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March 27, 2018

Via FedEx Delivery

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: In the Matter of the Application of Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P.) For Review of Action Taken By FINRA
Admin. Proc. File No. 3-18350

Dear Sir/Madam:

We represent Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P.) ("Applicant"). Attached for filing please find an original and three (3) copies of Applicant's Opening Brief in Support of Application for a Review of Decision of the Financial Industry Regulatory Authority's National Adjudicatory Counsel along with a signed Certificate of Service.

Very truly yours,

Robert I. Rabinowitz

RIR:cmk
Enclosures

cc: Colleen Durbin, Esq. FINRA Office of General Counsel (by Electronic Mail and FedEx)
Windsor Street Capital, L.P. (by e-mail only)

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P.) For Review of Disciplinary Action Taken by FINRA	Admin. Proc. File No. 3-18350

OPENING BRIEF IN SUPPORT OF APPLICATION OF MEYERS ASSOCIATES, L.P. (N/K/A WINDSOR STREET CAPITAL, L.P.) FOR A REVIEW OF DECISION OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY'S NATIONAL ADJUDICATORY COUNCIL

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Other Authorities

PRELIMINARY STATEMENT

Pursuant to Rule 450 of the Commission's Rules of Practice, Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P.) (the "Firm") hereby submits this opening brief in support of its application for a review by the Securities and Exchange Commission (the "Commission") of the decision of the Financial Industry Regulatory Authority's ("FINRA") National Adjudicatory Council ("NAC") dated December 22, 2017 (the "NAC Decision").

By way of background, on November 11, 2016, without providing the Firm critical due process protections and engaging in other procedural misconduct, a FINRA Office of Hearing Officers' Hearing Panel issued its Decision ("OHO Decision") pursuant to FINRA Rule 9311, finding that the Firm 1) violated NASD Rule 3010(a) and FINRA Rule 2010 by failing to adequately supervise its Chicago branch office and 2) violated FINRA Rules 3310(a) and 2010 by failing to establish and implement adequate anti-money laundering ("AML") policies and procedures.

The OHO Panel imposed on the Firm a fine of $350,000, ordered it to retain an independent consultant to conduct a comprehensive review of the Firm's policies, systems, and training for matters related to review of emails, communications with the public, low-priced securities, monitoring customer accounts and other matters related to the Firm's business activities, and ordered the Firm to pay costs. The OHO Decision further improperly determined that the Firm is subject to statutory disqualification because the Firm failed to supervise an employee who engaged in securities fraud in violation of the Securities Exchange Act of 1934 while employed at the Firm.

The Firm timely filed an appeal from the OHO Decision to the NAC, requesting that the NAC review and revise the findings and sanctions in the OHO Decision. However, the NAC Decision affirmed the improper and unsupported findings of the OHO Decision, agreeing with the OHO that the Firm failed to adequately supervise the Firm's Chicago branch office, failed to

establish and implement adequate AML policies and procedures, and is subject to statutory disqualification. Then the NAC went further by improperly increasing the OHO's fine against the Firm from $350,000 to $500,000 without adequate basis in the record.

LEGAL ARGUMENTS

I. The OHO Panel's Finding That the Firm is Subject to Statutory Disqualification by Operation of Law Was Improper and Not Supported by the Facts in the Record Before it and Should Not Have Been Affirmed by the NAC.

The Department of Enforcement ("Enforcement") asked the OHO Panel to make a specific finding that the Firm "is subject to statutory disqualification by operation of law, in accordance with FINRA's By-Law Article III, §4 and Section 3(a)(39) of the Exchange Act."[1] The OHO Panel made this important determination and relegated it to a footnote in the OHO Decision, based in part on an Order Accepting Offer of Settlement, *Dep't of Enforcement v. Johnson*, No. 2013035533701 (Feb. 18, 2016) (the "Johnson Settlement"). The Johnson Settlement was entered into by and between Enforcement and George Johnson ("Johnson"), who had been a co-Respondent in this case along with the Firm before entering into the Johnson Settlement, just six days before the start of the hearing. Footnote 245 of the OHO Decision states:

> Enforcement asked that the Panel also find that the Firm 'is subject to statutory disqualification by operation of law, in accordance with FINRA's By-Laws Article III, §4 and Section 3(a)(39) of the Exchange Act.' Dep't of Enforcement's Post-Hearing Br., at 31. Under these provisions, the Firm is subject to statutory disqualification, if three conditions are satisfied: the Firm failed to reasonably supervise an individual with a view to prevent violations of provisions of the Exchange Act; the individual violated these provisions; and the individual is subject to the Firm's supervision. **When combined with the findings set forth in the Order Accepting Offer of Settlement, Dep 't of Enforcement v. Johnson, No. 2013035533701 (Feb. 18, 2016), this decision contains findings satisfying these conditions.**[2]

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[1] *See* Extended Hearing Panel Decision (Nov. 11, 2016), Bates No. 006495 at 41, n. 245 [hereinafter, "Decision, Bates No. 006495"].

