SECURITIES AND EXCHANGE ACT OF 1934

Release No. 84597 / November 14, 2018

Admin. Proc. File No. 3-18869

In the Matter of the Application of

TMR BAYHEAD SECURITIES LLC

For Review of Action Taken by FINRA

CERTIFICATE OF SERVICE FOR

BRIEF OF TMR BAYHEAD SECURITIES IN SUPPORT OF THE APPLICATION FOR REVIEW

Dated December 14, 2018

TMR Bayhead Securities LLC ("TMR") hereby certifies that service was made of the above referenced brief on the above referenced date by way of certified mail addressed as follows:

Jennifer Piorko Mitchell
VP and Deputy Corporate Secretary
FINRA
1735 K Street, NW
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Respectfully submitted,

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Dated December 14, 2018

TMR Bayhead Securities LLC ("TMR") respectfully submits this brief in support of is application for review of FINRA's suspension of TMR and the improper imposition of excessive fines, penalties and expenses:

Introduction to the Dog Law Case

This case involves a broker dealer who (with the exception of these proceedings) was compliant and in good standing since its formation over a decade ago in 2006. It is labelled above as the Dog Law Case for reasons more fully described below. The FINRA risk categorization of this broker dealer based upon its business activities and experience in private placement and mergers advisory transactions is the lowest level applicable to the various classes of broker dealers that FINRA supervises (eg, the applicable net capital requirement is only $5,000). (See Exhibit CX-1). If FINRA went further to categorize the regulatory risk of this broker dealer among the subclass of $5,000 minimum net capital broker dealers it supervises, it would fairly determine from its regular onsite audits and the financial records and financial statements it reviews that the regulatory risk of this broker dealer must even be at the rock bottom of the minimal risk subclass of $5,000 minimum net capital broker dealers it supervises. For example, this broker dealer, unlike most other $5,000 net capital broker dealers, (i) does not open customer accounts or hold

any customer funds or securities, (ii) does not advertise or make any public recommendations or provide research regarding the purchase or sale of securities, (iii) does not delegate any activities to employees who have to be monitored and supervised, (iv) does not have any debt, (v) does not hold on its balance sheet any securities or other assets that could fall in value and (vi) maintains capital (cash in the bank) in excess of its $5,000 minimum in an amount that covers several years of its historical gross annual expenses. (See Exhibits JX-1, CX-15 and CX-29). In 2014, the SEC through the no action process exempted from regulation altogether the entire class of broker dealers engaged in the mergers advisory transactions business that this broker dealer has limited its business to since 2012.

From this rock bottom base of regulatory risk, this broker dealer made a determination in consultation with its FINRA examiners to <u>further</u> limit its risk and business activities in 2014 to the representation of a single issuer affiliated with the broker dealer. (See, sworn statement and footnote disclosure in Exhibit JX-1). The single issuer business was founded and managed by the brother (Chad Roberts) of the sole principal of the broker dealer (Todd Roberts), and the sole principal of the broker dealer was an investor in and longstanding advisor to the single issuer. The FINRA Panel mistakenly found that no documentation corroborating the testimony of TMR was provided to show that the single business consistently described over a four year period operated by Chad Roberts under the trade names PDA Verticals, Medical Wizards and Fountainhead Mobile were a single issuer, but Exhibit JX-12 in evidence does show Washington State registration of PDA Verticals and Fountainhead Mobile as a single business, with the absence of and no separate registration for Medical Wizards in Washington State as a separate business, just as TMR testified on this issue. It is also beyond dispute that TMR did not receive revenues from multiple businesses, as would be the case if he (like others who were denied the single issuer exemption) represented multiple issuers. Likewise, it is beyond dispute that the documentation from Chad Roberts confirming a continuing engagement of TMR with his business references a single rather than multiple issuers (see Exhibit JX-9).

There were two business reasons for the decision of TMR to limit its risk and business activities in 2014 that were discussed with FINRA. The first was the complete disruption of the business at the end of 2012 from Hurricane Sandy. The premises housing the business was a complete loss and was adjudicated to be uninhabitable after the storm. Simultaneously with the recovery period in 2013 and thereafter the sole principal of the broker dealer suffered setbacks to his health that have required medication and treatments that continue to this day. Accordingly, the sole principal had to make a choice between hiring registered representatives to continue and expand upon the pre-2012 business (which would increase the risk and annual expenses of the business, while maintaining and expanding upon its pre-2012 business) or limiting the business to the continuing representation of a single affiliated issuer as provided for in Exchange Act Rule 17a-5(e)(1)(i)(A) (the "single issuer exemption") until such time as the health of the sole principal or the conditions of the market improved enough to trigger a reconsideration of that voluntary limitation.

