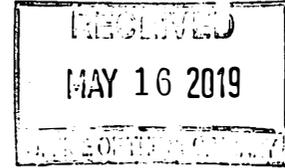


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**UNITED STATES OF AMERICA  
BEFORE THE  
UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

-----X  
In the Matter of the Application of :  
 :  
Arthur Mansourian : Administrative Proceeding  
 : File No. 3-18990  
 :  
For Modification of Action Taken by FINRA :  
 :  
-----X

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**OPENING BRIEF IN SUPPORT OF APPLICATION OF ARTHUR  
MANSOURIAN FOR MODIFICATION OR REVERSAL OF DECISION OF  
THE FINANCIAL INDUSTRY REGULATORY AUTHORITY'S  
NATIONAL ADJUDICATORY COUNCIL**

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## **I. PRELIMINARY STATEMENT**

Pursuant to Rule 450 of the Securities and Exchange Commission's (the "**Commission**") Rules of Practice, Arthur Mansourian ("**Mr. Mansourian**") hereby submits this opening brief in support of his application for modification or reversal of the decision by the Financial Industry Regulatory Authority's ("**FINRA**") National Adjudicatory Council ("**NAC**"), dated January 8, 2019 (the "**NAC Decision**"). Familiarity with the record<sup>1</sup> is assumed.

## **II. FACTUAL BACKGROUND**

### **A. Mr. Mansourian**

Mr. Mansourian entered the securities industry in 2006 and was registered as a general securities representative in 2007. RBN 006417 – RBN 006456 (NAC Decision at 4).<sup>2</sup> Mr. Mansourian was associated with NMS Capital Securities LLC ("**NMS Securities**") from October 2012 to September 2015, and registered with NMS Capital Advisors, LLC ("**NMS Advisors**") in June 2015 wherein he became a registered securities principal. RBN 006417 – RBN 006456 (NAC Decision at 4). In October 2015, NMS Securities filed a Form Broker-Dealer Withdrawal. RBN 006417 – RBN 006456 (NAC Decision at 3). However, Mr. Mansourian continued to be registered with NMS Advisors until the NAC Decision barred him from associating with any member firm. RBN 006417 – RBN 006456 (NAC Decision at 4, 29). Prior to this matter, Mr. Mansourian has had no prior disciplinary history with any securities regulator. At the time of the events in question herein, Mr. Mansourian had been in the industry as a general securities representative for approximately six (6) years, but had only been employed in the securities industry in a licensed capacity for less than three (3) years. He did not possess any principal or supervisory licenses at

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<sup>1</sup> The record for the underlying FINRA Complaint No. 2013037522501 was certified to the Commission by FINRA under cover of a transmittal letter dated February 19, 2019.

<sup>2</sup> References to "RBN \_\_\_\_" refer to the record bates numbers in the certified record filed by FINRA.

that time, and was the junior registered person at NMS Securities in terms of industry experience with approximately six (6) months on the job. RBN 000906.

### **B. The OBA/PST Compliance Forms**

In April 2013, FINRA conducted an unannounced examination of NMS Securities, and requested a number of Outside Business Activity (“**OBA**”) and Private Securities Transaction (“**PST**”) forms completed by NMS Securities’ registered representatives. RBN 006417 – RBN 006456 (NAC Decision at 12). Richard Daniel Tabizon (“**Tabizon**”), NMS Securities’ Chief Compliance Officer and Mr. Mansourian’s supervisor, requested that Mr. Mansourian replace previously executed OBA and PST forms by having such forms re-executed by the appropriate registered representatives. RBN 006417 – RBN 006456 (NAC Decision at 12). Tabizon had previously advised a FINRA representative that NMS Securities had misplaced the forms, and that FINRA representative authorized Tabizon to have the forms recreated to replace the misplaced forms. RBN 002373; RBN 002373; RBN 002408; RBN 002411 – RBN 002412. On or about Friday, April 19, 2013, Tabizon sent an email from his personal email account to Mr. Mansourian’s personal email account, attaching the OBA and PST forms. RBN 006417 – RBN 006456 (NAC Decision at 12). The next day, Mr. Mansourian forwarded the OBA and PST forms from his personal email to several of NMS Securities’ registered representatives, and requested that the recipients return the forms signed and bearing dates in February 2013. RBN 006417 – RBN 006456 (NAC Decision at 12). The recipients of that email returned the forms signed and bearing dates in February 2013, as Mr. Mansourian requested. RBN 006417 – RBN 006456 (NAC Decision at 12). On or about April 25, 2013, Tabizon produced the backdated OBA and PST forms to FINRA in response to FINRA’s previous request for documents. RBN 006417 – RBN 006456 (NAC Decision at 12). At the time Mr. Mansourian sent the above-referenced email to the NMS