[2] *Id.* (emphasis added).

A. The NAC Agreed with the Firm That the OHO Panel Erred in Relying on the Johnson Settlement for its Statutory Disqualification Determination but Took No Remedial Action.

The OHO Panel erred in utilizing the findings set forth in the Johnson Settlement as a basis for finding the Firm subject to statutory disqualification because the Johnson Settlement specifically provides that, "The findings herein are pursuant to Respondent George Johnson's Offer of Settlement **and are not binding on any other person or entity named as a respondent in this or any other proceeding.**"[3] Therefore, the OHO Panel's explicit reliance on the findings in the Johnson Settlement is a clear error. There are multiple cases which state that the findings in one respondent's offer of settlement are not binding upon another respondent in a multi-respondent case. For example, in the case *In re ACAP Financial and Gary Hume,* Enforcement filed a two-count Complaint against Vincent McGuire, ACAP, and Gary Hume.[4] FINRA then accepted an offer of settlement by McGuire.[5] However, the findings contained in the order of settlement were not binding on ACAP or Hume, and therefore, the SEC appropriately declined to rely on them.[6] It is important to note that the Johnson Settlement also contains language that precludes its use for any purpose other than the final settlement of charges by Enforcement against Johnson, specifically providing that "...Respondent has consented, **without admitting or denying** the allegations of the Complaint..."[7] The OHO Panel therefore ignored FINRA's Order and the general practice in similar FINRA cases by binding the Firm to the findings in the Johnson Settlement when it clearly was impermissible to do so.

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[3] Order Accepting Offer of Settlement, *Dep't of Enforcement v. Johnson*, No. 2013035533701 (Feb. 18, 2016), Bates No. 001459 at 2, n. 1 (emphasis added) [hereinafter, "Johnson Settlement, Bates No. 001459"].
[4] *In re ACAP Financial and Gary Hume*, Release No. 70046 (July 26, 2013) at 8.
[5] *Id.*
[6] *Id.* at n.36.
[7] Johnson Settlement, Bates No. 001459 at 1 (emphasis added).

On appeal, **the NAC "...agree[d] with Meyers that the Extended Hearing Panel erred in relving on the (Johnson) settlement agreement,** but nevertheless find that the record, excluding any reliance on the settlement agreement, supports a finding that the Firm is statutorily disqualified."[8] The NAC erred in finding that the record was sufficient to support a finding that the Firm is statutorily disqualified absent the reliance on the Johnson Settlement since the OHO Panel specifically and deliberately relied on the Johnson Settlement in order to reach its determination of statutory disqualification. If the record without reliance on the Johnson Settlement agreement was sufficient to support that important finding, the OHO Panel would have so stated in its extensive 44-page decision, and not needed to rely upon or even reference the Johnson Settlement agreement. Furthermore, for the reasons explained below, the record alone does not provide sufficient evidence to support a finding that the Firm is statutorily disqualified.

B. The Firm Was Precluded from Confronting and Cross-Examining the Key Witness.

The OHO Panel erred by permitting Enforcement to introduce and rely upon excerpts of transcripts from On-The-Record ("OTR") interviews of Johnson conducted by Enforcement in which the Firm did not participate and was not represented.[9] Johnson did not appear or testify at the hearing, despite being named on the Firm's witness list, and therefore the Firm had no opportunity to confront Johnson as to any documents or factual findings which comprise the record upon which the NAC bases its statutory disqualification finding.

