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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

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In the Matter of the Application of
Positron Corporation
For Review of Denial of Company-Related Action by
FINRA
File No. 3-15837

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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FINRA’S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

I. INTRODUCTION

Positron Corporation (“Positron”), an issuer quoted on the Over-the-Counter Bulletin Board® (“OTCBB”), appeals a FINRA decision that denied the company’s request to process documentation related to a reverse stock split and domicile change. FINRA denied Positron’s request because Patrick G. Rooney (“Rooney”), Positron’s CEO and the Chairman of the company’s Board of Directors, and the investment adviser that Rooney founded, owned, and managed, Solaris Management, LLC (“Solaris Management”), consented to the entry of a permanent injunction in a federal civil action that was based, among other things, upon findings that Rooney and Solaris Management misled investors in a hedge fund that they operated and misused their investors’ funds to keep Positron afloat.

FINRA’s decision to deny Positron’s request to process the reverse stock split and change in domicile based on Rooney’s fraud and securities laws violations was well-founded and correct. FINRA appropriately considered Rooney’s current management of Positron, his ownership of nearly 48 percent of the company’s stock, the recent and unresolved nature of the federal civil action, and the fraud and securities laws permanent injunctions to which Rooney

and Solaris Management consented. Based on these factors, FINRA concluded that Rooney's significant and continued involvement with Positron raised reasonable concerns about harm to the investing public and denied Positron's request in accordance with FINRA Rule 6490.

In so doing, FINRA fulfilled its role as the gatekeeper of information for the orderly operation of the securities markets and satisfied the standard of review for the denial of an issuer's request for a reverse stock split and domicile change. FINRA followed its rules, relied on grounds that are factually accurate, and applied its rules in a manner consistent with the Securities Exchange Act of 1934 ("Exchange Act"). The Commission therefore should dismiss Positron's application for review.

II. BACKGROUND

A. FINRA Reviews Company-Related Actions

FINRA performs critical functions in the over-the-counter market. *See Order Approving Proposed FINRA Rule 6490 (Processing of Company-Related Actions) ("Approval Order")*, Exchange Act Release No. 62434, 2010 SEC LEXIS 2186, at *2-3 (July 1, 2010). FINRA operates the OTCBB, which provides a mechanism for FINRA members to quote certain eligible over-the-counter securities.¹ *Id.* at *3.

FINRA also reviews and processes requests to announce or publish certain actions taken by issuers of over-the-counter securities to foster cooperation and coordination of the clearing, settling, and processing of transactions involving these securities, and in general, to protect

¹ The OTCBB is an electronic quotation facility that displays current quotes, last-sales prices, and volume information for eligible equity securities that are not listed on a national securities exchange. *See NASD Notice to Members 99-15*, 1999 NASD LEXIS 90, at *1-2 (Feb. 1999); *see also* FINRA Rule 6520. OTCBB eligible securities are defined in FINRA Rule 6530. Unlike national securities markets, where securities issuers apply for listing and must meet listing standards, FINRA members initiate quotations for specific securities on the OTCBB. *See NASD Notice to Members 99-15*, 1999 NASD LEXIS 90, at *2.

investors and the public interest. *See* FINRA Rule 6490(a)(1). Specifically, FINRA reviews and processes documents relating to announcements for two categories of issuer actions – actions related to announcements required under Exchange Act Rule 10b-17 and “Other Company-Related Actions” (collectively, “Company-Related Actions”). *Id.* These Company-Related Actions include: (1) dividend payments or other distributions in cash or kind, (2) stock splits, (3) reverse stock splits, (4) rights or other subscription offerings, (5) any issuance or change to an issuer’s symbol or name, (6) mergers, (7) acquisitions, (8) dissolutions, (9) bankruptcy, (10) liquidations, or (11) any other company control transaction.² FINRA Rule 6490(a)(2).

In considering an issuer’s request to process a Company-Related Action, FINRA may request additional information in order to complete its review of the request. *See* FINRA Rule 6490(b)(4); *Approval Order*, 2010 SEC LEXIS 2186, at *8. If FINRA determines to process documentation related to a Company-Related Action,³ FINRA provides notice of the action to the over-the-counter market and adjusts the issuer’s name, symbol, or stock price, as requested in the Company-Related Action. *See id.*, at *4. FINRA also publishes Company-Related Actions pursuant to requests from issuers and their agents on its website in a document known as the

² Positron’s request for a change in domicile falls within the category of “other company control transactions” under FINRA Rule 6490(a)(2). When an issuer initiates a change in domicile, it typically does so by merging with a shell company formed in the new state of incorporation. As a result of the merger with the shell company, the issuer recalls the current stock certificates to reissue the certificates in accordance with the securities laws, rules, and regulations of the new state of incorporation.

³ In addition to state corporate law requirements, an issuer with a class of publicly traded securities must comply with Exchange Act Rule 10b-17. *See Approval Order*, 2010 SEC LEXIS 2186, at *3, 4 n.6. Exchange Act Rule 10b-17 requires that an issuer provide FINRA with notice of proposed Company-Related Actions when their securities are not listed on a national securities exchange or the Commission has not issued an exemption. *See* Exchange Act Rule 10b-17(a), (b)(2), (3), 17 C.F.R. 240.10b-17(a), (b)(2), (3). Once FINRA receives this notice, FINRA Rule 6490 authorizes FINRA to use its judgment and process or decline to process the Company-Related Action. *See Approval Order*, 2010 SEC LEXIS 2186, at *7.

“Daily List.” *See Approval Order*, 2010 SEC LEXIS 2186, at *5 n.7. Publication of Company-Related Actions in the Daily List announces the Company-Related Action to the over-the-counter market. *See id.*

B. Deficiency Determinations Under FINRA Rule 6490

FINRA may determine that it is necessary for the protection of investors and in the public interest to deem a Company-Related Action deficient, in which case documentation related to the Company-Related Action will not be processed. FINRA Rule 6490(d)(3). Under FINRA Rule 6490, FINRA may deny an issuer’s application for Company-Related Actions based on five specific factors. *See id.* It is subsection three, FINRA Rule 6490(d)(3)(3), which is the focus of Positron’s application for review.

FINRA Rule 6490(d)(3)(3) permits FINRA’s Department of Operations (the “Department”) to exercise its judgment as to the significance of certain events. *See* FINRA Rule 6490(d)(3)(3); *Approval Order*, 2010 SEC LEXIS 2186, at *9 (“[I]f a request to process a Company-Related Action is deficient, and [FINRA] determines that it is necessary for the protection of investors and the public interest and to maintain fair and orderly markets, [FINRA] may determine that documentation related to a Company-Related Action *shall not be* processed.”) (emphasis added). Specifically, FINRA Rule 6490(d)(3)(3) allows the Department to deny an issuer’s request if “FINRA has actual knowledge that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected to the issuer” or the Company-Related Action “are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations.” FINRA Rule 6490(d)(3)(3).

Following the Department's determination that an issuer's request is deficient because it falls within one or more of the five factors of FINRA Rule 6490(d)(3), the Department provides written notice of the deficiency to the issuer, identifying the specific factors that caused the request to be deemed deficient. *See Approval Order*, 2010 SEC LEXIS 2186, at *11; FINRA Rule 6490(d)(4). Once an issuer's request is deemed deficient, FINRA will not process the issuer's documentation for the proposed Company-Related Action or announce the Company-Related Action to the over-the-counter market. *See Approval Order*, 2010 SEC LEXIS 2186, at *11.

FINRA Rule 6490 also provides an issuer with a right to appeal from a Department deficiency determination. *See* FINRA Rule 6490(e). A three-person subcommittee comprised of current or former industry members of FINRA's Uniform Practice Code Committee (the "UPC Subcommittee") thoroughly reviews and decides all appeals.⁴ *See id.* The UPC Subcommittee meets each month, as needed, and issues a written decision within three business days of its consideration of the appeal. *See id.*

III. FACTS

A. Positron

Positron is a public, Texas corporation that maintains its principal place of business in Indiana. RP 6.⁵ The company, which is a molecular imaging company, manufactures and sells medical imaging devices and radiopharmaceuticals. RP 6. Positron's stock is registered

⁴ The Uniform Practice Code Committee provides the framework of rules governing broker-dealers for the settlement of non-exchange listed securities quoted or traded in the over-the-counter market. *See Approval Order*, 2010 SEC LEXIS 2186, at *6 n.8.

⁵ "RP" refers to the record page in the certified record. "Br." refers to the referenced page in Positron's brief.

pursuant to Section 12(g) of the Exchange Act and trades on the OTCBB under the symbol POSC. RP 1, 6. In 2008, Positron's average daily trading volume was 90,214 shares and its market capitalization was approximately \$8 million. RP 6-7.

B. Rooney, Solaris Management, and Solaris Opportunity Fund

Rooney is Positron's CEO and Chairman of the company's Board of Directors.⁶ RP 6. Rooney owns common stock and securities convertible into common stock equal to 7 percent of Positron's outstanding common stock. RP 289-290, 313-314.

Rooney also is the founder, sole owner, and managing partner of Solaris Management. RP 6. Solaris Management is a limited liability company, which is incorporated in Delaware and maintains its principal place of business in Illinois. RP 6. Solaris Management is the general partner and investment adviser to Solaris Opportunity Fund, LP ("Solaris Opportunity Fund"). RP 6.

Solaris Opportunity Fund is a limited partnership and hedge fund that is based in Delaware.⁷ RP 6. Solaris Opportunity Fund promotes the use of "long, short, and neutral positions to hedge risk, generate income, and maintain equity growth over the long term." RP 6. Solaris Opportunity Fund trades in equities, options, and futures. RP 6. The hedge fund has no officers, directors, or trustees. RP 6. Solaris Opportunity Fund is a beneficial owner of 40.9 percent of Positron's stock. RP 289-290, 313-314. Through his beneficial ownership of Positron's shares, and the interest held through his ownership and management of Solaris

⁶ Rooney stated that Positron paid him a total salary of \$700,000 over a five-year period between 2009 and 2014. RP 171.

