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EXHIBIT A

TO MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SWAN ENERGY, INC., BRANDON, DAVIS, JOHN SCHIFFNER, and CODY DAVIS,	:	
Appellants,	:	No. 331, 2025
v.	:	Court Below: Superior Court of the State of Delaware
INVESTOR PROTECTION UNIT, OF THE DELAWARE DEPARTMENT OF JUSTICE,	:	C.A. No: N24C-03-071-MAA
Appellee.	:	

AMICUS CURIAE BRIEF OF THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC. IN SUPPORT OF APPELLEE AND IN AFFIRMANCE OF THE OPINION BELOW

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Dated: October __, 2025

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IDENTITY AND INTEREST OF *AMICUS CURIAE* INCLUDING SOURCE OF AUTHORITY TO FILE

IDENTITY

Formed in 1919, the North American Securities Administrators Association, Inc. ("NASAA") is the non-profit association of state, provincial, and territorial securities regulators in the United States, Canada, and México. NASAA has 68 members, including the securities regulators in all 50 U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The Delaware Department of Justice Investor Protection Unit ("IPU"), Appellee in this proceeding, is a NASAA member.

NASAA's U.S. members are responsible for regulating transactions under state securities laws, commonly known as "Blue Sky Laws." Our U.S. members' principal activities include registering securities offerings, licensing and examining brokers and investment advisers who sell securities or provide investment advice, and pursuing enforcement actions to combat fraud and other violations of state securities laws. The overriding mission of NASAA and its members is to protect investors, particularly retail investors, from fraud and abuse.

NASAA supports the work of its members and the investing public by, among other things, promulgating model rules, providing professional development programs, coordinating multi-state enforcement actions and examinations, and commenting on proposed legislation and rulemakings. NASAA also offers its legal

analyses and policy perspectives to state and federal courts as *amicus curiae* in important cases involving the interpretation of state and federal securities laws, securities regulation, and investor protection.

INTEREST

NASAA and its members have a substantial interest in this case. State legislatures rely on their NASAA-member state securities administrators to combat fraud and other abuses involving securities and investment advice. The ability to bring administrative enforcement actions—including antifraud enforcement actions seeking monetary penalties—is an essential element of state securities laws. NASAA's members rely on their administrative enforcement authority to ensure they are fulfilling their investor protection missions. An adverse decision from this Court on the issues raised in this case could have ripple effects that materially impair how other state securities regulators serve their citizens.

SOURCE OF AUTHORITY TO FILE

NASAA's authority to submit this brief would be by leave of Court, if granted.

RULE 28(c)(4) CERTIFICATION

Pursuant to Delaware Supreme Court Rule 28(c)(4), no party, party's counsel, or person other than *amici* and its counsel have: (i) authored this brief, in whole or in part, or (ii) contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

The IPU commenced an in-house proceeding against Appellants in 2020. The IPU alleges Appellants sold unregistered, nonexempt securities in violation of 6 *Del. C.* § 73-201 and committed securities fraud. The IPU is seeking an administrative cease-and-desist order, restitution and civil penalties. (*See* the October 9, 2025, Appellee's Answering Brief at 1-2 (hereinafter, "Appellee's Brief").)

Appellants initiated this litigation in 2023. Appellants seek to enjoin the IPU's proceeding, arguing it violates their jury trial rights under the Delaware Constitution. (The IPU proceeding has been stayed throughout this litigation.) On June 24, 2025, a Delaware Superior Court dismissed the Appellants' complaint, finding the IPU's proceeding was properly brought and did not infringe on Appellants' rights. Appellants seek reversal of the Superior Court's decision from this Court. (*See id.*) However, this Court should affirm the Superior Court's decision and allow the IPU's administrative enforcement action to proceed to completion.

The parties' legal briefs to this Court cover a range of issues. We are filing this brief *amicus curiae* to provide this Court with our analysis of two discrete issues: (1) Why the Appellants' jury trial rights are not triggered by the IPU's administrative proceeding; and (2) Why the Appellants' argumentation to this Court from three-hundred-year-old acts of the English Parliament is specious.

