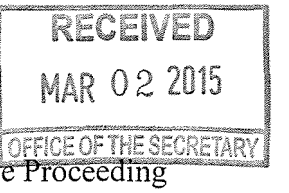
UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of WILLIAM SCHOLANDER and TALMAN HARRIS	:	
	:	Administrative Proceeding
For Review of Decision by the National Adjudicatory Council	:	File No.: 16360

REPLY BRIEF IN SUPPORT OF THE MOTION FOR STAY OF THE ENFORCEMENT OF SANCTIONS IMPOSED BY THE NATIONAL ADJUDICATORY COUNCIL

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I. INTRODUCTION

William Scholander ("Scholander") and Talman Harris ("Harris") (collectively, "Movants"), by and through their undersigned counsel, hereby submit this reply brief in support of their request by motion for an order staying the enforcement of the sanctions imposed by the National Adjudicatory Council ("NAC"). The NAC sanctions permanently barred the Movants from associating with any Financial Industry Regulatory Authority ("FINRA") member firm in any capacity.

Movants submit this reply brief in order to address two critical issues. First, the scope of FINRA's Brief in Opposition was improper as it set forth arguments as to all the issues that it apparently believed should be included in the substantive briefing on the appeal of this matter, despite the fact that those issues were not raised in Movant's motion and memorandum of law and thus should be disregarded. Second, FINRA incorrectly argued that Movants did not have legal support for their position that the harm to themselves, Radnor Research Trading Co. ("Radnor Research"), and its employees constituted "irreparable harm."[1] As discussed below, and as set forth more fully in Movants' memorandum of law, Movants have demonstrated all of the elements for a stay, and a stay should be granted here.

II. LEGAL DISCUSSION

A. FINRA Improperly Set Forth Arguments Not Raised and Irrelevant to the Present Motion.

Movants' motion for a stay as to their likelihood of success on the merits was focused solely on the NAC's incorrect conclusion as to a novel question of law: whether, even

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[1] For a rebuttal of FINRA's other arguments, Movants refer to their memorandum of law in support of their motion for a stay. Although Movants have chosen not to repeat their arguments as to the applicable law for each issue, that should not be construed as a concession as to any of FINRA's arguments. Rather, Movants' initial memorandum of law previously addressed these issues.

assuming the facts as found were true, a registered representative commits fraud under Section 10(b) of the Securities Act of 1934, 15 U.S.C. § 78j(b), and Rules 10b–5 and 10b–10, 17 C.F.R. 240.10b–5 and 240.10b–10, when accepting compensation from an issuer of securities, which is neither transaction-based in any way nor due to the recommendation of a particular stock, and not disclosing that compensation when selling the issuer's securities months later. No prior decision has ever held that such a situation is fraud. Thus, at best, accepting the payment without disclosing it to customers fell into a "grey area of the law," and as a result, it did not need to be disclosed and could not meet the requisite scienter requirement. Further, even assuming that a violation did occur, a permanent bar was too severe a sanction given the "grey area" in which the conduct fell.

FINRA's Brief in Opposition improperly set forth arguments as to all the issues that it apparently believed should be included in the substantive briefing on the appeal of this matter, both factual and legal, rather than solely addressing the narrow, focused question raised by Movants. For example, despite Movants' assumption of the facts as true for the purposes of the motion, FINRA engaged in a lengthy recitation of the facts and attempted to argue that the NAC's conclusions were supported by the record. FINRA's improper, irrelevant arguments should, therefore, be disregarded.

B. Irreparable Harm Will Occur Without a Stay of the Enforcement of the Bar

FINRA argues that there is no support that there will be irreparable harm if the stay is not granted. This statement is incorrect. As an evidentiary matter, Movants have demonstrated that they will suffer irreparable harm through the loss of their livelihoods, reputations, and long-standing careers and have demonstrated that Radnor Research and its employees will suffer irreparable harm since its business will likely be destroyed, thus destroying its employees' livelihoods as well.

In terms of legal support, the SEC has granted a stay previously where the movants demonstrated irreparable harm because the firm's business would be destroyed and the individual would lose "[t]he benefit of any possible reduction of his bar and fines . . . absent a stay at this juncture." In re: Scattered Corp., 52 S.E.C. 1314 (1997). In Scattered, the movants argued that a bar acts as a "professional death sentence" on an individual, who would "never recover the time lost from practicing his livelihood were his appeal to be successful," and would leave a firm "unable to continue operations, thereby destroying its business." 52 S.E.C. at 1314. While noting that it was "too preliminary for [the SEC] to have reached any conclusions as to the final outcome," the SEC noted that the movants had "presented a substantial case" as to their likelihood of success on the merits. Id. at 1319. The SEC found that both the individual and firm would suffer irreparable harm. Id. at 1320. As to the individual, the SEC explained, given the "substantial case" on the merits, "[w]ere these findings modified or dismissed after a full review of the record, the sanction of a complete bar would need to be carefully reexamined. The benefit of any possible reduction of his bar and fines, however, would be lost, absent a stay at this juncture." Id. As to the firm, the SEC explained that "the destruction of a business, absent a stay, is more than just 'mere' economic injury, and rises to the level of irreparable injury," having "dire consequences for its employees." Id.[2]

