**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| ARIF AHMED, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | C.A. No. 2025-1133-DG |
| | ) | **UNDER SEAL**[1] |
| JPMORGAN CHASE & Co., and J.P. MORGAN SECURITIES LLC, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

# REPORT

Date Submitted: December 5, 2025
Date Decided: January 21, 2026

Richard I.G. Jones, Periann Doko; BERGER MCDERMOTT LLP, Wilmington, Delaware; Christopher J. Clark, Patrick J. Smith, Andrew J. Rodgers, Diana Wang, P. Pauline Oostdyk; CLARK SMITH VILLAZOR LLP, New York, New York, *Attorneys for Plaintiffs*.

Sarah R. Martin, Trevor T. Nielsen, Bryan T. Reed; GREENBERG TRAURIG, LLP, Wilmington, Delaware, *Attorneys for Defendants*.

**GIBBS, M.**

[1] This report is being issued under seal to protect confidential information that may not have been made public through trial. Under Court of Chancery Rule 5.1, I will unseal this report unless, within five (5) days, either party files a notice stating grounds for any continued restriction and requesting a determination whether good cause exists therefor.

## INTRODUCTION

This report resolves cross-motions for summary judgment regarding the plaintiff's advancement rights pursuant to the defendant-corporation's bylaws and an investment professional agreement between the plaintiff and his former employer. The Court grants both motions in part. This is my report.

## FACTUAL BACKGROUND

Plaintiff Arif Ahmed is a former financial advisor employed by Defendant JPMorgan & Chase Co ("JPM Chase"), through its subsidiary, JPMorgan Chase Bank, National Association ("JPM Bank").[2] Plaintiff was also affiliated with two of JPM Bank's subsidiaries—Defendant J.P. Morgan Securities LLC ("JPM Securities") and non-party J.P. Morgan Private Wealth Advisors LLC ("JPM Wealth").[3] This Report refers to JPM Bank and its subsidiaries, collectively, as JPMC.

Between the years of 2019 and 2023, Plaintiff worked as a wealth manager for First Republic Bank ("First Republic").[4] First Republic owned

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[2] Answer to Verified Compl. for Declaratory and Injunctive Relief ("Ans."), Dkt. 13 at 2.

[3] *See* Defs.' Opening Br. in Supp. of Their Mot. for Summ. J. ("DOB"), Dkt. 40 at 1; Aff. of Periann Doko in Supp. of Pl.'s Mot. for Summ. J ("Doko Aff."), Dkt. 37 Ex. J ¶ 8 (stating Plaintiff was "an investment adviser representative of JPMPWA and a registered representative of JPMS").

[4] Aff. of Sarah R. Martin in Supp. of Defs.' Opening Br. in Supp. of Their Mot. for Summ. J ("Martin Aff."), Dkt. 41 Ex. 2.

advisory and wealth management subsidiaries First Republic Securities Company LLC ("FRSC") and First Republic Investment Management ("FRIM"), respectively.[5] FRSC was "a registered broker-dealer and a member firm of" FINRA.[6] FRIM was "registered with the [SEC] as an investment adviser."[7] Plaintiff worked as "a FINRA-licensed registered representative . . . of FRSC."[8] As an employee of First Republic, Plaintiff was an "associated person" of FRIM and could "refer potential investment advisory clients to" FRIM.[9]

First Republic Bank "failed in 2023" and "was placed into receivership, with [the] Federal Deposit Insurance Corporation . . . appointed as receiver."[10] On May 1, 2023, JPM Chase acquired certain First Republic assets, including its subsidiaries FRSC and FRIM, through subsidiary JPM Bank.[11] JPM Chase integrated the two First Republic subsidiaries into its own

[5] Martin Aff. Ex. 3.

[6] Martin Aff. Ex. 2.

[7] Martin Aff. Ex. 7.

[8] Martin Aff. Ex. 2.

[9] Martin Aff. Ex. 7.

[10] POB at 2–3.

[11] Doko Aff. Ex. D at iv.

structure; FRSC merged with a preexisting JPMorgan entity, JPM Securities,[12] and FRIM became JPM Wealth, a new JPMorgan entity.[13]

Plaintiff joined JPMC on May 1, 2023.[14] As a financial advisor, Plaintiff marketed and sold market linked investments ("MLIs") to ultra-high net worth clients.[15] The parties concede that Plaintiff sold MLIs to his clients both before and after he became an advisor affiliated with Defendants.[16] JPMC terminated Plaintiff's employment in May 2025.[17]

## I. The Investigations

In 2024, the SEC and FINRA began investigations (the "Investigations") that appear to be related to Defendants' and Plaintiff's involvement in certain MLI transactions.[18] The record contains little information about the Investigations. Plaintiff's representation and description states:

> The evidence in the record regarding the SEC investigation is that it is captioned 'JPM Market

[12] Doko Aff. Ex. F.

[13] *See* Doko Aff. Ex. J ¶ 9.

[14] *See, e.g.*, Doko Aff. Ex. M (stating Plaintiff's "employment with JPMC" began on May 1, 2023).

[15] *See, e.g.*, Doko Aff. Exs. J, K.

[16] *See* Pl.'s Opening Br. in Supp. of Mot. for Summ. J. ("POB"), Dkt. 37 at 16; DOB at 21.

[17] *See* Martin Aff. Ex. 29.

[18] *See* Martin Aff. Ex. 14.

> Linked Investments.' There is no additional detail indicating what specific conduct or transactions the SEC is investigating, nor would there be at this point, as no claims have been asserted. . . . Likewise, there is nothing from the record regarding the details of the FINRA inquiry other than its caption, which reveals that it is a 'preliminary inquiry' with an assigned matter number.[19]

Defendants' representation and description is:

> In 2024, the Securities and Exchange Commission ("SEC") initiated an investigation concerning the MLI transactions of the top ten MLI purchasers among Ahmed's clients (the "SEC Investigation"). . . . The SEC Investigation concerned Ahmed's clients' MLI transactions from January 2020 to **at least April 30, 2024**. FINRA subsequently initiated an investigation into similar transactions.[20]

For purposes of this decision, I can only assume that the Investigations will examine Plaintiff's actions while working for both FRSC and Defendants, and that the Investigations may have implications for Plaintiff and Defendants.