This Argument has two sections. The first section below argues that the Appellants' jury trial rights are not implicated by the IPU's administrative action, including the potentiality for civil penalties upon a finding of fraud, because the IPU's securities fraud claim under the Delaware Securities Act has different elements than would a common law securities fraud claim and this Court should treat these differences as dispositive. Section one also argues that if this Court does find Appellants' jury trial rights are triggered by the IPU's proceeding, this Court should nonetheless uphold it under a public rights exception to the Delaware Constitution.

The second section of this Argument is focused on rebutting the Appellants' assertion that the English Brokers Act of 1696 and the English Bubble Act of 1719 have any relevance to this case. Specifically, the Appellants' argument fails because Appellants misapprehend the nature and scope of these two Parliamentary acts and Appellants seek to give them a place in U.S. legal history that they never previously held and do not now deserve.

I. THIS COURT SHOULD FIND THAT THE IPU'S ADMINISTRATIVE ENFORCEMENT ACTION, INCLUDING THE POTENTIAL IMPOSITION OF CIVIL PENALTIES, WOULD NOT VIOLATE THE APPELLANTS' RIGHT TO A JURY TRIAL CONTAINED IN THE DELAWARE CONSTITUTION.

This section is divided into two parts. First, Part A explains how the IPU's securities fraud claim, rooted in the Delaware Securities Act, differs from a potential securities fraud claim at common law. These differences matter because courts hold no constitutional right to jury trial attaches when the government brings a statutory claim distinct from any similar common law claim. What is more, this Court should find that the IPU has the legal authority to impose civil penalties against Appellants in the IPU's administrative proceeding because any such penalties would be equitable remedies, not legal remedies.

Second, Part B argues in the alternative that if this Court declines to uphold the IPU's authority to bring an administrative proceeding against Appellants for fraud (including the IPU's authority to levy civil penalties therein), this Court should take up the question of whether a public rights exception exists to the Delaware Constitution's civil right to jury trial. And in so doing, this Court should join with those state courts that have found a public rights exception under their state constitutions to hold that the Delaware Constitution includes a public rights exception which permits the IPU's administrative proceeding against Appellants.

A. This Court Should Allow the IPU's Administrative Securities Fraud Charge to Proceed, Including the IPU's Authority to Impose Civil Penalties, Because the IPU's Cause of Action is Unlike Any in Common Law and Defendants Therefore Have No Right to a Jury Trial Under the Delaware Constitution.

Delaware, like nearly every other state,[1] includes a civil right to jury trial in its state Constitution. *See* Del. Const. art. I, § 4 ("The right to trial by jury shall be as heretofore.").[2] Article 1, Section 4 has not changed since the Delaware Constitution of 1792. However, it harkens back even further to the Declaration of Rights, part of Delaware's 1776 Constitution. This Court has interpreted this provision to mean people have a right to trial by jury under Delaware law to the same extent that such rights were recognized at common law when the first Delaware Constitution was adopted. *See Claudio v. State*, 585 A.2d 1278, 1296-98 (Del. 1991).

This Court should not extend the Article 1, Section 4 jury trial right to defendants in IPU antifraud proceedings (such as Appellants here) because doing so would be inconsistent with Delaware jurisprudence as of 1776.[3] There were no

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[1] *See* Eric J. Hamilton, FEDERALISM AND THE STATE CIVIL JURY RIGHTS, 65 Stan. L. R. 851, 855 (2013) (finding forty-seven of the fifty state constitutions have an expressed civil right to jury trial).

[2] In contrast to how this right is expressed in the Delaware Constitution, most state constitutions express the right by describing it as "inviolate." *See* Hamilton, *supra* note 1, at 855.

