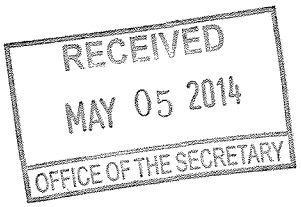
SECURITIES AND EXCHANGE COMMISSION



In the Matter of the Application of	
Robert Marcus Lane and Jeffrey Griffin Lane	Admin Proc. File No. 3-15701
For Review of Action Taken by	
FINRA	

JEFFREY LANE'S ANSWER TO FINRA'S OPPOSITION BRIEF

Petitioner, Jeffrey G. Lane ("Petitioner" or "Jeffrey Lane") respectfully submits this Answer to FINRA's Brief in Opposition to Application for Review.

Opening Statement

The FINRA Opposition Brief is an assault on the character and integrity of the Petitioner and is wrong and misrepresented in so many ways that it is almost difficult to decide where to begin. Petitioner disagrees with FINRA on just about every issue in this latest indictment. The latest Brief is riddled with inaccuracies and falsehoods. This is no surprise since this is the fifth FINRA attorney that has been reassigned to this case. It is the same situation as previously witnessed during the course of this review when the 8201 Inquiry was reassigned to four Analysts. It is like the children's game of post office where someone passes a message on to the next one who passes it on to the next and when it gets to the last person in line everyone laughs at how it has changed. Except that this is not funny. At each stage of this proceeding as the Review was passed from one to another the inference grew that the Petitioner has committed some kind of wrongdoing and it was incumbent upon FINRA DMR to frame a case against the

Petitioner. The latest FINRA Brief is entirely consistent with the new lawyer repeating and exacerbating the same falsehoods that have been perpetuated by the previous FINRA attorneys.

If the Petitioner were to read the latest Brief and some one else's name were substituted in place of Lane, Petitioner would be inclined to think that these are very bad people who have committed severe transgressions. At the very least, Petitioner would have to think that one of the parties was a crook and that the other party aided and abetted as an accomplice. This is the crux of the case against the Petitioner. This is what we dispute. Petitioner did not and still do not consider Marcus as a crook or myself as a conspirator in the trades being cited. The Petitioner was there during this time when these alleged wrongdoings were made and strongly disputes that the referenced trades were improper or unfair to our customers. Clearly, in the Review made by FINRA, interpreted by FINRA attorneys and decided in FINRA hearings these arguments that we have made in our defense have not succeeded. The conduct was not risk trading as Petitioners have argued – it is FINRA's interpretation that this was interpositioning that resulted in an unfair mark-up to the customer. It has come down to a matter of who is right and who is wrong on this simple issue. Upon whose position is one more likely to side with - Two FINRA members who in 2006 and 2007 are trying to conduct a compliant business in the high yield distressed bond market, or the full weight and authority of the FINRA DMR to prosecute their alleged and manufactured wrongdoings and rule violations in their own FINRA forum?

Another possible and more likely interpretation that Petitioner might consider in reading the latest Brief and seeing some one else's name were substituted in place of Lane is that these two misfortunate ones have gotten caught up in the FINRA machine and been chewed up and spit out.

That the Petitioner has not maintained sufficient supervisory procedures or that Petitioner failed to respond to 8210 requests for information is clearly not supported by the record or the facts. These false allegations are a misguided attempt to obfuscate the issue identified above. That Supervisory Procedures were in place, and that said procedures were sufficiently adequate for the size of the firm and did clearly identify the person responsible for reviewing sales and trading, and that Petitioner was responsible for reviewing Petitioner Marcus Lane's activities and did in fact review his transactions can not be disputed. Likewise, that the Petitioner responded to FINRA for information pursuant to an 8210 request from 2007 through

2011 also can not be disputed. The DMR argues that in 2009 the Petitioner did not provide responses to their fourth, fifth and sixth or even seventh requests for information. Petitioner would argue back just as strongly that this is nonsense, that full and complete information had been provided and that DMR is merely making such a case to bully its authority.