⁷ Rooney formed Solaris Opportunity Fund in mid-2003. RP 7. As of December 2008, which is the last time that the hedge fund issued financial statements, Solaris Opportunity Fund had 30 investors and reported assets of nearly \$16.3 million. RP 7. Positron's brief states that Rooney is Solaris Opportunity Fund's "Managing Director." Br. at 5.

Management and Solaris Opportunity Fund, Rooney controls 47.9 percent of Positron. RP 289-290.

C. Rooney Consents to a Permanent Injunction in a Federal Civil Action

On November 18, 2011, the Commission filed a federal civil action (the “Federal Civil Action”) in the United States District Court for the Northern District of Illinois against Rooney and Solaris Management. RP 3-25. The Commission alleged that Rooney and Solaris Management misused Solaris Opportunity Fund’s invested assets to keep Positron afloat. RP 3. The Commission stated that, “Rooney and Solaris Management used [Solaris Opportunity Fund] as Positron’s piggy bank, and caused [Solaris Opportunity Fund] to finance Positron when it had no other sources of funding.” RP 3.

The Commission asserted that Rooney and Solaris Management acted in contradiction to Solaris Opportunity Fund’s offering and marketing documents by radically changing the fund’s investment strategy to become wholly invested in Positron. RP 13-14. The Commission explained that Rooney, who had been Positron’s Chairman since 2004, and had received compensation from the company since September 2005, misused Solaris Opportunity Fund’s investor funds when he invested over \$3.6 million in Positron through both private transactions and market purchases. RP 10-14. The Commission noted that many of the private transactions were undocumented and consisted of no-interest loans to Positron. RP 10-13.

The Commission alleged that Rooney and Solaris Management did not inform Solaris Opportunity Fund’s investors that the fund had invested in Positron, or that Rooney served as the Chairman of the company’s Board of Directors. RP 15-17. The Commission stated that Rooney and Solaris Management did not make the required disclosures to Solaris Opportunity Fund’s investors for over four years, and when Rooney finally disclosed the investment and the

relationship, he misrepresented that he became the Chairman of Positron to safeguard Solaris Opportunity Funds' investment. RP 15-17. The Commission stressed that Rooney's and Solaris Management's misconduct benefitted Positron and Rooney,⁸ while providing the Solaris Opportunity Fund with "a concentrated, undiversified, and illiquid position in a cash-poor company with a history of net losses." RP 14.

The Commission alleged that Rooney's and Solaris Management's actions violated the antifraud provisions of the Securities Act of 1933 ("Securities Act"), Exchange Act, and Investment Advisers Act of 1940 ("Advisers Act"). RP 17-18, 20-22. The Commission also alleged that Rooney aided and abetted Solaris Management's antifraud violations of the Advisers Act, and that Rooney and Solaris Management aided and abetted Solaris Opportunity Fund's violation of the antifraud provisions of the Exchange Act. RP 19, 22-23.

On December 19, 2013, Rooney and Solaris Management consented to the Illinois District Court's entry of permanent injunctions against them.⁹ RP 27-32. The Federal Civil

⁸ The Commission's complaint alleged that Rooney, as the sole owner and managing partner of Solaris Management, was "exclusively" responsible for the business of Solaris Management. RP 7. Rooney handled the day-to-day management of Solaris Opportunity Fund and made all of the hedge fund's investment decisions of behalf of Solaris Management. RP 7. As Solaris Management's sole owner, Rooney received all of the fees that Solaris Opportunity Fund paid Solaris Management for its investment advisory services. RP 9. As of November 2011, when the Commission filed the Federal Civil Action, Rooney had received more than \$1.4 million in fees from Solaris Opportunity Fund. RP 9.

⁹ The District Court issued a "Judgment as to Patrick G. Rooney and Solaris Management, LLC," in which Rooney and Solaris Management consented to the permanent injunctions. The District Court, however, retained jurisdiction to adjudicate penalties, disgorgement, and a possible office-and-director bar. RP 30-32. The judgment states:

[Footnote Continued on Next Page]

Action is pending, and the parties are in the midst of remedies discovery to determine whether Rooney and Solaris Management should pay monetary penalties and disgorgement, and whether Rooney should be barred as an officer and director. *See SEC v. Rooney*, No. 11-08264 (N.D. Ill. filed Nov. 18, 2011) (Civil Docket Report, dated July 7, 2014), attached as Appendix A.

D. The Commission Initiates an SEC Regulatory Action Against Rooney

On January 8, 2014, the Commission instituted administrative proceedings (the “SEC Regulatory Action”) pursuant to Section 203(f) of the Advisers Act to determine whether Rooney should be subjected to an officer and director bar.¹⁰ *See Patrick G. Rooney*, Investment Advisers Release No. 3751, 2014 SEC LEXIS 102, at *1 (Jan. 8, 2014). The Commission initiated the SEC Regulatory Action as a follow-on proceeding to the Federal Civil Action.¹¹ *See id.* at *4.

[Cont’d]

In connection with the Commission’s motion for disgorgement and civil penalties, and at any hearing held on such a motion: (a) [Rooney and Solaris Management] will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; [Rooney and Solaris Management] may not challenge the validity of the Consents or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court

RP 31.

¹⁰ Under Section 203(f) of the Advisers Act, Rooney may be subject to an investment adviser suspension or bar. *See* Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f).

¹¹ In an administrative order, dated April 1, 2014, the Administrative Law Judge presiding over the SEC Regulatory Action noted that the Commission’s Division of Enforcement had filed a motion for summary disposition. *See Patrick G. Rooney*, Administrative Proceedings Rulings Release No. 1352, 2014 SEC LEXIS 1149, at *1 (April 1, 2014). In that same order, the Administrative Law Judge ordered Rooney to file his opposition on April 30, 2014, and stated that the Division of Enforcement’s reply was due on May 14, 2014. *See id.* at *1-2. The order that the Administrative Law Judge issued on April 1, 2014, is the last reported event in the SEC Regulatory Action.

E. The 1-100 Reverse Stock Split and Change in Domicile

On January 24, 2014, Positron requested that FINRA process documentation related to a 1-100 reverse stock split and a change in domicile from Texas to Delaware. RP 47-52. FINRA asked Positron to answer questions and provide documentation to facilitate its review. RP 53-56, 161. After reviewing the information that Positron provided, FINRA deemed Positron's request deficient and denied the request. RP 35-38.

The Department denied Positron's request pursuant to FINRA Rule 6490(d)(3)(3). RP 35. The Department explained that it had actual knowledge that Rooney, Positron's CEO and Chairman of the company's Board of Directors, and Solaris Management, the investment adviser that Rooney founded, owned, and managed, were the subject of the Federal Civil Action. RP 35-36. The Department noted that Rooney and Solaris Management settled the Federal Civil Action, that the Federal Civil Action related to fraud and securities laws violations, and that Positron's application triggered one of the grounds delineated in FINRA Rule 6490(d)(3). RP 35-36. Consequently, the Department declined to process Positron's documentation concerning the reverse stock split and domicile change. RP 35-36. The Department provided Positron with a written deficiency determination on February 19, 2014. RP 35.

F. The Appellate Proceedings Before the UPC Subcommittee

On February 27, 2014, Positron requested that the UPC Subcommittee review the Department's decision under FINRA Rule 6490(e).¹² RP 39-44. Consistent with the rule, the UPC Subcommittee provided Positron with the opportunity to respond to the Department's

¹² Positron's filing of an appeal stayed the processing of the reverse stock split and domicile change. Company-Related Actions are not processed during an appeal. *See* FINRA Rule 6490(e); *Approval Order*, 2010 SEC LEXIS 2186, at *11.

deficiency determination and supplement the record with additional supporting documentation. RP 285-286. Positron supplemented the record on March 6, 2014. RP 289-317.

The UPC Subcommittee also permitted Positron to file an additional brief to address the effect of the SEC Regulatory Action, which provided a second basis under FINRA Rule 6490(d)(3)(3) to decline the company's request for the reverse stock split and change in domicile. RP 319-320. Positron filed its brief concerning the effect of the SEC Regulatory Action on March 24, 2014. RP 327-335.

After a de novo review of the record, the UPC Subcommittee affirmed the Department's denial of Positron's requested reverse stock split and domicile change. RP 351-355. The UPC Subcommittee's decision provided several reasons to support the denial. RP 354-355.

First, the UPC Subcommittee found that Rooney maintained a significant role in Positron, and that he controlled a substantial amount (47.9 percent) of the company's stock through his ownership and management of Solaris Management and Solaris Opportunity Fund. RP 354. Second, the UPC Subcommittee highlighted the recent nature of the Federal Civil Action and SEC Regulatory Action, explaining that Rooney and Solaris Management consented to the judgment in December 2013, one month before Positron submitted the application for the Company-Related action to the Department. RP 354. Finally, the UPC Subcommittee noted that the Federal Civil Action and SEC Regulatory Action were unresolved. RP 354. The UPC Subcommittee stated that the Federal Civil Action was pending before the Illinois District Court for a determination of an issuer officer-and-director bar and monetary remedies against Rooney and Solaris Management, and that the SEC Regulatory Action was pending before an administrative law judge at the Commission for a determination of whether Rooney should be suspended or barred as an investment adviser. RP 354.

In rendering its decision, the UPC Subcommittee analyzed each of the arguments that Positron offered in support of the appeal – that Positron had business reasons for the proposed reverse stock split and domicile change, that Positron was not engaged in fraud, and that Positron was not named as a defendant in the Federal Civil Action. RP 354-355. The UPC Subcommittee concluded, however, that these factors did not favor approval of the Company-Related Action. RP 354-355.