[3] We use 1776 as the point in time when the constitutional right to a jury trial was fixed under Delaware law. However, if this Court disagrees and deems 1792 to be the appropriate benchmark, we of course accede. (We believe it ultimately makes

comparable common law causes of action to the IPU's securities fraud claim against Appellants when the first Delaware Constitution was adopted in 1776, nor were there any comparable causes of action brought by the government to protect the public from investment fraud generally. The closest analogue in the 18th century was common law fraud. However, the elements for common law fraud are different from the elements required in an IPU antifraud enforcement action. And courts distinguish statutory claims from analogous yet different common law claims when it comes to assessing constitutional jury rights. *See Jersey Cent. Power & Light Co. v. Melcar Util. Co.,* 59 A.3d 561, 570 (N.J. 2013) (citing *Shaner v. Horizon Bancorp*, 561 A.2d 1130, 1139 (N.J. 1989)) ("[W]here actions created by statute have distinctive features with respect to substantive and procedural standards that would render them virtually unknown to the common law, there is no right to jury trial."); *Reed v. Farmers Ins. Grp.*, 720 N.E.2d 1052, 1060 (Ill. 1999) (quoting *People v. Niesman*, 190 N.E. 668 (Ill. 1934) ("The state constitutional guarantee of a jury trial 'was not intended to guarantee trial by jury in special or statutory proceedings unknown to the common law.'"); *Blue Beach Bungalows DE, LLC v. Delaware Dep't of Just. Consumer Prot. Unit*, 2024 WL 4977006, at *14 (Del. Super. Ct. Dec. 4, 2024), amended 2024 WL 5088688 (Del. Super. Ct. Dec. 12, 2024) (stating the cause of

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no difference to the arguments herein at what point in time this Court assays Delaware common law.)

action was "not known at common law" and was "significantly different than common law fraud").

This Court has recognized five elements for a common law fraud claim involving securities:

1. a material misrepresentation by a defendant in connection with the sale of a security;
2. made with knowledge of its falsity (or with reckless disregard for the truth);
3. with intent to induce some action (or inaction) by another party;
4. upon which the other party relies; and,
5. that causes damages to the other party.

Gaffin v. Teledyne, Inc., 611 A.2d 467, 472 (Del. 1992) (citing *Stephenson v. Capano Dev.*, *Inc.*, 462 A.2d 1069, 1074 (Del. 1983)). Built into this test are five basic elements that courts commonly recognize in common law fraud today: misrepresentation, materiality, scienter, reliance and damages. *See* 23A Jerry W. Markham and Thomas Lee Hazen, BROKER-DEALER OPS. UNDER SEC. & COMM. LAW § 10:28 (2024). These same five elements likely would apply if such a claim had been brought in colonial America. The earliest case we can find laying out the elements of common law fraud is *Cornelius v. Molloy*, 7 Pa. 293 (1847). Excerpting from that decision, the court wrote: it is "now established, as the general rule," that

common law fraud exists "where a party intentionally misrepresents a material fact, or wilfully produces a false impression, in order to mislead another [party]," the other party "trusted to such representation," and suffered "injury" thereby. *See id.* Parsing these words, all five elements of modern common law fraud—misrepresentation, materiality, scienter, reliance and damages—are there.

However, it is equally well established today that securities regulators are not held to all five of these elements when they bring securities fraud claims under federal and state securities acts. Regulators are often excused from showing scienter and are always excused from showing reliance. *See*, *e.g.*, *Harrington v. Sec'y of State*, 129 So. 3d 153, 163-70 (Miss. 2013) (reviewing federal and state precedents that show scienter is usually not required and reliance never is).[4] Regulators also are always excused from showing damages and therefore can charge inchoate frauds, potentially stopping frauds before they harm anyone. *See, e.g., Geman v. SEC*, 334 F.3d 1183, 1191 (10th Cir. 2003). Thus, of the five elements required for a securities fraud claim at common law, regulators are usually required to show only two

[4] There is no easy explanation for when federal or state securities regulators are required to prove scienter. Most state courts hold their securities regulators do not have to prove scienter. *E.g.*, *Harrington*, 129 So. 3d at 170; *Tanner v. State*, 574 S.E.2d 525, 530 (Va. 2003); *State v. Shama Resources LP*, 899 P.2d 977, 982 (Idaho 1995); and *State v. Larsen*, 865 P.2d 1355, 1359 (Utah 1993). That this is a conundrum at all springs largely from *Aaron v. SEC*, 446 U.S. 680 (1980), wherein the U.S. Supreme Court set different scienter requirements for the U.S. Securities and Exchange Commission under the Securities Act of 1933 versus the Securities Exchange Act of 1934.