## II. The Arbitrations

In July and November 2024, respectively, two of Plaintiff's clients filed arbitration claims (the "Arbitrations") against Plaintiff, JPM Wealth and JPM Securities.

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[19] POB at 6 (citing Doko Aff. Ex. L at 1).

[20] DOB at 14 (emphasis added). The Investigations likely extend beyond April 30, 2024, as evidenced by Defendants' pre-litigation advancement letters concerning the Investigations. *See* Martin Aff. Exs. 14, 15.

The first Arbitration was initiated by Arash Ferdowsi against Plaintiff, JPM Wealth, and JPM Securities.[21] It concerns Mr. Ferdowsi's purchase of MLIs while he was advised by Plaintiff. His statement of claim states that "[b]etween April 2020 and October 2023," Plaintiff and JPM Wealth "advised Mr. Ferdowsi to invest . . . in dozens of complex structured notes called Market-Linked Investments" but "did not disclose . . . that the MLIs he was steered into purchasing were specifically designed by Mr. Ahmed and JPM Wealth to include exorbitant embedded fees paid to JPM Wealth, which were 15 times greater than their agreed-upon advisory fee."[22]

The Ferdowsi Arbitration asserts claims against Plaintiff for the following alleged wrongs: (1) fraud; (2) violations of California law; (3) violations of the Securities Exchange Act of 1934; (4) breach of fiduciary duty; and (5) negligence.[23] The Ferdowsi Arbitration statement alleges that "[t]he MLI transactions at issue in this statement of claim occurred both before and after JPM Bank's acquisition of FRIM."[24] It also alleges that "[t]he MLI

[21] Doko Aff. Ex. J.

[22] *Id.* ¶ 2.

[23] *Id.* at 32–44. The Ferdowsi Arbitration asserts the following claims against JPM Wealth: (1) fraud; (2) violations of California law; (3) violations of the Securities Exchange Act of 1934; (3) breach of fiduciary duty; (4) negligent supervision; (5) negligence. *Id.* JPM Securities is a named party, but no claims are asserted against that entity.

[24] *Id.* ¶ 9.

transactions at issue in this statement of claim occurred both before and after JPM Bank's acquisition of FRSC."[25]

The second arbitration was initiated by Joseph Gebbia. It concerns Mr. Gebbia's purchase of MLIs while he was advised by Plaintiff.[26] The Gebbia Arbitration statement alleges that "[b]etween May 2022 and September 2023, Mr. Ahmed and JPM Wealth advised Mr. Gebbia to invest through the Gebbia Trust in nine complex structured notes called Market-Linked Investments" but that Plaintiff "and JPM Wealth did not disclose to Mr. Gebbia . . . that the MLIs he was steered into purchasing were specifically designed by [Plaintiff] and JPM Wealth to include exorbitant embedded fees paid to JPM Wealth[.]"[27]

[25] *Id.*

[26] *See* Doko Aff. Ex. K.

[27] *Id.* ¶ 2.

The Gebbia Arbitration statement alleges similar, but not identical, claims against Plaintiff.[28] Like the Ferdowsi Arbitration, the Gebbia Arbitration alleges misconduct relating to Plaintiff's work before and after his employment at JPMC.[29]

## III. Defendants' Initial Advancement Commitments

Defendants agreed to advance expenses to Plaintiff on terms JPMC presented in a series of letters.[30] From the outset, Defendants' letters provided two different rationales for advancement.[31] To the extent that the Investigations relate to actions taken after Plaintiff became affiliated with JPMC, Defendants acknowledged their obligation to provide mandatory advancement under JPM Chase's bylaws (the "Bylaws").[32] Defendants confirmed the obligation to provide mandatory advancement for the

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[28] *Id.* at 30–40. The Gebbia Arbitration asserts claims against JPM Wealth for: (1) fraud; (2) violations of California law; (3) violations of the Securities Exchange Act of 1934; (4) breach of fiduciary duty; (5) negligent supervision; and (6) negligence. *Id.* No claims were asserted against JPM Securities.

[29] *See id.* ¶¶ 8–9.

[30] In these letters, "JPMC" refers to JPM Bank "and subsidiaries." *See, e.g.*, Martin Aff. Ex. 14 at 1. This Report adopts that term.

[31] *Compare id.* (addressing underlying proceedings to the extent they relate to Plaintiff's "role, if any, in such matters during your employment with JPMC, beginning on May 1, 2023"), *with* Martin Aff. Ex. 15 (stating Plaintiff was "identified as an individual with relevant information concerning the time period (January 1, 2020 to April 30, 2023) during which you were employed with First Republic Bank").

[32] *See* Martin Aff. Exs. 14, 18.

Investigations, as of the time Plaintiff joined JPMC, in a letter to Plaintiff dated July 31, 2024.[33] Plaintiff submitted written undertakings for these mandatory advancements.[34]

To the extent that the Investigations relate to actions taken before Plaintiff became affiliated with JPMC, Defendants believe there is no mandatory advancement obligation, but they may provide advancement to Plaintiff on a voluntary basis. Thus, in a second letter to Plaintiff, also dated July 31, 2024, Defendants offered to advance fees and expenses on a voluntary basis to the extent the Investigations are based on actions preceding Plaintiff's employment with JPMC.[35] The letter states that accepting advancement on this basis constitutes Plaintiff's agreement that the advancement does not "put[] JPMC under any on-going obligation to continue reimbursing [Plaintiff's] legal expenses."[36] The letter also states that accepting advancement constitutes Plaintiff's agreement "to repay any amounts paid to

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[33] *See* Martin Aff. Ex. 14. At least 19 former FRSC employees are receiving mandatory advancement in connection with the SEC investigation. *See* Pl.'s Reply Br. in Further Supp. of His Mot. for Summ. J. and Ans. Br. in Opp. to Defs.' Cross-Mot. for Summ. J. ("PAB"), Dkt. 55 at 15.

