and without any meaningful direction, supervision, or surveillance by any presidentially appointed governmental officer. FINRA's actions thereby contravene Article II of the Constitution.

[1] All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part and no person or entity, other than NCLA and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief.

Because FINRA sanctioned Petitioners using this unconstitutional process, the Court should set aside SEC's final order affirming FINRA's sanctions and direct SEC to cancel those sanctions.

ARGUMENT

I. RELEVANT BACKGROUND

FINRA is an ostensibly private, nonprofit corporation that regulates the securities brokerage industry subject to SEC oversight. Its board members, officers, and employees are all private citizens who are neither appointed nor (with limited exceptions) removable by any governmental official. *See generally Scottsdale Capital Advisors Corp. v. FINRA*, No. 23-1506, 2023 U.S. Dist. LEXIS 99350, at *4-5 (D.D.C. June 7, 2023) ("*Scottsdale II*"), *emergency injunction granted pending appeal*, No. 22-5487, 2023 U.S. App. LEXIS 16987 (D.C. Cir. July 5, 2023). FINRA also unilaterally sets its own budget and staff salaries and receives no government funding. *Id*. at *5.

As nominally private actors, FINRA and its personnel are largely exempt from many of the basic checks, balances, and transparency requirements designed to protect individuals from overzealous governmental coercion and punishment. For example, FINRA and its

personnel are not constrained by the Administrative Procedure Act, the Sunshine Act, the Freedom of Information Act, the Advisory Committee Act, the Equal Access to Justice Act, or countless other laws applicable to traditional government regulators. And, as best *amicus curiae* can determine, despite wielding vast legislative and executive power, none of FINRA's board members, officers, or employees is required, like their governmental counterparts, to take an oath to "support and defend the Constitution" and to "bear true faith and allegiance to the same." 5 U.S.C. § 3331.

As the only SEC-registered "national securities association," FINRA wields vast legislative, executive, and adjudicatory powers over more than 3,000 broker-dealer firms and more than 600,000 individual brokers (also known as "registered representatives") operating within the securities industry. *See* FINRA, *Statistics*, www.finra.org/media-center/statistics (hereinafter "FINRA Statistics"). Federal law requires most broker-dealer firms to become members of FINRA and thereby subject themselves to FINRA's regulatory jurisdiction. 15 U.S.C. § 78o(b)(8); *see also* SEC Press Rel. No. 2023-154, *SEC Adopts Amendments to Exemption From National Securities Association*

Membership (Aug. 23, 2023) (further narrowing the thin sliver of broker-dealer firms exempt from mandatory FINRA membership). Federal law also requires FINRA to maintain rules to ensure that when its member firms or their brokers violate federal securities law or rules, they "shall be appropriately disciplined … by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction." *Id.* § 78o-3(b)(7).[2]

Although not an official agency or department of the federal government, FINRA exercises significant legislative power by

[2] Federal courts have characterized comparable sanctions in attorney-discipline cases as "quasi-criminal" in nature, *e.g.*, *In re Ruffalo*, 390 U.S. 544, 551 (1968); *In re Finn*, No. 22-11092, 2023 WL 5193517, at *2 (5th Cir. Aug. 14, 2023) (quoting *United States v. Brown*, 72 F.3d 25, 29 (5th Cir. 1995))—*i.e.*, sufficiently severe to require proof of misconduct by "clear and convincing evidence," *see, e.g.*, *In re Liotti*, 667 F.3d 419, 426 (4th Cir. 2011) (citation omitted); *Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001) (citing *In re Thalheim*, 853 F.2d 383, 389 n.9 (5th Cir. 1988)); *In re Fisher*, 179 F.2d 361, 369 (7th Cir. 1950) (citation omitted); *accord* Am. Bar Ass'n, STANDARDS FOR IMPOSING LAWYER SANCTIONS § 1.3. By contrast, FINRA imposes disciplinary sanctions using the threadbare "preponderance of evidence" standard, which one court has aptly described as the "rock-bottom" lightest evidentiary burden, typically applied in mine-run civil cases. *Charlton v. FTC*, 543 F.2d 903, 907 (D.C. Cir. 1976). But Petitioners have not raised this as an issue, so the Court need not address it.

promulgating rules applicable to the securities brokerage industry, most of which become legally binding on regulated parties only upon SEC approval after public notice and comment. *Id.* § 78s(b). In a typical year, FINRA promulgates a few dozen new rules that affect its member firms and their brokers. *See* FINRA, *Rule Filings*, finra.org/rules-guidance/rule-filings (listing new rule proposals filed with SEC). Each year FINRA also conducts more than two thousand examinations of securities firms and brokers for compliance with federal securities laws and rules. *See* FINRA, *Preparing for a FINRA Cycle Examination,* finra.org/sites/default/files/Education/p038336.pdf.