Although the Firm recognizes that hearsay is admissible in administrative proceedings, such admissibility is premised on the reliability and probative value of that testimony, and the fairness of its use, such as where the testimony was under oath and the respondent had an

[8] *See* Final NAC Decision, dated December 22, 2017, Bates No. 006795 at 11.
[9] *See* Hearing Transcript (Feb. 24, 2016), Bates No. 001709 at 102–109.

opportunity to cross-examine the witness.[10] In *In re A.G. Baker, Inc.*, the Commission made the following holding regarding respondents' due process objection: "Unquestionably a 'fair hearing' requires that respondents be afforded an opportunity to cross-examine Hanson during the course of his deposition . . . Should Hanson refuse, as respondents posit, to submit to cross-examination on all or part of his testimony, the rights of respondents can be assured through consideration of a motion to strike or to deny admission into the record of any testimony respondents were unable to subject to cross-examination."[11]

Indeed, at the hearing, the Firm objected continuously to the use of Johnson's OTR transcript as the basis of factual findings in this case. Although the Firm appreciates that OTR transcripts can sometimes be used as the basis for factual findings, doing so was inappropriate and fundamentally unfair in this case, and particularly for the stated purpose of finding the Firm subject to statutory disqualification, based on the manner in which the case unfolded. Although certain Constitutional protections are inapplicable to FINRA proceedings, FINRA, as a quasi-governmental agency, is still required to provide fair procedures for disciplining its members.[12] Fair procedures include things such as adequate notice of the complaint, a sufficiently detailed complaint that adequately apprises a respondent of the charges against it, a hearing held on the record, and providing the respondent an opportunity to present a case and cross-examine Enforcement's witnesses.[13]

This is significant because, in order to make the finding requested by Enforcement—that the Firm is subject to statutory disqualification—the OHO Panel and the NAC would have had to find (1) that Johnson violated Section 10(b) and Rule 10b-5, and (2) that the Firm failed reasonably

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[10] *See, e.g., Dep't of Enforcement v. Varone*, No. 2006007101701 (Aug. 20, 2008) at n.4.
[11] *In re A.G. Baker, Inc.*, 1984 SEC LEXIS 2573 (Aug. 1, 1984) at *2-3.
[12] *In re E. Magnus Oppenheim & Co.*, Exchange Act Rel. No. 51479, 2005 SEC LEXIS 764, at n.15.
[13] *Id.* at *10.

to supervise Johnson.[14] Regarding Johnson's alleged violation of Section 10(b) and Rule 10b-5, the requested finding relates to two of the five underlying Causes of Action against Johnson in which the Firm was not named: The First and Third Causes of Action. Enforcement failed to prove its allegations in both of these Causes of Action largely due to the fact that Johnson settled his portion of the case before and did not testify at the hearing, and because the Firm was unfairly precluded from cross-examining him.

C. Enforcement Failed to Present Evidence of Scienter.

In the First Cause of Action, Enforcement alleged that, "Between May 15, 2012 and May 24, 2012, Respondent George Johnson manipulated the market for the common stock of IceWEB, Inc. (OTCBB: IWEB) by soliciting certain customers to buy, while soliciting other customers to sell, IWEB stock at increasingly higher and artificially inflated prices, frequently effecting matched orders among his own customers, in willful violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and in violation of FINRA Rules 2020 and 2010."[15]

There are four elements necessary to prove a claim of market manipulation under Section 10(b) and Rule 10b-5 thereunder: "'that the defendant (1) committed a deceptive or manipulative act (2) with scienter, (3) that the act affected the market for securities or was otherwise in connection with their purchase or sale, and (4) that defendants' actions caused the plaintiffs' injuries.'"[16]

First, there was no evidence presented at the hearing to establish that Johnson "(1)

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[14] Post-Hearing Brief of Respondent Meyers Associates, L.P. (Apr. 15, 2016), Bates No. 006139 at 25–35 [hereinafter, "Meyers' Post-Hearing Brief, Bates No. 006139"].
[15] Complaint (Apr. 8, 2015), Bates No. 000001 at 2.
[16] *CompuDyne Corp. v. Shane*, 453 F. Supp. 2d 807, 821 (S.D.N.Y. 2006) (internal citations omitted).

committed a deceptive or manipulative act (2) with scienter."[17] The crux of Enforcement's argument in relation to IWEB was that Johnson manipulated the market by engaging in "cross" or "matched" transactions. As a matter of law, "'agency cross' or 'matched' transactions are not manipulative per se."[18] Absent proof of manipulative intent, mere wash trades or matched orders that were sent out to a market maker or exchange for execution do not establish a violation of Section 10(b) and Rule 10b-5.[19] Further, "The securities laws do not proscribe all buying or selling which tends to raise or lower the price of a security...So long as the investor's motive in buying or selling a security is not to create an artificial demand for, or supply of, the security, illegal market manipulation is not established."[20]

What is required to prove scienter (i.e., manipulative intent) varies depending on the type of alleged violation. The SEC has adopted specific intent as the standard to be applied to alleged wash sales and matched orders under Section 10(b) and Rule 10b-5.[21]

