HARD COPY

SECURITIES AND EXCHANGE COMMISSION

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

JEFFREY LANE'S BRIEF IN SUPPORT OF APPLICATION TO REVIEW ACTION TAKEN BY THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

Petitioner, Jeffrey G. Lane ("Petitioner" or "Jeffrey Lane") respectfully submits this Brief to support the previous application to appeal the Decision by the Financial Industry Regulatory Authority ("FINRA"), and the National Adjudicatory Council ("NAC").

Opening Statement

The findings by FINRA and the NAC and the sanctions imposed against the Petitioner are not supported by the record and the evidence. The record shows that the Petitioner has a long history of working with FINRA and its predecessor the National Association of Securities Dealers ("NASD") as a compliance officer maintaining compliance with NASD and FINRA rules and regulations. The opinion of the NAC states that an outcome adverse to a party in a disciplinary proceeding is not just cause to overturn the findings. "(A)dverse rulings, by themselves, generally do not establish improper bias." Petitioner respectfully disagrees on the basis that the facts do not support the charges or findings in this present case.

From the initiation of the 8210 Review in 2007, the NASD and FINRA have adopted a hands off approach to the review. From 2007-2011 there were no charges made and the Review was passed through the hands of four different Examiners. The office of the Department of Market Regulation ("Department of Market Regulation" or "DMR") initiated the 8210 Review in July 2007 on the impression that there were irregularities in corporate bond trades that were being executed by Greenwich High Yield LLC ("GHY"). The DMR spent the intervening five years looking at a two year trading history searching for something to use as proof that trades conducted by GHY were improper.

The evidence and authorities provided by the Complainant and relied upon by the Hearing Panel do not support the adverse findings or the draconian penalties made against the Respondents in the Hearing Panel's Decision or the NAC Decision.

Petitioner's Statement of Facts

1. Petitioner passed the Series 7 and 63 licensing requirements and became a new member with the NASD in April 1987. Petitioner was employed with Bear Stearns, Hambrecht & Quist, Dean Witter and Prudential Securities from 1987 through 1991. Petitioner has also successfully completed the licensing requirements for Series 24, 27, and 53 and served as FINOP with Credit Research and Trading from 1991 through 1995. From 1995 through 2009 Petitioner was responsible for acting as CFO, FINOP, CCO, MSRB principal and manager of operations for Greenwich High Yield LLC ("GHYL"). Petitioner and Petitioner's firms have never been cited for a rule violation or for a customer complaint. Petitioner has complied with at least eight Annual Audits completed by the NASD District 11 Office.

2. Both Credit Research & Trading and GHYL were founded by Petitioner's brother, Marcus Lane ("Marcus Lane"). The primary objective of both these firm's was the sale of deep distressed fixed income securities to institutional investors or qualified individual investors under Rule 3110(c)(4). Both of these firms employed as many as thirty registered members and devoted considerable resources to research. GHYL employed ten registered research analysts and three research support staff during its history. As a result, although the market for deep distressed securities is characterized by tremendous volatility and risk, our customers enjoyed significant returns. Another result was that our registered representatives were coveted and

attrition was a problem. During the years covered during the review, GHYL had one research analyst and two other sales representatives, although Marcus Lane conducted primarily all of sales and trading.

3. In March of 2007, Jeffrey Lane received a call from the NASD Office of Market Regulation, in which it was stated that GHYL was the subject of an 8210 review, that GHYL was obligated to provide all requested information and that no explanation would be provided regarding the cause or nature of this review. Petitioner subsequently received an 8210 letter dated April 2, 2007 from James Haas at the NASD DMR requesting a response by April 17, 2007 concerning five GHYL trades from October 16 to October 31, 2006. Petitioner prepared the information requested and mailed the response in the time frame provided.

4. During the summer of 2007, the NASD District Office 11 also completed its Annual Examination. The Annual Examination covered all GHYL's supervisory procedures and trading records for 2005 and 2006. The examiners for the 2007 Annual Examination noted that the only deficiency for GHYL was in failing to use write once read many (WORM) or other suitable permanent hard drive storage technology.

5. In July 2008, Petitioner received a second request from Ranjay Rotolo at the NASD DMR for information concerning thirty two trades covering a two month time period in 2006. Petitioner prepared and sent a complete response within the two week time frame provided. Again, there was no response or follow-up from Department of Market Regulation.

6. On March 6, 2009, Petitioner received a third request from Gregory Johnson at FINRA covering all GHYL records and trades in corporate and municipal debt securities from January, 2006 through December, 2007. At this time, Petitioner was unaware of the purpose for this review and the current allegations were not made known until January 2011. In April of 2009, GHYL filed U-6 terminating the Broker-Dealer and U-5 terminations for the Petitioner.

7. During 2009, DMR Attorneys Gerard Finn, Jerry Shapiro, Christian Nanu, and Michael Levy also became involved in this review for FINRA when Petitioner suggested that FINRA should bear the cost of document production and shipping. Petitioner also questioned the unusual delays by FINRA and the purpose for this Review. Advice regarding the cause or nature of the Review was not disclosed. Petitioner provided all of GHYL's records for the year 2006 and 2007 in April 2009. In addition, FINRA sought Bloomberg records and e-mails on Marcus' hard drive for Marcus Lane – these records under Marcus Lane's control, Marcus Lane

held out to and made available to FINRA. On July 31, 2009 FINRA filed a Notice of Suspension against Petitioner charging Petitioner with failing to provide information to FINRA pursuant to an 8210 request for information. Although Petitioner was prepared to respond for a hearing on these allegations, FINRA dismissed its Notice of Suspension and Hearing in October 30, 2009.

8. On April 1, 2010 Petitioner received a request from FINRA for an On-The-Record ("OTR") interview. Petitioner appeared for his OTR on July 14, 2010 at the New York office of FINRA. During this time, Marcus Lane also made an appearance for his OTR.

9. On December 7, 2010 Petitioner was first informed by telephone of the nature of the allegations which FINRA intended to bring against Petitioner. During the telephone call, the DMR advised Petitioner that he would have the opportunity to accept a FINRA AWC offer of settlement which was e-mailed to Petitioner on January 6, 2011. At this time the allegations being made by DMR were related.

10. At all times relevant to this review, Marcus Lane worked both from his home office in Florida as well as from the GHYL Greenwich office. He bought and sold distressed bonds on behalf of GHYL. Marcus Lane determined the price and corresponding markups for each transaction that GHYL executed, including the transactions at issue in this complaint. Marcus Lane was GHYL's only trader and salesman during the relevant period.