(misrepresentation and materiality) or at most three (misrepresentation, materiality and scienter) when they bring statutory fraud charges.

Courts excuse regulators from proving all the elements of securities fraud that would be required at common law because regulators occupy a unique position in relation to their securities statutes. Securities laws are remedial statutes created by legislatures to protect the public. *See*, *e.g.*, *State v. Casper*, 297 S.W.3d 676, 694 (Tenn. 2009); *Trivectra v. Ushijima*, 144. P.3d 1, 11 (Haw. 2006). Securities regulators have a critical role in fulfilling the statutes' remedial purposes. *See*, *e.g.*, *Sec'y of State v. Tretiak*, 22 P.3d 1134, 1140-42 (Nev. 2001) (explaining the court's rationale for not requiring scienter, reliance or damages in an action by the state's securities regulator and noting the regulator's role in fulfilling the act's remedial purpose). In Delaware, the General Assembly has been crystal clear that it intends the Delaware Securities Act to be interpreted liberally and on behalf of the IPU. *See* 6 *Del. C.* § 73-101(b) (stating the purpose of the Delaware Securities Act is to "prevent the public from being victimized" and "remedy any harm caused by securities law violations," these goals being "of paramount importance [. . .] particularly in any judicial review of sanctions or penalties imposed by the Investor Protection Director [. . .].").

Given that different elements are required for statutory versus common law claims, a question has arisen (as Appellants do here) whether constitutional jury trial

rights attach in both situations. Notably, every state court that has faced this question has answered it in the negative—including cases decided subsequent to the U.S. Supreme Court's decision last year in *SEC v. Jarkesy*, 603 U.S. 109 (2024). *See Ridlon v. N.H. Bureau of Sec. Reg.*, 214 A.3d 1196 (N.H. 2019); *EFG America, LLC v. Ariz. Corp. Comm'n*, 569 P.3d 806 (Ariz. Ct. App. 2025); and the opinion below, *Swan Energy, Inc. v. Inv. Protection Unit of Del. Dept. of Justice*, 2025 WL 1744503 (Del. Super. Ct. Jun. 24, 2025).[5] These three decisions are not outliers. Many other state cases in other contexts hold that defendants' constitutional rights to jury trial do not extend to government fraud claims brought under remedial state statutes.

For instance, states have adopted a variety of consumer protection laws. These statutes empower state agencies to bring civil suits against businesses that defraud citizens or otherwise engage in harmful commercial conduct. Available remedies include injunctions and monetary penalties. Courts have repeatedly held these claims do not entitle defendants to trial by jury. An example of this is *Nationwide Biweekly Admin., Inc. v. Superior Ct. Alameda Cnty.*, 462 P.3d 461 (Cal. 2020). *Nationwide* held no constitutional right to jury trial applied in a California Department of

[5] The IPU correctly points out in its Appellee's Brief that *Jarkesy* has no application to this case because whether a right to jury trial exists under the Seventh Amendment depends on the nature of the remedy sought (equitable versus legal) whereas whether a right to jury trial exists under the Delaware Constitution depends on if the right existed at common law when the Delaware Constitution was adopted. (*See* Appellee's Brief at 10-12.)

Business Oversight fraud claim brought under that state's unfair competition law ("UCL") and false advertising law ("FAL"). The defendant's jury trial rights were not implicated because the state's causes of action were "not of like nature or of the same class as any common law action." *Id.* at 485. Furthermore, the court wrote that, "perhaps most significantly," no "early English statutes authorized a prosecuting official to seek and obtain, *in the same action*, a civil penalty and an injunction," like the Department of Business Oversight could under the UCL and the FAL. *Id.* at 486 (emphasis in original). The Delaware Securities Act empowers the IPU similarly. *See* 6 *Del. C.* § 73-601.

