JOHN L. ERIKSON, JR. (State Bar No. 189585)
[redacted]
Wedbush Securities Inc.
1000 Wilshire Boulevard
Los Angeles, California 90017
Telephone: (213) 688-6665
Facsimile: (213) 688-6634

Attorneys for Applicants Wedbush Securities Inc. and Edward Wedbush

UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of

WEDBUSH SECURITIES, INC. and EDWARD WILLIAM WEDBUSH

For Review of Disciplinary Action Taken by FINRA

REPLY BRIEF OF APPLICANTS WEDBUSH SECURITIES INC. AND EDWARD WILILAM WEDBUSH TO FINRA'S OPPOSITION TO APPLICATION FOR REVIEW

Admin. Proc. File No. 3-16329

Pursuant to the February 24, 2015 Order Scheduling Briefs in this matter, Applicants Wedbush Securities Inc. ("WS") and Edward William Wedbush ("Mr. Wedbush") (collectively, "Applicants") submit the following Reply to the Brief of the Financial Industry Regulatory Authority ("FINRA") in Opposition to Application for Review (the "Opposition"). As set forth below, and in their Opening Brief, Applicants respectfully submit that their application for review by the Commission of FINRA's final disciplinary action should be granted, and that the Commission should vacate the Decision and/or remand this proceeding for a new hearing before a different FINRA Office of Hearing Officers panel.

1. Introduction

In its Opposition, FINRA states that this case is about various alleged supervisory failures. While the underlying case may have been focused on that issue, this Application for Review is primarily about the complete deprivation of due process afforded to Applicants in the underlying proceeding. Specifically, it is about the fundamental unfairness in imposing a suspension upon the president of a brokerage firm with no reasonable, let alone actual, notice that such a suspension might result from a disciplinary proceeding.

As stated in Applicants' Opening Brief, the final disciplinary decision at issue is the December 11, 2014 decision of FINRA's National Adjudicatory Council (the "NAC"). That decision (the "NAC Decision") upheld and increased the sanctions imposed on Applicants after a hearing before a Panel of the FINRA Office of Hearing Officers ("OHO"). Chief among several other items of fundamental unfairness, the OHO decision imposed a suspension on Applicant Edward Wedbush, despite the fact that neither FINRA Enforcement, nor the OHO Panel, provided Applicants with any notice that the OHO Panel might suspend Mr. Wedbush. On the contrary, FINRA Enforcement specifically indicated that they were not seeking to suspend Mr. Wedbush, and Mr. Wedbush prepared and presented his defense in the underlying proceeding in reliance on that representation.

As a result, the entire disciplinary process in this matter has been unfair, and FINRA has imposed sanctions that are excessive, oppressive, and impose an undue burden on competition. FINRA's disciplinary action should therefore be overturned.

2. Analysis

Applicants submit that the underlying OHO hearing was not conducted fairly because the Applicants were not properly notified of the potential for a suspension for Mr. Wedbush. That unfair procedure resulted in the imposition of improper and unfair sanctions in both the OHO Decision and the NAC Decision, and was not cured by the NAC's de novo review.

A. The Sanctions Imposed On Applicant Edward Wedbush Are Excessive And Oppressive Because FINRA Did Not Inform Applicants That Mr. Wedbush Might Be Subject To A Suspension.

FINRA Enforcement did not put Applicants on proper notice that Mr. Wedbush might be suspended as a result of the disciplinary hearing. Such a failure is excessive and oppressive on its face.

When enforcing compliance with industry rules and regulations, FINRA "must provide 'a fair procedure for the disciplining of members and persons associated with members.'"[1] When the SEC reviews a FINRA disciplinary sanction, "the SEC must determine whether, with 'due regard for the public interest and the protection of investors,' that sanction is excessive or oppressive."[2]

In this case, the suspension of Mr. Wedbush was excessive and oppressive, in that Mr. Wedbush received no notice – prior to the issuance of the original OHO Decision – that he might be suspended. FINRA specifically notified all Applicants that it was seeking a censure and a fine, but it did not notify any Applicant that it was seeking a suspension of any person or entity. Nor did the OHO Hearing Panel ever mention that it was considering a suspension. The word "suspension" was not specifically stated in any case document until the Decision was issued.