The Petitioner has consistently maintained that he has not violated the Rules or even the code of integrity that is part of the FINRA ethic. FINRA has taken action against the smallest group it could choose to pick in an action that simply is lacking in merit expecting that there would be no opposition to its authority. This proceeding has gone full circle.

Discussion

The FINRA DMR Brief on page 3 states that, "instead of accepting responsibility, the Lanes cast blame on everyone but themselves..." This is not a matter of casting blame. It is a matter of disputing these false allegations of any wrongdoing.

Responding to 8210 Requests for Information

The FINRA DMR Brief states on page 2, "The Lanes failed to respond in a timely manner to FINRA's requests for information." This is contradicted by the responses provided in 2007, 2008, and 2009 as well as appearing for an OTR in 2010. "The record amply supports the NAC's finding that in 2009, the Lanes repeatedly failed to respond timely to FINRA's requests for information that was critical to its investigation." This is not entirely accurate for a number of reasons. First, it was at this time in 2009 that Petitioners questioned the length of time between 8210 requests and the purpose of the review. Responses were made including the identity of the ownership of the high yield trading accounts (This is a matter in dispute. FINRA claims that this had not been provided and Petitioner claims that it had been provided.). The information was not "critical to its investigation." The most often referred to failure in providing information is as pertains to Marcus' e-mails and Bloomberg records. These have not ever been referred to for anything else except alleging a rule violation for failure to respond to an 8210 request. "Ultimately, it took seven months of repeated requests and escalating regulatory pressure before the Lanes finally responded in full, ultimately providing information that was

easy to provide." During this time period referred to, both the Lanes were in contact with FINRA DMR. Voluminous documentation under the Petitioner's control were collected, copied and sent to FINRA. The Bloomberg Authorization had been previously furnished in the Petitioner's first response to the NASD in 2007. Indeed, the delay of seven months was for the most part caused by the Notice of Suspension and the back and forth associated with that. It subsequently took FINRA another eight months after dropping its Notice of Suspension to issue an order for Petitioner and Marcus Lane to appear for an OTR. The escalating regulatory pressure was brought about as a result of the Petitioner merely attempting to engage FINRA in any type of dialogue as to the purpose for its review and in questioning the undue delays. It was also clear that the two FINRA attorneys, Gary Finn and Christian Nanu, had been offended and had already decided that they were going to demonstrate FINRA's authority. This can be witnessed by the Notice of Suspension. "The Lanes assert they responded to FINRA's requests in a timely manner but do not address the documentary evidence showing otherwise." Yes, responses were made in a timely matter and the documentary evidence clearly supports this.

Again on page 7, the FINRA DMR Answer states that "instead of providing responsive information by the deadlines, the Lanes offered a litany of excuses, complaints and non-responses." This is, again, not entirely true and misleading. It is true at this time the office was closed, that records were stored at Marcus' house in Greenwich, CT and that Petitioner did not have a copier machine. It is true that Petitioner offered access to all Greenwich High Yield's historical records, which is tantamount to what was being asked for. It is true that Petitioner complained about the length of FINRA's investigation and "harassment" and chastised that FINRA "would be better served to investigating other Matters." The length of the review already at two years was frustrating. At the time this review was being conducted Wall Street was imploding: Bear Stearns and Lehman folded; the biggest banks were being supported by government bailouts; mortgage companies were going bankrupt and scandals of the Madoff type were emerging. Still, that has no bearing on the responsiveness by the Petitioner. It merely serves to illustrate that the Petitioner's had clearly struck a false chord with the DMR and attorneys Gary Finn and Christian Nanu.

