No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ALPINE SECURITIES CORPORATION,

Applicant,

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY,

Respondent,

&

UNITED STATES OF AMERICA,

Respondent-Intervenor.

On Application for an Extension of Time Within Which
To File a Petition for Writ of Certiorari to the
United States Court of Appeals for the District of Columbia

APPLICATION TO THE HON. JOHN G. ROBERTS, JR. FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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February 10, 2025

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the D.C. Circuit:

Pursuant to Rules 13.5 and 22, the above-captioned Applicant respectfully moves for an extension of time granting an additional 60 days in which to file a petition for writ of certiorari to the United States Court of Appeals for the District of Columbia in *Alpine v. FINRA*, No. 23-5129.

The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). The opinion for which Applicant intends to seek the writ (a copy of which is included as Appendix A) was filed on November 22, 2024, and no party timely petitioned for rehearing or rehearing en banc. Under the ordinary timing requirements in Rule 13.1, Applicant's petition is due on February 20, 2025. With the additional 60 days Applicant requests, the petition would be due on April 21, 2025. In support of this request, Applicant states as follows:

1. This application for an extension is not filed for purposes of delay. Counsel for the Applicant is heavily engaged during the months of February and March with substantial briefing obligations in several pending matters, including: a principal brief due on February 7, 2024 in *Cheeseman* v. *Platkin*, (3d Cir. Nos. 24-2415, 24-2450, 24-2506); an opposition to a motion to dismiss due on February 7, 2025, in *South Carolina* v. *TikTok Inc.*, No. 2024-CP-40-06018 (S.C. Ct. Common Pleas); a motion for summary judgment due on February 11, 2025, in *AmBase Corp.* v. *111 West 57th Sponsor LLC*, No. 652301/2016 (N.Y. Sup. Ct. N.Y. Cnty.); an oral argument on February 12, 2025, in *Mitchell et al.* v. *River City Firearms et al.*, No. 24-CI-000518 (Ky. Jefferson Cnty. Cir. Ct.); a motion for summary judgment due on February 14, 2025, in *111 West 57th Investment LLC* v. *111W57 Mezz Investor LLC*, No. 655031/2017 (N.Y. Sup. Ct. N.Y. Cnty.); a summary judgment motion due on February 27, 2025, in *Faustin* v. *Polis*,

No. 23-cv-1376 (D. Colo.); and an opposition to a preliminary injunction motion due on March 27, 2025 in *McDonald et al.* v. *Trustees of Indiana Univ.*, No. 1:24-cv-01575-RLY-CSW (S.D. Ind.), among other engagements.

2. The D.C. Circuit's decision presents substantial issues of law, including whether the Financial Industry Regulatory Authority ("FINRA"), a private corporation that purports to enforce the federal securities laws against private parties like Applicant, violates the structural constitutional protections of the Constitution, including Article II's guarantee of presidential supervision and removal, the Appointments Clause, and the private non-delegation doctrine; and, relatedly, whether this Court's language in *Axon*—that "subjection to an illegitimate proceeding, led by an illegitimate decisionmaker" is a "here-and-now injury" that "is impossible to remedy once the proceeding is over, "*Axon Enter., Inc.* v. *FTC*, 598 U.S. 175, 191 (2023), applies in the context of establishing irreparable injury for injunctive relief from an unconstitutionally structured hearing.

3. These questions are substantial and worthy of this Court's review. As to private non-delegation, this Court has already granted certiorari in a case raising a private non-delegation question this Term. See *FCC* v. *Consumers' Rsch.*, No. 24-354 (cert. granted Nov. 22, 2024). Further, the Court has before it several pending requests for review over related questions regarding the Horseracing Integrity and Safety Authority (HISA). See Cert. Pet., *Horseracing Integrity & Safety Auth., Inc.* v. *Nat'l Horsemen's Benevolent & Protective Ass'n*, No. 24-433 (U.S. Oct. 15, 2024); Cert. Pet., *FTC* v. *Nat'l Horsemen's Benevolent & Protective Ass'n*, No. 24-429 (U.S. Oct. 16, 2024); Cert. Pet., *Walmsley* v. *FTC*, No. 24-420 (U.S. Oct. 10, 2024); Cert. Pet., *Oklahoma* v. *United States*, No. 23-402 (U.S. Oct. 13, 2023).