The UPC Subcommittee found that Rooney’s ownership of Positron, his role as CEO of the company, and his position as the Chairman of the company’s Board of Directors, provided Rooney with substantial control over the company. RP 354. The UPC Subcommittee concluded that these facts, coupled with Positron’s direct involvement in Rooney’s misconduct as the beneficiary of the \$3.6 million that Rooney directed Solaris Management and Solaris Opportunity Fund to invest in the company, provided ample grounds to deny Positron’s request for the reverse stock split and domicile change. RP 354-355.

The UPC Subcommittee rendered its decision on March 27, 2014. RP 351. Positron timely appealed to the Commission on April 10, 2014. RP 365-369.

IV. SUMMARY OF ARGUMENT

FINRA appropriately denied Positron’s request for the reverse stock split and domicile change because a denial of the proposed Company-Related Action was necessary for the protection of investors and the public interest. FINRA’s denial properly applied FINRA Rule 6490. FINRA Rule 6490(d)(3)(3) permitted FINRA to examine any pending, adjudicated, or settled civil or regulatory action related to fraud or securities laws violations, in which the issuer, or its associated persons, officers, directors, or other persons connected to the issuer are a party.

In this instance, Rooney, Positron’s CEO and Chairman of the company’s Board of Directors, consented to a judgment in a Federal Civil Action, which related to fraud and

securities laws violations and is pending to determine whether Rooney and Solaris Management should pay monetary penalties and disgorgement, and whether Rooney should be barred as an officer and director. Rooney also is the subject of a pending SEC Regulatory Action, which may result in Rooney's suspension or bar as an investment adviser. The Federal Civil Action and follow-on SEC Regulatory Action each invoke FINRA Rule 6490(d)(3)(3), and the UPC Subcommittee properly exercised its judgment to deny Positron's request for the Company-Related Action.

On appeal before the Commission, Positron demonstrates a fundamental misunderstanding of FINRA Rule 6490. First, Positron argues that FINRA overstepped the jurisdictional reach that it has over issuers and rendered a decision that regulated Positron's officers and directors. That is not the case. FINRA's decision does not prohibit Rooney from serving as an officer or director of Positron (or any company), and it imposes no sanction or penalty on Positron, Rooney, or any other individual associated with the company.

Second, Positron argues that FINRA Rule 6490 limits FINRA's authority to decline to process Company-Related Actions solely to circumstances in which FINRA has actual knowledge of an issuer's, officer's, or director's fraudulent activities in connection with the proposed Company-Related Action. Reading FINRA Rule 6490 in this manner, however, ignores the rule's purpose and text, imposes a meaning that has no support, and would render the rule ineffective.

Third, Positron states that it has compelling business reasons for the reverse stock split and domicile change, and that FINRA's denial of the requested Company-Related Action disadvantages Positron's shareholders. Positron's shortsighted argument ignores the primary importance of FINRA's responsibility to protect investors when an issuer's officers or directors are the subject of civil and regulatory actions that allege fraud or securities laws violations.

Fourth, Positron asserts that its adherence to the legal requirements necessary to effect the reverse stock split and change in domicile requires that FINRA approve the Company-Related Action. FINRA Rule 6490, however, is not a technical step for the processing and announcing of Company-Related Actions. To the contrary, the rule serves as a monitoring mechanism for FINRA to root out proposed Company-Related Actions for which there are indicators of potential fraud. One such indicator, which is present in this case, is when an issuer's officer or director is the subject of a pending or settled federal civil or regulatory action. Positron's compliance with federal and state legal requirements for a reverse stock split and domicile change has no bearing on FINRA's discretionary authority under FINRA Rule 6490.

Finally, Positron states that the company was neither accused of fraud nor named as a defendant or respondent in the Federal Civil Action or SEC Regulatory Action, and argues that FINRA is improperly punishing the company for Rooney's misconduct. Rooney, however, is deeply connected to Positron, and his misconduct serves as a proper basis under FINRA Rule 6490(d)(3)(3) to deny Positron's reverse stock split and domicile change. Rooney's misconduct also directly involved Positron because Positron was the beneficiary of Rooney's fraudulent activities and received \$3.6 million from Solaris Opportunity Fund.

FINRA properly denied Positron's proposed Company-Related Action, and in so doing, complied fully with the three-pronged standard of review for this action. FINRA followed its rules, relied on grounds that are factually accurate, and applied its rules in a manner consistent with the Exchange Act. The Commission therefore should dismiss this appeal.

V. ARGUMENT

Section 19(f) of the Exchange Act governs the Commission's review of this case.¹³ *See* 15 U.S.C. § 78s(f). The Commission should affirm FINRA's denial of Positron's proposed reverse stock split and change in domicile because: (1) FINRA's action was taken in accordance with its rules; (2) the specific grounds upon which FINRA based its action "exist in fact"; (3) FINRA applied its rules in a manner that is consistent with the purposes of the Exchange Act; and (4) FINRA's action imposes no undue burden upon competition.¹⁴ *See id.*; *see also Tassaway, Inc.*, 45 S.E.C. 706, 709-10 (1975) ("Our function when asked to review the [FINRA's] action . . . is very narrow. It is solely that of seeing whether 'the specific grounds on which such action [are] based exist in fact and are in accord with the applicable rules of the association.' Should [FINRA's] action meet that test, we must dismiss the review proceedings.").

A. FINRA's Action Is in Accordance with FINRA Rule 6490

FINRA Rule 6490 grants FINRA discretion to deny Company-Related Actions based on certain indicators of potential fraud, including instances when an issuer's officer or director is the subject of a pending or settled federal civil or regulatory action. *See Approval Order*, 2010 SEC

¹³ Section 19(d) of the Exchange Act, 15 U.S.C. § 78s(d), grants the Commission jurisdiction to review any denial of access to services by a self-regulatory organization. *See JD Am. Workwear, Inc.*, Exchange Act Release No. 43283, 2000 SEC LEXIS 1906, at * 7 (Sept. 12, 2000) (explaining Commission's basis for jurisdiction and denying request to stay issuer's removal from OTCBB). FINRA's denial of the reverse stock split and change in domicile prevents Positron's access to FINRA's services, is FINRA's final action in this case, and is subject to Commission review. *See id.*; *Approval Order*, 2010 SEC LEXIS 2186, at *21.

¹⁴ Positron does not assert, and the record does not demonstrate, that FINRA's denial of the Company-Related Action imposes an unnecessary or inappropriate burden on competition. *See generally Revcon, Inc.*, 53 S.E.C. 315, 328 (1997) (holding that denial of access to services was "aimed reasonably" at an important regulatory purpose and did not burden competition unnecessarily).

LEXIS 2186, at *7. These circumstances are present here, and FINRA properly exercised its discretion to deny Positron's proposed Company-Related Action in accordance with FINRA Rule 6490.

1. **FINRA Rule 6490 Authorized FINRA's Denial of Positron's Company-Related Action**

FINRA Rule 6490(d)(3) enumerates five grounds upon which FINRA may decide to classify a Company-Related Action as deficient. The rule states that FINRA will make a "determination" about whether to approve or "deem[] deficient" the requested Company-Related Action. FINRA Rule 6490(d)(3). Specifically, FINRA Rule 6490(d)(3) explains that, "In circumstances where . . . [FINRA] may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to [the] . . . Company-Related Action *will not be processed.*" FINRA Rule 6490(d)(3) (emphasis added).

Although FINRA Rule 6490 provides FINRA with discretion concerning the classification of Company-Related Actions as deficient, the rule limits the grounds upon which FINRA may deny the issuer's request for Company-Related Action. FINRA Rule 6490(d)(3). The rule states, "[FINRA] shall make such deficiency determinations solely on the basis of one or more of the following factors" FINRA Rule 6490(d)(3); *see also Black's Law Dictionary* 1379 (7th ed. 1999) (shall means, "[h]as a duty to; more broadly, is required to . . .").

Read completely, FINRA Rule 6490(d)(3) permits FINRA to use its judgment and determine whether a request is deficient. If FINRA exercises such judgment, however, FINRA must deem the issuer's request deficient based only on one or more of the five grounds. *See* FINRA Rule 6490(d)(3). In short, if one of the five grounds exists, then FINRA *may* decide to deny the request. *See id.*

FINRA identified subsection (3) of FINRA Rule 6490(d)(3) as the basis for its denial of Positron's reverse stock split and domicile change. That subsection permits FINRA to deny a Company-Related Action based on a pending or settled federal civil or regulatory action related to fraud or securities laws violations:

- (3) FINRA has actual knowledge that the issuer, associated persons, officers, directors, . . . or other persons connected to the issuer . . . are the subject of a pending, adjudicated or settled regulatory action . . . by a federal . . . regulatory agency . . . related to fraud or securities laws violations.

FINRA Rule 6490(d)(3)(3). FINRA's denial of Positron's proposed Company-Related Action is fully authorized by the rule.

2. FINRA Followed the Procedures Set Forth in FINRA Rule 6490

FINRA's decision also complied with the requirements of FINRA Rule 6490 because FINRA followed each of the rule's procedural steps in the proceedings before the Department and the UPC Subcommittee. The Department provided Positron with written notice of the deficiency determination. RP 35-38. *See* FINRA Rule 6490(d)(4). The Department explained that its deficiency determination was based on FINRA Rule 6490(d)(3)(3), Rooney's ownership and management of Positron, and his involvement in the Federal Civil Action. RP 35-38. *See* FINRA Rule 6490(d)(4).