[34] *See id.* at 5; Martin Aff. Ex. 18.

[35] *See* Martin Aff. Ex. 15. Plaintiff "is the only employee who was receiving *voluntary* advancement relating to activity at FRSC when his employment with [JPM Bank] was terminated." *See* Doko Aff. Ex. U at 17 (emphasis added).

[36] Martin Aff. Ex. 15 ¶ 1.

[him] or on [his] behalf by JPMC for legal expenses incurred in connection with the Covered Matters if it shall ultimately be determined that [he] [is] not entitled to advancement of fees and expenses by JPMC."[37]

As the underlying proceedings multiplied, Defendants' advancement strategy and documentation evolved. In a written commitment dated August 8, relating to the Ferdowsi Arbitration, Defendants agreed to "reimburse [Plaintiff's] reasonable legal expenses, in [JPMC's] discretion[.]"[38] In this letter, Defendants contend that the Ferdowsi Arbitration "concerns the time period during which [Plaintiff] [was] employed with First Republic Bank."[39] In fact, the Ferdowsi Arbitration concerns the period before and after Plaintiff joined JPMC.[40] Regarding Plaintiff's conduct while at First Republic, the letter states:

> [S]hould you become the target or subject of any other legal or investigatory proceeding, JPMC shall not be required to reimburse any legal expenses you may incur from that point forward. Similarly, by agreeing to voluntarily advance your reasonable legal fees and expenses for the Covered Matter, JPMC is not conceding that it has any legal obligation to provide you advancement and/or indemnification by reason of your status as a former

[37] *Id.* ¶ 7.

[38] Martin Aff. Ex. 16.

[39] *Id.*

[40] *See, e.g.*, Doko Aff. Ex. J ¶¶ 9–10.

> employee [of] First Republic. To the contrary, JPMC believes it has no such obligation.[41]

On January 6, 2025, Defendants presented a similar letter-commitment to advance fees and expenses on a discretionary basis in connection with the Gebbia Arbitration.[42]

## IV. Defendants Terminate Advancement and Demand Immediate Repayment of Advanced Funds

On May 16, Defendants wrote to Plaintiff "in reference to the advancement of legal fees that JPMC had previously agreed to make *on a voluntary basis* in connection with" the Investigations and Arbitrations, which the letter defines as the "Covered Matters."[43] The letter states that "in light of newly obtained information, [Defendant] will no longer advance any legal fees or costs in connection with the Covered Matters *or any related matters*."[44] The letter includes a repayment "demand . . . for the amounts advanced to date ($1,054,002) in connection with the Covered Matters," and states: "You

[41] Martin Aff. Ex. 16 at 2. The Bylaws confer a right to the extent that Plaintiff is involved in a Proceeding by reason of the fact that he was an employee of JPMC. It does not deny a right by reason of his status as an employee of another entity. *See* Bylaws § 9.01.

[42] Martin Aff. Ex. 17 at 2.

[43] Martin Aff. Ex. 18 (emphasis added).

[44] Martin Aff. Ex. 18 (emphasis added). It is not clear what Defendants intended to convey in the reference to "any related matters."

should be aware that interest will accrue on this amount at the legal rate if not promptly repaid."[45]

Plaintiff alleges that Defendants have not advanced any fees or expenses associated with the four proceedings since the date of the termination letter, May 16, 2025.[46] Defendants represent that, before Plaintiff filed this action, Defendants offered to continue advancing fees to Plaintiff to the extent that his involvement in the underlying proceedings relates to his time with JPMC.[47]

## PROCEDURAL POSTURE

On October 3, Plaintiff filed the present action, seeking advancement and reimbursement of all attorneys' fees, costs and expenses incurred in connection with the four underlying proceedings, fees-on-fees and prejudgment interest.[48] Defendants filed their answer on October 21.[49]

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[45] Martin Aff. Ex. 18 (citing 6 *Del. C.* § 2301(a)). The parties have not briefed any issues relating to Defendants' demand for repayment.

[46] Ans. at 23.

[47] *See* DOB at 20 ("In subsequent communications, [JPM Bank]'s counsel informed Ahmed's counsel that [JPM Bank] would continue to advance to Ahmed a portion of his reasonable expenses that were fairly attributable to the percentage of transactions at issue in the Pending Matters that occurred when he was employed by [JPM Bank][.]") (citing Martin Aff. Ex. 12 at 5). I do not find support for this statement at the cited location, but I accept counsel's representation and note that Plaintiff does not appear to contest the statement.

[48] Dkt. 1 at 17.

[49] Dkt. 13.

After discovery and related motion practice, Plaintiff and Defendants each moved for summary judgment on the issue of Plaintiff's entitlement to advancement. Briefing on the cross-motions closed on December 2, and I held oral argument on December 5.[50] I took the matter under advisement on that date.

## LEGAL STANDARD[51]

"Cross-motions for summary judgment are governed by Court of Chancery Rule 56."[52] "For either party to prevail, it must demonstrate the absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law."[53] "Summary judgment is an appropriate way to resolve advancement disputes because 'the relevant question turns on the application of the terms of the corporate instruments setting forth the purported right to advancement and the pleadings in the proceedings for which advancement is sought.'"[54] "In determining whether to award advancement, the Court will

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[50] Dkt. 59.

[51] Although it was a termination of advancement that triggered this litigation, the parties framed and briefed their motions as presenting standard entitlement issues.

[52] *Lieberman v. Electrolytic Ozone, Inc.*, 2015 WL 5135460, at *2 (Del. Ch. Aug. 31, 2015).