After Marcus Lane executed a transaction, he related the trade details to Petitioner who worked in GHYL's Greenwich Connecticut office. Petitioner prepared the order tickets and reviewed the markups that Marcus Lane charged to the customers. Petitioner would then input trades into the clearing execution system so that they would be accurately submitted for TRACE reporting on a timely basis. After entering the order tickets, Petitioner entered the transactions in GHYL's trade blotter.

11. With the advice and consent of the NASD District 11 office, Marcus Lane established High Yield Partners ("HYP") and High Yield Partners Income ("HYPI") in 2003 as trading accounts. At this time, The NASD was informed of these trading accounts and requested that GHYL provide a letter to this effect, which letter was sent. Marcus Lane owned 100 percent of HYP and HYPI, and controlled all of the transactions engaged in by the two accounts.

12. From 2003 forward, HYP and or HYPI bought and sold bonds with GHYL acting as principal. During this time, GHYL treated HYP and HYPI as a customer account and charged a mark-up to these accounts as it would to charge to another customer.

Case History

FINRA has made the following allegations of violations of NASD Rules 2110, 3010, and 8210 – Jeffrey Lane, as his member's Financial and operations Principal and Chief Compliance Officer, failed to establish and maintain Written Supervisory Procedures applicable to interpositioning, fair prices and markups. Jeffrey Lane failed to establish, maintain and enforce Written Supervisory Procedures to supervise the types of business in which his member firm engaged and to supervise the activities of Registered Representatives and Associated persons that were reasonably designed to achieve compliance with applicable securities laws, regulations and NASD Rules regarding interpositioning and unfair and unreasonable prices and excessive markups. Jeffrey Lane failed to reasonably and properly supervise the activities of a Registered Representative so as to achieve compliance with federal securities laws, Regulations and NASD Rules applicable to interpositioning and unfair pricing and markups. Jeffrey Lane reviewed the Representative's transactions with customers and failed to take reasonable steps to detect and prevent him from engaging in interpositioning and charging unreasonable prices or excessive markups to firm customers. Jeffrey Lane failed to provide complete and timely responses to FINRA requests for information and documents.

Findings

The NAC Decision rendered December 26, 2013 wherein Petitioner is barred from associating with any member firm in any principal or supervisory capacity for his supervisory violations, and he is suspended for two years from association with any Member in any capacity and fined $25,000 for failure to establish and maintain reasonable Written Supervisory procedures, not providing information pursuant to an 8210 and failing to supervise a Representative's markup activities appropriately. Lane is ordered to pay costs of $4,625.25, jointly and severally.

Petitioner's Supporting Memorandum that Petitioner Established and Maintained Reasonable Written Supervisory Procedures (Alleged Violations of NASD Rules 3010 and 2110)

Acting in his capacity for GHYL, Petitioner was in compliance with Rule 3010 regarding Supervision and Rule 2110 regarding Standards of Commercial Honor and Principles of Fair Trade.

Petitioner maintained GHYL's Supervisory System as wells as Written Supervisory Procedures from the inception of GHYL in 1995 through the review period. This was an ongoing process as new rules were added (e.g. on-line filing, Year 2K preparedness, FIPS, TRACE, AML). The GHYL Supervisory Procedures have been reviewed and approved on an ongoing basis by the NASD District 11 Office during each NASD Annual Audit. All activities of GHYL have been reviewed and approved on an ongoing basis by the NASD during each NASD annual audit, including the 2007 audit. A copy of GHYL's Written Supervisory Procedures has been provided to Department of Market Regulation and Market Regulation has merely alleged Petitioner's failure to establish and maintain reasonable Written Supervisory Procedures without sufficient reference or support thereof.

Petitioner was designated the principal responsible for maintaining and enforcing a system of supervisory control policies and procedures for GHYL. During the review period, Petitioner did not fail to identify the supervisory deficiencies as alleged by DMR. The NASD Supervisory Control System Rule 3012 require that a member shall designate and specifically identify to NASD one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the member's senior management no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results. All of this was done in accordance with Rule 3012.

During the review period, Petitioner maintained compliance with the requirements of Rule 3010 and Rule 3012. This is demonstrated by the Annual Compliance and Supervision Certification (Rule 3013), dated June 27, 2007, and the Annual Operations Meeting Agenda,

dated January 15, 2007. During the relevant review period Petitioner conducted annual examinations focusing on issues that needed to be monitored closely and regularly and designating the Petitioner as the one responsible for monitoring compliance. The content of the Annual Operations Meeting, in particular, demonstrates the emphasis of testing and verifying compliance.

Petitioner had maintained adequate and sufficient Supervisory Procedures for Greenwich High Yield which had been tested and approved by the NASD District Office in its Annual Examinations. Indeed, Supervisory Procedures are one of the most significantly tested operational issues reviewed in Annual Examinations. The Supervisory Procedures were suitable to the size and scope of the business of Greenwich High Yield LLC, ("GHY") the Member Broker/Dealer. Jeffrey Lane had over twenty years experience in working with the NASD and FINRA as a FINOP and Compliance Officer adapting and complying with all of the changes occurring during these years. It can be readily shown that over the course of a twenty year span that the Petitioner has worked closely with the NASD and FINRA in maintaining compliance with regulations pertaining to Supervisory Procedures.

The NAC Decision (p. 18 footnote 30) states "Jeffrey Lane argues that an advisory notice in a 1998 Notice to Members should not be the basis for authority because it is not a rule simply an advisory." This is a valid objection. The NAC Decision (p. 18 footnote 30) observes that the 1998 Advisory Notice has been used often (once) as a precedent. If the language of the advisory notice is to be construed as providing authority for establishing violations then these requirements should have been incorporated into the Rule regarding supervisory procedures during the intervening sixteen years since 1998. Even the language of 98-96 imposes such a requirement on its member firms but presumably exempts itself from such obligation. See 98-96 Notice to Members – Obligation To Update And Amend Written Supervisory Systems Upon The Implementation Of Rule Changes.