Thus, in order for Enforcement to have met its burden of proof for the allegations in the First Cause of Action (which was necessary in order for the OHO Panel and the NAC to make a finding that the Firm was subject to statutory disqualification), it would have needed to provide evidence that Johnson's alleged conduct was done with the specific intent of manipulating IWEB's common stock. To make a finding of specific intent, the OHO Panel and the NAC were not permitted to simply draw inferences based on the statements made by Enforcement at the hearing[22]

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[17] *Id.*
[18] *Dep't of Market Regulation v. Ara Proudian*, Disciplinary Proceeding No. CMS040165, at 14 (NASD Office of Hearing Officers, Sept. 7, 2006).
[19] *Rockies Fund, Inc. v. S.E.C.*, 428 F.3d 1088, 1093 (D.C. Cir. 2005).
[20] *Chris-Craft Indus., Inc. v. Piper Aircraft Corp.*, 480 F.2d 341, 383 (2d Cir. 1973).
[21] *In the Matter of Marketxt, Inc.*, No. 3-11813, 2005 SEC Lexis 3282 (2005), discussing *Rockies Fund, Inc. v. SEC*, 428 F.3d 1088 (D.C. Cir. 2005) ("It *[Rockies]* did not reach the question of what standard of intent should be applied to wash sales and matched orders under Section 10(b) and Rule 10b-5. I conclude that the specific intent standard should be applied to the alleged wash sales and matched orders...").
[22] *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323-24, 127 S. Ct. 2499, 2510, 168 L. Ed. 2d 179 (2007).

which of course are not evidence. In order to establish scienter by way of inference, more than mere conclusory allegations regarding a defendant's mental state are required.[23] The fact finder must take into account all of the plausible inferences, including non-culpable inferences.[24] Of particular importance to this case is that **"omissions and ambiguities count against inferring scienter."**[25] In this case, there was a huge, glaring omission: Johnson did not testify at the hearing and neither the OHO Panel nor the NAC (nor the Firm) were able to evaluate his testimony to determine his state of mind and the reasons behind his pattern of trading IWEB stock.

Given that Johnson did not testify at the hearing, it was virtually impossible to know what his intent was regarding his transactions in IWEB. While Enforcement might argue that the OHO Panel and the NAC could have inferred Johnson's intent from his OTR testimony, such an argument is imprudent for two reasons. First, this position is disingenuous because Enforcement's own chief witness and lead investigator in this case, Maureen Brogan, testified at least twice that she felt that Johnson's testimony at his OTR was false.[26] Therefore, implying intent from those statements would be improper. Second, and perhaps more importantly, the Firm never had an opportunity to cross-examine Johnson about his intent regarding the IWEB transactions. The Firm was not present at Johnson's OTR, and obviously did not have a chance to cross-examine him at his OTR, or at the hearing. It was therefore improper and imprudent for the OHO Panel and the NAC to consider Johnson's OTR testimony as evidence of his intent without the benefit of the Firm's cross-examination, particularly for the purpose of the statutory disqualification issue. FINRA's own procedures permit respondents to "... ask questions of claimant's witnesses, too, during what is known as 'cross examination,'...The respondents may use rebuttal evidence to

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[23] *Id.*
[24] *Id.*
[25] *Id.* at 326 (emphasis added).
[26] *See* Hearing Transcript (Feb. 24, 2016), Bates No. 001709 at 227:18 – 228:11; 251:17-22.

contradict the claimant's arguments or evidence."[27] The OHO Panel and the NAC should have completely disregarded all statements made by Johnson during his OTR and sustained the Firm's multiple objections to the use of excerpts of Johnsons' OTR transcript as evidence at the hearing.

Furthermore, it was imprudent for the OHO Panel and the NAC to rely so heavily on the documentary evidence presented at the hearing in the absence of any context or explanation which Johnson could have provided. It was both imprudent and fundamentally unfair to subject the Firm to a finding which could lead to its statutory disqualification when it did not have a chance to properly defend itself on the merits of this important issue.