[53] *Id.*

[54] *Rhodes v. bioMerieux, Inc.*, 2024 WL 669034, at *7 (Del. Ch. Feb. 19, 2024) (quoting *Senior Tour Players 207 Mgmt. Co. LLC v. Golftown 207 Hldg. Co., LLC*, 853 A.2d 124, 126–27 (Del. Ch. 2004)).

look to the plain meaning of the advancement provisions in the governing instruments."[55]

## ANALYSIS

Defendants proposed to advance fees and expenses to Plaintiff on the basis of the Bylaws and their own strategy for controlling advancement obligations related to underlying activity that took place before Plaintiff joined JPMC. Plaintiff initially accepted advancement on the terms Defendants proposed. Now that all advancement is alleged to have stopped, Plaintiff argues that he is entitled to advancement, in connection with all four pending proceedings, under two independent agreements: (1) an Investment Professional Agreement ("IPA") that he entered into with FRSC when Plaintiff was employed there, and (2) Defendant JPM Chase's Bylaws.[56] Plaintiff seeks an order directing Defendants to "resume advancement immediately," and awarding fees-on-fees and prejudgment interest.[57]

Defendants argue that Plaintiff is entitled only entitled to partial, mandatory advancement in connection with the four pending proceedings, to the extent stated in the Bylaws. The Bylaws, they say, mandate coverage only

[55] *Id.* (cleaned up).

[56] *See* POB at 16, 22.

[57] *Id.* at 2.

for claims that arise "by reason of the fact" of Plaintiff's affiliation with JPMC.[58] Defendants argue that Plaintiff can meet the "by reason of the fact" standard only when he took action as a JPMC employee.[59] Viewing the action through the lens of individual "transactions," Defendants argue that, only 9% of the "transactions" implicated in the proceedings relate to the time that Plaintiff has been affiliated with Defendants, and Defendants should therefore advance only 9% of Plaintiff's expenses.[60]

Defendants deny that they have any obligations under the IPA.[61] Defendants present multiple arguments in support of their position, but I need only address one. Defendants contend that if the IPA is at all relevant to this action, Plaintiff's right to advancement under the IPA must be determined by an arbitrator pursuant to the document's binding arbitration clause.[62] For the reasons stated below, I agree that if Defendants have any obligations under the IPA—which I assume to be true only for purposes of this report—the extent to which Defendants may be obligated to advance fees and expenses to Plaintiff under that agreement must be determined by an arbitrator.

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[58] *See, e.g.*, DOB at 25.

[59] *See id.*

[60] *See id.* at 51.

[61] *See id.* at 31–50.

[62] *Id.* at 51.

However, I conclude that Plaintiff is entitled to mandatory advancement under the Bylaws for all fees and expenses incurred in connection with the Investigations. Plaintiff is covered under a plain reading of the relevant bylaw, and Defendants' termination of advancement relating to the Investigations was improper. To this extent, I recommend that Plaintiff's motion be granted, and Defendants' motion be denied.

I also conclude that Plaintiff is entitled to partial advancement in connection with the Arbitrations. Plaintiff is entitled to mandatory advancement only to the extent that the claims arise "by reason of the fact" of Plaintiff's affiliation with JPMC. To the extent that the claims do not arise "by reason of the fact" of Plaintiff's affiliation with JPMC, the company's agreement to advance fees and expenses was voluntary, and the company was entitled to terminate advancement at its discretion. To this extent, I recommend that Defendants' motion be granted, and Plaintiff's motion be denied.

I provide the reasons for my conclusions below, beginning with Plaintiff's arguments under the IPA, followed by his arguments under the Bylaws.

## I. Plaintiff's Rights Under the IPA are Subject to Mandatory Arbitration.

Plaintiff argues that the IPA entitles him to full advancement of fees for the underlying proceedings.[63] The IPA sets forth the terms and conditions of Plaintiff's at-will employment with FRSC.[64] Paragraph 10 of the IPA addresses FRSC employees' rights to indemnification, and perhaps, as Plaintiff argues, advancement. Defendants argue that I need not grapple with the scope of the rights granted in Paragraph 10 because, if Defendants have any obligations under the IPA at all (which they deny), the scope of the rights provided in Paragraph 10 must be determined by an arbitrator. Defendants point to Paragraph 16 of the IPA, which states that the parties must submit to arbitration

> any dispute, claim or controversy that may arise between [Plaintiff] and FRSC, or a customer, or any other person arising out of this agreement or your employment or termination of employment with FRSC, . . . to binding arbitration before FINRA Dispute Resolution pursuant to the FINRA Code of Arbitration Procedure.[65]

Defendants maintain, among other things, that they did not assume the IPA or any of the obligations stated in that agreement and argue that, even if

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[63] *See* POB at 22–27.

[64] Doko Aff. Ex. I.

[65] *Id.* ¶ 16.

they had, disputed advancement rights under the IPA are subject to mandatory arbitration per the IPA's terms.[66] I do not need to decide the first issue (or any others Defendants raise in connection with the IPA) because I find that Defendants' argument concerning the arbitrability of advancement disputes under the IPA is correct. Solely for purposes of conducting that analysis, I assume that Defendants have assumed the IPA or its advancement obligations.

Plaintiff contends that this Court may determine his right to advancement under the IPA for two reasons. First, Plaintiff argues that "[t]o the extent the JPMC Offer Letter and the IPA contained arbitration clauses, those provisions were superseded by the later-in-time advancement letters to" Plaintiff.[67] The logic of this argument escapes me. The JPMC Offer Letter makes no reference to the IPA or to advancement rights.[68] The advancement letters concern mandatory advancement "under Article IX of JPMC's By-Laws,"[69] or voluntary advancement, at JPMC's discretion. None of Defendants' communications with Plaintiff reference the IPA or purport to supplant any rights Plaintiff may have under the IPA.[70]

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[66] *See* DOB at 26–31.

[67] POB at 36.

[68] *See* Martin Aff. Exs. 9–10.

[69] *E.g.*, Doko Aff. Ex. M.