In response to pages 18 and 19 of the NAC Hearing Opinion, since it is evident that the DMR wants to rest its authority of improper supervisory reviews on the 98-96 Notices to Members, the language of this Notice is important. The NASD and FINRA has always represented that a Member Firms Supervisory Procedures should be appropriate to the size and scope of the firm's activities. In its 98-96 Notice to Members it states: "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 only addresses some of the general elements that member firms should consider in assessing their supervisory system and written procedures. NASD is not mandating any particular type or method of supervision.*" Thus, review procedures that might be appropriate for a firm with 25 or more registered representatives might not be the same as for a firm with less than 5 registered representatives. Based upon the size of Greenwich High Yield, the Petitioner had been appointed to perform the function of reviewing and monitoring the trading activity for the firm and did, in fact, review and monitor all trading activity for GHY. Once again, *the 98-96 Notice does not mandate any particular type or method of supervision.*

Petitioner's Supporting Memorandum that Petitioner Established and Maintained Reasonable Written Supervisory Procedures Concerning Mark-ups and fair and reasonable prices (Alleged Violations of NASD Rules 3010 and 2110)

Petitioner maintained compliance according to Rule 2110 regarding Standards of Commercial Honor and Principles of Fair Trade. During the time frame of this Review, supervisory steps were in place to ensure that GHYL did not charge excessive markups. Rule 2440 Fair Prices and Commissions had always been addressed in the GHYL Written Supervisory Procedures ("WSPs") under Commission Schedules and Written Markup Policy (CX 37, Cx38). GHYL's WSPs demonstrate that the supervisory steps were in place to ensure the GHYL did not charge excessive markups. Furthermore, it is Petitioner's belief and understanding that GHYL customers did get the best price that would have been available to them in the market.

The issue of the five percent markup policy has been raised by the NASD to GHYL in a past Annual Examination and it has been addressed by GHYL to the NASD on such occasion. This issue would not even arise if the bonds that GHYL transacted in were near or close to par value instead of deeply discounted distressed bonds. Although GHYL has responded to the NASD in regards to this 5% markup policy, no further guidance or response has been provided back to GHYL from the NASD. This has been an ongoing area of concern to GHYL. It has reinforced the need for Petitioner on behalf of GHYL to continue to monitor transactions so that the 5% mark-up policy is observed.

The Written Supervisory Procedures for GHYL were written to emphasize the nature of the firm's business and the relationship between transacting in low dollar securities and compliance with the 5% mark-up policy. The Department of Market Regulation has somehow

misinterpreted this language to read that the WSPs endorse the proposition that trades "would often" exceed the 5% policy. This is a confused and misguided interpretation because the Written Supervisory Procedures are meant to intend a heightened awareness of the 5% mark-up policy and in no way "strongly suggest" that trades "would often" exceed the 5% guideline (NAC Decision p. 19). The biggest mistake that Petitioner made was in not drafting Supervisory Procedures that did not simply copy verbatim the 5% Policy rule. In this case, Petitioner would have been protected from censure. Instead, Petitioner opted to draft the firm's Supervisory Procedures as it applies to and pertains to the business of GHY. Somehow the DMR misconstrues this to imply that the Supervisory Procedures provide exceptions or encourages trades that would exceed the 5% Policy rule instead of a greater focus on observation of the 5% Policy rule.

There were four reasons that acting as Supervisory Principal, for which Petitioner considered that the transactions with the High Yield trading accounts was consistent with NASD Rules and Regulations. First, the use of trading accounts would avoid any potential compromise as to GHYL's Net Capital Requirement if GHYL were to engage in positioning bonds. Second, Petitioner had advised the NASD in regards to the creation of these accounts and the purpose for which they were proposed to be used. Third, the use of trading accounts for such purposes as positioning or trading profits is an established practice of all large securities Broker/Dealers. Fourth, that positioning bonds in the trading accounts did facilitate trades that GHYL may not otherwise have been able to transact if it were not for being able to make firm offers of bonds held.

Therefore, Petitioner's conduct during the review period did not constitute a violation of NASD Rules regarding Supervision and standards of Commercial Honor and Principles of Fair Trade.

Petitioner Properly Supervised Petitioner Marcus Lane (Alleged Violations of NASD Rules 3010 and 2110)

The Department of Market Regulation has identified the trades in which it alleges that Marcus Lane charged excessive markups and engaged in interpositioning, and that Petitioner failed to detect Marcus Lane's conduct even though Petitioner reviewed his transactions,

conduct which it is alleged constitutes a violation of NASD Rules 3010 and 2110. Petitioner was responsible for supervising Marcus Lane for sales and trading. In each of the transactions identified by the DMR, Marcus Lane was acting as a trader, positioning bonds in trading accounts and committing his own risk capital to try to take advantage of a market anomaly (e.g. to catch an upturn in securities that are in fact rebounding and do end up trading higher). The transactions referred to as the 11 transactions which exceeded the 5% Policy Rule were separate and distinct trades. In each leg of these transactions, GHYL charged a markup to the trading account based upon what GHYL might charge to a customer in such a transaction. When the trading accounts sold bonds, a markup would be charged to the customer. Except for one trade, these transactions were all under the five percent guideline. It is DMR's argument that each leg of such transaction must be viewed and considered as part of the whole and that taken together, the mark-up to the trading account, any profit the trading account realized, and the mark-up charged to the customer in aggregate defines the amount of the mark-up. This issue is still a source of significant disagreement between the Petitioner and the DMR.

During the review period, Petitioner has consistently monitored all trades for compliance with the rules. All trades are written to trade tickets upon execution, time stamped and TRACE reported. In each of these transactions identified, trade tickets were properly prepared, time stamped and TRACE reported. As for compliance with NASD Rules 3010 and 2110, Petitioner was aware of the requirements and responsibilities hereunder and carried these out at all times. The market for distressed and bankruptcy securities bears substantial risk and GHYL has sought to trade with qualified institutional investors who are aware of and understand this market risk. During its history, GHYL has invested substantially in qualified research analysis. GHYL has never had a customer complaint. In reviewing the history of transactions, GHYL customers have realized tremendous returns on the vast majority of the securities that we sold to them. It almost appears that the DMR picked out the only losing trades that have been made. (It raises an implication that FINRA is seeking to provide enforcement on investments that did not work out. This would be inherently wrong because neither FINRA nor any member may guarantee any securities investment.) During the entire time that Petitioner served GHYL as FINOP, CCO, Petitioner monitored all transactions to comply with the NASD rules and regulations. In reviewing the transactions referenced and for Petitioner's actions throughout the review period such conduct at GHYL were never in violation of NASD Rules 2110, 3010 or 3012.

Therefore, Petitioner's conduct during the review period did not constitute a violation of NASD Rules regarding Supervision and standards of Commercial Honor and Principles of Fair Trade.