The highest court in Maryland held likewise in *Consumer Protection Div. v. Morgan*, 874 A.2d 919 (Md. 2005). That decision upheld an administrative proceeding by the state's consumer protection bureau in which the bureau imposed a cease-and-desist order and civil penalties on a defendant after finding the defendant committed fraud in violation of the Maryland Consumer Protection Act ("CPA"). *See id.* at 969. The court upheld the state's administrative proceeding because the state's cause of action under the CPA differed from any at common law. *Id.* at 958-59. Still further cases in this vein include *State v. Schroeder*, 384 N.W.2d 626, 629-30 (Neb. 1986) (finding no right to trial by trial in a civil enforcement action for penalties under the Nebraska Consumer Protection Act) and *State v. Sailor*, 810 A.2d

564, 567-68 (N.J. Super. Ct. App. Div. 2001) (holding the state's enforcement action for insurance fraud did not entitle the defendant to a trial by jury).

It is worth highlighting that the civil penalties imposed in the aforementioned cases were all deemed equitable remedies, not legal ones. The role of the state as plaintiff was dispositive on this point. This outcome is consistent with how courts treat penalties obtained by private parties versus by the government more broadly.

For private plaintiffs, penalties are treated as legal remedies because they are designed to punish. Courts impose them when the defendant's conduct has been so egregious that merely compensating the plaintiff is insufficient and the court wants to assess an additional remedy. Civil penalties obtained by the government are different. Penalties in this context are treated as equitable remedies because they protect the public interest and prevent a defendant's unjust enrichment. For cases discussing these distinctions, *see In re Investigation Pursuant to V.S.A. Sec. 30 & 209*, 327 A.3d 789, 807 (Vt. 2024) (holding civil penalties obtained by the state against a public utility were "equitable in nature in that they seek primarily to promote the public welfare rather than [to] punish"), and *Comm'r of Env. Prot. v. Conn. Bldg. Wrecking Co*., 629 A.2d 1116, 1123 (Conn. 1993) (finding the state's action for civil penalties under an environmental protection statute was equitable given that the purpose of the statute was to protect the environment, a "restitutionary" goal). This Court should interpret the Delaware Securities Act

similarly and hold that civil penalties obtained by the IPU are equitable remedies. Such a holding would effectuate the General Assembly's intent that the Delaware Securities Act be interpreted liberally in the hands of the IPU to protect investors.

B. The IPU's Administrative Action Should Also Be Allowed to Proceed, Including Potentially Imposing Civil Penalties, Under a Public Rights Exception to the Appellants' Constitutional Right to Jury Trial.

If this Court does not uphold the IPU's administrative proceeding against Appellants for reasons argued in Part A above (or for any other reason), this Court should nonetheless hold that Appellants still do not have a right to a jury trial in this matter because the IPU's administrative enforcement action is an exercise of Delaware's public rights that obviates the Appellants' constitutional jury rights.

Based on our research, this Court has never addressed whether the Delaware Constitution's right to jury trial is subject to a public rights exception. However, other state courts have recognized such an exception to their state constitutions. *See*, *e.g.*, *Nat'l Velour Corp. v. Durfee*, 637 A.2d 375, 379 (R.I. 1994); *Baskin v. Berkeley Rent Stab. Bd.*, 253 Cal. Rptr. 791, 796 (Cal. Ct. App. 1988), *subsequent review dismissed by* 786 P.2d 892 (Cal. 1990).

The public right exception derives from *Murray's Lessee v. Hoboken Land & Improvement Co*., 59 U.S. 272 (1855), and holds that where "public rights are being litigated—*e.g.*, cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes," a defendant's civil jury trial rights at

common law are not implicated. *Nat'l Velour Corp.* at 379. The underlying rationale behind the public rights exception is straightforward. Courts reason that where a legislature creates a cause of action by statute, it may assign adjudication of that cause of action to an administrative agency so long as the same cause of action did not exist at common law. *See Bd. of Ed. of Carlsbad v. Harrell*, 882 P.2d 511, 523 (N.M. 1994). As outlined in Part A above, this is precisely the circumstance in which the IPU finds itself with respect to Appellants on the IPU's administrative securities fraud claims.