Thereafter, Positron availed itself of the opportunity to appeal the Department's denial and submitted a brief to the UPC Subcommittee. *See* FINRA Rule 6490(e). RP 285-286. The UPC Subcommittee considered the written record developed during the proceedings before the Department, permitted Positron to supplement the record with additional supporting documentation to address the Federal Civil Action and SEC Regulatory Action, and conducted a de novo review of the Department's denial. RP 285-286, 289-317, 319-320, 327-335. *See*

FINRA Rule 6490(e). After an independent review of the record, the UPC Subcommittee concluded that the Department's decision was correct and provided Positron with written notice of its decision. RP 351-355. *See* FINRA Rule 6490(e). The UPC Subcommittee's decision to deny Positron's proposed reverse stock split and change in domicile was in accordance with FINRA Rule 6490.

B. FINRA Relied on Grounds That Are Factually Accurate

Positron's request for the reverse stock split and domicile change fell within one of the five grounds detailed in FINRA Rule 6490(d)(3) because FINRA had actual knowledge that Rooney, Positron's CEO and Chairman of the company's Board of Directors, consented to a judgment in a Federal Civil Action, and was the subject of a pending SEC Regulatory Action. *See* FINRA Rule 6490(d)(3)(3).

FINRA considered that Rooney maintained significant management roles within Positron and controlled nearly 48 percent of the company's stock through his ownership, management, and control of Solaris Management and Solaris Opportunity Fund. RP 354. FINRA carefully examined Positron's business reasons for the Company-Related Action, but determined that Positron's reasons did not present a compelling basis for FINRA to allow the action to proceed. RP 354. FINRA also considered the recent and unresolved nature of the Federal Civil Action and SEC Regulatory Action and found that these factors weighed in favor of denial of the Company-Related Action. RP 354. Finally, FINRA examined the facts underlying the Federal Civil Action and SEC Regulatory Action and stressed that the cases were related to fraud and other serious securities laws violations. RP 352-353. *See Montford and Co., Advisers Act* Release No. 3829, 2014 SEC LEXIS 1529, at *78-79 (May 2, 2014) (barring investment adviser and its president and sole owner because they committed securities fraud and reporting violations by failing to disclose material conflicts of interest and making material misrepresentations to

clients); *Feeley & Willcox Asset Mgmt. Corp.*, 56 S.E.C. 616, 645 (2003) (finding that it was “in the public interest” to sanction an investment adviser and its associated person for their violations of the Advisers Act, Exchange Act, and Securities Act).

FINRA had actual knowledge of these facts, determined that the Federal Civil Action and follow-on SEC Regulatory Action raised concerns about Rooney’s continued involvement in Positron, and properly denied Positron’s proposed Company-Related Action in accordance with FINRA Rule 6490(d)(3)(3).

1. **Rooney and Solaris Management Consented to the Judgment in the Federal Civil Action**

Positron asserts that FINRA’s denial of the Company-Related Action impermissibly relied on the consent judgment in the Federal Civil Action. Br. at 2. To support this point, Positron stresses that Rooney and Solaris Management neither admitted nor denied the Commission’s allegations. Br. at 2. Positron similarly argues that the Illinois District Court enjoined Rooney and Solaris Management from *future* violations of the securities laws, and that the District Court’s entry of permanent injunctions did not permit FINRA to make findings based on the Federal Civil Action. Br. at 2 (emphasis added). Positron therefore asserts that the consent judgment should have minimal effect on Positron’s request for Company-Related Action. These arguments demonstrate a misunderstanding of FINRA’s denial of Positron’s Company-Related Action.

FINRA properly considered the consent judgment. FINRA did not, however, treat the consent judgment as an *admission* by Rooney or Solaris Management. Rather, FINRA’s consideration of the consent judgment is fully consistent with FINRA’s authority under FINRA Rule 6490(d)(3)(3), which permits FINRA to deny a Company-Related Action based on a settled federal civil action related to fraud or securities laws violation. Once Rooney and Solaris

Management consented to the Illinois District Court's entry of judgment against them for fraud and securities laws violation, the consent judgment became a proper basis for FINRA's review of Positron's request for Company-Related Action. *Cf. DHB Capital Group, Inc.*, 52 S.E.C. 740, 744-45 (1996) (affirming denial of issuer's request for quotation on NASD's automatic quotation system, where the controlling shareholder, officer, and director had settled an administrative proceeding with the Commission alleging that he had aided and abetted violations of Sections 15(b) and 15(f) of the Exchange Act and Exchange Act Rule 15b3-1).

Rooney and Solaris Management may not make their settlement vanish from existence merely because they did not admit or deny the allegations in the Commission's complaint. FINRA may consider settlements (including consent judgments) concerning violations of the securities laws when evaluating an issuer's request for a reverse stock split and domicile change. FINRA Rule 6490(d)(3)(3). In this case, FINRA fulfilled its role as gatekeeper of information for the orderly operation of the securities markets and properly used its judgment to deny Positron's request to process documentation for its proposed reverse stock split and domicile change.

2. Positron Benefitted from Rooney's Misconduct

Positron claims that the Commission did not allege any misconduct concerning Rooney's role with Positron, did not accuse Positron of fraud or securities laws violations, and did not name the company as a defendant in the Federal Civil Action or respondent in the SEC Regulatory Action. Br. at 5-6. Although these statements are largely true, they fail to address the parts of Rule 6490(d)(3) that apply directly to officers and directors of issuers.

FINRA Rule 6490(d)(3)(3) permits FINRA to examine civil or regulatory actions related to fraud or securities laws violations, in which the issuer, or its associated persons, *officers*, *directors*, or other persons connected to the issuer are a party. Nothing in FINRA Rule 6490

requires that the issuer is a party to the civil or regulatory action. Positron fails to explain why the Commission should invalidate the express language of FINRA Rule 6490.

FINRA Rule 6490(d)(3)(3) also covers numerous actors that are connected to the issuer, not just the issuer. Rooney, as an officer and director of Positron, is deeply connected to the company, and his positions served as a proper basis for FINRA's denial of Positron's Company-Related Action.

Finally, although not required by the rule, Rooney's and Solaris Management's activities did directly involve Positron. As the Commission aptly noted in its complaint, "Rooney and Solaris Management used [Solaris Opportunity Fund] as Positron's piggy bank, and caused [Solaris Opportunity Fund] to finance Positron when it had no other sources of funding." RP 3. Positron patently benefitted from Rooney's and Solaris Management's misconduct, receiving over \$3.6 million from Solaris Opportunity Fund. Positron's argument that FINRA's action was in error because it was not involved in the Federal Civil Action and SEC Regulatory Action is wholly without merit.

3. FINRA Properly Considered Rooney's Role in Positron and the Recent and Unresolved Nature of the Federal Civil Action and SEC Regulatory Action

When FINRA reviewed Positron's application and made its deficiency determination, FINRA considered Rooney's management and control of Positron and the recent and unresolved nature of the Federal Civil Action and SEC Regulatory Action.

Rooney maintained a significant role within Positron and held a substantial amount of the company's stock. Rooney, Solaris Management, and Solaris Opportunity Fund, owned nearly 48 percent of Positron. RP 289-290. Rooney also served as Positron's CEO and the Chairman of the company's Board of Directors. RP 6. Rooney's beneficial ownership of Positron, and the corporate positions that he maintained, provided Rooney with substantial authority and control.

Rooney's continued involvement with Positron, coupled with his authority and control over the company, created an environment ripe for abuse.

The recent and unresolved nature of the Federal Civil Action and SEC Regulatory Action also support FINRA's denial of the Company-Related Action. Rooney and Solaris Management consented to the entry of the judgment in December 2013, one month before Positron submitted the application for the Company-Related Action. RP 27-32, 47-52. The Commission initiated the SEC Regulatory Action on January 8, 2014, two weeks after Positron filed the application.

The remedies that the Commission seeks in the Federal Civil Action and SEC Regulatory Action also have not been determined. The Federal Civil Action is pending before the Illinois District Court for a determination of monetary remedies against Rooney and Solaris Management and a possible bar from serving as an officer or director of a publically reporting company. *See Rooney*, No. 11-08264 (N.D. Ill. filed Nov. 18, 2011) (Civil Docket Report, dated July 7, 2014), attached as Appendix A. The SEC Regulatory Action is pending before the Commission for a determination of whether Rooney should be suspended or barred as an investment adviser. *See Rooney*, 2014 SEC LEXIS 1149, at *1-2.

Rooney's continued ownership and management of Positron and the recent and unresolved nature of the Federal Civil Action and SEC Regulatory Action reinforce that FINRA's denial of Positron's Company-Related Action was correct.

C. FINRA Applied FINRA Rule 6490 in a Manner Consistent with the Exchange Act

FINRA's decision in this case was in accordance with FINRA Rule 6490, firmly rooted in the facts, and was entirely consistent with the Exchange Act. *See Approval Order*, 2010 SEC LEXIS 2186, at *15-16 ("[T]he proposal is consistent with the [Exchange] Act and . . . Section

15A(b)(6) of the [Exchange] Act,” and “is necessary for the protection of investors and the public interest and to maintain fair and orderly markets.”).

In this case, FINRA properly found that Rooney’s involvement with Positron, the Federal Civil Action, and the SEC Regulatory Action raised reasonable concerns about investor protection and market integrity, and it denied Positron’s request for the reverse stock split and change in domicile. RP 351-355. In denying the request, FINRA appropriately considered that Rooney and Solaris Management consented to a judgment that permanently enjoined them from future violations of the securities laws, and that Rooney continues to own Positron and maintain a prominent role in the company.

FINRA also considered the fact that the Federal Civil Action and SEC Regulatory Action are pending to determine whether Rooney should be ordered to pay civil penalties and disgorgement, face a bar as an officer and director, or should be suspended or barred as an investment adviser. FINRA properly exercised its judgment and denied Positron’s request for the reverse stock split and domicile change in accordance with FINRA Rule 6490 and the Exchange Act.