4. As to the Article II questions, the Petition will argue that FINRA's structure violates several structural protections of Article II under a straightforward application of this Court's precedents. In *Lucia* v. *SEC*, this Court held that SEC ALJs are "Officers of the United States," and thus must be appointed consistent with the Appointments Clause. 585 U.S. 237 (2018). SEC's Administrative Law Judges, this Court explained, exercise "significant discretion," have "the authority needed to ensure fair and orderly adversarial hearings," and may serve as the "last-word" in an enforcement action. *Id.* at 247–52 (first quoting *Freytag* v. *Commissioner*, 501 U.S. 868, 882 (1991)). All of that is also true of FINRA Hearing Officers, who are "indistinguishable from the administrative law judges in *Lucia* and the special trial judges in *Freytag*." See *Alpine Sec. Corp.* v. *FINRA*, 121 F.4th 1314, 1346 (D.C. Cir. 2024) (Walker, J., concurring in the judgment in part and dissenting in part). Thus, FINRA officers must likewise be appointed consistent with the Constitution's Appointments Clause.

5. As to presidential removal, this Court held in *Free Enterprise Fund* v. *PCAOB*, that the structure of a private, quasi-governmental board violated the separation of powers because its officers enjoyed two separate levels of protection from presidential removal. 561 U.S. 477, 482 (2010). Here again, FINRA's structure is identical in this respect, and is unconstitutional under a straightforward application of this Court's precedent. See *Alpine*, 121 F.4th at 1347 (D.C. Cir. 2024) (Walker, J., concurring in the judgment in part and dissenting in part) (FINRA's structure violates both the Appointments Clause and Article II's protections on presidential removal).

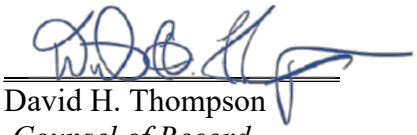
6. The question of the proper reading of the *Axon* Court's "here-and-now injury" language in the context of injunctive relief is likewise substantial and important. Judges in the D.C. Circuit, including then-Judge Kavanaugh, *John Doe Co.* v. *CFPB*, 849 F.3d 1129, 1136

(D.C. Cir. 2017) (Kavanaugh, J., dissenting), have disagreed over whether being forced to participate in an allegedly unconstitutionally structured proceeding constitutes an irreparable injury. Compare *Alpine*, 121 F.4th at 1335–37. So too, the Courts of Appeals have differed in their application of *Axon* in this context. Compare *CFPB* v. *Nat'l Collegiate Master Student Loan Tr.*, 96 F.4th 599, 615 (3d Cir. 2024), cert. denied, No. 24-185, 2024 WL 5112295 (U.S. Dec. 16, 2024), and *United States* v. *Biden*, No. 24-1703, 2024 WL 4541448, at *2 (3d Cir. May 9, 2024) with *Leachco, Inc.* v. *Consumer Prod. Safety Comm'n*, 103 F.4th 748, 760 (10th Cir. 2024), and *YAPP USA Auto. Sys., Inc.* v. *NLRB*, No. 24-1754, 2024 WL 4489598, at *3 (6th Cir. Oct. 13, 2024). It is a question of profound importance that will arise in virtually every case in which a plaintiff argues that a hearing or the entity overseeing the hearing is unconstitutionally structured. The lower courts would benefit from clarity on how to interpret and properly apply this Court's language.

For the foregoing reasons, Applicant hereby respectfully requests an extension of time up to and including April 21, 2025, for the filing of a petition for writ of certiorari in this case.

Dated: February 10, 2025

Respectfully submitted,



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