Again, on pages 7 and 8, FINRA DMR makes a huge issue in regards to cooperating with the request for Marcus Lane's electronic communications. "Marcus Lane, in e-mails dated July 1 and 15, 2009, informed Market Regulation that he never used e-mails, texts, or instant

messages when communicating with customers or for business." This is true. "And on July 16, 2009 Market Regulation indicated that Jeffrey Lane had informed it that "the firm used e-mail and that Marcus Lane "retained the hard drive that contains the firms electronic communications." This is also true. However, later on page 8 the Answer states "Despite having previously informed Market Regulation that the firm used e-mail and maintained e-mails on its hard drive, Jeffrey Lane changed course to assert that Marcus Lane never used e-mails to conduct business." This is false. It ignores the fact that first of all it was a FINRA requirement that a member firm should have and maintain e-mail accounts for its registered representatives, and second that e-mail accounts may be used for different reasons or not at all. Did the firm use e-mail? Yes, to receive Notices and electronically file FOCUS reports and such. Did Marcus Lane use e-mail to conduct business? No. Does this represent a change of course by the Petitioner? Absolutely not. One other point that has never been factored in or considered is how does one make an authenticated copy of a hard drive? Not to mention that this is all irrelevant because the electronic communications have never been introduced for any reason except to support its claim that Petitioner(s) failed to respond to an 8210 request.

Trading versus interpositioning. Indication of interest versus a sold transaction.

Petitioner strongly differs with FINRA's characterization of the trading activity as interpositioning and not as Petitioner's have maintained what is appropriate use of risk capital in properly designated trading accounts established and used for risk trading. FINRA DMR Brief argues that the only evidence in support of the claim that FINRA had been informed of and approved the trading account operations is a 1997 letter to the NASD District 11 office. This is incomplete as evidence was provided that in 2004 telephone calls were made to Patrick McKeon, Examiner for the District 11 Office, again advising the NASD regarding the creation of these accounts and a letter to this effect were sent to the District 11 Office. The FINRA DMR on page 19 states "In any event, associated persons cannot shift their burden of compliance to FINRA." Petitioner is not shifting the burden, but simply pointing out that the trading accounts were established to facilitate risk trading for which they were used and that this had been made known to the NASD.

On page 18, the FINRA DMR Brief states "The claim that High Yield Entities were exposed to risk is questionable, considering that Marcus Lane had received customer's indications of interest, the trades sets were completed in a short period of time, and the High Yield Entities profited in all 11 trade sets." While admitting that the question of risk trading is debatable, the FINRA DMR's greatest concern is not risk exposure, but that the High Yield Entities profited in all 11 trade sets. Indeed, the Petitioner has previously sought to enter evidence that was overruled regarding trades in which the High Yield Entities incurred risk and also subsequent losses. FINRA DMR claimed that evidence of losses can not be used to justify higher prices to customers when Petitioner was seeking to establish that the losses show that the risk to capital was real and that the High Yield Entities were being used for risk trading. The foregoing contradicts, the FINRA DMR statement on page 18 that "The evidence casts serious doubts, however, whether any risk was involved."

On page 20, the FINRA DMR Brief argues that using the trading accounts protected the firm's net capital also does not hold water. Petitioner questions how DMR can assert this when so many firms were bankrupted or needed government bailouts at this time (2006-2007) because of bad trades. Also the FINRA DMR Brief states "That Jeffrey Lane claims that the so-called positioning of bonds within the High Yield Entities facilitated trades with the customers that Greenwich High Yield may not otherwise to transact. But he does not explain why that was so or address why the firm could not have sold the bonds through riskless transactions with customers, who had given indications of interest." This has, in fact, been addressed previously. The positioning of bonds in the High Yield Entities by placing below market bids and positioning them gave the High Yield Entities the advantage or disadvantage of owning the bonds and being able to offer them firm. It is such that instead of saying that there is a 9 bid against a 10 offer in the street, and if the customer can bid 10.25, you might be able to sell bonds to the customer at that price, the salesman can simply say I can sell you bonds at 9.75. By positioning bonds it gives the salesman the ability to offer bonds firm in hand. The FINRA DMR Brief makes a great deal out of Marcus Lane's statement that he had "indications of interest" for the bonds that were traded. Query, can a firm engage in a riskless trade on an "indication of interest"? No. What does an "indication of interest" mean? It means the customer is interested. An "indication of interest" would not justify a firm to buy bonds at 10 above and offer them on a riskless principal basis at 10.25. An "indication of interest" is not any kind of

guarantee that even if you own the bonds and can offer them at 9.75 that the customer will buy the bonds. It is merely an indication of interest.