D. Positron’s Interpretations of FINRA Rule 6490 Have No Merit

Positron argues that FINRA exceeded the scope of its authority under FINRA Rule 6490. Positron contends that FINRA’s denial of the Company-Related Action allowed FINRA to impermissibly regulate the company and its officers and directors. Positron also asserts that FINRA Rule 6490 applies only when FINRA has actual knowledge of fraud in connection with an issuer’s proposed Company-Related Action. Finally, Positron argues that its business reasons, and compliance with the legal prerequisites, for the Company-Related Action require that FINRA process the company’s application. Positron’s interpretations of FINRA Rule 6490 are nonsensical and conflict with the rule’s purpose and plain language.

1. **FINRA Is Not Regulating Positron or Its Officers or Directors**

Positron notes that FINRA lacks jurisdiction over issuers and argues that FINRA's denial of Company-Related Actions pursuant to FINRA Rule 6490 provides FINRA with improper "oversight over the regulation of [an issuer's] officers and directors." Br. at 5. Positron's argument misses its intended mark.

FINRA's decision to deny Positron's request for the reverse stock split and domicile change imposes no sanction or penalty upon Positron, Rooney, or any individual associated with Positron. Although FINRA's action denies Positron's request to process its request for a reverse stock split and change in domicile from Texas to Delaware at this time, it does not prohibit Rooney from serving as an officer or director of *any* company. *Cf. Eric J. Weiss*, Exchange Act Release No. 69177, 2013 SEC LEXIS 837, at *45 (Mar. 19, 2013) (stating that FINRA's decision imposes no penalty because "Weiss remains free to restart the association process with a different firm at any time.").

FINRA's decision also does not prohibit or prevent Positron, or any other company for which Rooney might serve as an officer or director, from undertaking any Company-Related Action permitted by and consistent with the federal securities and FINRA rules. *Cf. Eagle Supply Group, Inc.*, 53 S.E.C. 480, 485 n. 12 (1998) ("Eagle argues that the NASD has effectively established a rule . . . that prevents an entity's securities from being listed if an officer or director engaged in prior criminal or civil violations of the federal securities laws. We disagree.").

FINRA's consideration of Rooney's Federal Civil Action and SEC Regulatory Action, as a basis for the denial of Positron's request for a reverse stock split and domicile change, is consistent with both the express terms of FINRA Rule 6490(d)(3), and the exercise of judgment

granted to FINRA therein. *Cf. DHB Capital Group*, 52 S.E.C. at 744-45 (“The NASD’s decision to deny inclusion – based in part on the fact that, upon finding that Brooks committed serious securities law violations, we barred him (with his consent) from the industry – is a collateral consequence of Brooks’ misconduct It also is a proper exercise of the NASD’s authority under its Qualification Requirements By-Law.”); *see also Approval Order*, 2010 SEC LEXIS 2186, at *7 (“[FINRA] Rule 6490 would codify the authority of [FINRA] to conduct in-depth reviews of requests to process Company-Related Actions and to provide FINRA staff the discretion not to process . . . requests for which there are certain indicators of potential fraud.”).

2. FINRA Rule 6490 Is Not Limited to Fraud in Connection with an Issuer’s Proposed Company-Related Action

Positron suggests that FINRA exceeded its grant of authority under FINRA Rule 6490. Positron claims that FINRA Rule 6490 limits FINRA’s authority to deny an issuer’s request for Company-Related Action solely to circumstances in which FINRA has actual knowledge of the issuer’s, officer’s, or director’s fraudulent activities in connection with the proposed Company-Related Action. Br. at 5. Positron’s argument is deeply flawed and has no support in the text of the rule or the Commission’s Approval Order for FINRA Rule 6490. *See generally Approval Order*, 2010 SEC LEXIS 2186, at *1.

FINRA Rule 6490 authorizes FINRA “to conduct in-depth reviews of requests to process Company-Related Actions and to provide FINRA staff the discretion not to process incomplete requests and requests for which there are certain indicators of potential fraud.” *Id.* at *7. The rule also provides FINRA with discretion to deem a Company-Related Action deficient and to decline to process an issuer’s documentation concerning the proposed action when doing so “is necessary for the protection of investors and the public interest and to maintain fair and orderly

markets.” *Id.* at *9. Finally, the rule sets out five factors upon which FINRA must base its deficiency determination. *See id.* at *10.

Read in context, the five factors identify five circumstances in which an issuer’s request may be incomplete or indicate potential fraud. Subsections one, two, and five of FINRA Rule 6490(d), for example, highlight instances where a request may be deemed incomplete by virtue of incomplete forms and supporting documentation or an issuer’s failure to satisfy reporting or other legal requirements.¹⁵

Subsections three and four, however, require that FINRA use its judgment as to the significance of certain events, events that indicate potential fraud. *See* FINRA Rule 6490(d)(3)(3), (4). Subsection three allows the Department to deny an issuer’s request if “FINRA has actual knowledge that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected to the issuer” or the Company-Related Action “are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations.” FINRA Rule 6490(d)(3)(3). Subsection four allows the Department to deny the issuer’s request if FINRA knows or a government authority or regulator has given FINRA information indicating that persons connected with the issuer “may be potentially involved in fraudulent activities related to the securities market and/or pose a threat to public investors.” FINRA Rule 6490(d)(3)(4).

¹⁵ Subsection one allows FINRA to deny an issuer’s request if “the forms and all supporting documentation . . . may not be complete, accurate or with proper authority.” FINRA Rule 6490(d)(3)(1). Subsection two requires the issuer to be current in its applicable reporting obligations to the Commission or another regulatory authority. *See* FINRA Rule 6490(d)(3)(2). Subsection five allows FINRA to deem a request for Company-Related Action deficient if there “is significant uncertainty in the settlement and clearance process for the security.” FINRA Rule 6490(d)(3)(5).

FINRA Rule 6490(d)(3)(3) is precise and permits FINRA to rely on pending, adjudicated, and settled civil and regulatory actions related to fraud or securities laws violations to analyze and determine whether an issuer may proceed with a Company-Related Action. There is nothing in the text of the rule, or the Commission's Approval Order, that limits FINRA to denying a Company-Related Action only when it has actual knowledge of fraudulent activity in connection with the proposed Company-Related Action.

Positron's suggested interpretation of FINRA Rule 6490 would render the rule meaningless. Of course, FINRA would not permit a Company-Related Action to proceed if FINRA had actual knowledge that an issuer proposed a Company-Related Action for a fraudulent purpose. FINRA Rule 6490, however, is broader than Positron's utterly unsupported argument. The text of FINRA Rule 6490, as well as the Commission's Approval Order, establishes that FINRA may use its judgment and deny a request for Company-Related Action when certain events raise reasonable concerns about the effect of a proposed Company-Related Action on the investing public and the securities markets.¹⁶

¹⁶ Positron argues that the Commission authorized FINRA to deny requests for Company-Related Actions only when FINRA has actual knowledge of fraudulent activity that results in the Commission's issuance on an order pursuant to Sections 12(j) or 12(k) of the Exchange Act, 15 U.S.C. 78l(j), (k) (2014). Br. at 5. Positron misunderstands the breadth of FINRA's authority in this area. The Approval Order for FINRA Rule 6490 specified that FINRA Rule 6490(d)(3)(3) "would *include* instances when FINRA has actual knowledge of a Commission Order pursuant to Section 12(k) of the Act, 15 U.S.C. 78l(k), temporarily suspending the issuer's securities or pursuant to Section 12(j) of the Act, 15 U.S.C. 78l(j), revoking registration of the issuer's securities." *Approval Order*, 2010 SEC LEXIS 2186, at *10 n.10 (emphasis added). The use of the word "include" in this context means that situations involving the suspension or revocation of an issuer's securities pursuant to Exchange Act Sections 12(k) and 12(j), respectively, presents only one of the numerous situations in which FINRA may deny an issuer's Company-Related Action under FINRA Rule 6490(d)(3)(3). See *Black's Law Dictionary* 687 (5th ed. 1979) (explaining that the term "include" in a statutory context is interpreted as a word of enlargement).

3. **Positron's Self-Justified Business Reasons Do Not Compel Approval of the Company-Related Action**

Positron states that it has compelling business reasons for engaging in the reverse stock split and change in domicile. Br. at 3-4. Positron explained that the reverse stock split would improve the company's capitalization structure, raise the per-share price, and enhance the company's ability to execute its business objectives, including the raising of additional capital. Br. at 4. Positron also notes that, "Delaware is the 'corporate capital' of the world," and that Delaware's statutes and regulations would be more favorable to Positron and its shareholders. Br. at 3. FINRA considered Positron's business reasons for the Company-Related Action, but determined that the business reasons did not present a compelling basis to allow the Company-Related Action to proceed.

As an initial matter, a majority of issuers that request Company-Related Action pursuant to FINRA Rule 6490 have business reasons for their proposed action. Positron is not exceptional in this regard. FINRA Rule 6490 places primary importance on FINRA's responsibility to protect investors, not issuers. *See Approval Order*, 2010 SEC LEXIS 2186, at *5 (explaining that FINRA Rule 6490 responds to a "growing concern that FINRA's Company-Related Action processing services may potentially be used by certain parties to further fraudulent activities").

When an issuer's officers or directors are defendants and respondents in pending and settled actions that allege fraud and securities laws violations, it poses a substantial risk and creates an environment ripe for further misconduct.¹⁷ FINRA Rule 6490 curtails this risk by

¹⁷ Positron claims that FINRA's denial of the Company-Related Action was detrimental to the investing public and securities markets and harmed Positron because it forced the company to quote its shares on the "Pink Sheets." Br. at 3, 4; *see NASD Notices to Members 88-54*, 1988 NASD LEXIS 173, at *3 n.2 (July 1988) (explaining that over-the-counter securities are commonly referred to as "pink sheet" securities because information on many of the securities is published by the National Quotation Bureau in its Pink Sheets). Positron's argument is flawed.

[Footnote Continued on Next Page]

encouraging issuers to avoid having officers, directors, and other persons facing fraud and securities laws violations from being connected to the issuer. *See* FINRA Rule 6490(d)(3)(3).