FINRA contends that Applicants were in fact on notice that Mr. Wedbush might be suspended because the complaint refers to FINRA Rule 8310(a), and because the Sanctions Guidelines provide for a suspension as one of the available sanctions for a supervisory failure. But neither of these sources indicated to Applicants that a suspension was sought in this specific case, and Enforcement specifically indicated that it was not seeking a suspension.

FINRA Rule 8310 contains several sub-parts, identifying various potential sanctions. Sub-section (1) authorizes censures, sub-section (2) authorities fines, etc. Sub-section

---

[1] *Otto v. S.E.C.*, 253 F.3d 960, 964 (7th Cir. 2001) (quoting 15 U.S.C. § 78o-3(b)(8); *Mister Discount Stockbrokers, Inc. v. SEC*, 768 F.2d 875, 876 (7th Cir. 1985)).

[2] *Saad v. S.E.C.*, 718 F.3d 904, 906 (D.C. Cir. 2013) (quoting 15 U.S.C. §78s(e)(2)).

(5) authorizes suspensions of associated persons. Notably, FINRA did not specifically cite sub-section (5) in any version of the complaint, or any other filing or pleading. It simply requested "one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions." Respondent respectfully submits that if it was appropriate and/or necessary for FINRA to add the modifier, "including monetary sanctions," then an associated person ought to receive a notice that the sanctions sought in a specific case "include suspension." Instead, FINRA indicated in this case that it was not seeking a suspension. The procedure essentially amounted to a bait and switch, and is unfair on its face.

FINRA claims in its Opposition that the "Commission has upheld the ability of FINRA hearing panels to impose a sanction not requested by Enforcement."[3] It then cites a single case, *Dept' of Enforcement v. FCS Secs*, Disc. Proc. No. 2007010306901, 2009 FINRA Discip. LEXIS 19 (FINRA Hearing Panel May 13, 2009), and two subsequent appellant decisions in the same case. FINRA's citation to the *FCS* case is highly misleading. The *FCS* case has no bearing on this case, for several reasons. First, neither the NAC appellate decision nor the SEC appellate decision in that case makes any reference whatsoever to the fact that the hearing panel imposed a sanction that was not sought.[4] Unlike the present case, there is no indication in any of the decisions that FCS ever complained about a lack of notice. That question simply was not at issue on either of those appeals, and FINRA's reference to the Commission "upholding" such a sanction is questionable, at best.

Second, the *FCS* OHO decision specifically indicates that the sanctions imposed in that case were "[b]ased upon [the] unique facts" of that case.[5] In other words, unless the facts of the present case have some similarity to those in the *FCS* case, the prior case is of limited value.

Third, there is no indication from the *FCS* OHO decision, or any of the appellate

---

[3] Opposition, p. 23 (emphasis added).

[4] See *Dept' of Enforcement v. FCS Secs*, 2010 FINRA Discip. LEXIS 9 (FINRA NAC July 30, 2010); *In the Matter of the Application of FCS Securities and Dale Edward Kleinser*, S.E.C. Release No. 34-64852 (July 11, 2011).

[5] *FCS Secs*, 2009 WL2777322, at *7.

and sanctioned Applicants based on those purportedly deficient procedures. In its Opposition, FINRA continues to insist that Applicants were not sanctioned because of the procedures themselves, but because Applicants failed to effectively implement those procedures.[9] But this interpretation is not accurate.

FINRA confuses the issues in its Opposition by conflating "supervisory procedures" with "written supervisory procedures," noting that the "NAC's liability finding, and resulting sanctions, is not an indictment of Wedbush Securities' written supervisory procedures."[10] Applicants agree that Wedbush's written supervisory procedures ("WSP's") were never at issue. But WSP's are not the same thing as supervisory procedures. Enforcement specifically indicated that it was not challenging Wedbush's supervisory procedures; this indication was not limited to the WSP's. And it is undisputed that one of those procedures was to limit Business Conduct to a largely administrative role.