[70] Likewise, the Bylaws do not supplant any rights Plaintiff may have under the IPA. *See* Bylaws § 9.04 ("The right of indemnification and advancement of expenses

Plaintiff's next argument is that the IPA "did not explicitly delegate indemnification or advancement disputes to arbitration."[71] Plaintiff argues that "[a]bsent a clear and unmistakable delegation of such a claim to arbitration, this Court's summary advancement process should proceed," because it "best serves the policy of resolving advancement claims promptly."[72] With this argument, Plaintiff raises the question of substantive arbitrability.

Substantive arbitrability concerns the question of "whether [an arbitration clause] encompasses the controversy in question[.]"[73] Neither party here argues that this Court lacks the authority to determine questions of substantive arbitrability. FINRA Rules "have been interpreted as leaving the question of arbitrability to the courts."[74] Accordingly, the question I must address in this context is whether a plain reading of the IPA demonstrates that

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provided in this Article IX shall not be exclusive of any other rights to which a person seeking indemnification and/or advancement of expenses may otherwise be entitled, under any statute, by-law, agreement, vote of stockholders or disinterested directors, or otherwise[.]").

[71] POB at 36.

[72] *Id.*

[73] *Fairstead Cap. Mgmt. LLC v. Blodgett*, 288 A.3d 729, 750 (Del. Ch. 2023).

[74] *RBC Cap. Mkts. Corp. v. Thomas Weisel P'rs, LLC*, 2010 WL 681669, at *7 (Del. Ch. Feb. 25, 2010) (citing *Cantor Fitzgerald, L.P. v. Prebon Sec. (USA) Inc.*, 731 A.2d 823, 824 (Del. Ch. 1999)).

a dispute concerning the scope of advancement rights under the IPA must be arbitrated. I conclude that it does.

As explained by the Delaware Supreme Court, to determine whether a controversy is covered by an arbitration clause:

> First, the court must determine whether the arbitration clause is broad or narrow in scope. Second, the court must apply the relevant scope of the provision to the asserted legal claim to determine whether the claim falls within the scope of the contractual provisions that require arbitration. If the court is evaluating a narrow arbitration clause, it will ask if the cause of action pursued in court directly relates to a right in the contract. If the arbitration clause is broad in scope, the court will defer to arbitration on any issues that touch on contract rights or contract performance.[75]

The arbitration clause set forth at Section 16 of the IPA "requires any dispute, claim or controversy that may arise between [Plaintiff] and FRSC, or a customer, or any other person arising out of this agreement or [Plaintiff's] employment or termination of employment with FRSC, to be submitted to binding arbitration before FINRA Dispute Resolution pursuant to the FINRA Code of Arbitration Procedure."[76] The language requiring arbitration of "*any*

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[75] *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 155 (Del. 2002). *See also Bunting Macks LLC v. D.R. Horton, Inc. – N.J.*, 2025 WL 2233619, at *5 (Del. Ch. Aug. 6, 2025)).

[76] Martin Aff. Ex. 2 ("IPA") § 16 (emphasis added).

*dispute, claim or controversy . . . arising out of this agreement*" creates a clause that is broad in scope.[77]

In connection with this broad arbitration clause, I must ask whether Plaintiff's right to advancement *specifically under the IPA* is an "issue[] that touch[es] on contract rights or contract performance."[78] Plainly, it is. Plaintiff seeks advancement under Section 10 of the IPA. Section 10 of the IPA confers a contractual right. Because the disputed claim for advancement under the IPA is a specific issue touching on an IPA-conferred right, the claim must be presented to an arbitrator in accordance with Section 16.[79]

## II. The Bylaws Entitle Plaintiff to Advancement of Some, But Not All, of His Underlying Fees.

Section 9.01 of the Bylaws confers a right to advancement. The provision states, in its entirety:

> The Corporation shall, to the fullest extent permitted by applicable law as then in effect,

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[77] *See, e.g.*, *Buzzfeed Media Enters., Inc. v. Anderson*, 2024 WL 2187054, at *5 (Del. Ch. May 15, 2024) ("An arbitration clause that sends to arbitration "any claim or controversy arising out of or relating to this agreement" . . . generally refers all disputes to arbitration.") (cleaned up); *Majkowski v. Am. Imaging Mgmt. Servs., LLC*, 913 A.2d 572, 583 (Del. Ch. 2006).

[78] *Parfi*, 817 A.2d at 155.

[79] *Cf. Majkowski*, 913 A.2d at 583 ("Applied to this case, even though the Consulting Agreement provides for the very rights that Majkowski is trying to assert here, under *Parfi*, Majkowski need not arbitrate this advancement action *if he seeks to establish rights to advancement without reference to the Consulting Agreement*.") (emphasis added).

> indemnify any person (the "Indemnitee") **who was or is involved in any manner (including, without limitation, as a party or a witness), or is threatened to be made so involved, in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative, or investigative** (including without limitation, any action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor, but excluding any action, suit, or proceeding, or part thereof, brought by such person (including without limitation an action, suit or proceeding against the Corporation or any affiliate of the Corporation) unless consented to by the Corporation) (a "Proceeding") **by reason of the fact that such person is or was a director, officer, or employee of the Corporation,** or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding (or part thereof). Such indemnification shall be a contract right. **Each Indemnitee shall also have the right to receive payment in advance of any expenses incurred by the Indemnitee in connection with such Proceeding**, consistent with the provisions of applicable law as then in effect.[80]

Section 9.01 of the Bylaws provides mandatory advancement rights to "Indemnitees."[81] A qualifying Indemnitee is "any person . . . who was or is

[80] Bylaws § 9.01 (emphasis added).

[81] *See id.* §§ 9.01; 9.05 ("All reasonable expenses incurred by or on behalf of the Indemnitee in connection with any Proceeding shall be advanced to the Indemnitee the Corporation within 30 days after the receipt by the Corporation of a statement

involved in any manner (including, without limitation, as a party or a witness), or is threatened to be made so involved, in any threatened, pending or completed investigation, claim, action, suit or proceeding . . . by reason of the fact that such person is or was a director, officer, or employee of the Corporation[.]"[82] Thus, the Bylaws employ the "by reason of the fact" standard.