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[2] The cases that FINRA cites for its proposition that "the Commission generally has not granted stays on the basis of claims that bars on individuals will force hardship on their firm" are distinguishable from the present case. See FINRA Br. in Opp'n, at p. 20. In two of these cases, the Commission was evaluating a request for a stay *after* the Commission had already taken its action and prior to a decision by one of the federal courts of appeals. See Al Rizek, Partial Stay Order, Exchange Act Release No. 41972, Admin. Proc. File No. 3-9041 (Oct. 1, 1999) (pending appeal before a United States Court of Appeals); Richard L. Sacks, Order Denying Stay, Exchange Act Release No. 57028, SR-NASD-2006-109 (Dec. 21, 2007) (pending appeal before the Court of Appeals for the Ninth Circuit). That situation is completely different from the present case because the Commission had already determined the merits of the movant's claim. Furthermore, in the case of Rizek, the Commission actually *granted* the stay of the individual's bar from the industry pending the appeal, stating that it would "grant such a stay for a limited period so that Rizek may avail himself of his appellate rights," and did not deny it as stated by FINRA in its brief. See Rizek, Partial Stay Order, Exchange Act Release No. 41972, at p. 2. Thus, rather than supporting FINRA's argument, Rizek actually supports Movants' argument that a stay should be granted here.

Based on the foregoing and as described more fully in Movants' memorandum of law, Movants' bar, which is based on an improper conclusion of law, will result in significant irreparable harm if the stay is not granted. It will be a "professional death sentence" for them, affecting their livelihoods, reputations, and careers as a whole, and it will likely destroy Radnor Research, affecting the company and its employees. As a result, Movants have demonstrated – both legally and factually – that irreparable harm will occur should the stay not be granted.

III. CONCLUSION

As set forth in full in Movants' memorandum of law, a stay of the bars imposed against them by the NAC should be granted because (1) the NAC's legal conclusion as to this novel question of law is incorrect because Movants had no duty to disclose the payment and lacked the requisite scienter under the anti-fraud provisions; (2) without the stay, irreparable harm will result from the Movants' bar; they will lose their livelihood, their reputations, and their careers and their bar will also likely destroy Radnor Research and the livelihoods of those employed by Radnor Research; and (3) staying the enforcement of the sanctions does not harm the public interest and ultimately serves the public interest.

The Hans N. Beerbaum decision is also distinguishable. See Beerbaum, Order Denying Request for Reconsideration of Stay Decision, SEC Admin. File No. 3-445649, at p. 3 (Aug. 25, 2006). In Beerbaum, the Commission was evaluating a stay pending its review of the underlying matter, but found the "irreparable harm" argument lacking, noting that the barred member's claims that the firm would be forced to close due to the barring of its principal were "unsubstantiated" and that the firm could have had a plan to have another principal put in place should a bar occur. Id. Here, Movants' claims of harm to Radnor Research are substantiated by the Affidavit of C. Morgan Simpson, and furthermore, the harm stems not from the loss of Radnor Research's principal but from its loss of two key sales personnel who have the most significant client base and sales record for the firm, which is not so easily replaced. Moreover, unlike here, the movant in Beerbaum had not demonstrated a likelihood of success on the merits. See id.

Finally, in Rooney, Pace Inc., the Commission was not evaluating a stay or "irreparable harm" at all, but rather, were evaluating whether a suspension was an appropriate sanction given the violation at issue. 48 S.E.C. 602, 608 (1986). Thus, it is also distinguishable from the present case.

Dated: March 2, 2015

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March 2, 2015

By Hand Delivery

Brent J. Fields, Esq.
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United States Securities and
Exchange Commission
100 F Street, N.E.
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Re: In the Matter of the Application of William Scholander and Talman Harris for Review of Decision by the National Adjudicatory Council (Admin. Pro. File No. 16360)

Dear Mr. Fields:

On behalf of William Scholander and Talman Harris ("Appellants"), and in accordance with U.S. Securities and Exchange Commission ("SEC") Rule of Practice 152, please find enclosed one original and three copies of Appellants' Reply Brief in Support of the Motion for Stay of the Enforcement of Sanctions Imposed by the National Adjudicatory Council (the "NAC"), pursuant to SEC Rule of Practice 401 and which relates to the NAC's December 29, 2014, decision to sanction Appellants.

Please acknowledge receipt of this letter and the enclosures by time-stamping the additional attached duplicate and returning it to the courier.

Thank you for your courtesies.

Sincerely,

Adriel Garcia

Enclosures

cc: Michael Garawski, Esq.