FINRA also exercises vast executive power by investigating, prosecuting, and punishing securities brokers and firms suspected of violating federal securities laws and rules, including both SEC's and FINRA's rules. *See* FINRA, *Enforcement*, https://www.finra.org/rules-guidance/enforcement. In this role, deploying its 350-person enforcement staff, FINRA investigates and imposes disciplinary sanctions against several hundred or more member firms and brokers each year. *See* FINRA Statistics. In a typical year, FINRA imposes anywhere from $50 million to $150 million in aggregate fines and restitution while

suspending, barring, or expelling from the securities industry more than 500 brokers—far more than SEC itself does—and occasionally entire firms. *See id.*

II. THE "PRIVATE NONDELEGATION DOCTRINE"

In a series of cases involving the nominally private operator of the Amtrak train system and other private regulators, the D.C. Circuit has "detailed extensively why private entities cannot wield the coercive power of government." *Ass'n of Am. R.R.s v. Dep't of Transp.*, 821 F.3d 19, 37 (D.C. Cir. 2016) ("*Amtrak III*") (citing and reaffirming relevant holding of *Ass'n of Am. R.R.s v. Dep't of Transp.*, 721 F.3d 666, 670-74 (D.C. Cir. 2013) ("*Amtrak I*")). The Fifth Circuit also recently observed that "[a] cardinal constitutional principle is that federal power can be wielded only by the federal government. Private entities may do so only if they are subordinate to an agency." *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869, 872 (5th Cir. 2022) (citing *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935); *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936); *Currin v. Wallace*, 306 U.S. 1, 15-16 (1939); and *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940)). "If it were otherwise—if people outside government

could wield the government's power—then the government's promised accountability to the people would be an illusion." *Id.* at 880 (citing THE FEDERALIST No. 51); *see also Dep't of Transp. v. Ass'n of Am. R.R.s*, 575 U.S. 43, 62 (2015) ("*Amtrak II*") (Alito, J., concurring) ("When it comes to private entities, … there is not even a fig leaf of constitutional justification" for delegating regulatory power).

Starting from this foundational principle, courts have developed something called the "private nondelegation doctrine," which three Supreme Court justices recently signaled the need to fortify through an appropriate future case. *Texas v. Comm'r of Internal Revenue*, 142 S. Ct. 1308 (2022) (statement of Justice Alito, joined by Justices Thomas and Gorsuch, respecting denial of certiorari). In short, the doctrine generally forbids delegation of government power to a private actor unless the private actor operates subordinately—or "as an aid"—to a governmental actor and subject to that governmental actor's "pervasive surveillance and authority." *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381 388 (1940); *see also Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936); *Oklahoma v. United States*, 62 F.4th 221, 231 (6th Cir. 2023), *reh'g denied*, 2023 WL 3815095 at *1 (6th Cir. May 18, 2023), *cert. docketed*,

No. 23-402 (U.S. Oct. 13, 2023); *Nat'l Horsemen's Benevolent and Protective Ass'n*, 53 F.4th at 881.

Cases in this area have typically focused on the participation of private actors in promulgating legislative rules that bind a particular industry rather than on the private actors' investigation and punishment of rulebreakers. *See, e.g.*, *Adkins*, 310 U.S. 381; *Carter Coal*, 298 U.S. 238; *Amtrak I*, 721 F.3d 666.[3] Indeed, in most cases it appears the relevant private regulator lacked any enforcement powers at all. In other cases, constitutional scrutiny of the private entity's enforcement powers was premature because the private regulator was only a recent creation and had not yet taken steps to establish its enforcement system, much less to investigate or punish anyone. *See, e.g.*, *Oklahoma v. United*

[3] For this reason, courts typically invoke the nomenclature of "nondelegation," but *amicus curiae* respectfully suggests that is a misnomer when extended to analyzing a private regulator's exercise of *executive* power. Whereas Congress possesses legislative power under Article I of the Constitution, Congress possesses no executive power under Article II, and thus cannot "delegate" it. *See generally* Philip Hamburger, *Nondelegation Blues*, 91 GEO. WASH. L. REV. 1083, 1169-72 (2023) (urging a focus on "vesting" rather than "delegation").