In its Third Cause of Action, Enforcement alleged that "Between July 18, 2012 and August 31, 2012, Johnson solicited customers to purchase shares of Snap Interactive, Inc. stock (OTCBB: STVI) while failing to disclose that he was simultaneously selling his and his wife's personal holdings of STVI. By knowingly, or at least recklessly, failing to disclose this material conflict of interest, Johnson willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and also violated FINRA Rules 2020 and 2010."[28]

This Cause of Action—which was also not charged against the Firm—should have easily been disposed of because there was simply no evidence introduced at the hearing to prove these allegations. As explained above, Johnson did not testify at the hearing, and the only one of Johnson's customers who testified at the hearing, Doug Twiddy, did not testify regarding STVI. Without such testimony, it is impossible to know whether Johnson disclosed any potential conflict of interest to his customers or not. Here, again, Enforcement failed to prove its allegations, and the OHO Panel and the NAC erred by utilizing these findings to find that the Firm was subject to statutory disqualification.

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[27] FINRA, *Hearings*, http://www.finra.org/arbitration-and-mediation/hearings.
[28] Complaint (Apr. 8, 2015), Bates No. 000001 at 2.

D. The OHO Panel Erred in Denying the Firm's Motion for a Brief Adjournment of the Start of the Hearing.

In this case, the Firm was initially one of four respondents, which included Johnson and two other individuals formerly associated with the Firm. The Complaint set forth seven causes of action, but significantly only named the Firm in the Sixth and Seventh Causes of Action. Less than one week before the hearing was set to begin, Enforcement settled with Johnson[29] and the remaining individual respondent[30] (having previously settled with the third individual respondent, who played a minor role in this case).[31] The Firm moved for an adjournment of the hearing for an additional three weeks to allow it additional time to prepare its defenses to the first five Causes of Action in which it was not named and which it had expected the settling respondents to address at the hearing. The hearing officer denied the Firm's motion, writing:

> I deny Meyers' motion because Meyers has not shown good cause for a three-week adjournment. It was foreseeable that the individual respondents might settle. When Meyers decided to nevertheless focus its hearing preparation on the sixth and seventh causes of action, Meyers assumed the risk that it would have to defend against the other causes of action in the event that one or more of the individual respondents settled before the hearing.[32]

This denial of the Firm's request for a brief adjournment was improper and fundamentally unfair given that it was not seeking an unreasonable delay of the hearing, and no parties would have been prejudiced by such a brief delay. Further, the OHO Panel's contention that the Firm had "assumed the risk" of having to defend against Causes of Action with which it was not charged, was in error and fundamentally unfair. The Firm renewed its objections at the hearing after the conclusion of opening statements, specifically moving to exclude evidence related to the first five

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[29] *See* Johnson Settlement, Bates No. 001459.
[30] *See* Order Accepting Offer of Settlement – Wynne (Feb. 18, 2016), Bates No. 001547.
[31] *See* Order Accepting Offer of Settlement – Mahalick (Feb. 11, 2016), Bates No. 001303.
[32] Order Denying Meyers' Motion to Continue the Hearing and Granting, in Part, Enforcement's Motion to Continue the Hearing (Feb. 18, 2016), Bates No. 001453 at 2.

Causes of Action because it was not charged with those Causes of Actions and they had been removed from the OHO Panel's jurisdiction based upon the settlements with the other respondents who were charged in those Causes of Action.[33] As part of that oral motion, the Firm argued that it was Enforcement's decision to settle with Johnson and the other individual respondents prior to the hearing.[34] This decision resulted in Johnson's failure to appear at the hearing, and as an obvious consequence of that, the Firm was unable to cross-examine him.[35] Thus, by its own actions, Enforcement determined to rely on Johnson's OTR transcript to adduce necessary evidence for the failure to supervise charge against the Firm. The OHO Panel erroneously and unfairly denied the Firm's motion.[36] The Firm continued to renew its objection in not agreeing to make Johnson's OTR transcript a joint exhibit, and by refusing to counter-designate any portions of Johnson's OTR transcript for entry into evidence during the hearing based upon its unreliability, thereby preserving the objection for appeal. The Firm further renewed its objection in its post-hearing submissions.[37]

Had the Firm been granted the request brief adjournment, it could have approached Johnson, with whom it had been in communications, to request that he take a deposition or take a sworn statement clarifying his underlying actions in this case and putting in perspective certain statements he made in his OTR.

For all of these reasons, the record provided insufficient basis for a finding of statutory disqualification.

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[33] *See* Hearing Transcript (Feb. 24, 2016), Bates No. 001709 at 61–86.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 85–86.
[37] *See generally*, Meyers' Post-Hearing Brief, Bates No. 006139; Reply Brief of Respondent Meyers Associates, L.P. (May 27, 2016), Bates No. 006413.