"The 'by reason of the fact' standard is satisfied when 'a nexus or causal connection' exists between the underlying proceeding and the official's 'corporate capacity.'"[83] "This connection is established if the corporate powers were used or necessary for the commission of the alleged misconduct."[84] Thus, for Plaintiff's proceedings to be advanceable under the Bylaws, "the conduct complained of must [have] occur[red] at a time when" he "is or was a director, officer, or employee of [Defendants]."[85]

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or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding.").

[82] *Id.* § 9.01.

[83] *Krauss v. 180 Life Scis. Corp.*, 2022 WL 665323 (Del. Ch. Mar. 7, 2022) (quoting *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 213 (Del. 2005)).

[84] *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1011 (Del. Ch. 2007) (citing *Brown v. LiveOps, Inc.*, 903 A.2d 324, 329 (Del. Ch. 2006)).

[85] *Id.*

Defendants argue that "[t]o the extent the Pending Matters relate to [Plaintiff]'s employment with First Republic Bank, they are not brought 'by reason of the fact' that [Plaintiff] was an employee of [JPMC][.]"[86] Stated differently, Defendants contend that they "are not responsible for advancing the portion of fees and expenses that were or will be incurred 'by reason of the fact' that [Plaintiff] was *not* an employee of [Defendants]."[87]

To some degree, Defendants are correct.[88] In the Arbitrations, the customers allege wrongdoing based on trading activity and communications that required the use of some entity's corporate authority or power. Before Plaintiff was ever employed with JPMC, it does not appear possible for Plaintiff to have used JPMC's corporate authority or power. Thus, fees and expenses relating to the Arbitrations may lend themselves to allocation

[86] DOB at 23.

[87] *Id.* (emphasis in original). The "by reason of the fact" standard exists because the company put such language into its Bylaws to explain when advancement is required. There is technically no exclusion, as Defendants have articulated it, "by reason of the fact that Plaintiff was not an employee."

[88] *See, e.g.*, *Bernstein*, 953 A.2d at 1010 ("This court will not rewrite a contract by reading words into it that the parties clearly did not intend. Therefore, Bernstein is entitled only to advancement for acts occurring after he became a director and officer of TractManager, Inc. on January 2, 2003.") (internal citations omitted).

according to the apportionment standards this Court has developed in advancement actions.[89]

But little is known about the Investigations. Based on the available record, they appear to involve Defendants and Plaintiff. The nature of the expenses incurred (or to be incurred) is not clear. Fees and expenses may relate to the defense of a potential claim against Plaintiff, against Defendants, or both. Defendants' arguments lump all Investigations and Arbitrations together under the heading "Pending Matters," which obscures the issue.

Three principles guide my analysis of Plaintiff's entitlement to advancement in this case. First, "courts often can determine whether the 'by reason of the fact' requirement has been satisfied solely by examining the pleadings in the underlying litigation."[90] Second,

> in actions where only certain claims are advanceable, the Court generally will not determine at the advancement stage whether fee requests relate to covered claims or excluded claims, unless such discerning review can be done realistically without significant burden on the court . . . . If fees cannot be apportioned with rough precision between advanceable claims and non-advanceable claims or

[89] That said, if there is a theory upon which Defendants may be held to account for the actions of First Republic employees, including Plaintiff, it may be that employees' expenses are, in part, related to acting as witnesses for Defendants. *See* Bylaws § 9.01.

[90] *Holley v. Nipro Diagnostics, Inc.*, 2014 WL 7336411, at *8 (Del. Ch. Dec. 23, 2014).

> the work was useful for both sets of claims, then the fees will be advanced in whole.[91]

Third, this Court has found that a claim for advanceable fees can be parsed where "a bright-line, temporal standard" can be applied to demarcate advanceable claims from non-advanceable claims.[92]

### A. Plaintiff is Entitled to Full Advancement for the Investigations.

There are no communications or documents related to the Investigations in the record. The Court has only limited descriptions of the Investigations from the parties, which vary as would be expected given their positions in this action. The descriptions do not provide a basis for the Court to conduct a "discerning review" of claims, much less whether any fees and expenses "relate to covered claims or excluded claims" (or both). Accordingly, I decline to make such a determination at the advancement stage. Plaintiff is entitled to continued advancement for all fees, expenses and costs relating to the Investigations.[93] Defendants acknowledge that some

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[91] *White v. Curo Tex. Hldgs., LLC*, 2017 WL 1369332, at *10 (Del. Ch. Feb. 21, 2017) (internal quotation marks and citations omitted).

[92] *See Mooney v. Echo Therapeutics, Inc.*, 2015 WL 3413272, at *7 (Del. Ch. May 28, 2015) (discussing *Xu Hong Bin v. Heckmann Corp.*, 2010 WL 187018 (Del. Ch. Jan. 8, 2010)); *see also Bernstein*, 953 A.2d at 1010.

[93] *White*, 2017 WL 1369332, at *10.

advancement is mandated under the Bylaws, and the Court will defer any further parsing of Defendants' obligations to the indemnification phase.

### B. Plaintiff is Entitled to Partial Advancement for the Arbitrations.

Unlike the Investigations, the Arbitrations contain allegations that may lend themselves to temporal apportionment. Plaintiff did not become an employee of Defendants until May 1, 2023.[94] It is clear that the Ferdowsi Arbitration largely relates to Plaintiff's actions before employment with JPMC.[95] Conversely, the Gebbia Arbitration covers fewer transactions, over a shorter period of time, which results in a more balanced set of allegations.[96]

Defendants propose to advance 9% of Plaintiff's fees relating to all four proceedings, arguing that all stem from the same transactions, and that only 9% of the transactions occurred after May 1, 2023.[97] They argue that this method is appropriate "[b]ecause only 9% of the MLIs at issue in the [Investigations and Arbitrations] were purchased by [Plaintiff]'s clients when [Plaintiff] was a [JPMC] employee[.]"[98] At this stage, the record is

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[94] *See, e.g.*, Doko Aff. Ex. M (stating Plaintiff's employment with JPMorgan Chase began "on May 1, 2023").