States, 62 F.4th at 231-33; *Nat'l Horsemen's Benevolent and Protective Ass'n*, 53 F.4th at 890 n.37.[4]

Here, by contrast, FINRA's long-established, prolific, and punitive enforcement regime is front and center—and ripe for constitutional scrutiny in the context of a pending enforcement case.

III. FINRA EXERCISES VAST EXECUTIVE POWER WITH VIRTUALLY NO MEANINGFUL SEC SUPERVISION OR DIRECTION

In *Jones v. SEC*, 115 F.3d 1173, 1183 (4th Cir. 1997), this Court characterized FINRA's predecessor entity, the National Association of Securities Dealers, as a private corporation and not a governmental agency. Other circuits and SEC have subsequently said the same about FINRA. *See, e.g.*, *Alliance for Fair Bd. Recruitment v. SEC*, 85 F.4th 226,

[4] In one such case, the court in dictum helpfully suggested certain oversight techniques that a supervisory government agency might adopt to minimize private nondelegation concerns. For example, the court hypothesized that the agency "could issue rules protecting covered persons from overbroad subpoenas or onerous searches;" "could require that the [subordinate private regulator] provide a suspect with a full adversary proceeding … with free counsel;" and "could require that the [subordinate private regulator] meet a burden of production before bringing a lawsuit or preclear the decision with the [government agency]." *Oklahoma v. United States*, 62 F.4th at 231. Notably, SEC applies none of these hypothetical oversight techniques to FINRA enforcement proceedings.

240-41 (5th Cir. 2023), *reh'g en banc granted, vacated by* 2024 WL 670403 (5th Cir. Feb. 19, 2024) (collecting federal cases); *In re Beyn*, SEC Rel. No. 34-97325, at 24 n.86 (Apr. 19, 2023) (citing *In re William H. Murphy & Co.*, SEC Release No. 90759, 2020 WL 7496228, at *17 (Dec. 21, 2020)). *Amicus curiae* therefore assumes for purposes of this brief that FINRA is a private actor.[5]

As discussed in the preceding section of this brief, the Constitution prohibits private actors from exercising binding government powers typically exercised by governmental actors, especially in the absence of meaningful governmental supervision. Yet FINRA routinely exercises core executive powers—such as investigating, prosecuting, and punishing other private citizens and businesses for alleged violations of federal law and related rules—with *zero* real-time governmental direction, supervision, or oversight.

In at least one respect—FINRA's exercise of legislative power through rulemaking—FINRA is subject to *some* degree of direct, real-

[5] If FINRA is not a private actor but rather a government actor, it should be subject to the same constitutional requirements and restrictions as any other government agency.

time SEC supervision. As previously noted, with exceptions not relevant here, FINRA rules generally do not become effective or binding on regulated parties unless and until SEC pre-approves them, and SEC retains plenary authority to amend those rules on its own. 15 U.S.C. § 78s(b), (c); *see also Scottsdale Capital Advisors Corp. v. FINRA*, 844 F.3d 414, 417 (4th Cir. 2016), *cert. denied*, 581 U.S. 940 (2017) ("*Scottsdale I*"). Similar types of governmental supervision of private lawmaking through agency pre-approval have been deemed sufficient to remove any constitutional infirmity, especially where the private regulator is otherwise subject to the agency's "pervasive surveillance and authority." *Adkins*, 310 U.S. at 388, 399 (1940); *see also Amtrak I*, 721 F.3d at 671 (quoting *Adkins*), *vacated and remanded on other grounds*, 575 U.S. 43 (2015).[6]

[6] Even SEC's supervision of FINRA rulemaking is far from pervasive. Many (and likely most) FINRA rules are reviewed and approved not by SEC's presidentially appointed commissioners but rather only by SEC staff acting pursuant to delegated authority. *See generally* 17 C.F.R. § 200.30-3(a)(12) and (57)-(59). Moreover, certain FINRA rules can take binding effect with the passage of time if SEC simply takes no action. *See, e.g.*, 15 U.S.C. § 78s(b)(2)(D).