Petitioner Complied with FINRA Rule 8210 Information Requests (Alleged Violations of FINRA Rules 8210 and 2010)

FINRA's allegation that Petitioner did not provide all requested information on a timely basis is not supported. With the exception of the 2009 request for information which took significantly more time to put together all requested information was provided in full on a timely basis.

On April 2 2007, Petitioner received a letter from NASD Market Regulation requesting information and response pursuant to an 8210 review. This information was submitted to NASD within the two week time frame provided.

A second request for information pursuant to an 8210 request from NASD Market Regulation was made in July 2008 which was also provided within the two week time frame.

Another year passed by when NASD Market Regulation sent its third request dated March 2009 for information pursuant to this review. In addition, after FINRA Market Regulation dismissed its October 30, 2009 Hearing for Notice of Suspension, another six months elapsed before Petitioner was served with the additional request for an On-The-Record interview. As a result of the delays and inaction by the DMR, the review has gone on for four and a half years before finally making a statement of allegations in 2011. This review should have been completed with charges made in 2007 and concluded in 2008 at the latest. Three of the eleven transactions that Market Regulation cites were part of its initial inquiry. If there was to be any further review it should have been conducted then at that time in 2007 and 2008. It makes sense that if the DMR had a reason for complaint when it received Petitioner's first response, then at that time they should have pursued it. Justice delayed is justice denied.

When Gregory Johnson made the third request for information in March 2009, Petitioner Jeffrey Lane sent out a response that the review No. 20070082049 has gone on too long without

any response from FINRA as to the nature of its inquiry and that FINRA resources were being wasted on a frivolous and unsubstantiated review. Petitioner also requested that FINRA should bear the cost of additional document production and shipping costs. This prompted an escalation of tension between the DMR and the Petitioner which led to the involvement of Attorneys Gerard Finn, Jerry Shapiro, Christian Nanu, and Michael Levy as well as to its Notice of Suspension for failure to respond to requests for information.

The Petitioner Jeffrey Lane, acting on behalf of GHYL, has responded to requests for information and has provided information Regarding Matter No. 20070082049 to the NASD and to FINRA on 7/16/2007, 8/12/2008, 3/15/2009, and 5/2009 and has appeared for an OTR on 7/14/2010. The information requested on each occasion has been a full and complete response to NASD/FINRA inquiries and requests for information. In that time the NASD/FINRA has never responded to the answers provided by Petitioner, has never provided any reason as to the cause or nature of this review and has only in 2011 made its allegations known. The inaction by FINRA has been the direct cause of unnecessary delay in the ultimate resolution of this review. This unnecessary delay and the shadow that it has cast upon my reputation have acted as a severe detriment to the ability of Petitioner to seek employment for which he would be qualified.

The following people from FINRA Market Regulation have been engaged on this review: Regulatory Analysts James Haas; Ranjay Rotolo; and Gregory Johnson and now Victor Chan; as well as Attorneys Gerard Finn; Jerry Shapiro; Christian Nanu; Michael Levy; Kate Schaeffer; James Nixon; Gary Jackson; and now Robert Marchman and David Rosenstein. Naturally, when the case has been reassigned to so many different people this review has been unnecessarily prolonged and prejudiced.

Discussion

The NAC Hearing Decision is basically the same as FINRA's first offer of settlement made to Petitioner in 2011. Nothing has changed from the time this offer was made made four years ago to accept the same outcome that was unacceptable back then. Since Petitioner has not committed those violations which have been alleged, there is no reason to reconsider and accept these falsities today.

It is not surprising that the opinion of the NAC Decision is reminiscent of the same arguments and case citations for precedents that are markedly differentiated from the present case because the opinion was written by the Office of General Counsel for FINRA. The Office of General Counsel for FINRA has advised the Petitioner that the findings and the decision are based on the two Hearing Officers, Douglas Kelly and Adam Pritchard who were appointed in December 2012 to hear this matter, but that the text of the NAC Opinion was drafted by the FINRA Office of General Counsel. This is clearly significant because it illustrates how the bias and preconceptions against the Petitioner is further advanced and perpetuated by this non-neutral party in writing the NAC opinion. Interesting also is how this Opinion was released on December 26, 2013 – almost a year and a half after which documents for appeal to the NAC were submitted as if the DMR was looking at its open/closed calendar on December 1st and realized that they had forgotten about this case again.

The frivolous and abusive allegations outlined above are not supported by the evidence or facts or case authority cited for the findings made by the NAC Decision. The charges are made on the basis of a corporate bond trades in three issues that, in aggregate, exceeded the 5% Markup Policy during a Review of the entire trading activity for Greenwich High Yield over a two year review period. After reviewing all trades for Greenwich High Yield for 2006 and 2007, the Department of Market Regulation was able to find five trades in corporate bonds which exceeded, in aggregate, the 5% Markup Policy. The allegations and findings involving "interpositioning" and unfair markups and pricing has been addressed to the Hearing Panel that the trades did not exceed 5% when each trade is analyzed separately, that the trading activity for the high yield accounts was held out to and made known to the NASD District 11 Office, and that the prices achieved by the customers was fair and consistent with current bond prices for trades in these issues. The FINRA expert witness, Charles Myers, testified that based on his review of the pricing history for the subject bonds that the price that Greenwich High Yield customers got was in line with the market both before and after the cited trades.

In every step of this Hearing the bias of the Regulatory Authority has been slanted against the Petitioner and heavily weighted in favor of FINRA. The initial hearing conducted at the FINRA office in Florida was especially prejudiced. The conduct of the Chief Hearing Officer was such that she clearly sided with the attorneys for the Department of Market Regulation, as well as with the testimony of the Department of Market Regulations Director of

Fixed Income and overruled the Petitioner in every attempt to challenge and differentiate the cases used as authority and precedent to support the Claimant's case. The testimony of the Director of Fixed Income cited a *1998 Notice to Members Advisory* as the basis for its authority that the Supervisory Procedures were insufficient because they did not document the steps to be taken to conduct review of the trading activity according to its Notice. This testimony regarding the 1998 Advisory Notice was accepted as reliable authority when this should not be the case. This 1998 Advisory Notice to Members should not be considered as a controlling authority for established review for supervisory procedures. The NAC Decision states simply that a 1998 Advisory Notice to Members is sufficient authority to justify a rule violation and it has been relied upon for authority in *one* case.