Securities' registered representatives, the Firm's Written Supervisory Procedures prohibited the use of a private email for business related communications. RBN 006417 – RBN 006456 (NAC Decision at 12).

### **III. PROCEDURAL HISTORY**

#### **A. The FINRA Disciplinary Proceeding and Decision**

On or about March 24, 2016, FINRA's Department of Enforcement instituted a disciplinary proceeding against Mr. Mansourian and several other individuals (the "**FINRA Disciplinary Proceeding**"). RBN 006417 – RBN 006456 (NAC Decision at 6). On or about December 15, 2017, a FINRA Office of Hearing Officers' Extended Hearing Panel ("**OHO Panel**") issued its Extended Hearing Panel Decision ("**OHO Decision**"), finding that Mr. Mansourian: (1) violated FINRA Rule 2010 by participating in obtaining backdated compliance forms that were to be provided to FINRA using his personal email; and (2) violated FINRA Rules 4511 and 2010 by causing a member firm to maintain inaccurate books and records. RBN 006417 – RBN 006456 (NAC Decision at 7). For those purported violations, the OHO Panel barred Mr. Mansourian from associating with any FINRA member firm in any capacity. RBN 006417 – RBN 006456 (NAC Decision at 7). Mr. Mansourian timely appealed the OHO Decision to the NAC (the "**NAC Appeal**"). RBN 006417 – RBN 006456 (NAC Decision at 7).

#### **B. The NAC Appeal and Decision**

After conducting what it characterized as an independent review of the record in connection with the NAC Appeal, the NAC Decision affirmed the improper and unsupported findings of the OHO Decision. RBN 006417 – RBN 006456 (NAC Decision at 22-24). The NAC Decision further noted that the OHO Panel "unanimously agreed that [Mr. Mansourian was not] a credible witness[,]" and determined to not disturb that finding. RBN 006417 – RBN 006456 (NAC

Decision at 13). In doing so, and as discussed more fully herein, both Mr. Mansourian and the underlying record offered several mitigating factors that the NAC simply ignored or dismissively brushed off without adequate consideration. The NAC concluded its review of the matter by affirming Mr. Mansourian's bar. RBN 006417 – RBN 006456 (NAC Decision at 27-28).

**C. The NAC Ignored Multiple Mitigating Factors Regarding Mr. Mansourian**

In his moving papers in support of his NAC Appeal, Mr. Mansourian offered several mitigating factors, noting the OHO Panel's failure to consider them. For example, in *Respondent Saliba and Mousourian's Opening Brief*, Mr. Mansourian raised the mitigating factor that, "as a new member of the NMS team, in sending the email at issue, he simply followed the advice of his superior," who was a seasoned compliance officer. RBN 006109 – RBN 006138 (Respondent Saliba and Mansourian's Opening Brief at 24). Mr. Mansourian also raised the following mitigating factors from FINRA's Sanction Guidelines: General Principle 1, General Principle 2, General Principle 3, Principal Consideration 5, Principal Consideration 11, Principal Consideration 12, Principal Consideration 13, Principal Consideration 15, Principal Consideration 17, and Specific Sanction Guidelines Applicable to "Falsification" of Records. RBN 006109 – RBN 006138 (Respondent Saliba and Mansourian's Opening Brief at 24-25 (citing Sanction Guidelines (2015 ed.)). Notwithstanding Mr. Mansourian providing such mitigating factors to the NAC, the NAC largely ignored the mitigating factors as described more fully below.