But SEC exercises *no* comparable pre-approval or "pervasive surveillance" when FINRA exercises its quintessentially *executive* powers to investigate, prosecute, and punish alleged violators of federal securities laws and rules. When FINRA exercises these enforcement powers, SEC's role is entirely after-the-fact, not unlike this Court's role in reviewing SEC's final order in this case. *See Scottsdale I*, 844 F.3d at 418 (noting that only an after-the-fact appeal from a *final* FINRA disciplinary sanction "invokes the SEC's role under the Exchange Act in overseeing FINRA's authority to discipline members"); *Kim v. FINRA*, No. 23-cv-02420, 2023 U.S. Dist. LEXIS 180456, at *4 (D.D.C. Oct. 6, 2023) ("Other than serving as a level of review after a hearing, the SEC plays no active role in FINRA's enforcement proceedings.").

For example, FINRA "alone determines which cases to investigate and when to file a complaint." *Scottsdale II*, 2023 U.S. Dist. LEXIS 99350, at *24; *accord id*. at * 6-7 ("investigations are done at FINRA's discretion, without any influence from the SEC or other branch of government"). Likewise, FINRA alone—with no pre-approval or direction from SEC—makes all discretionary executive decisions during its investigations and adjudications. For example, FINRA decides which brokers and firms to

burden with investigative demands for documents and testimony (noncompliance with which can result in summary suspension from the industry, *see* FINRA Rules 8210 and 9552); how burdensome those demands will be; which brokers and firms will be charged with wrongdoing; what statutory and rule violations will be charged against them; whether to accept a settlement offer and on what terms; and what fines and other sanctions will be imposed. *See Kim*, 2023 U.S. Dist. LEXIS 180456, at *3 ("FINRA decides whom to investigate, whom to bring charges against, what charges to bring, and what sanctions to seek."); Jessica Hopper, *Working on the Front Lines of Investor Protection: How a FINRA Enforcement Action Becomes a FINRA Enforcement Action*, FINRA NewsBlog (June 4, 2020), www.finra.org/media-center/blog/working-on-the-front-lines-of-investor-protection-how-an-enforcement-action-becomes-an-enforcement-action (then-Head of FINRA Enforcement describing the entire FINRA enforcement process, making no mention of SEC involvement or supervision); FINRA Regulatory Notice No. 09-17, *FINRA Provides Guidance on Its Enforcement Process* (March 18, 2009) (detailed description of FINRA enforcement and disciplinary process mentioning no SEC involvement

unless and until a respondent appeals to SEC after enduring the entire process within FINRA).

In a typical FINRA enforcement case, *all* of these discretionary, career-altering, and often punitive executive decisions are made *solely* by the private citizens who work for and manage FINRA. Those decisions are made with no input, direction, or supervision from anyone at SEC, much less by the presidentially appointed and Senate-confirmed SEC commissioners, who are the only constitutionally appointed Principal Officers of the government anywhere in the vicinity of FINRA. Indeed, with exceedingly rare exceptions, SEC commissioners are entirely oblivious to who FINRA is investigating or prosecuting unless and until FINRA concludes an entire enforcement matter by imposing a disciplinary sanction. Even then, the commissioners as a practical matter get involved only in the tiny fraction of FINRA enforcement cases that run their entire course through FINRA's costly and protracted processes—including investigation, prosecution, disciplinary hearing, and internal FINRA appeals—and are then formally appealed to SEC's

commissioners pursuant to Exchange Act § 19(d)(2), 15 U.S.C. § 78s(d)(2).[7]

The practical reality for nearly all of the brokers and firms FINRA investigates, prosecutes, and sanctions each year is that this theoretical, after-the-fact SEC review *never* happens. Nearly all FINRA enforcement cases prematurely end in settlements or defaults, and thus are *never* formally reviewed by *anyone* at SEC, much less the commissioners themselves through a formal appeal. *See, e.g.*, Jeff Kern and Rena Andoh, *FINRA Enforcement Actions—Who's Afraid of the Big Bad Wolf?*, Insights, Vol 30, No. 9 at 10 (Sept. 2016) ("the overwhelming majority of FINRA enforcement actions settle"). Very few FINRA investigative targets have the resources and fortitude to persevere through FINRA's entire enforcement gauntlet, so their disciplinary sanctions are typically imposed with no government surveillance or oversight whatsoever. *Compare* FINRA, *Regulatory Actions and Corporate Financing Review 2017-2022*, www.finra.org/media-center/statistics (reporting per-year