At the same time, the Hearing Panel and the NAC choose to ignore the testimony by the Director of Fixed Income that for trades in low dollar bonds below 10, a markup that is close to or exceeds the 5% markup policy is regularly the case. This is so important that it needs to be repeated. The Director of Fixed Income for the Department of Market Regulation testified that for most trades in low dollar bonds that the markups regularly are close to *or exceed* the 5% markup policy. The business of GHY was entirely focused on transactions in distressed low dollar corporate bonds. The 5% policy is clearly an issue that would be of significant interest to observe from the standpoint of regulatory compliance. The role of the trading accounts was to position bonds at risk with the intention of creating inventory for our customers, participating on a risk basis for investment and to shelter the very real risk to capital exposure at the level of the Broker/Dealer GHY. The attempts by the Department of Market Regulation to characterize this otherwise by claiming that capital risk to GHY was minimal, or that the time the bonds were held for a short time period so there was not any "real" risk to the trading accounts is flawed.

See generally page 6 of the NAC opinion. Footnote 12 states "By themselves, none of the trade sets executed during these quarters would have posed a material threat to the firm's net capital." On page 7, the opinion states "Marcus Lane and Jeffrey Lane also contended that the customers 'most likely' could not have purchased the bonds 'except for Marcus Lane's actions in positioning bonds ... and that the bonds otherwise would be taken by somebody else.'" Also, in footnote 13 it states "Many factors suggest that the High Yield Entities were never taking any market risk. .... Nevertheless, the record does not permit the conclusion that no market risk was involved. The TRACE reports for the Werner and Collins and Aikman bonds show a certain

amount of volatility within the days and weeks around the trades at issue. Likewise, a Market Regulation analyst testified that the September 2006 trading in Werner bonds 'appeared to be volatile.'" And while the consistent profits earned by the High Yield Entities may suggest that there was never any risk, Marcus Lane testified that customers sometimes backed away from their indication of interest (*edit.* trades)." This is the reason Marcus Lane sought to introduce the evidence of worthless bond positions in his trading account for showing that it was risk trading. The footnote recognizes this as it continues "Moreover, Marcus Lane attempted to introduce evidence purportedly showing how the high Yield Entities' accounts sometimes incurred losses holding other bonds, which may have shed light on whether any market risk was assumed. While we find that the Hearing Panel erred in failing to receive such evidence, that error is harmless." All of the above, however, buttresses the Petitioner's position that the High Yield Accounts were engaged in risk trading.

The Department of Market Regulation characterizes this activity as "interpositioning" not "trading." This goes against a fundamental practice among wall street firms that "risk trading" is commonly accepted. It seems that this practice of "trading" is alright for large firms but not alright for little firms.

Even the time given for the FINRA attorneys to present their case versus the time given to Petitioner to cross examine the witnesses was skewed such that the FINRA attorneys were given ample time to present its case while the Petitioner was rushed through making cross examination with very little time and being objected to and overruled at every step. The NAC Decision dismisses this argument on page 30, "We see no such unfairness." The claim that the Petitioners did not receive a fair hearing is supported by the fact that the Chief Hearing Officer displayed an unusual bias and hostility towards the Petitioners at the same time exhibiting a favored bias towards the DMR, their witnesses, and the conduct of the proceeding. Two to three days were provided for the conduct of this Hearing. On the first day, DMR called their first witness, FINRA's expert, Charles Myers. The Complainant stated that his testimony would take approximately one to two hours. After two hours, the Petitioners observed that two hours had passed and they should be given the opportunity to cross examine the witness. This was overruled and the Complainant proceeded to question the witness for most of the first day. Finally, with about less than an hour remaining in the day, the Petitioners were given the chance to begin its cross examination. The lack of time remaining in day forced the Petitioners to make

a rushed cross examination when the DMR had had all the time it needed to leisurely examine this witness. Furthermore, when Petitioners sought to cross examine the expert witness as regards to the authorities cited as precedent in this case, the Chief Hearing Officer overruled the Petitioners in questioning as to these cases.

The second day proceeded much along the same lines as the first day with ample time provided to the DMR for examining its witnesses, leaving little time for Petitioners to make cross examination coupled with many of the questions being objected to by the DMR attorney and not allowed by the Chief Hearing Officer. Indeed, overruling the Petitioners and upholding the objections of the DMR seemed to be a consistent theme for both days. At the end of the second day, all parties were ready to adjourn. The DMR because they had presented their case, the Hearing Panel because they wanted to go home, and the Petitioners because the bias against them was so pronounced and obvious that any attempt to continue this hearing would be futile.

As an example of bias, Petitioner sought to introduce evidence as to the case authority upon which FINRA was basing its allegations. This was overruled. The importance of this "case authority" is shown below.

The cases which have been cited as precedent for such issues as "fraudulent interpositioning" (SEC v. First Jersey Securities, Inc., 101 F.3d 1450 (2d Cir. 1996), and *In The Matter of Gonchar and Polyviou*, 2009 SEC LEXIS 2797 (Aug. 14, 2009) or failure to provide information requested by Market Regulation in a complete and timely manner (PAZ Sec. v. SEC 566 F.3d 1172, 2009) are significantly different from the present case and do not offer any support at all for the current allegations or findings. Any attempt by Petitioner to seek to admit evidence in the Hearing regarding these cases and to show how dissimilar the cited cases were from the present case was overruled. This is not an insignificant overruling. The authorities and case references upon which these charges and findings are based simply do not warrant the finding of rule violations in the present case.

As an example of the Department of Market Regulation's reliance on case law, the DMR cites as authority, In re Paz Securities, Inc. 2008 SEC Lexis 820 (April 11, *2008*) For a case involving failure to provide information pursuant to an 8210 Review. In this case *multiple requests were made for information and there was zero response to any and all of the NASD requests for information.* Clearly, Paz is different from the present situation when Petitioners have responded consistently and in good faith over an extended period of time. The Petitioner

did make full and complete responses to 8210 requests for information in 2007, 2008, and in 2009 as well as appearing for On-The-Record interviews in 2010. As part of Petitioner's response, trade tickets and trade blotters covering a two year time frame along with account applications for all the requested accounts including the two high yield trading accounts were provided. Compare this with the language of footnote 36 on page 25 of the NAC Decision. "Although Market Regulation indicated that the Lanes had "completed production," it is unclear exactly what that meant concerning its request for the various new account forms. With respect to the new account form for High Yield Partners Income's account, a Market Regulation analyst testified that the Lanes never produced a new account form for High Yield Partners Income's account. Evidently, the Lanes satisfied that request in some other fashion. The record contains the new account form for High Yield Partners' account, but the record also suggests that it could have been a copy that was already produced in response to an earlier request in 2007. As for MM's, GE's, or AE's new account forms, there is no indication whether the Lanes ever produced those forms, whether they satisfied the request for those forms in some other fashion, or whether Market Regulation simply dropped its request for them." These new account forms have all been provided with the exception of the AE account which is not recognized as a GHY account.

