Mitchell Fillet
[redacted]
New Haven, CT. [redacted]
[redacted]

SECURITIES AND EXCHANGE COMMISSION

OF

THE UNITED STATES OF AMERICA

MITCHELL H. FILLET, Appellant, vs. FINRA, Defendant	Complaint No.: 2008011762801 3-15601n **BRIEF FILED IN SUPPORT OF RESPONDENT NOW APPELLANT MITCHELL H. FILLET'S APPLICATION FOR REVIEW OF ACTION TAKEN BY FINRA.**

June 20, 2016

This appeal of the sanctions taken against Mitchell Fillet, Respondent now Appellant (and hereinafter "Fillet"), by FINRA in the matter Complaint No. 2008011762801, is to the Securities and Exchange Commission (hereinafter "The Commission"). This appeal is necessitated by FINRA's continued misapplication of their desire to levy sanctions against Fillet irrespective of the body of evidence in this matter. Their willingness to ignore the facts of this case as well as The Commissions willingness to support FINRA's decision in this case, even though The Commission rightly dismissed some of the fraud charges, is unjust. However, the Commission's clear attempt to support its affiliate FINRA by only dismissing part of the Securities Fraud charges against Appellant Fillet is an indication of The Commission's willingness to overlook material facts and definitive legal procedure regarding this matter which otherwise would clearly have led to dismissal and expungement of this matter. That FINRA affirmed the severity of the sanctions against Fillet upon remand was to be expected.

Now therefore, due to the continued partnership of FINRA and The Commission to support FINRA's baseless claim against Appellant Fillet, Fillet does hereby request that the Commission review once again its original decision and the decision of the National Adjudicatory Council, upon remand, and institute a just and fair outcome to this matter by dismissing all of the sanctions against Fillet.

BASIS FOR REVIEW:

1. Background:

FINRA has conducted a seven year campaign (2009-2016) against Fillet alleging that Fillet committed Securities Fraud in the instance of a single investor who loaned money to a venture that Fillet's employer at the time (The Riderwood Group, Inc. of Towson, Maryland) was advising. This set of allegations is based on a letter dated February, 2009 that was written by the General Counsel of Mr. Malkin's registered broker dealer. The letter is laced with false allegations and inaccuracies. One of the most glaring is in the second paragraph on Page Two wherein the General Counsel, Mr. Keltner, stated that Mr. Malkin tendered a subscription to the offering. This is clearly false, as there was no offering, Mr. Malkin did not tender his alleged subscription to Riderwood and, as stated in paragraph 3, Riderwood never touched or took any of these proceeds, as was verified by FINRA during a field audit of Riderwood's books and records. Further to this issue, on page 3, Mr. Keltner states that "Mr. Fillet has joined Mr. Sloan in the series of false promises to Mr. Malkin....that a $ 150,000 refund was imminent"...In fact, Mr. Keltner called Fillet at Riderwood in January of 2009, well after Mr. Malkin's loan to Mr. Sloan was made and threatened him if Riderwood would not immediately refund all of Mr. Malkin's ~~investment.~~ loan. Fillet told Mr. Keltner that Riderwood had no responsibility for repayment, was not party to the relationship between Mr. Malkin and Mr. Sloan and, therefore, would not be repaying Mr. Malkin. The letter in question was the outcome of Mr. Keltner's threats on that phone call. It should be noted by The Commission that the General Counsel of a registered broker dealer did not then and has never used the privilege of arbitration under the authority of FINRA, as that would have held his firm and his principal, Mr. Malkin, to a higher level of truthfulness as to their allegations against Fillet and Riderwood.

In addition to Mr. Keltner's letter, FINRA's basis for their claim is the initial engagement agreement between this client and Riderwood as well as the hearsay evidence of a single, highly sophisticated investor, Peter Malkin, who was never able to provide any substantive proof of his claims including and most importantly, he could not remember the circumstances by which he came into possession of the documents upon which he stated that he made a material reliance in making this loan, which is the basis for the charge of securities fraud against Fillet. The engagement agreement used in this matter enables Riderwood to provide and be paid for the firm's advice and then if warranted, to launch a fund raising campaign for a client through the marketing of securities issued by the client. Riderwood was paid once, at the very beginning of its relationship with this client, which was the retainer fee that initiated the advisory work on behalf of this client. Riderwood never received any additional fees from this client, including the firm DID NOT receive any percentage of Makin's loan to this client, which would have been an industry standard method of compensation to Riderwood for that activity, had Riderwood been involved in that loan, which it clearly was not. FINRA completely ignores the compensation issue as it strongly supports Fillet's contention that he knew nothing about this loan until well after the funds had been disbursed by Malkin.

One need only look at Rule 10(b) 5 a, b and c to understand that The Commission should have dismissed all of these charges and not just those charges that come under Para. b. In fact, The Commission's decision begs the question as to how does one commit fraud under these statutes without the violation of Para B. But to better understand this issue, it is helpful to look at the Rule, as published and written below:

Rule 10b-5: Employment of Manipulative and Deceptive Practices":

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security."