In this instance, Rooney, Positron's CEO and Chairman of the company's Board of Directors, triggered FINRA's discretionary authority under FINRA Rule 6490(d)(3)(3).

FINRA considered Rooney's misconduct and analyzed the proposed Company-Related Action, including Positron's business reasons for the reverse stock split and domicile change. RP 53-56, 161. FINRA concluded, however, that Positron's Company-Related Action raised concerns about investor protection, particularly as Rooney continued his deep involvement with the company. RP 35-38, 351-355. Positron's business reasons simply did not resolve FINRA's concerns about Rooney or the company's proposed Company-Related Action. RP 35-38, 351-355.

4. Positron's Adherence to the Legal Requirements for the Company-Related Action Does Not Alleviate Concerns About the Company's Request

Positron represents that it has fulfilled certain legal requirements to effect the reverse stock split and change in domicile. Br. at 6. Positron similarly highlights the fact that a super-majority (two-thirds) of the company's Board of Directors approved the Company-Related Action. Br. at 6. Positron, however, reaches an illogical conclusion – that the company's completion of these legal prerequisites necessitates FINRA's approval of the Company-Related Action. Again, Positron misunderstands FINRA Rule 6490.

[Cont'd]

FINRA's denial serves simply to maintain the status quo ante for purpose of protecting the investing public and promoting market integrity. *See Approval Order*, 2010 SEC LEXIS 2186, at *4 (noting that FINRA's issuer-related OTCBB services "are aimed not only at facilitating trading and settlement, but also promoting investor protection and market integrity").

FINRA Rule 6490 permits FINRA to use its judgment and deem a request for a Company-Related Action “deficient,” if doing so “is necessary for the protection of investors, the public interest and to maintain fair and orderly markets” *See* FINRA Rule 6490(d)(3); *see also Approval Order*, 2010 SEC LEXIS 2186, at *9. The rule is not a mere ministerial step for the processing of an issuer’s Company-Related Action. *See Approval Order*, 2010 SEC LEXIS 2186, at *5 (“Historically, FINRA has viewed its role in performing issuer-related functions as primarily ministerial.”).

To the contrary, the adoption of FINRA Rule 6490 changed FINRA’s role from ministerial to one that permits the use of judgment to approve or deny Company-Related Actions. *See id.* The Approval Order reinforces this fact and explains that “the proposed factors [in FINRA Rule 6490] are reasonably designed to allow FINRA to deny a request.” *Id.* at *20 (emphasis added). FINRA Rule 6490 grants FINRA broad discretionary authority in the review of Company-Related Actions. *See id.*, at *19-20 Positron’s compliance with the legal requirements necessary to effect the Company-Related Action has no bearing on FINRA’s authority under the rule.

VI. CONCLUSION

FINRA properly denied Positron’s proposed Company-Related Action. FINRA considered the seriousness of Rooney’s misconduct, the recent and unresolved nature of the civil and regulatory actions, and the fact that Rooney’s misconduct involved Positron. FINRA also considered Rooney’s current management and significant ownership of Positron and concluded that his deep involvement with the company raised significant concerns about the proposed Company-Related Action. FINRA’s denial comports fully with Section 19(f) of the Exchange Act and imposes no undue burden upon competition. The Commission therefore should dismiss Positron’s application for review.

Respectfully Submitted,



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July 7, 2014

APPENDIX A

**United States District Court
Northern District of Illinois – CM/ECF LIVE, Ver 6,1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:11-cv-08264**

Securities & Exchange Commission v. Rooney et al
Assigned to: Honorable Charles P. Kocoras
Demand: \$9,999,000
Cause: 15:77 Securities Fraud

Date Filed: 11/18/2011
Jury Demand: None
Nature of Suit: 850
Securities/Commodities
Jurisdiction: U.S. Government Plaintiff

Plaintiff

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ATTORNEY TO BE NOTICED**Matthew Morrissey Showel**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/18/2011	<u>1</u>	COMPLAINT filed by Securities & Exchange Commission; (Leiman, Timothy) (Entered: 11/18/2011)
11/18/2011	<u>2</u>	CIVIL Cover Sheet (Leiman, Timothy) (Entered: 11/18/2011)
11/18/2011	<u>3</u>	ATTORNEY Appearance for Plaintiff Securities & Exchange Commission by Timothy Stewart Leiman (Leiman, Timothy) (Entered: 11/18/2011)
11/18/2011	<u>4</u>	ATTORNEY Appearance for Plaintiff Securities & Exchange Commission by Andrew Charles Shoenthal (Shoenthal, Andrew) (Entered: 11/18/2011)
11/21/2011		CASE ASSIGNED to the Honorable Charles P. Kocoras. Designated as Magistrate Judge the Honorable Maria Valdez. (nsf,) (Entered: 11/21/2011)
11/28/2011	<u>5</u>	MINUTE entry before Honorable Charles P. Kocoras: Status hearing set for 1/19/2012 at 09:30 AM. At the initial hearing, parties to report on the following: 1. Possibility of settlement. 2. If no possibility of settlement exists, the nature and length of discovery necessary to prepare the case for resolution. Plaintiff is directed to advise all other parties of the Court's action herein. Lead counsel for each party is required to attend the initial hearing. Failure to appear at any scheduled court hearing may result in the dismissal of claims for want of prosecution. The Court directs counsel's attention to its Motion Schedule and Case Management Procedures located at www.ilnd.uscourts.gov. Mailed notice (sct,) (Entered: 11/28/2011)
12/16/2011	<u>6</u>	WAIVER OF SERVICE returned executed by Securities & Exchange Commission. Solaris Management, LLC waiver sent on 11/18/2011, answer due 1/17/2012. (Leiman, Timothy) (Entered: 12/16/2011)
12/16/2011	<u>7</u>	WAIVER OF SERVICE returned executed by Securities & Exchange Commission. Patrick G Rooney waiver sent on 11/18/2011, answer due 1/17/2012. (Leiman, Timothy) (Entered: 12/16/2011)
01/05/2012	<u>8</u>	ATTORNEY Appearance for Defendants Patrick G Rooney, Solaris Management, LLC by Gerald M. Miller (Miller, Gerald) (Entered: 01/05/2012)
01/05/2012	<u>9</u>	ATTORNEY Appearance for Defendants Patrick G Rooney, Solaris Management, LLC by Matthew Morrissey Showel (Showel, Matthew) (Entered: 01/05/2012)
01/05/2012	<u>10</u>	MOTION by Defendants Patrick G Rooney, Solaris Management, LLC for extension of time to file answer (Showel, Matthew) (Entered: 01/05/2012)
01/05/2012	<u>11</u>	NOTICE of Motion by Matthew Morrissey Showel for presentment of motion for extension of time to file answer <u>10</u> before Honorable Charles P. Kocoras on 1/11/2012 at 09:30 AM. (Showel, Matthew) (Entered: 01/05/2012)
01/09/2012	<u>12</u>	MINUTE entry before Honorable Charles P. Kocoras: Defendants' unopposed motion (Doc <u>10</u>) for an extension of time to 2/20/2012 to answer or otherwise plead is granted. Hearing on said motion, set for 1/11/2012, is stricken. Status hearing is reset from 1/19/2012 to 2/22/2012 at 9:30 a.m. Mailed notice (sct,) (Entered: 01/09/2012)

01/27/2012	<u>13</u>	MINUTE entry before Honorable Charles P. Kocoras:Status hearing reset from 2/22/2012 to 2/29/2012 at 9:30 a.m.Mailed notice (sct,) (Entered: 01/27/2012)
01/30/2012	<u>14</u>	MINUTE entry before Honorable Charles P. Kocoras:At defendants' telephonic request, status hearing is reset from 2/29/2012 to 3/20/2012 at 9:30 a.m.Mailed notice (sct,) (Entered: 01/30/2012)
02/21/2012	<u>15</u>	ANSWER to Complaint by Patrick G Rooney, Solaris Management, LLC(Miller, Gerald) (Entered: 02/21/2012)
03/20/2012	<u>16</u>	MINUTE entry before Honorable Charles P. Kocoras:Status hearing held on 3/20/2012. Status hearing continued to 5/22/2012 at 9:30 a.m.Mailed notice (sct,) (Entered: 03/20/2012)
05/22/2012	<u>17</u>	MINUTE entry before Honorable Charles P. Kocoras:Status hearing held on 5/22/2012. Status hearing continued to 6/27/2012 at 9:30 a.m.Mailed notice (sct,) (Entered: 05/22/2012)
06/27/2012	<u>18</u>	MINUTE entry before Honorable Charles P. Kocoras:Status hearing held on 6/27/2012. Status hearing continued to 8/15/2012 at 9:30 a.m.Mailed notice (sct,) (Entered: 06/27/2012)
08/15/2012	<u>19</u>	MINUTE entry before Honorable Charles P. Kocoras:Status hearing held on 8/15/2012. All fact discovery to be completed by 12/13/2012. Status hearing continued to 12/13/2012 at 9:30 a.m.Mailed notice (sct,) (Entered: 08/15/2012)
08/31/2012	<u>20</u>	Rule 26(a)(1) Disclosures by Patrick G Rooney, Solaris Management, LLC (Miller, Gerald) (Entered: 08/31/2012)
10/23/2012	<u>21</u>	MOTION by Defendants Patrick G Rooney, Solaris Management, LLCReferral to Mediation and Stay of Discovery (Showel, Matthew) (Entered: 10/23/2012)
10/23/2012	<u>22</u>	NOTICE of Motion by Matthew Morrissey Showel for presentment of motion for miscellaneous relief <u>21</u> before Honorable Charles P. Kocoras on 10/30/2012 at 09:30 AM. (Showel, Matthew) (Entered: 10/23/2012)
10/23/2012		MOTION by Defendants Patrick G. Rooney and Solaris Management, LLC to stay discovery (Omitted Relief from motion <u>21</u>) (ym,) (Entered: 10/24/2012)
10/30/2012	<u>23</u>	Pursuant to Local Rule 72.1, this case is hereby referred to the calendar of the Honorable Maria Valdez for the purpose of holding proceedings related to: settlement conferences.(sct,)Mailed notice. (Entered: 10/30/2012)
10/30/2012	<u>24</u>	MINUTE entry before Honorable Charles P. Kocoras:Motion hearing held on 10/30/2012. Defendants' unopposed motion (Doc <u>21</u>) for referral to the designated magistrate judge to hold settlement conferences, and to stay discovery is granted. Status hearing is reset from 12/13/2012 to 11/29/2012 at 9:30 a.m.Mailed notice (sct,) (Entered: 10/30/2012)
10/31/2012	<u>25</u>	MINUTE entry before Honorable Maria Valdez: Settlement Conference set for 12/10/2012 at 02:00 p.m. in Courtroom 1041. Judge Valdez requires full compliance with the Court's Standing Order on Settlement Conference found on Judge Valdez's website available at www.ilnd.uscourts.gov, or the parties can contact courtroom deputy, Yolanda Pagan, at 312/408-5135 for a copy. Failure to comply with the provisions of the Court's Standing Order may result in the unilateral cancellation of the settlement conference by the Court. Absent leave from the Court, cancellation will result if the Plaintiff fails to submit to chambers copies of the settlement letters four days prior to the settlement conference. Because of the volume of settlement conferences conducted by Judge Valdez, once a settlement conference date has been agreed upon, no continuance will be granted without a motion showing extreme hardship. Mailed notice (yp,) (Entered: 10/31/2012)
10/31/2012	<u>26</u>	MINUTE entry before Honorable Maria Valdez: At the telephonic request of counsel of record, the settlement conference set for 12/10/12 is stricken and reset for 12/14/2012 at 11:00 a.m. in Courtroom 1041.Judge Valdez requires full compliance with the Court's Standing Order on Settlement Conference found on Judge Valdez's website available at www.ilnd.uscourts.gov, or the parties can contact courtroom deputy, Yolanda Pagan, at 312/408-5135 for a copy. Failure to