In the OHO Decision, the Hearing Panel specifically concluded that Wedbush's "compliance department [Business Conduct] functioned solely in an administrative capacity."[11] It further found that "the relegation of the Compliance Department to such a role...is inadequate supervision."[12] The evidence showed that 'relegating' Business Conduct to an administrative capacity was not the "implementation" of a procedure, it <u>was</u> the procedure. FINRA sanctioned Applicants based on that procedure, despite that fact that all parties agreed going into the hearing that Wedbush's procedures were not at issue. It is fundamentally unfair to sanction Applicants in any manner based on a procedure that was not challenged.

D. <u>The Record Does Not Support a Finding Of Personal Responsibility On The Part of Mr. Weddbush For The Filings At Issue.</u>

FINRA notes in it Opposition that broker-dealer presidents have supervisory

---

[9] Opposition, p. 15.

[10] *Id.*

[11] OHO Decision, p. 37.

[12] *Id.*

the management of many areas, but little, if any, of that role involved the generation of additional business, and he certainly was not the primary or sole salesperson at Wedbush. On the contrary, Mr. Wedbush' role consisted almost entirely of overall management of the firm's various business operations.

Pellegrino has even less relevance to this case. The "competing obligations" in that case were not efforts to manage the overall business, or even other parts of the business; they were Mr. Pellegrino's apparent focus on "improving sales" rather than implementing enhanced suitability procedures with respect to the product that was the subject of that enforcement proceeding.[15] Mr. Pellegrino's actions included sales contests, and creating scripts to overcome investor objections.[16] Nothing like that occurred in this case. Mr. Wedbush did not take steps specifically designed to avoid the firm's reporting obligations – he took steps to help the firm meet those obligations (such as his directives at the management committee meetings). His "other obligations" were not sales contests – they were efforts to manage the firm and its business lines.

3. Conclusion

For all of the foregoing reasons, and for the reasons set forth in their Opening Brief, Applicants respectfully submit that the NAC Decision should be reversed, and the sanctions imposed should be vacated. In the alternative, the case should be remanded for a new hearing before a different Panel.

Respectfully Submitted,

Dated: May 11, 2015

By: _____
JOHN L. ERIKSON, JR.
Attorney for Applicants Wedbush Securities Inc. and Edward Wedbush

---

[15] *Pellegrino*, 2008 SEE LEXIS 2843, at *10.

[16] *Id.*

CERTIFICATE OF SERVICE

Pursuant to Rule 150 and Rule 151 of the Commission's Rules of Practice, I hereby certify that on **May 11, 2015**, I served true and correct copies of the foregoing documents described as **REPLY BRIEF OF APPLICANTS WEDBUSH SECURITIES INC. AND EDWARD WILILAM WEDBUSH TO FINRA'S OPPOSITION TO APPLICATION FOR REVIEW** on the following parties and persons by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Office of the Secretary **[Original and 3 copies]**
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Facsimile: (202) 772-9324

Megan Rauch, Esq.
Office of General Counsel
FINRA
1735 K Street, NW
Washington, D.C. 20006-1500
Facsimile: (202) 728-8264

☒ **BY MAIL**: I deposited such envelope(s) in the mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after deposit for mailing in this declaration.

☒ **BY FACSIMILE**: I caused the above-referenced documents(s) to be transmitted to the above-named person(s) at the facsimile telephone number exhibited therewith. The facsimile machine I used complied with California Rules of Court, Rule 200 and the transmission was reported as complete and without error. Pursuant to California Rules of Court, Rule 2006 (d) I caused the machine to print a transmission record of the transmission and the transmission report was properly issued by the transmitting facsimile machine.

John L. Erikson, Jr.