This Court should recognize a public rights exception because doing so would be consistent with the Delaware Securities Act's stated purpose in 6 *Del. C.* § 73-101(b). Unlike securities fraud complaints brought by private parties that seek to vindicate the parties' own interests, the IPU seeks to advance the public interests of Delaware as a polity. By enacting the Delaware Securities Act, the Delaware General Assembly should be entitled to assign reasonable adjudicatory responsibilities under it to the IPU.

II. THIS COURT SHOULD DISREGARD APPELLANTS' ARGUMENTATION FROM THE BROKERS ACT OF 1696 AND THE BUBBLE ACT OF 1719 BECAUSE THESE OLD ENGLISH ACTS HAVE NO BEARING ON THIS MATTER.

Appellants argue they have a right to trial by jury on the IPU's charge that they sold unregistered, nonexempt securities in violation of the Delaware Securities Act because this right existed at common law when the Delaware Constitution was adopted in 1776. (*See* the September 9, 2025, Appellants' Opening Brief at 28-30 (hereinafter, "Appellants' Brief").) Appellants assert, "*it is undisputed* that English law in the 17th and 18th centuries imposed registration and licensure requirements on corporations and individuals acting as brokers, requirements similar in substance to those of 6 *Del. C.* § 73-202," and this therefore entitles them to a jury trial. (*Id.* at 28-29 (emphasis added).) To the contrary, we believe there are strong reasons to dispute this claim.

Appellants argue they have a right to trial by jury that derives from the English Brokers Act of 1696[6] and the Royal Exchange and London Assurance Corporation Act (or, "Bubble Act") of 1719.[7] (*See* Appellants' Brief at 29.) Appellants view these

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[6] The text of the Brokers Act is publicly available at http://bit.ly/4oG2en9 and a copy is included as item 9 in the September 9, 2025, Compendium of Unreported Authorities Cited in Appellants' Opening Brief (hereinafter, "Appellants' Compendium").

[7] The Bubble Act in publicly available at http://bit.ly/3LbPVA9 and a copy is included as item 7 in the Appellants' Compendium.

three-hundred-year-old English acts as antecedents to modern American regulation of broker-dealers and securities offerings and Appellants argue that, because these Parliamentary acts provided for trial by jury, so too must this Court afford them a trial by jury now. However, this Court should not follow Appellants' creative argument because Appellants misconstrue the nature and scope of these antiquated Parliamentary acts. The Brokers Act and the Bubble Act were not progenitors of American securities laws, and the Delaware Securities Act certainly bears no lineage to them. The fact that these two acts allowed for trial by jury in their day is therefore immaterial to whether Appellants have a right to trial by jury on the IPU's enforcement action today.

The Brokers Act of 1696 was not an attempt by the English Parliament to set regulatory standards for English stockbrokers and stock jobbers (*i.e.*, market makers). It certainly did not presage the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, the foundational federal statute for broker-dealer regulation and securities market trading in the United States, or any state securities law such as the Delaware Securities Act. Rather, the Brokers Act appears to have been a mercantilist attempt by the English Parliament to protect London stockbrokers from economic competition. The most important provision in the Brokers Act was Article III, which limited the total number of brokerage licenses eligible for issuance to a scant one hundred. Article III says (in the English of its time), "such Person and Persons as

shall from time to time be admitted sworne and appointed Brokers according to the true Intent and Meaning of this Act shall not att any one Time exceed the Number of One hundred [. . .].” Thus did Parliament try to cabin the number of stockbrokers in the entire British Empire to a mere one hundred persons. But the Brokers Act does not appear to have had a long life. Our research shows it lapsed in 1707 and was not renewed. *See* 1 Louis Loss et al. SECURITIES REGULATION 4 (5th ed. 2014).[8] The Brokers Act therefore would have had no impact on English or American law in 1776 when the first Delaware Constitution was adopted.[9]

The Bubble Act likewise was no antecedent to the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, the federal statute that sets standards for securities offerings in the United States, nor did it presage any state securities law. For a thorough discussion of the genesis of the Bubble Act, we recommend Professor Ron Harris’s INDUSTRIALIZING ENGLISH LAW: ENTREPRENEURSHIP AND BUSINESS ORGANIZATION,

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[8] *See* Exhibit B in our Compendium filed with this brief.