		comply with the provisions of the Court's Standing Order may result in the unilateral cancellation of the settlement conference by the Court. Absent leave from the Court, cancellation will result if the Plaintiff fails to submit to chambers copies of the settlement letters four days prior to the settlement conference. Because of the volume of settlement conferences conducted by Judge Valdez, once a settlement conference date has been agreed upon, no continuance will be granted without a motion showing extreme hardship. Mailed notice (yp,) (Entered: 10/31/2012)
11/29/2012	<u>27</u>	MINUTE entry before Honorable Charles P. Kocoras: Status hearing held on 11/29/2012. Status hearing continued to 12/19/2012 at 9:30 a.m. Mailed notice (sct,) (Entered: 11/29/2012)
12/03/2012	<u>28</u>	MOTION by Plaintiff Securities & Exchange Commission to amend/correct <i>Unopposed Motion to Modify Settlement Procedures</i> (Leiman, Timothy) (Entered: 12/03/2012)
12/03/2012	<u>29</u>	NOTICE of Motion by Timothy Stewart Leiman for presentment of motion to amend/correct <u>28</u> before Honorable Maria Valdez on 12/6/2012 at 10:15 AM. (Leiman, Timothy) (Entered: 12/03/2012)
12/05/2012	<u>30</u>	MINUTE entry before Honorable Maria Valdez: Plaintiff's Unopposed Motion to Modify Settlement Procedures <u>28</u> is granted. Presentment date of 12/6/12 on said motion is stricken. Mailed notice (yp,) (Entered: 12/05/2012)
12/14/2012	<u>31</u>	MINUTE entry before Honorable Maria Valdez: Settlement conference held on 12/14/2012. No agreement reached. Case continued to 1/15/2013 at 10:00 a.m. for status. Mailed notice (tjp,) Modified on 12/17/2012 (tjp,). (Main Document 31 replaced on 12/17/2012) (tjp,). (Entered: 12/17/2012)
12/18/2012	<u>32</u>	MOTION by Defendants Patrick G Rooney, Solaris Management, LLC to amend/correct answer to complaint <u>15</u> (Attachments: # <u>1</u> Exhibit)(Showel, Matthew) (Entered: 12/18/2012)
12/18/2012	<u>33</u>	NOTICE of Motion by Matthew Morrissey Showel for presentment of motion to amend/correct, motion for relief <u>32</u> before Honorable Charles P. Kocoras on 1/2/2013 at 09:30 AM. (Showel, Matthew) (Entered: 12/18/2012)
12/19/2012	<u>34</u>	MINUTE entry before Honorable Charles P. Kocoras: Status and motion hearing held on 12/19/2012. Answer to defendants' motion (Doc <u>32</u>) for leave to amend their answer to the complaint is due 1/2/2013. Reply is due 1/9/2013. The Court will rule by mail. Hearing on said motion, set for 1/2/2013, is stricken. All fact discovery to be completed by 5/14/2013. Status hearing continued to 5/14/2013 at 9:30 a.m. The referral issued to Magistrate Judge Valdez is hereby withdrawn. Magistrate Judge Valdez no longer referred to the case. Status hearing set for 1/15/2013 before Magistrate Judge Valdez is stricken. Mailed notice (sct,) (Entered: 12/19/2012)
01/02/2013	<u>35</u>	RESPONSE by Plaintiff Securities & Exchange Commission to notice of motion <u>33</u> <i>Defendants' Motion for leave to File an Amended Answer</i> (Leiman, Timothy) (Entered: 01/02/2013)
01/09/2013	<u>36</u>	REPLY by Defendants Patrick G Rooney, Solaris Management, LLC to notice of motion <u>33</u> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Showel, Matthew) (Entered: 01/09/2013)
02/07/2013	<u>37</u>	MINUTE entry before Honorable Charles P. Kocoras: ENTER ORDER: Defendants' motion (Doc <u>32</u>) to amend their answer to include a statute of limitations affirmative defense is granted. Status and the close of fact discovery, set for 5/14/2013 at 9:30 a.m., shall stand. (For further details see separate order.) Mailed notice (sct,) (Entered: 02/07/2013)
02/07/2013	<u>38</u>	ORDER signed by the Honorable Charles P. Kocoras on 2/7/2013. Mailed notice (sct,) (Entered: 02/07/2013)
02/19/2013	<u>39</u>	AMENDED Answer by Patrick G Rooney, Solaris Management, LLC to complaint <u>1</u> (Showel, Matthew) (Entered: 02/19/2013)

03/11/2013	<u>40</u>	MOTION by Defendant Patrick G Rooney for judgment on the pleadings (Showel, Matthew) (Entered: 03/11/2013)
03/11/2013	<u>41</u>	NOTICE of Motion by Matthew Morrissey Showel for presentment of motion for judgment on the pleadings <u>40</u> before Honorable Charles P. Kocoras on 3/14/2013 at 09:30 AM. (Showel, Matthew) (Entered: 03/11/2013)
03/11/2013	<u>42</u>	Memo In Support of Motion by Patrick G Rooney (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Showel, Matthew) (Entered: 03/11/2013)
03/14/2013	<u>43</u>	MINUTE entry before Honorable Charles P. Kocoras:Motion hearing held on 3/14/2013. Answer to defendants' motion (Doc <u>40</u>) for partial judgment on the pleadings is due 4/4/2013. Reply is due 4/18/2013. Ruling set for 5/16/2013 at 9:30 a.m. Status hearing is reset from 5/14/2013 to 5/16/2013 at 9:30 a.m.Mailed notice (sct,) (Entered: 03/14/2013)
04/04/2013	<u>44</u>	RESPONSE by Securities &Exchange Commissionin Opposition to MOTION by Defendant Patrick G Rooney for judgment on the pleadings <u>40</u> (Attachments: # <u>1</u> Exhibit)(Leiman, Timothy) (Entered: 04/04/2013)
04/18/2013	<u>45</u>	REPLY by Patrick G Rooney to MOTION by Defendant Patrick G Rooney for judgment on the pleadings <u>40</u> , response in opposition to motion <u>44</u> <i>Reply in Support of Motion for Partial Judgment on the Pleadings</i> (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Showel, Matthew) (Entered: 04/18/2013)
04/29/2013	<u>46</u>	MOTION by Defendants Patrick G Rooney, Solaris Management, LLC for extension of time to complete discovery (Showel, Matthew) (Entered: 04/29/2013)
04/29/2013	<u>47</u>	NOTICE of Motion by Matthew Morrissey Showel for presentment of motion for extension of time to complete discovery <u>46</u> before Honorable Charles P. Kocoras on 5/8/2013 at 09:30 AM. (Showel, Matthew) (Entered: 04/29/2013)
05/07/2013	<u>48</u>	MINUTE entry before Honorable Charles P. Kocoras:Defendants' agreed motion (Doc <u>46</u>) to extend fact discovery cut-off date to 5/23/2013, to accommodate the May 23 deposition is granted. Hearing on said motion, set for 5/8/2013, is stricken.Mailed notice (sct,) (Entered: 05/07/2013)
05/16/2013	<u>49</u>	MINUTE entry before Honorable Charles P. Kocoras:Ruling held on 5/16/2013. Defendant's motion (Doc <u>40</u>) for partial judgment on the pleadings is denied. (For further details see minute order.) Mailed notice (sct,) (Entered: 05/16/2013)
05/16/2013	<u>50</u>	MINUTE entry before Honorable Charles P. Kocoras:Status hearing held on 5/16/2013. All expert discovery to be completed by 8/13/2013. Status hearing continued to 8/13/2013 at 9:30 a.m.Mailed notice (sct,) (Entered: 05/16/2013)
08/13/2013	51	MINUTE entry before Honorable Charles P. Kocoras:Status hearing held on 8/13/2013. Expert discovery cut-off date is extended to 10/31/2013. Status hearing continued to 10/31/2013 at 9:30 a.m.Mailed notice (sct,) (Entered: 08/13/2013)
09/05/2013	<u>52</u>	MOTION by Defendants Patrick G Rooney, Solaris Management, LLC for extension of time to complete discovery <i>Unopposed Motion to Extend Expert Discovery</i> (Showel, Matthew) (Entered: 09/05/2013)
09/05/2013	<u>53</u>	NOTICE of Motion by Matthew Morrissey Showel for presentment of motion for extension of time to complete discovery <u>52</u> before Honorable Charles P. Kocoras on 9/12/2013 at 09:30 AM. (Showel, Matthew) (Entered: 09/05/2013)
09/11/2013	<u>54</u>	MINUTE entry before Honorable Charles P. Kocoras: Defendant's Unopposed Motion to Extend Expert Discovery (Doc <u>52</u>) is granted to 11/7/2013. Status hearing set from 10/31/13 to 11/7/2013 at 09:30 AM. Presentment date of 9/12/2013 on said motion is stricken. Mailed notice (yp,) (Entered: 09/11/2013)
10/07/2013	<u>55</u>	GENERAL ORDER 13-0018 dated 10/7/13: IT IS HEREBY ORDERED, effective October 1, 2013, that all civil litigation involving as a party the United States of America, is immediately suspended, postponed and held in abeyance continuing for a period of fourteen (14) days from the date of entry of this General Order (For Further Details See Attached Order). Signed by Chief Judge Castillo. Mailed notice. (ea,) (Entered: 10/07/2013)