As the findings by the Decision of the Hearing Panel and the NAC Decision are not supported by the facts and evidence or by the authorities cited as precedent, these findings should be reversed. Furthermore, Petitioner requests that his licenses which have lapsed to be reinstated.

It is to be expected that a strong presumption exists against the Petitioner. The Hearing Officer for the SEC will likely consider that the Petitioner is merely complaining because the outcome is unfair. Yes. Who initiated this Review? The NASD Department of Market Regulation. This was not brought about by a customer complaint. Even when the customers involved were asked by DMR to participate – they declined. What did Petitioner do? From 2007 until 2011, the Petitioner had no idea what the DMR was looking for. The only thing that was clear was that the DMR was searching for something to build a case and something to use as proof. Since 2007, FINRA has enlisted four regulatory analysts, six or eight attorneys, four hearing officers and that these findings have been made there is a strong inference against the Petitioner. The analogy to David and Goliath is not inappropriate here. In the eyes of FINRA

Department of Market Regulation, everyone is suspect on principle, even when there has not been any wrongdoing. The customers that would have benefitted from this case were approached by FINRA to become involved and they declined. FINRA doesn't care about its decisions because they have no consequence and they carry a large deal of immunity from civil liability. What did Petitioner do? Did Petitioner violate NASD/FINRA Rules? No. Did the Petitioner have and maintain adequate supervisory procedures? Yes. Did the Petitioner respond to the 8210 review? Yes. Has the conduct of this review been unfair and significantly detrimental and harmful to Petitioner? Yes.

FINRA has certified to the attached record (its certified record) of this disciplinary proceeding to the Securities and Exchange Commission. The Petitioner would like to observe that this is an incomplete and misleading record of this disciplinary proceeding inasmuch as it indicates the commencement of this disciplinary proceeding began with the issuance of the Complaint dated April 6, 2011. I would respectfully submit and ask the SEC to amend the record to include the following:

April 2007 NASD 8210 Letter from Regulatory Analyst James Haas.

April 2007 Petitioner Response providing information and documents within the two week time frame.

July 2008 NASD 8210 Letter from Regulatory Analyst Ranjay Rotolo.

July 2008 Petitioner Response providing information and documents within the two week time frame.

Amending the record to incorporate the above steps in the disciplinary proceeding is important for three reasons: First it points out that the Petitioner did make full and complete responses for four years to the regulatory authority even without any indication from the Complainant for the basis of their Review. This is important because it is support that directly contradicts the finding that Petitioner's did not provide full and complete responses to requests for documentation and information pursuant to an 8210 Review. Second, it is evidence that the DMR has acted in bad faith by causing unreasonable delays due to its negligence in pursuing an extended fishing expedition against the Petitioner. It became clear during the course of the Review that when the 8210 requests for information were made in 2007 and 2008, that the responses were provided and that the file simply languished until it was uncovered and reassigned to another Regulatory Analyst. This inefficiency and the resulting prejudice can be

made clear by the request for Bloomberg Authorization to retrieve instant Bloomberg messaging. This request for Bloomberg Authorization was made in 2007, and this authorization was provided to the DMR. However, nothing was done and no action was taken by DMR to obtain the Bloomberg messaging. This later became one of the principal reasons in 2009 for claiming that Petitioner had violated its duty to provide information pursuant to an 8210 request. The third and fourth DMR Analyst had no idea that this information had been previously requested and provided, and that DMR had not acted upon the authorization provided.

When Petitioner brought this considerable delay to the attention of the DMR in 2009, the Attorneys Gary Finn and Christian Nanu resolved to demonstrate FINRA's absolute and unfettered authority both to as to Petitioner in this case and as to the general public as authority for future use against similarly placed persons subject to their review. To establish this disciplinary proceeding as a precedent for which FINRA may make charges of failure to respond to an 8210 inquiry; to establish and maintain supervisory procedures and to maintain adequate supervision of registered representatives and principals would give the Department of Market Regulation unlimited authority to charge future parties on this basis and impose the stiffest of penalties with only the thinnest basis of cause or evidence. Third, it points out the complete lack of due process provided to Petitioner in the conduct of this review.

While due process which is provided by notice of charges being made, the right to defend oneself and the ability to receive a prompt and impartial hearing is <u>not</u> a requirement observed by FINRA in it 8210 review procedure it ought to be. The FINRA authority maintains and Petitioner do not dispute that FINRA has the authority to request information and documentation from its members and member firms and as a member or a member firm there is an obligation to provide information and documentation. Petitioner agrees with this and has complied with this obligation. However, three years into requests for information when Petitioner questioned as to *the cause or basis or reason* for this Review and why it has been going on so long, FINRA was determined to manufacture a case against Petitioner to validate its authority. Due process does attach when licensing and livelihood issues are at stake, and courts generally seek to enforce that. FINRA would assert that as a quasi-governmental entity that they are exempt from providing due process in their proceedings and would be protected from liability in cases involving licensing and livelihood issues.

This unusual length of time from 2007 to 2011 has been severely detrimental to the Petitioner in many ways: it has impaired the ability to provide an even better defense (i.e. through documentation as to then current markets), it has substantially impaired Petitioner's ability to find employment, the charges have been subsequently published to the detriment of my reputation, and it has required a quite considerable amount of time and energy in pursuing a defense. The NAC Decision (written by the DMR attorneys) dismiss this on page 29 as follows: ""The Commission has held that "under certain circumstances inordinate time delays can render a proceeding inherently unfair and be cause for dismissal." *William D. Hirsch*, 54 S.E.C. 1068, 1077 (2000). There is nothing to indicate, however, that the amount of time it took Market Regulation to complete the investigation resulted in an unfair disciplinary proceeding.""

The decision by the Hearing Officer and the NAC Decision makes it clear that the Regulatory Authority would prefer that the Petitioner would offer no defense, get rolled over and plead guilty as charged. "One of the principal considerations is whether the Petitioner took responsibility for his misconduct or acknowledged it prior to regulatory intervention," (page 31, Notice of Hearing Panel Decision). Petitioner did not even know about the charges made against them until April 2011. There is no reason why Petitioner should not defend themselves against baseless charges of misconduct and if one does not defend against false accusations then you might as well get rolled. Even so, every defense that has been made by Petitioner on his behalf in regards to all the charge made against him has been conveniently passed over and disregarded.