The latter course of action was pursued on a completely transparent basis and in full consultation with the broker dealer's FINRA supervisor (See Exhibit JX-6), and the alternative course of action that would have provided much greater reward and risk for the business was forgone while the decision to limit the business remained in effect. The broker dealer dutifully recorded the limitation in its business in the annual sworn statements and footnote disclosures provided to FINRA, the SEC and other state regulators and SIPC. (See Exhibit JX-1) in accordance with the direction provided in 2015 by FINRA (and the SEC, through FINRA). (See Exhibit JX-6). The economic impact of limiting the business activities of TMR in accordance with the single issuer exemption has been substantial. Prior to 2014 TMR had aggregate revenues in excess of $1.5 million (see Exhibits CX-29 and CX-15), and since limiting its business activities to a single affiliated issuer its aggregate revenues have been zero and will remain at that level unless and until (i) a sale of the affiliated issuer is completed or (ii) the TMR abandons its voluntary limitation of its business activities (and its eligibility for the single issuer exemption) to expand its business.

Issues Presented in this Appeal

1. Did the FINRA Panel err in allowing FINRA to block all access to discovery material that would not be used by FINRA itself to prove its case in violation of FINRA Rule 9251(a)?
2. Did the FINRA Panel err in its reliance upon and consideration of "opinion" and hearsay testimony of the inexperienced and biased FINRA witnesses involved in the prosecution of this case?
3. Did the FINRA Panel err in its failure to credit the sworn affidavits, testimony and other writings of the only two firsthand witnesses to the facts at issue?
4. Did the FINRA Panel err in its strained interpretation of the letter from Chad Roberts dated May 7, 2017 refencing the continuing engagement of TMR as its agent as failing to corroborate TMR's testimony of a continuing engagement of TMR by Chad Roberts' company during TMR's fiscal years 2015, 2016 and 2017?
5. Did the FINRA Panel err in its application of the burden of proof in a case involving the single issuer exemption?
6. Did the FINRA Panel err in its interpretation of the implicit and explicit requirements of the single issuer exemption?
7. Did the FINRA Panel's conclusion that TMR had simultaneously too few and too many issuer clients to rely upon the single issuer exemption constitute a logical impossibility and evidence of manifest error, capriciousness and arbitrary conclusions taken in its proceedings?
8. Did the FINRA Panel err in failing to assess the legality or fairness of the penalties retroactively imposed and the appropriateness of the corrective action imposed?
9. Did the FINRA Panel err in failing to consider the doctrines of laches, waiver and FINRA's own contribution to the violations alleged, as well as the injustice of retroactive application of new laws or interpretations, when deciding to adjudicate TMR out of business?
10. Did the improper actions of the FINRA prosecution team, and then the Panel's reliance upon that team, evidence a systemic bias against the class of smaller broker dealers which includes TMR?

Statement of Compliance or Attempted Compliance by TMR

It is respectfully submitted that TMR at all times since 2014 satisfied all requirements for exemption from the annual PCAOB audit provided by the single issuer exemption, and most notably those discussed in detail in the Sharemaster case (See Exhibit CX-27).

Further, by limiting its business to a single issuer client as required by the single issuer exemption, TMR irrovacably limited its business income and growth prospects during each of the annual periods at issue. It is manifestly unfair for FINRA to review and accept TMR's reliance on the single issuer exemption for several years during which TMR irrevocably limited its business, and then later change its mind and require years of retroactive compliance as if the single issuer exemption and the advice that it had provided in 2015 did not exist. By its own testimony, FINRA estimated the cost of meeting its retroactive

requirements at $4,000 in costs for PCAOB audits per year, $1,000 in fines per year and more than $5,000 of FINRA Panel costs, for a total of approximately $20,000 of fines and expenses imposed retroactively upon a member with a $5,000 net capital requirement who had earned no income during those years precisely because it had limited its business as required by the single issuer exemption rule. In addition, it is respectfully submitted that the FINRA testimonial estimate of $4,000 per year for PCAOB audits was either naïve or intentionally misleading to the Panel since minimum audit costs are easily 3 to 4 times that amount, if they can be obtained by small broker dealers at all.

In the alternative, if for some reason TMR did not in hindsight meet all the requirements of the single issuer exemption, then it is respectfully submitted that a clarification of the Rule's requirements would be the appropriate remedy for future periods, instead of the retroactive imposition of fines and audits that serve no purpose other than to eliminate TMR's capital base and force it out of business. A no enforcement action position would certainly be common at the SEC where good faith compliance efforts are present, misleading or incomplete guidance is provided publicly or by FINRA (or another regulator), and the imposition of retroactive fines and requirements would serve no regulatory purpose other than (i) to punish notwithstanding the good faith compliance efforts and (ii) to eliminate the member's capital base and force it out of business.

TMR notes that the FINRA Panel placed great weight upon email communications with FINRA in 2014 relating to a medical device company and a solar company regarding potential sell side assignments and securities business that never progressed to an engagement. These communications with FINRA were of course known to FINRA and were not flagged as an impediment by FINRA to TMR's reliance upon the single issuer exemption for its 2015 fiscal year, or thereafter. Since TMR did not represent these other potential issuers during any fiscal year it is respectfully submitted that TMR correctly certified for its 2015 fiscal year that it represented a single issuer during that fiscal year, and TMR's FINRA examiner correctly concurred with that assessment in her 2015 advice and review. These potential targets for business

expansion were not contacted after 2014, and clearly should have had no impact on TMR's eligibility for the single issuer exemption in its 2016 and 2017 fiscal years.