[95] *See* DOB Ex. 14 ¶¶ 15, 21, 25–27, 35, 37, 38, 44, 67, 71, 73–74.

[96] *See* DOB Ex. 15 ¶¶ 26, 28, 38, 60, 63–64, 67–69.

[97] *See* DOB at 26.

[98] *Id.*

insufficient to permit me to reach that conclusion and adopt Defendants' proposed method of determining Plaintiff's entitlement to advancement.

When an advancement action concerns multiple and distinct underlying proceedings, this Court typically evaluates each proceeding separately.[99] That makes sense here. The Arbitrations do not involve identical claims or time periods.[100] Thus, I decline to bundle the Arbitrations and apply a flat cap of 9% to determine Plaintiff's entitlement to advancement. A more individualized assessment is appropriate.

In *Fasciana v. Electronic Data Systems Corp.*,[101] this Court apportioned advancement rights where it was found that the defendant's bylaws only partially extended to the plaintiff in the underlying proceedings. The Court rejected the notion that "a plaintiff seeking advancement is entitled to have *all* of his expenses advanced if he merely proves that *some portion* of

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[99] *See, e.g.*, *Mooney*, 2015 WL 3413272, at *3 (categorizing claims individually to evaluate entitlement to advancement).

[100] For example, if the Ferdowsi and Gebbia Arbitrations are considered individually, the claims appear to implicate a different percentage of pre- versus post-JPM-affiliated conduct. They may also raise different legal issues. For example, in the Ferdowsi Arbitration, Plaintiff has filed a cross claim against Defendants. *See* Martin Aff. Ex. 5. Work relating solely to the cross claim would not be covered by the Bylaws, but I cannot know whether any fees or expenses may relate to both the cross claim and a covered claim. *See* Bylaws § 9.01 (excluding from advanceable and indemnifiable proceedings "any action, suit, or proceeding, *or part thereof*, brought by [an Indemnitee]") (emphasis added).

[101] 829 A.2d 160 (Del. Ch. 2003).

the case against him is subject to a contractual right of advancement."[102] To the contrary, the Court noted "the unreasonableness of requiring a corporation like EDS to bear a credit risk it did not contract to assume."[103]

In *Fasciana*, the Court found the distinctions between advanceable and non-advanceable facts in the underlying proceedings "sufficiently discrete that experienced counsel will know when they are addressing [covered conduct] rather than the separate misconduct Fasciana allegedly committed when not acting as EDS's agent."[104] The Court ordered the plaintiff to "submit a good faith estimate of expenses incurred to date to address the precise allegations that trigger Fasciana's advancement right."[105]

This Court applied *Fasicana*'s holding in *Underbrink v. Warrior Energy Services Corp*.[106] There, the Court evaluated advancement requests that encompassed claims involving conduct outside the plaintiff's role while employed by the defendant.[107] The parties disputed the scope of the plaintiff's advancement rights. The Court looked to the defendant's bylaws for guidance

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[102] *Id.* at 175.

[103] *Id.*

[104] *Id.* at 176.

[105] *Id.* at 177.

[106] 2008 WL 2262316 (Del. Ch. May 30, 2008).

[107] *Id.* at *17.

and found that "expenses not 'arising out of any event or occurrence related to the fact the claimant is or was a director' are not subject to advancement."[108] Instead, the Court found that "if some, but not all, of the conduct underlying a claim relates to the fact Underbrink or Harrison was a director of Warrior, advancement for expenses associated with defending that aspect of the claim would be appropriate."[109] The Court applied *Fasciana* and ordered the plaintiff to submit fees for advancement only for claims that specifically triggered the plaintiffs' advancement rights.[110]

Here, both Arbitrations assert claims against Plaintiff stemming from specific transactions and communications.[111] The pleadings in the Arbitrations, and Plaintiff's employment timeline with First Republic and JPMorgan are both "sufficiently discrete that experienced counsel [may] know when they are addressing" allegations related to Plaintiff's pre-JPMC conduct. May 1, 2023—the date Plaintiff joined JPMC—is a "temporal bright line" by which the facts underlying the Arbitration claims can be roughly

[108] *Id.* (citation omitted).

[109] *Id.*

[110] *Id.*

[111] *See generally* Doko Aff. Exs. J, K.

demarcated.[112] Because the Arbitrations' allegations can be chronologically demarcated, it may be possible to apportion advanceable fees.[113] To the extent counsel can separate work directed toward "acts occurring after [Plaintiff] became a[n] [employee] . . . of Defendant[,]" Plaintiff is entitled to advancement solely for those acts.[114] But where the "work was useful for both" advanceable and non-advanceable aspects of the Arbitration, the fees are fully advanceable.[115]

As in *Fasciana* and *Underbrink*, the Court notes that "[s]ome level of imprecision is inherent in the retrospective application of this task" and, thus, "to ensure the integrity of this process [Plaintiff's] attorneys shall provide a sworn affidavit certifying their good faith, informed belief that the identified litigation expenses relate solely to defense activity to address those allegations for which [Plaintiff is] owed advancement.' Plaintiff[] shall follow the same procedures for any future expenses for which they seek advancement" of fees incurred in connection with the Arbitrations.[116]

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[112] *White*, 2017 WL 1369332, at *10; *Mooney*, 2015 WL 3413272, at *7; *Bernstein*, 953 A.2d at 1010.

[113] *See Bernstein*, 953 A.2d at 1010–11.

[114] *Id.* at 1010.

[115] *White*, 2017 WL 1369332, at *10.

[116] *Underbrink v. Warrior Energy Servs. Corp.*, 2008 WL 2262316, at *17 (quoting *Fasciana*, 829 A.2d at 177).