[7] In theory, SEC can also review a final FINRA sanction "on its own motion" even if no respondent appeals, 15 U.S.C. § 78s(d)(2), but *amicus curiae* is not aware of SEC ever having done so and believes such cases, if any exist, are exceptionally rare.

enforcement case totals ranging from a low of 743 in 2022 to a high of 1,369 in 2017) *with* FINRA, *Comment Letter to SEC, Nov. 24, 2015*, at 2 (reporting that over the preceding three-year period, only 32 FINRA cases were appealed to SEC) *and* SEC, *Report on Administrative Proceedings for the Period April 1, 2023 through September 30, 2023*, SEC Exchange Act Rel. No. 98830 at 4 (Oct. 31, 2023) (reporting only 26 total appeals docketed from FINRA and all other securities industry self-regulatory organizations *combined*, including the Public Company Accounting Oversight Board, during the 18-month period from April 1, 2022 through September 30, 2023).

As a practical result, of the many hundreds of enforcement cases that private staff at FINRA investigates and prosecutes each year—resulting in hundreds of punitive fines, industry bars, disrupted careers, and damaged reputations—almost none are ever directed, supervised, surveilled, or even reviewed after the fact by any constitutionally appointed officer of the U.S. government.[8] This after-the-fact appellate

[8] Adding insult to injury, even those rare brokers and firms that appeal to SEC's commissioners after persevering through years of costly and stressful FINRA enforcement proceedings often wait several *additional*

review of a tiny percentage of FINRA final disciplinary orders each year hardly constitutes "pervasive surveillance and authority" over FINRA's enforcement regime—any more than this Court's appellate review of a tiny percentage of SEC enforcement orders each year under 15 U.S.C. § 78y(a) could plausibly be characterized as "pervasive surveillance and authority" over SEC's enforcement regime.

* * * *

SEC simultaneously maintains that FINRA is not a state actor subject to constitutional limitations, yet that, as a private actor enforcing the law, FINRA satisfies the private nondelegation doctrine because it is subject to SEC's pervasive surveillance and supervisory authority. This game of "heads I win, tails you lose" is constitutionally untenable.

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years before SEC decides their appeal. FINRA's case against Petitioners is a good example; they filed their appeal with SEC in May 2019 but SEC didn't decide the appeal until December 2023. *See also In re Scottsdale Capital Advisors Corp.*, SEC Exchange Act Rel. No. 93052 (Sept. 17, 2021) (setting aside final FINRA sanctions order imposed more than three years earlier); *In re Southeast Investments, N.C., Inc.*, SEC Exchange Act Rel. No. 97954 (July 20, 2023) (20th consecutive SEC order unilaterally extending agency's deadline to decide Petitioners' fully briefed appeal). Throughout all those years of investigation, prosecution, and appeal, most accused brokers remain largely unemployable in the securities industry (or, to only a slightly lesser extent, anywhere else).

FINRA cannot have it both ways: It cannot evade the Constitution's appointment, removal, due process, and jury trial requirements by claiming to be a private actor free of government entanglement, while at the same time evading the equally important constitutional requirement that private actors be subject to the "pervasive surveillance and authority" of governmental officers when they wield vast governmental powers typically exercisable only by government officials. Because SEC plays no meaningful role in directing, supervising, or surveilling the overwhelming majority of FINRA's enforcement investigations and prosecutions, and plays only a limited, after-the-fact appellate role in the relatively few FINRA cases it reviews, FINRA and its staff are wielding core executive power in violation of Article II of the Constitution and the private nondelegation doctrine.

CONCLUSION

The Court should set aside SEC's final order and direct SEC to cancel the sanctions imposed by FINRA against Petitioners.

Dated: April 22, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of the Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) because it contains fewer than 6,500 words. This brief also complies with the typeface and type-style requirements of the Federal Rule of Appellate Procedure because it was prepared using Microsoft Word 2016 in Century Schoolbook 14-point font, a proportionally spaced typeface.

April 22, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2024, I electronically filed the foregoing brief with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

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