The argument on page 18 of the FINRA DMR Brief, that "If Marcus Lane sought to avoid risk exposure, he could have effected riskless principal trades or declined to execute the trades altogether." This is the perfect legal argument made from an attorney. Don't try; can't fail. It ignores all prior arguments regarding the use of the High Yield Entities as risk trading accounts established and used for facilitating and promoting trades. The Brief does not even deign to consider the fact that this was properly authorized risk trading in designated trading accounts. The Petitioner has pointed out that what the DMR characterizes as "interpositioning" is a commonly known and accepted practice called trading. When Goldman Sachs reports that their earnings are up as a result of gains made from trading, no one raises an eyebrow. However, when it is a small broker-dealer that engages in the same activity, FINRA labels it "interpositioning". Clearly, it appears that what is good for the goose is not good for the gander.

The Petitioner would like to draw attention to and examine the point spreads and the prices paid by Greenwich High Yield customers. Petitioner would point out that both the point spread and the price paid by Greenwich High Yield were fair and within the confines of the market. Again on page 15, footnote 9 the FINRA DMR Brief states "Contrary to Jeffrey Lane's assertion, Charles Myers, Market Regulation's expert witness never testified that the customer's prices were in line with the market." Petitioner disagrees and maintains that Myers testified that the prices the customer paid for the securities at issue were in line with the market. Regardless, Petitioner is confident of producing his own an expert witness who is actually familiar with the market for high yield distressed securities who would testify that the prices paid by our customers was fair and the corresponding markup was likewise fair.

The Tower Euro Dollar Denominated bonds should have been omitted from this review as these trades were not under the authority of its jurisdiction as discussed below. However, the Petitioner has offered evidence that on an exchange basis from euros to dollars, the dollar price was the same as U.S. Tower bond price trading at that time for bonds that are pari passu (treated the same in the capital structure) as the Euro Dollar Denominated bonds. This is not a difficult concept. If the conversion ratio from 9 euro dollars was into 14 U.S. dollars and the U.S. Tower corporate bonds were trading at 14 as can be shown by TRACE reporting and the bonds are treated equally in the capital structure then the price is the same. However, the more important

issue is that these transactions and others (e.g. bank debt, trade claims, private placements, even mortgage backed securities pools) are outside of FINRA's jurisdictional regulatory authority. These transactions should not have been included in this review and should not have been considered in the charges and findings.

Legal Standards and Supervisory Procedures

The FINRA DMR Brief states on page 2, "In briefs that are notable for the lack of any discussion of the legal standards...the Lanes challenge the NAC decision on grounds that lack any basis in fact or law." This is wrong simply as may be observed by the fact that the FINRA Brief is non-responsive to the legal challenges that have been made by the Petitioner. For example, Petitioner has challenged the case law upon which FINRA DMR relies for its allegations of interpositioning and not responding to an 8210 Review. The Petitioner has pointed out that their reliance upon these cases is wrong because the facts of those cases are substantially different involving gross malfeasances repeatedly committed over a long period of time. FINRA DMR has not attempted to refute this and indeed continues to rely upon such misguided authority in the cases they cite - e.g. *SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450 (2d Cir. 1996); *In the Matter of Gonchar and Polyviou,* 2009 SEC Lexis 2797 (August 14, 2009) for interpositioning; and In re Paz Securities, Inc. 2008 SEC Lexis 820 (April 11, 2008) for failing to respond. First Jersey involved a company underwriting issues, recalling them, marking them up by 100-300% and reissuing the securities at a higher level done over a course of time in multiple underwritings. In Gonchar, the interpositioning consisted of marking up convertible bonds over the course of a day in repeated transactions to the tune of twenty points again repeatedly in multiple (100+) transactions. These two cases are so significantly different that they can not possibly construed to use as a precedent for authority in the present case. Likewise, in re Paz Securities, multiple requests were made for information over a two year time period and there was no response to any and all of the NASD requests for information. Again, Paz is significantly different from the present in which Petitioners have responded consistently and in good faith over an extended period of time. FINRA DMR has not attempted to offer any reason as to why it should not be able to rely on such cases that are so dissimilar from the present case. It would appear that the logic is that if it appears to provide the authority of a legal precedent, then maybe

this appearance will be accepted to confer legitimate case authority. At any rate, FINRA DMR has declined to address these issues that have been raised, and continues to rely upon this case law for authority.