There was nothing offered to refute the fact that Supervisory Procedures and Supervisory Control Procedures were regularly reviewed and approved in the NASD District 11 Annual Examinations - examinations in which Supervisory Procedures and controls are a primary focus of such annual examinations. In addition to the testing and approval of Supervisory Procedures and controls conducted by NASD District 11 in 2005 and 2007, compliance with the requirements of Rule 3012 can also be demonstrated by the Annual Compliance and Supervision Certification dated June 27, 2007 (Exhibit 3, FINRA Pre-Hearing Brief) and the Annual Operations Meeting Agenda dated January 15, 2007 (Exhibit 4, FINRA Pre-Hearing Brief). These documents may well as not have been prepared or offered as evidence to support the Supervisory Procedures because they were disregarded.

The finding that Jeffrey Lane failed to establish and maintain reasonable supervisory procedures and failed to reasonably supervise Marcus Lane is not supported by the evidence.

Petitioner has shown that the Supervisory Procedures for Greenwich High Yield had been updated with rule changes and additions, and have been reviewed in NASD Annual examinations. The steps outlined in the 1998 Advisory Notice to Members recommending procedures can not be regarded as the basis of authority for support of this finding. Likewise, there is no evidence to support a finding that Jeffrey Lane did not consistently review each transaction that Marcus Lane executed for Greenwich High Yield, for the high yield trading entities, and for our customers during the trading history in 2006 and 2007 for compliance with NASD Rules. The charges that the Supervisory Procedures were deficient and that Petitioner Jeffrey Lane failed to supervise Marcus Lane with regard to the subject transactions are not supported by the evidence. The Petitioner has supplied documentation showing that supervisory procedures were in place and that the activities of Marcus Lane were properly supervised. Petitioners have shown that the Written Supervisory Procedures for GHYL had been updated with Rule changes and additions, and have been reviewed and approved in NASD Annual Examinations. There were procedures in place for reviewing trades and trades were consistently reviewed for accuracy and compliance. The findings that Petitioner did not maintain adequate supervisory procedures and that Jeffrey Lane failed to supervise Marcus Lane are wrong and not supported by the facts.

The DMR continues to rely on Notice to Members 98-96 as authority for the proposition that the conduct of reviews was insufficiently documented. In fact in his testimony the DMR Head of Fixed Income relied entirely on this Notice to Members 98-96 in making his argument that the supervisory procedures were inadequate. This reliance is inappropriate as discussed previously on pages 7 and 8 of this brief that the Notice does not mandate any particular type or method of supervision. The language of this Notice to Members further states that Members should update their supervisory procedures as new Rules are made. However, in the intervening 14 years NASD and FINRA has elected not to incorporate the 98-96 Advisory Notice into a NASD/FINRA Rule. This Notice to Members provided the authority and formed the basis for the finding that Petitioner Jeffrey Lane violated Rule 3010. Moreover, Petitioner not only objects to the authority upon which the DMR relies, Petitioner Jeffrey Lane maintains that the supervisory procedures for Greenwich High Yield were in place, properly updated and adequately served the purpose of supervisory procedures and for his supervision of Marcus Lane.

There is no evidence to refute the fact that Petitioner did respond in full to 8210 requests in 2007, 2008 and in 2009 and by appearing for their On-the-Record interviews in 2010. As part of their 2009 response, all trading record, trade tickets and confirmations as well as requested account applications for all of 2006 and 2007 were provided. In point of fact, the Decision of the Hearing Panel asserts that the Petitioner failed to provide information regarding the ownership and management of the high yield entities when this information had already been provided and was not even an issue. The only documentation or information that the Department of Market Regulation claimed to be missing when it filed its Notice of Suspension against Petitioner was Bloomberg records and a copy of Marcus Lane's hard drive (not the identification of ownership of the High Yield accounts). The hard drive Marcus Lane held out to FINRA. The Bloomberg records which the Hearing Panel declined to decide upon in footnote 120 of its decision had previously been authorized in 2007 at which time nothing was done with this authorization. Therefore the basis for the Hearing Panel's finding that Petitioner had not responded to requests for information pursuant to an 8210 request regarding ownership of the high yield entities is based on information that had already been provided and was not in issue.

This finding that Petitioner did not respond to an 8210 request for information is simply not supported by the evidence or by cited cases, PAZ Securities v. SEC 566 F.3d 1172, 2009). The Petitioner has cooperated with all 8210 requests for information from the NASD and FINRA. Each response was furthermore provided by the Petitioner on a timely basis within the two week time frame provided for a response (with one exception for the third FINRA request for all trading activity in corporate and municipal bonds and additional records covering a two year period – which required more time to prepare and ship, but still provided without delay). In reference to Marcus Lane's Electronic Communications the NAC Opinion states "In May 2009, after producing documents that were responsive to other portions of the Rule 8210 request, Jeffrey Lane attempted to wash his hands of his outstanding compliance obligations, informing Market Regulation that he needed to 'focus all of my energy and attention 'on taking the Connecticut Bar Examination in July and asking it to direct future requests to Marcus Lane." Petitioner stands by this statement because at that time the Petitioner had provided all the information which was under his control to produce. The only outstanding requests for information was the Bloomberg Authorization which had been provided in 2007 and Marcus' electronic communications which were contained on his hard drive in Florida. At this time,

Petitioner did not "attempt to wash his hands of his outstanding compliance obligations," he merely pointed out that he had provided all the information under his control. Likewise, FINRA suggests that the Petitioner and Marcus Lane tried to pass off responsibilities and point the finger at each other. No. As an example, they cite the above and also Marcus Lane's observation that Jeffrey Lane was responsible for issues relating to operations. This much is true Jeffrey Lane was responsible for operations, but it is a far reach to understand how either of these observations provides an example of not responding to an 8210 request. The findings that Petitioner did not respond to an 8210 inquiry are wrong and not supported by the facts.

