

September 15, 2020

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
Attention Attorney General William Barr

RE: Color of Law Violation and Defiance of Executive Order by Securities and Exchange Commission

Dear Attorney General William Barr,

I am truly a fan of yours and was happy to see You interviewed by Mark Levin on FOX News some weeks ago. You stated the DOJ asked the States to voluntarily remove Covid related restrictions which were "arbitrary and capricious". Funny I recently asked SEC Chairman Jay Clayton to voluntarily reverse the SEC approval of FINRA Rule 2010 "Standards of Commercial Honor and Principles of Trade" as it is indeed arbitrary and also "repugnant to the Constitution".

Attached is complaint filed with the DOJ and FBI against the SEC and FINRA for Color of the Law Violations filed over six months ago with the Department of Justice. After several emails requesting a status, I was finally given a reply from the DOJ in July, after the George Floyd death. An email response that the DOJ may or may not review the matter. CRT.CRM@usdoj.gov sent an email to me with "ID: 2090-KQJ" in the subject line on July 9, 2020.

Attached is also a complaint for the Federal District Court of New Jersey for the Judicial Review against Agency Action the Securities and Exchange Commission Approval of FINRA Rule 2010 which the SEC itself describes "***is broader and provides more flexibility than prescriptive regulations and legal requirements.***" Within the complaint there are several cases cited where similar laws and regulations "beyond prescriptive regulation and legal requirements" were made void due to vagueness. It is illegal for any agency, including the SEC, to effectuate regulations which compromise due process.

Also attached an article "Reforming FINRA" from Senior Fellow David Burton of the Heritage Foundation. It states: "*Due process, transparency, and regulatory-review protections normally associated with regulators are not present, and its arbitration process is flawed. Reforms are necessary.*" As the SEC had no authority to approve rules which diminish discovery within the FINRA Arbitration Process, their approval is also a violation of the Fifth Amendment of the Constitution.

In the opinion of Supreme Court Neil Gorsuch, "***Vague Laws invite Arbitrary Power***" and according to Think Advisor of FINRA Rule 2010 is "***intentionally vague***". As the SEC never had authority to approve the Financial Regulatory with Arbitrary Power, their actions were a violation of the Color of the Law. The approval was a semblance of authority for which no real authority exists.

Also, when a Federal Agency defies an Executive Order is it considered a Civil or Criminal Penalty? According to President Trumps Executive Order 13772 of February 3, 2017 it is regulation be made “efficient, effective, and appropriately tailored”. The American Securities Association is suing the Securities and Exchange Commission for mandating the Consolidated Audit Trail on the industry as it transmits *“the most sensitive personal information of every U.S. retail investor in a single database.”*

In November 2000 I received a Patent # 6144947 for a system which would show the effect of trading on regulatory capital of broker-dealers which only required the real time transmission of the firm’s long and short positions and **no personally identifiable information**. The calculations are required by Rule 15c3-1 of the Securities and Exchange Act. The System is more effective to Consolidated Audit Trail as it would prevent a flash crash and the need for Consolidated Audit Trail. If Regulatory Capital were calculated in real time, then a kill switch can stop trading the moment net capital is breached.

The SEC has enslaved the Brokerage industry with over regulation with Consolidated Audit Trail which will not prevent a flash crash. The utilization of a real time system which shows the effect of trading on Net Capital as per the existing regulation Securities and Exchange Act would have saved the investors of Knight Clearing Corp \$440 million in August 2012. The investors who the SEC was set up to protect as there was no real time system utilized to monitor the effect of trading on their capital.

There is no need for Consolidated Audit Trail but a need to leverage technology the United States Government itself deems as enabling. I received a response from Kevin Goodman of the Securities and Exchange Commission but never received an answer why the SEC does not utilize a more efficient means of regulation. The President never likes to “trail” and favors prevent defense of risk.

So here you have the SEC granting FINRA the authority to make up arbitrary violations where no written law exists while simultaneously defying an explicit Executive Order from the highest office in the United States the President of the United States. The President of The United States is “serious about the Rule of Law” says White House Chief of Staff Mark Meadows.

Just as Ninety-Four U.S. Attorneys were advised the United States Constitution is not “suspended in times of Crisis”, The Federal Agency, the SEC cannot usurp Constitutional Protections through their conduit FINRA. The Securities and Exchange Act expressly requires the approval of the SEC for the adoption of rules and approval of rule changes of Self-Regulatory Organizations. FINRA Rule 2010 could never exist without SEC approval but indeed it does illegally.

Regarding Consolidated Audit Trail (CAT), it seems President Trump does not like overregulation nor defiance of Executive Orders. As Securities and Exchange Act Rule 15c3-1 requires brokers to stop trading the moment regulatory capital is breached, there is no systemic impact onto the broader market, and the consolidated audit trail is unnecessary, and is indeed overregulation.

With all due respect to the SEC, the Consolidated Audit Trail resembles the raw deal of the MetLife Arena in New Jersey where taxpayers and fans overpay for an eyesore of an arena lacking a retractable roof, and someone on the inside made out like a bandit through the backdoor.

The opportunity provided to SEC Chairman Jay Clayton to reverse FINRA's lack of due process would not only help to distinguish him as worthy for Attorney General in New York State. but would also help to distinguish the Justice provided by the Trump Administration from that of Kamala Harris.

Just as Kamala Harris branded Justice Kavanaugh as guilty, FINRA under SEC approval requires the public branding of all terminated associates with guilt and limits the discovery of documents and persons in arbitration to expunge such branding. Just as there is bona-fide prosecutorial misconduct under the office of Kamala Harris, FINRA Enforcement's supply of baseless FINRA 2010 Violation coupled with repeated denial of exculpatory information is obscene prosecutorial misconduct.

Both Jay Clayton and Eric Dreiband should their oath of protecting the United States Constitution. If Eric Dreiband wants to convey "*equal protection of the law*", then I should at least get minimal service for my Color of the Law Violation filed in February 2020. Given the level of severity of the violation, I do not expect someone with the stature of Erica MacDonald to hold an immediate press conference. But as a taxpayer who acted consistently with the guidance of the SEC's Lerner Letter, and someone not high on fentanyl nor passing counterfeit bills, I would appreciate the dignity of a response to my complaint

I know both President Trump cc'd and yourself both take the Oath to The Constitution seriously and of you read this document you will act upon having the SEC reverse their approval for Rule 2010 and rid the industry of overregulation of CAT. You are both great people and I sincerely appreciate your work.

Finally, as I said I am a big fan of yours and understand you play the bagpipes. The Bayonne Rugby Football Club marches in Bayonne, New Jersey's Saint Patrick's Day Parade which never falls on March 17th. You are always welcomed to march with us and play the pipes. You would replace our old bagpiper "Cave Dog" who coincidentally has your same body build. You are always welcome to march with us. Please keep up the great work you are doing at the Department of Justice.

Sincerely,

Peter Schwartz
Hoboken, New Jersey

Cc'd

President Donald J. Trump
David Burton Senior Fellow in Economic Policy of the Heritage Foundation
SEC Chairman Jay Clayton
Kevin W. Goodman Director, FINRA and Securities Industry Oversight Program (FSIO)
Eric S. Dreiband Assistant Attorney General for the Civil Rights Division
Chris Iacovella CEO of The American Securities Association