Examining the last line of the Ruled that The Commission should have dismissed this claim in its entirety, as there was no purchase or sale of a security. This further exemplifies how FINRA is shoring up the weakness of their claim against Fillet by attempting to define a private loan between two individuals as a security. FINRA uses as proof of their contention that they have a set of transactional documents signed and supplied by Peter Malkin, who cannot remember how he received those documents nor when he signed those documents. (Before he made the loan. After he made the loan or when he was asked to provide evidence to FINRA at the beginning of its investigation of Fillet). What is eminently clear in this case, is that FINRA made no attempt to authenticate any part of that documentation. This is especially damaging to FINRA's claims of fraud against Fillet because the documents are null and void, under the Commercial Code of the State of New York. As Malkin is an expert in these matters (private notes construed under the laws of the State of New York) objective examination of those documents supports Fillet's contention of his and Riderwood's lack of involvement in this matter because the documents are not properly counter-signed which is what makes them null and void. No attorney experienced in these matters, as is Peter Malkin, would have let this note go unsigned by an authorized representative of the issuer.

This appeal is based not only on the premise that The Commission was reluctant to completely dismiss the charges against Fillet due to the lack of support of FINRA that such an action would define but also the simple fact that The Commission, by dismissing the charges against Fillet under Rule 10(b) 5b should have also dismissed all charges

under Rule 10(b) 5 Para. a and c. as well as those charges under NASD Rule 2120. And with the dismissal of all of these charges, the FINRA "fishing net" rule (NASD Rule 2110) would not be applicable, as neither Fillet nor Riderwood violated the "Standards of Honor" nor "the Principles of Trade".

If Fillet did not "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made... not misleading" which is the exact language of Rule 10(b) 5 Para. b, then how could a fraud have been committed ?? Peter Malkin testified that his only meeting with Fillet was a key part of his material reliance on Riderwood and Fillet's expertise. The Commission clearly saw that was not the case in dismissing the fraud charges under Para. b. This then causes the fraud charges against Fillet to rest solely on NASD Rule 2120 and Rule 10(b) 5 Para a and c. For the sake of further clarity in this matter, please see these rules listed below:

2120. Use of Manipulative, Deceptive or Other Fraudulent Devices

No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance

Rule 10(b)5 Para. a & c.:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
in connection with the purchase or sale of any security."

As stated previously there was no purchase or sale of a security. Therefore, these rules cannot apply. FINRA did not even attempt to verify that Malkin thought himself to be a client of Riderwood, which could have been easily examined by his adherence to FINRA's own rule about the establishment of an account at another firm by a registered person, ie. Permission of the registered person's compliance department and establishment of a set of duplicate confirmation slips being sent to compliance. The only "fraudulent device" that could have been employed in this matter is the "Term Sheet" upon which Peter Malkin claimed to make a material reliance and that FINRA used as proof of Riderwood and Fillet's attempt to defraud Peter Malkin. As Malkin received the term sheet from someone other than Fillet and Riderwood,

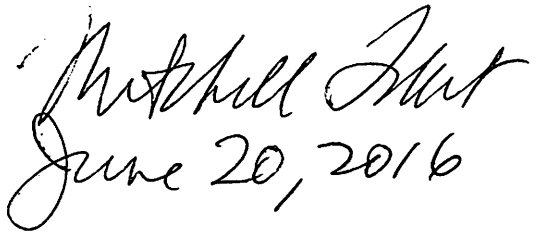
which has often been repeated by Fillet under oath and on appeal, with only a weak dispute by Malkin's testimony, there can be no other device upon which this fraud could be based.

As there is no proof that either Fillet or Riderwood supplied Makin with the Term Sheet, other than Malkin's foggy recollections that he received the term sheet from someone who was probably Fillet and as there were other, non-registered persons, including a close personal friend of Malkin's, who all possessed electronic copies of the Term Sheet, as it was in draft form and being reviewed by all of the interested parties to this potential transaction, it is very possible that Malkin received the term sheet from someone other than Fillet. FINRA, knowing that the evidentiary support of Fillet's attempt to defraud Malkin with the term sheet as the "device" of that fraud is weak as there is only hearsay evidence that Fillet supplied the term sheet to Malkin, points to the single fact that the term sheet did not contain the word "DRAFT" anywhere within the four corners of that document. This, of course does not functionally nor legally define whether this document was a draft. Equally as important, this document was in electronic form and anyone, including Malkin himself or one of his employees, could have deleted the word "draft".

With The Commission dismissing the core of the fraud charges against Fillet, Fillet believed that upon Remand, FINRA would see that their case against Fillet was weak and would dismiss all of the fraud charges against Fillet. Instead, they did what they have done since the beginning of this process and created a predictable outcome of affirmation of all of the charges and penalties against Fillet by tasking the lawyer who originally drafted the last appeal to the National Adjudicatory Council to review his own opinion. Instead of recusing himself, he affirmed his original opinion.

For this reason and supported by the above facts, Fillet has again sought appeal to The Commission with the belief that The Commission will see that FINRA's affirmation of the charges and penalties against Fillet should be replaced by dismissal and expungement of these charges.

For the specific reason of relief against these personally damaging charges including FINRA's constant use of the Internet to damage Fillet's life through the utilization of a well-executed cyber bullying campaign, Fillet seeks review of the sanctions of this matter, their dismissal and expungement by The Securities and Exchange Commission of the United States.



 MF

[redacted] New Haven, CT. [redacted]

June 20, 2016

Ms. Jill M. Peterson
Assistant Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

3-15601R

Dear Ms Peterson:

Attached to this letter is the brief that I am filing pursuant to Rule 450 (a) of the Rules of Practice and as requested in the Order Scheduling Briefs dated May 24, 2016 and signed by you.

These documents are being sent by regular mail, registered, return receipt requested, as per 17 C.F.R. Section 201 Para 150-(c) (2) and (d).

Sincerely,

Mitchell Fillet