Aside from the mitigating factors referenced above, the record contained uncontroverted evidence that Mr. Mansourian suffered from a medical condition that affected (1) his conduct during the underlying investigation into this matter and (2) the OHO Panel's credibility determination of Mr. Mansourian. More specifically, the NAC added insult to injury by supporting Mr. Mansourian's bar in this matter with the discounting of his obsessive-compulsive disorder (a

disorder that causes Mr. Mansourian to suffer from anxiety and panic attacks, and for which he has been prescribed the medication Zoloft). RBN 002184. For example, after originally testifying that Co-Respondent Trevor Michael Saliba (“**Mr. Saliba**”) was the individual who directed him to send the email at issue in this matter to the registered representatives containing the OBA and PST forms, Mr. Mansourian later amended such testimony to correct such misstatement by indicating that it was Tabizon who directed him to send such email and that Mr. Saliba was just in the same room, which was part of the confusion. RBN 006417 – RBN 006456 (NAC Decision at 13). Even though Tabizon consistently admitted that he directed Mr. Mansourian to send the email in question, the OHO Panel belittled Mr. Mansourian’s condition by questioning whether the OHO Panel could believe any of Mr. Mansourian’s testimony in the FINRA Disciplinary Proceeding, even though Mr. Mansourian’s testimony was consistent throughout the remainder of the matter after correcting his initial misstatements. RBN 002477 – RBN 002479. Rather than sending the appropriate message to the OHO Panel to cease from further acts of belittling an individual who suffers from a serious medical condition but who took the necessary steps to correct previously incorrect testimony, the NAC simply ignored the mitigating nature of Mr. Mansourian’s medical condition. RBN 006417 – RBN 006456 (NAC Decision at 23).

#### **IV. ARGUMENT**

##### **A. Legal Standard**

Pursuant to Section 19(e)(1) of the Securities Exchange Act of 1934 (the “**Exchange Act**”), in reviewing the decision of a self-regulatory organization (“**SRO**”) in a disciplinary action, the Commission must conduct an independent, de novo, review of the record to determine (1) whether the aggrieved person engaged in the conduct found by the SRO, (2) whether such conduct violated the securities laws or SRO rules, and (3) whether those rules are, and were applied in a manner

consistent with the purposes of the Exchange Act. *See* 15 U.S.C. § 78s(e)(1). Pursuant to Section 19(e)(2) of the Exchange Act, the Commission, with due regard for the public interest and protection of investors, will not sustain a sanction imposed by FINRA if the sanction is excessive or oppressive, or imposes an unnecessary or inappropriate burden on competition. *See* 15 U.S.C. § 78s(e)(2). Congress clearly intended that the substantive fairness of FINRA deliberations be subject to the Commission's review. *See, e.g.*, Harry Richardson, Exchange Act Release No. 34-51236, 2005 WL 424920, at \*5.

As part of its review to determine whether a FINRA sanction is excessive or oppressive, the Commission must carefully consider whether there are any aggravating or mitigating factors that are relevant to its determination of an appropriate sanction and whether the sanctions imposed by FINRA are remedial and not punitive. *See John M.E. Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013). In *Saad*, the District of Columbia Circuit further noted that “this review is particularly important when the respondent faces a lifetime bar, which is ‘the securities industry equivalent of capital punishment’”. *Id.* (citing *PAZ Securities, Inc. v. SEC*, 494 F.3d 1059, 1065-1066 (D.C. Cir. 2007)). When reviewing a NAC decision on an appeal from a FINRA Hearing Panel determination, the Commission's decision is ripe for remand if it ignores potentially mitigating factors asserted by the petitioner and supported by the record. *Saad*, 718 F.3d at 913.

In connection with a Commission review of an SRO's disciplinary action, credibility determinations by a fact-finder deserve “special weight.” *Alderman v. SEC*, 104 F.3d 285, 288 n.4 (9th Cir. 1997), *aff'g*, *Daniel Joseph Alderman*, 52 S.E.C. 366 (1995). These determinations can be overcome only when there is “substantial evidence” for doing so. *Anthony Tricarico*, 51 S.E.C. 457, 460 (1993); *see also Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999) (explaining that

“[c]redibility determinations by the fact finder are entitled to substantial deference and can be overcome only where the record contains substantial evidence for doing so.”)

**B. Mitigating Factors Warrant a Reduced Sanction for Mr. Mansourian**

Mr. Mansourian was a largely inexperienced general securities representative at the time of his conduct at issue in this matter, and was following the instructions of his supervisor. Although such factors are not a defense for Mr. Mansourian’s rule violations in this matter, they certainly warrant consideration in determining whether such conduct warrants a lifetime bar (i.e., the securities industry equivalent of a death sentence). Nothing in the record suggests that Mr. Mansourian would have engaged in the conduct at issue in this matter if he had not been instructed to do so by his supervisor.