Another example of a misuse of case law is in citing *Morrison v. Nat'l. Australia Bank,* 130 S. Ct. 2869, 2884 (2010) for the proposition that FINRA has authority over the Euro dollar denominated transactions. Petitioner has pointed out that case law is not be applied retroactively to grant authority to regulate transactions which had previously been outside of FINRA's jurisdiction and review. The Petitioner has argued that applying this decision retroactively to put the Tower transactions under the FINRA jurisdiction is an inappropriate extension of FINRA's authority. This legal argument is conveniently disregarded. Applying a precedent from a 2010 case as authority over the Euro dollar denominated trades in 2006 and 2007 is improper. Yet the DMR argues unconvincingly that "Judicial decisions usually apply retroactively, however, and we see no reason why this should not be the case here."

In a similar vein, FINRA DMR bases its entire argument that the Petitioner's supervisory procedures they had in place were deficient because they did not follow the guidelines provided in the 1998 advisory notice to members. However, as pointed out in Petitioner's opening Application Brief, the Advisory Notice represented that a Member Firm's Supervisory Procedures should be appropriate to the size and scope of the firm's activities and "Given the differences among member firms in terms of their business mixes and the fact that compliance with NASD Rule 3010 can be achieved through a variety of procedures and systems, this Notice addresses some of the general elements that member firms should consider in assessing their supervisory system and procedures. NASD is not mandating any particular type or method of supervision." It is sufficient to FINRA that the 1998 Advisory Notice has been used often (once) as a precedent. Once again, there is not a failure on behalf of the Petitioner to make legal challenges on grounds that lack any basis in fact or law. The Answer by FINRA is non-responsive to the legal challenges that have been made by the Petitioner. What is missing is any response by FINRA to these legal arguments or an explanation from FINRA as to why it may freely interpret the law incorrectly merely to serve its own purpose.

Closing Remarks and Summary

It is the Petitioner's interpretation of this proceeding that the FINRA DMR has pursued this case primarily as a vendetta for challenging the conduct of its Review, and secondarily to establish a platform for which FINRA DMR has absolute authority to prosecute and persecute its members for the issues identified above upon the smallest basis of facts and evidence. Giving the regulatory authority more power to act with unfettered authority and lowering the thresholds for proving its cases should not be allowed by establishing this present case as a precedent. Petitioner has disputed all charges and maintains that the review, the charges and the findings are not merited or justified.

Petitioner considers that this has been a colossal waste of FINRA resources pursuing a frivolous and unsubstantiated case. The incredibly harsh findings and sanctions are totally inappropriate and unwarranted. The imposition of a $25,000 fine on Petitioner is a misguided attempt to force the Petitioner to pay FINRA's costs for manufacturing these false charges and should be reversed. The fact is that the way in which this case has been bungled and mismanaged has put an incredible undue burden upon the Petitioner. The regulatory authority has caused severe and undue hardships to the Petitioner and irreparable damage to the character and reputation of the Petitioner.

The Securities and Exchange Commission can correct a decision that is not supported by the facts and evidence or the cited precedents. The Petitioner has not violated NASD Rules. Petitioner had maintained and enforced proper supervisory procedures and has supervised Marcus Lane's actions and has consistently responded to NASD 8210 review over an extended period.

For the reasons stated above, Petitioner respectfully requests that the decision by the FINRA NAC should be set aside and that Petitioner should be cleared of the false charges made against them.

Dated: May 3, 2014

Jeffrey G. Lane

[redacted]