## III. Plaintiff is Entitled to Partial Fees-on-Fees and Prejudgment Interest.

Both parties acknowledge that Plaintiff's entitlement to fees-on-fees in this action must be commensurate to Plaintiff's success in prosecuting the action.[117] Plaintiff's motion is granted in part because I have determined that he is entitled, under the Bylaws, to full advancement for the Investigations and partial advancement for the Arbitrations.[118] Plaintiff is entitled to fees-on-fees "in accordance with the findings of the court above."[119]

"Prejudgment interest "is awarded 'for the period of time when [Defendants] unjustifiably refused to provide advancement[.]"[120] Here, Defendants concede that they have not advanced fees and expenses since May 2025.[121] This initially raises a flag, because Defendants appear to have

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[117] *See* POB at 34 (quoting *Fasciana*, 829 A.2d at 183); DOB at 49–50 (citing *Charney v. Am. Apparel, Inc.*, 2015 WL 5313769, at *18 (Del. Ch. Sept. 11, 2015)).

[118] Plaintiff's motion is also denied, in part, because I have determined that JPMC's division of advancement into mandatory and discretionary categories based upon the dates of Plaintiff's employment with JPMC is legally sound under preexisting case law. Plaintiff may, nevertheless, end up receiving advancement of fees and expenses relating to his actions before employment with JPMC, but that would be for reasons of administrative efficiency, benefiting the parties and the Court. *See, e.g.*, *White*, 2017 WL 1369332, at *10 (where fees and expenses relate to both advanceable and non-advanceable claims, and cannot be parsed with reasonable precision, the parties need not parse; fees may be advanced).

[119] *Krauss v. 180 Life Scis. Corp.*, 2022 WL 665323, at *10 (Del. Ch. Mar. 7, 2022).

[120] *Id.* (quoting *Citrin v. Int'l Airport Ctrs. LLC*, 922 A.2d 1164, 1167 (Del. Ch. 2006)).

[121] Ans. at 23.

acknowledged that Plaintiff is owed some mandatory advancement under the Bylaws. Defendants' termination letter seems to indicate that Defendants intended to cease only voluntary advancement, but the reference to "any related matters" injects some ambiguity.[122] Defendants appear to suggest that they offered to pay a portion of Plaintiff's fees post-termination, but that Plaintiff refused to accept partial payment.[123] If this is so, it would seem to limit the extent to which Defendants can be said to have "refused" payment. The record does not indicate whether Plaintiff continued to present invoices to Defendants after Plaintiff's termination.

Based on this record, I can offer only the following guidance to the parties. To the extent Plaintiff has presented invoices for payment of fees and expenses relating to the Investigations and advanceable portions of the Arbitrations, prejudgment interest shall accrue at the legal rate, compounded

[122] *See* Martin Aff. Ex. 18.

[123] *See* DAB at 20 ("In subsequent communications, [JPM Bank]'s counsel informed [Plaintiff]'s counsel that [JPM Bank] would continue to advance to Ahmed a portion of his reasonable expenses that were fairly attributable to the percentage of transactions at issue in the Pending Matters that occurred when he was employed by [JPM Bank] (i.e., that percentage which could be required under the Bylaws) . . . . Notwithstanding these communications, [Plaintiff] commenced this Action[.]") (citing Martin Aff. Ex. 12 at 5).

quarterly,[124] starting on the date payment was due.[125] If Plaintiff did not present invoices, or did not accept payment offered, the parties will have to consider whether and how those facts impact the interest calculation. Those issues have not been briefed. If the foregoing guidance is insufficient for the parties to determine the appropriate amount of prejudgment interest, they may contact the Court and submit supplemental information or argument following the instructions provided below.

## CONCLUSION

Plaintiff's motion is granted in part. Plaintiff is entitled to full advancement for fees incurred in connection with the Investigations and is entitled to advancement of fees incurred in the Arbitrations to the extent mandated by the Bylaws and to the extent that the fees and expenses relate to both advanceable and non-advanceable claims. Plaintiff "shall submit a good faith estimate of expenses incurred to date to address the precise allegations

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[124] *See Murphy Marine Servs. of Del., Inc. v. GT USA Wilm., LLC*, 2022 WL 4296495, at *24 (Del. Ch. Sept. 19, 2022) ("When the court 'award[s] the legal rate of interest, the appropriate compounding rate is quarterly.'") (quoting *Doft & Co. v. Travelocity.com Inc.*, 2004 WL 1152338, at *12 (Del. Ch. May 20, 2004)).

[125] *See Underbrink*, 2008 WL 2262316, at *19 (granting prejudgment interest "on those expenses properly subject to advancement"). Under the Bylaws, payment of advanced fees is due "within 30 days after the receipt by the Corporation of a statement or statements from the Indemnitee requesting such advance or advances[.]" Bylaws § 9.05(a).

that trigger [Plaintiff]'s advancement right."[126] Plaintiff's counsel "shall provide a sworn affidavit certifying their good faith, informed belief that the identified litigation expenses relate solely to defense [and witness] activity to address those allegations for which [Plaintiff is] owed advancement."[127] Plaintiff "shall follow the same procedures for any future expenses for which they seek advancement."[128]

The parties have three days from the issuance of this report to inform the Court whether they wish to submit additional information or argument on the issue of prejudgment interest. If they do, the parties may propose the form and timing of submissions for my review. If the parties choose not to submit additional information or argument, this report will become a Final Report on the third day after issuance. Either party may take exception to the Final Report by lodging a notice of exception within three days after the report becomes final.[129] If no exception is taken or this report is adopted by order of the Court, the parties must meet and confer, and submit a joint proposed

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[126] *Fasciana*, 829 A.2d at 177. *See also Underbrink*, 2008 WL 2262316, at *17.

[127] *Fasciana*, 829 A.2d at 177. *See also Underbrink*, 2008 WL 2262316, at *17.

[128] *Underbrink*, 2008 WL 2262316, at *17.

[129] *See* Ct. Ch. R. 144(d)(2).

implementing order that meets the requirements set forth in *Fitracks v. Danenberg*[130] and this report.

[130] 58 A.3d 991 (Del. Ch. 2012).