In the NAC Decision, the NAC indicated as follows regarding Mr. Mansourian:

For recordkeeping violations, the Guidelines recommend a suspension of up to two years or, where aggravating factors predominate, a bar. The principal considerations specifically applicable to recordkeeping violations include the nature and materiality of the missing information, whether the missing information was omitted intentionally, and whether the violations allowed other misconduct to escape detection. All of these factors are aggravating here. The information missing from NMS Securities’ books and records because of [Mr.] Mansourian’s violation – that the firm was obtaining backdated compliance forms – was important.

. . .

[Mr.] Mansourian participated in obtaining backdated OBA and PST forms knowing FINRA had requested them and that they would be provided to FINRA. Moreover, he obtained the documents in a manner that was designed to minimize the likelihood of detection. His misconduct was intentional and his participating was an integral part of obtaining the backdated documents that were provided to FINRA. [Mr.] Mansourian’s assertion that he was following superiors’ instructions does not excuse his conduct and moreover, calls into question his judgement and ability to conduct himself ethically in the securities industry. Accordingly, for his violations, we affirm the bar in all capacities imposed by the [OHO] Panel.

RBN 006417 – RBN 006456 (NAC Decision at 27-28). As noted herein, Mr. Mansourian only participated in the backdating of the OBA and PST forms at his supervisor's request, and was only replacing documents that were previously part of NMS Securities' books and records. In spite of the NAC's assertion, nothing in the record suggests that a one-time act of assisting his supervisor in obtaining replacement OBA and PST forms warrants the questioning of Mr. Mansourian's judgment and/or his ability to conduct himself ethically in the securities industry. To the contrary, the stress and discomfort that this matter has caused Mr. Mansourian is more likely to ensure that he strongly questions any instruction any supervisor gives him in the future, as he can now fully understand the consequences of blindly abiding by a supervisor's request. Mr. Mansourian also received his Series 24 and completed continuing education since the incident.

The NAC also erred in not reversing the OHO Panel's credibility determination regarding Mr. Mansourian in light of the substantial evidence in the record justifying a reversal. As noted herein, the NAC Decision noted that the OHO Panel unanimously held that Mr. Mansourian was not a credible witness, and determined to not disturb such determination. *See supra* Part II(B). While the OHO Panel determination of Mr. Mansourian's credibility might normally be entitled to deference in the NAC Decision, in this matter the NAC was well aware of the underlying evidence in the FINRA Disciplinary Proceeding that Mr. Mansourian's obsessive-compulsive disorder affected his testimony and caused him to be forced to correct previous errors. The NAC was also aware that FINRA's Department of Enforcement offered no evidence to suggest that Mr. Mansourian did not truly suffer from obsessive-compulsive disorder or that such disorder was not responsible for Mr. Mansourian's confusion during his initial on-the-record interview. Such evidence is substantial in determining whether Mr. Mansourian's correction of his testimony provides a meritorious basis to question Mr. Mansourian's credibility, and warrants the NAC

reversing the OHO Panel's credibility determination. Such reversal of the OHO Panel's credibility determination would likely have motivated the NAC to view Mr. Mansourian in a fair manner, as a registered person who misstepped but whose conduct does not warrant the NAC affirming the OHO Decision and Mr. Mansourian's permanent bar.

**V. CONCLUSION**

Mr. Mansourian engaged in conduct that violated FINRA Rules. In connection with that conduct, he should be sanctioned. However, any reasonable review of such conduct – coupled with the mitigating factors that are relevant for consideration – demonstrate that Mr. Mansourian's conduct does not warrant a permanent bar from the securities industry. For the reasons set forth herein, Mr. Mansourian respectfully requests that the Commission modify or reverse the NAC Decision by ordering a reasonably lesser sanction against Mr. Mansourian.

Dated: May 15, 2019

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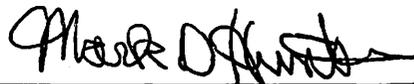
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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 15, 2019, I caused a true and correct copy of the foregoing document to be served upon the following by overnight mail, facsimile, and email transmission, addressed to:

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