10/17/2013	<u>56</u>	GENERAL ORDER 13-0019 dated 10/17/13: IT IS THEREFORE ORDERED, that the stay entered by General Order 13-0018 is hereby lifted, and any and all deadlines in the affected civil litigation (whether established by order, rule, or agreement), including but not limited to any scheduled discovery and pleading dates, are extended by 28 days. The Court warns litigants that this General Order does not purport to affect rights to or deadlines concerning appeal from any decision of this Court. Any litigant affected by this General Order may see relief from the order by motion. Trial dates in the affected cases will stand, although they may need to be adjusted in individual cases to account for the extension of other dates. The Court may, in any particular case, vary the effect or operation of this General Order by a separate ruling. (For Further Details See Attached Order). Signed by Chief Judge Castillo. Mailed notice. (ea,) (Entered: 10/18/2013)
11/07/2013	<u>57</u>	MINUTE entry before Honorable Charles P. Kocoras: Status hearing held on 11/7/2013. Outstanding depositions shall be completed by 12/12/2013. Status hearing continued to 12/19/2013 at 09:30 AM. Mailed notice (yp,) (Entered: 11/08/2013)
12/10/2013	<u>58</u>	ATTORNEY Appearance for Plaintiff Securities & Exchange Commission by Daniel J. Hayes (Hayes, Daniel) (Entered: 12/10/2013)
12/16/2013	<u>59</u>	MOTION by Plaintiff Securities & Exchange Commission for judgment of <i>Permanent Injunctions Against All Defendants (Agreed)</i> (Attachments: # <u>1</u> Exhibit 1 -- Consent of Defendant Rooney, # <u>2</u> Exhibit 2 -- Consent of Defendant Solaris Management)(Hayes, Daniel) (Entered: 12/16/2013)
12/16/2013	<u>60</u>	NOTICE of Motion by Daniel J. Hayes for presentment of motion for judgment, <u>59</u> before Honorable Charles P. Kocoras on 12/19/2013 at 09:30 AM. (Hayes, Daniel) (Entered: 12/16/2013)
12/19/2013	<u>61</u>	MINUTE entry before the Honorable Charles P. Kocoras: Status and motion hearing held on 12/19/2013 regarding motion for permanent injunctions (Doc. <u>59</u>). Plaintiff's agreed motion for entry of judgment of permanent injunctions against all defendants (Doc. <u>59</u>) is granted. Status hearing continued to 2/18/2014 at 9:30 a.m. to report about time on other submissions. Enter Judgment as to Patrick G. Rooney and Solaris Management, Inc. Enter Judgment as to Patrick G. Rooney and Solaris Management, LLC. Mailed notice (yp,) (Entered: 12/20/2013)
12/19/2013	<u>62</u>	JUDGMENT AS TOPATRICK G. ROONEY AND SOLARIS MANAGEMENT, LLC Signed by the Honorable Charles P. Kocoras on 12/19/2013. Mailed notice(yp,) (Entered: 12/20/2013)
02/14/2014	<u>63</u>	MOTION by Plaintiff Securities & Exchange Commission for extension of time to <i>Complete Remedies Discovery</i> (Hayes, Daniel) (Entered: 02/14/2014)
02/14/2014	<u>64</u>	NOTICE of Motion by Daniel J. Hayes for presentment of extension of time <u>63</u> before Honorable Charles P. Kocoras on 2/20/2014 at 09:30 AM. (Hayes, Daniel) (Entered: 02/14/2014)
02/18/2014	<u>65</u>	MINUTE entry before the Honorable Charles P. Kocoras: Status hearing held on 2/18/2014. MOTION by Plaintiff Securities & Exchange Commission for extension of time to Complete Remedies Discovery <u>63</u> is granted. Presentment date of 2/20/2014 on said motion is stricken. Status hearing set for 4/8/2014 at 09:30 a.m. Mailed notice (yp,) (Entered: 02/18/2014)
04/02/2014	<u>66</u>	MINUTE entry before the Honorable Charles P. Kocoras: At the telephonic agreement request of counsel, status hearing is reset from 4/8/2014 to 4/10/2014 at 09:30 AM. Mailed notice (yp,) (Entered: 04/02/2014)
04/10/2014	<u>67</u>	MINUTE entry before the Honorable Charles P. Kocoras: Status hearing held on 4/10/2014. Dispositive motions with supporting memoranda due by 5/1/2014. Responses due by 5/29/2014. Replies due by 6/5/2014. Ruling by mail. Mailed notice (tlp,) (Entered: 04/10/2014)
05/01/2014	<u>68</u>	MOTION by Plaintiff Securities & Exchange Commission for Disgorgement, Penalties and Other Relief (Hayes, Daniel) (Entered: 05/01/2014)

05/01/2014	<u>69</u>	MEMORANDUM by Securities & Exchange Commission in support of motion for miscellaneous relief <u>68</u> (Attachments: # <u>1</u> Exhibit 1 -- Excerpts from Dep. of P. Rooney, # <u>2</u> Exhibit 2 -- Rooney's Ans. to Interrogs., # <u>3</u> Exhibit 3 -- Excerpts from Dep. of C. Conn, # <u>4</u> Affidavit 4 -- Declaration of A. Tushaus)(Hayes, Daniel) (Entered: 05/01/2014)
05/20/2014	<u>70</u>	MOTION by Defendants Patrick G Rooney, Solaris Management, LLC for leave to file excess pages (Showel, Matthew) (Entered: 05/20/2014)
05/20/2014	<u>71</u>	NOTICE of Motion by Matthew Morrissey Showel for presentment of motion for leave to file excess pages <u>70</u> before Honorable Charles P. Kocoras on 5/27/2014 at 09:30 AM. (Showel, Matthew) (Entered: 05/20/2014)
05/21/2014	<u>72</u>	MINUTE entry before the Honorable Charles P. Kocoras: MOTION by Defendants Patrick G Rooney, Solaris Management, LLC for leave to file excess pages <u>70</u> is granted. Presentment date of 5/27/2014 on said motion is stricken. Mailed notice (yp,) (Entered: 05/21/2014)
05/29/2014	<u>73</u>	RESPONSE by Patrick G Rooney, Solaris Management, LLC in Opposition to MOTION by Plaintiff Securities & Exchange Commission for Disgorgement, Penalties and Other Relief <u>68</u> (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Notice of Filing, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit)(Showel, Matthew) (Entered: 05/29/2014)
05/30/2014	<u>74</u>	MOTION by Plaintiff Securities & Exchange Commission for extension of time to file response/reply - <i>UNOPPOSED</i> (Shoenthal, Andrew) (Entered: 05/30/2014)
05/30/2014	<u>75</u>	NOTICE of Motion by Andrew Charles Shoenthal for presentment of motion for extension of time to file response/reply <u>74</u> before Honorable Charles P. Kocoras on 6/5/2014 at 09:30 AM. (Shoenthal, Andrew) (Entered: 05/30/2014)
05/30/2014	<u>76</u>	MINUTE entry before the Honorable Charles P. Kocoras: Plaintiff's unopposed motion for extension of time for plaintiff to file a reply (Doc. no. <u>74</u>) is granted to 6/12/2014. Court will rule by mail. Presentment date of 6/5/2014 on said motion is stricken. Mailed notice (yp,) (Entered: 05/30/2014)
06/03/2014	<u>77</u>	MINUTE entry before the Honorable Charles P. Kocoras: The Court accepts the filing of a redacted version of Defendants Opposition to Plaintiffs Motion for Disgorgement, Penalties and Other Relief <u>73</u> in order to protect the personal information of non-parties pursuant to a confidentiality agreement. Mailed notice (yp,) (Entered: 06/03/2014)
06/12/2014	<u>78</u>	REPLY by Plaintiff Securities & Exchange Commission to motion for miscellaneous relief <u>68</u> of <i>Disgorgement, Penalties and other Relief</i> (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11 - Redacted, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 19, # <u>20</u> Exhibit 20)(Shoenthal, Andrew) (Entered: 06/12/2014)

CERTIFICATE OF COMPLIANCE

I, Jante C. Turner, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 9,115 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

Respectfully Submitted,



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