II. Neither the OHO Panel Nor the NAC Adhered to General Principle No. 4 of FINRA's Sanction Guidelines.

FINRA's Sanction Guidelines provide for the aggregation or "batching" of similar types of violations rather than imposing sanctions per individual violation.[38] In the OHO Decision, the OHO Panel conceded that "Although the Guidelines do not contain a recommendation specific to AML violations, the rules requiring firms to implement AML programs are, in substance supervisory requirements. Accordingly, the Panel considered the Guidelines for failure to supervise in connection with determining the appropriate sanctions here."[39] Furthermore, in the OHO Decision, the OHO Panel agreed with the Firm's position that the AML violations are part and parcel of the supervisory violations and "impose[d] a unitary sanction for these violations"[40] of $350,000. However, the amount of this "unitary" fine was the exact amount requested by Enforcement in its Pre-Hearing Brief, in which it sought two separate and distinct fines against the Firm in the amount of $250,000 for its supervisory violations, and a $100,000 fine for its AML violations.[41] The concept of "batching" or "aggregating" fines does not mean to add the two fines together and term it a "unitary sanction," but rather to fold the lesser offense into the greater offense which is subsumed thereby. For example, in *Dep't. of Enforcement v. Ranni*, "Enforcement broke down the requested sanctions, requesting a separate suspension and fine for each of the three violations. In total, Enforcement requested a supervisory suspension for a total of eight months and a fine of $20,000. The Hearing Panel has determined to impose a sanction for all the violations here in the aggregate, because the violations were negligent rather than fraudulent and, in addition,

[38] SANCTION GUIDELINES, General Principle No. 4, *available at* http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.
[39] Decision, Bates No. 006495 at 35.
[40] *Id.* at 36.
[41] Department of Enforcement's Pre-Hearing Brief (Jan. 19, 2016), Bates No. 001043 at 60–62.

the violations resulted from essentially the same careless conduct."[42] The *Ranni* Panel then imposed a unitary sanction on the respondent of a suspension from acting in a supervisory capacity for eight months, as well as a fine of $7,000, rather than the $20,000 Enforcement had requested.[43]

In the instant case, the OHO Panel appears to have misinterpreted the legal and practical meaning of a "unitary sanction." Therefore, based on the OHO Panel's stated acceptance of Enforcement's recommended fine structure, the appropriate amount of the monetary fine imposed against the Firm should have been no greater than $250,000 for the combined supervisory and AML violations, as they both arose from the exact same course of conduct.

Furthermore, the NAC erred in increasing the monetary fine imposed on the Firm without sufficient basis to do so. The NAC failed to take into account – or even address the fact – that since Johnson's "scheme," as described by the NAC itself, involved Johnson's efforts to conceal his conduct from the Firm and hinder its supervision of him ("circulating and disseminating inaccurate reports," "soliciting customers to purchase STVI without disclosing that he was simultaneously selling that same stock," and that he "acted with scienter"), the Firm was hindered in its supervision efforts by Johnson.

Moreover, the record is devoid of any indication that any AML violations actually occurred.

Thus, contrary to the NAC's finding that "aggravating factors predominate," in fact, *mitigating* factors were present but were not addressed. The NAC Decision was made in error, and the Firm's fine should have thus been reduced, not increased.

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[42] *Dep't. of Enforcement v. Ranni*, Disciplinary Proceeding No. 20080117243 (Mar. 9, 2012), at 25–26.
[43] *Id.*

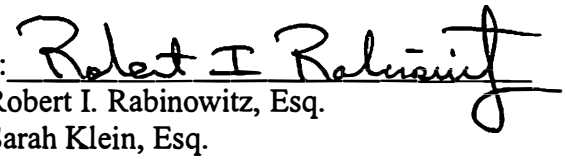
III. Conclusion

In view of the foregoing, the Firm respectfully requests that the Commission reverse the NAC's finding that the Firm is subject to statutory disqualification by operation of law, in accordance with FINRA By-Laws Article III, §4 and Section 3(a)(39) of the Exchange Act, and further modify the NAC Decision to reduce the amount of monetary fine imposed to no more than $250,000.

Dated: March 27, 2018

Respectfully Submitted,

Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P.)

By: 

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UNITED STATES OF AMERICA
Before the
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	:	
For Review of Disciplinary Action Taken by FINRA	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2018 I caused a true and correct copy of the foregoing Applicants' Opening Brief in Support of the Application for Review of disciplinary Action taken by FINRA to be served upon the following by overnight delivery service addressed to:

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Dated: March 27, 2018

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