[9] Appellants’ Opening Brief discusses a 1767 English case brought against two defendants for acting as unregistered brokers. (*See* Appellants’ Brief at 29.) Appellants presumably cite this case to suggest the Brokers Act remained in effect in the late 1700s. However, as mentioned previously, our research indicates the Brokers Act lapsed in 1707. Ultimately, this issue is a red herring: It is irrelevant whether the Brokers Act was good law in England in the late 1700s because the Brokers Act bears no kinship to the Delaware Securities Act and therefore has no bearing on Appellants’ rights under the Delaware Constitution.

1720-1844 (2009) (pages 60-81).[10] Professor Harris points to the genesis of the Bubble Act as arising from anticompetitive concerns of the English South Sea Company combined with the British Crown's need to refinance a crippling debt burden. *See id.* at 61 ("I argue that the South Sea Company, which organized the national debt conversion scheme, also instigated the Bubble Act, but that it did so because small bubble companies had become an annoying factor in the stock market of 1720.").

Basically, the deal struck between the South Sea Company and the British government was that the South Sea Company would take-on the Crown's outstanding public debt provided Parliament passed the Bubble Act to limit the number of companies competing with the South Sea Company for precious financial capital in London. The overall scheme was "unprecedented in English history in terms of sums of money, numbers of investors and financial sophistication [. . .]." *Id.* at 63. Importantly for purposes here, though, the Bubble Act's role in this overall scheme was most definitely not as a form of nascent securities regulation: "the Bubble Act should not be seen as a major attempt to regulate the stock market." *Id.* at 79. Furthermore, the Bubble Act (like the Brokers Act) was not designed to accomplish the goals of the Delaware Securities Act, which the IPU seeks to enforce

[10] *See* Exhibit A in our Compendium filed with this brief. (The full source is publicly available (for a fee) at http://bit.ly/490LW3q.)

here; namely, to protect investors and the public from unlawful unregistered securities offerings and fraudulent conduct.

We do not know how colonial Americans might have responded to an attempt by King George to enforce the Bubble Act (or the Broker Act) against them as this was never attempted. Appellants cite the 19th century case *Rex v. Webb*, 104 Eng. Rep. 658 (K.B. 1811), for an example of the Crown's enforcing the Bubble Act in England. (*See* Op. Br. at 29). But our research found this 1811 decision was the very first time the Crown sought to enforce the Bubble Act. Prior to the American Revolution, therefore, the Bubble Act had never been tested or applied in any British courtroom. To the extent the Bubble Act ever had relevance within English law, that relevance ended in 1825 when the English Parliament repealed it. *See* Eric C. Chaffee, A THEORY OF THE BUSINESS TRUST, 88 U. Cin. L. Rev. 797, 808-099 (2019) (discussing repeal of the Bubble Act and noting it "was largely ignored" while it was extant); *see also* Loss et al. at 7-8 (contexting the Bubble Act with the development of subsequent English securities regulations). The Bubble Act would have been of no moment to the adopters of the Delaware Constitution in 1776.

For all these reasons, this Court should place no stock in Appellants' argument that the Bubble Act or the Brokers Act entitle them to trial by jury on the IPU's claims against them (or that these two old Parliamentary acts even have any relevance in the present litigation).

CONCLUSION

This Court should find that the IPU's administrative action against Appellants is lawful in all respects and that Appellants' jury trial rights under the Delaware Constitution are not implicated. This Court should allow the IPU's action to proceed, including the potential imposition of civil penalties if the administrative proceeding determines such penalties are warranted.

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Dated: October __, 2025