The analysis of operations by FINRA reviewed *all* corporate and municipal trades for Greenwich High Yield for 2006 and 2007 and came up with five corporate trades that in the aggregate exceeded the 5% Policy. Five corporate bond trades. The other six trades were in Tower Euro denominated bonds. The Euro denominated bonds traded on a dollar exchanged basis at a price in line or less than the current price of Tower corporate bonds and were treated equally. The evidence that trading these bonds involves considerably more risk and is not a security that falls under FINRA's authority was dismissed as a procedural issue that lacks merit (NAC Decision p.28). "FINRA has jurisdiction over the transactions, however, because they were domestic transactions. *Morrison v. Nat'l. Australia Bank*, 130 S. Ct. 2869, 2884 (2010) (holding that Section 10(b) applies to "transactions in securities listed on a domestic exchange, and domestic transactions in other securities")." This dismissal of Petitioner's argument that foreign euro-clear bonds are not subject to FINRA's jurisdiction is based on a case *Morrison v. National Australia Bank,* 130 S.Ct. 2869, 2884 (2010). This case was decided in 2010 and should not be used as an authority for trades that occurred in 2006 and 2007. A judicial precedent attaches a specific legal consequence to a detailed set of facts in an adjudged judicial decision, which is then considered as providing the rule for the determination of a *subsequent* case involving identical or similar material facts and arising in later cases. Applying a precedent from a 2010 case for jurisdiction over trades in 2006 and 2007 is improper. Including the euro-clear bonds and weighting them in the same manner as corporate bonds ignores first that there is a significantly greater amount of risk to the broker-dealer which is compensated by higher markups and second, that the prices that the customer paid for the euro-clear bonds were pari passu with and trading at the same price at which Tower corporate bonds were then trading.

However, in footnote 40 the NAC Decision states "Jeffrey Lane argues that *Morrison* is not authoritative because it was decided after the trades at issue. Judicial decisions usually apply retroactively, however, and we see no reason why that should not be the case here." Besides that this is an incorrect statement of law, it is an important distinction. The Tower Euro denominated bonds should be considered separately from the corporate bond trades and weighted differently in analyzing these trades. The Decision goes on to state (p.29) "With regard to the trades in Tower bonds, Jeffrey Lane's assertion of prejudice lack any specifics. He has not explained the available sources of historical price information or any steps he took to obtain such information." Petitioner relies upon the same historical prices that FINRA relies upon through TRACE reporting. By comparing the prices the customer paid for Euro denominated bonds that are treated equally as the Tower corporate bonds reported on TRACE, our customers bought these bonds at the same price or for less.

The 5 corporate bond trades cited consist of a small percentage of the trading in 2006 and 2007 and an infinitesimally small percentage of trades during Greenwich High Yield's fifteen year history. Trades were regularly and consistently reviewed by Petitioner Jeffrey Lane for accuracy and compliance with securities regulations. Petitioner Jeffrey Lane was aware of the trading activity in the high yield entities and established that a commission should be charged to the high yield accounts to compensate for providing a service. Petitioner Jeffrey Lane was aware that the high yield entities positioned bonds for both short term trades as well as for long term trades. Evidence of worthless positions in bonds that were traded demonstrating that Marcus Lane was putting his capital at risk was not allowed to be introduced in the Hearing. The Decision of the Hearing Panel in footnote 56 page 14 cites F.B. Horner & Associates, Inc. v. SEC 994 F.2d 61, 1993 that "The facts that (the trading accounts) sometimes lost money on other transactions for the same client or that some of its markups paid the firm's costs in other transactions does not justify an excessive markup in any one transaction." The evidence of worthless positions in bonds in the trading accounts was not being offered to justify any markup but was being offered to show that the Petitioner properly considered this activity was to be trading risk capital. Petitioner Jeffrey Lane was opposed to trading bonds for Greenwich High Yield's account because of the potential risk to net capital computation. The DMR and the NAC both summarily dismiss the risk exposure that might have been assumed had GHY been trading for its own account. Petitioner considered that trades with the high yield accounts were

legitimate and bona fide trades with proprietary trading accounts that allowed Greenwich High Yield to be compensated for trading activity when it otherwise would not have been the case. Trading activity in properly designated trading accounts is a common practice for most large securities firms. However, here the Petitioner is being singled out and charged for what is generally a common street practice.

An examination or review by FINRA should not arbitrarily abrogate certain principles of fair play and justice that are generally provided under the privileges and rights of the U.S. judiciary system. While past courts have recognized that FINRA is not a state or federal agency for its purpose of regulating securities markets and investigating or disciplining its members and member firms, courts would be unlikely to consider that FINRA's discretion may be unfettered without any restraints especially when issues such as licensing and livelihood are at stake. See generally, MLPFS v. NASD, 616 F.2d 1363 (5th Cir. 1980) @ 1368, First Jersey v. Bergen, 605 F.2d 696, and Austin Municipal Securities v. NASD, 757 F.2d 676 (5th Cir. 1985) @ 691.

The record for enforcement actions sanctioning individual FINRA members has lately been predominated by suspensions for failure to respond to requests for information and failure to provide for adequate supervisory procedures. These have become a catch-all enforcement action. Now, however, FINRA is using these charges (as warrantless as they are) to seek to impose a two year suspension and a lifetime bar from acting in a principal or supervisory capacity with any member firm. This amounts to an absolute deprivation of licensing privileges and substantially impairs the ability to make a livelihood without due process of law. FINRA maintains that as a member-controlled quasi regulatory agency that it is above the strictures of the legal system. It is beyond the jurisdiction of state and federal legal constraint in FINRA's own, internal proceedings. FINRA will control all aspects of market regulation in the securities industry, conduct its own hearings and discipline its members and member firms as to any alleged violations with absolute impunity from judicial review. This absolute discretion in the hands of the regulatory authority is a real problem that has become evident in this case. When character reputation, licensing and registration rights and livelihood issues are at an issue, then there must be some additional protections that should be provided. The licensing/regulatory agency may not simply claim that due process legal rights such as notice, statement of a cause of

action, and the right to a fair and impartial hearing are waived because the regulatory agency is not subject to judicial review.

If the NAC Decision is upheld it will set the bar sufficiently low that FINRA may prosecute any member or member firm successfully with only the thinnest evidence or support for its charges. Failure to respond to an 8210 request would be easy to prove. Inadequate supervisory procedures would be a snap. Extended fishing expeditions without cause cast over an extended period are okay. For interpositioning and mark-up charges, all that is necessary is to find a few transactions that seem questionable and the support for a scheme is established. Giving the regulatory authority more power to act without any considerations for due process and lowering the thresholds for proving its cases should not be allowed in this present case.

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 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 consistently responded to NASD 8210 review over an extended period. The Petitioner considers to have been unduly served by the regulatory authority in all respects.

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. The Petitioner licensing and membership qualifications should also be reinstated to them and damages of $750 should be made to Petitioner.

Dated: March 18, 2014

Jeffrey G. Lane

[redacted]