No Precedent for the FINRA Action Taken

It is respectfully submitted that in all cases where the SEC has found non-compliance with the requirements of the single issuer exemption, including the Sharemaster case and the other cases referenced in the No Action Letters included within Exhibit JX-10, the non-compliance was (i) substantive rather than technical and (ii) known rather than incidental or unintentional. Substantively, in all cases where non-compliance was found (including the Sharemaster case) the broker dealer (i) earned revenues from and provided services to more than a single issuer or (ii) explained to the SEC that it was inactive and was not providing services to anyone. Here, neither of these conditions is the case. Here, though, FINRA argued aggressively a whole host of novel and sometimes mutually inconsistent facts, such as (i) TMR had no clients despite having identified one to FINRA, (ii) TMR had to many clients, (iii) clients had to be party to written agreements for exclusive representation, (iv) clients could be inferred from contact with a third party and the possibility that a representation of that party might form in the future and (iv) every year to comply with the single issuer exemption a transaction must be completed and the broker dealer must take possession of the securities issued, and the broker dealer must have solicited the purchase of the securities that were so purchased. If this prior sentence is confusing it sums up this case in a nutshell. In order for TMR (or any other broker dealer) to comply with the single issuer exemption in full, a clear and unchanging statement of what the single issuer exemption requires is needed – which is what TMR requested and thought it received in 2015 from its FINRA examiner.

The Dog Law Case

As stated above, prior to limiting its business, foregoing potential revenue and growth and attempting to fully comply with the requirements of the single issuer exemption, TMR consulted with its

FINRA examiner to ensure all required or recommended steps were taken to meet TMR's obligations and FINRA's expectations. See Exhibit JX-6. For years thereafter, TMR provided sworn annual statements of compliance and responded to FINRA inquiries regarding TMR's business and the exemption. Then, three years later, FINRA took offense to TMR's reliance on the exemption because "TMR was not doing business" (See Exhibit JX-9)– an allegation of fact that TMR contested at the time it was made and FINRA later conceded was incorrect at the Panel hearing. Then, the FINRA prosecution team got involved and filed a complaint a year later in 2018 that for the first time referenced an "implicit requirement in the single issuer exemption that a transaction close each year in which the broker dealer takes possession of the issued securities and solicited (rather than participated) in such sale". (See Exhibit CX-9). This requirement was never mentioned in the prior four years, and notably not when TMR asked its FINRA examiner for compliance guidance in 2015 and thereafter. It is doubtful whether any such requirement exists, and the FINRA Panel declined to take a position on the issue, but if it is found to exist then it should nonetheless not be imposed retroactively to suspend TMR and put it out of business. Both TMR and the rest of the industry are entitled to fair notice of what will be required by examiners, and all should be entitled to rely upon compliance guidance provided by examiners and the closing of issues once a fiscal period has closed and/or the issue has been reviewed by an examiner. Instead, in this case FINRA has employed the worst version of Jeremy Bentham's dog law. Philosopher Jeremy Bentham warned in the mid-1800s of the tyranny of arbitrary and capricious enforcement and the ex post facto imposition of laws. "When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog …". In this case, the result is even more unjust because the appropriate standard for compliance still remains unclear (see above paragraphs), and the kick to the dog sought by the FINRA prosecution team and delivered by the FINRA Panel was not merely surprising and of great annoyance to TMR as a kick might be, but it was designed to deprive TMR of a multiple of its

entire required capital and to impose suspensions and requirements designed to preclude the firm from further engaging in the securities business.

The FINRA Witnesses

From the record, a split emerges between the examiner team in the FINRA Woodbridge office, and the team from New York and Washington that conducted the prosecution (and to the extent there was one, the investigation that predicated the prosecution).

Prior to FINRA's filing of its complaint, the only contact since inception between FINRA and TMR was through the FINRA Woodbridge office witnesses (Ms. Domasica and Mr. Albaum). Neither of these witnesses testified that TMR was dishonest in any way or that TMR did not act in anything other than good faith with them since the inception of its business in 2006. These witnesses were aware of TMR's expressed intention to limit its business to the representation of a singe affiliated issuer after 2014, the identity of that issuer and its principal officer (Chad Roberts), the identity of the primary prospective purchasers targeted by TMR for the issuer's business (Apotex, Sobey's and Teva Pharmaceuticals, see proposed Exhibits RX2-3 and 5-7 improperly excluded from evidence by the FINRA Panel) and some of the activities taken or resulting from that representation (see for example Exhibit RX-4 and the improperly excluded RX Exhibits referenced above). Neither of these witnesses was ever in contact with any of the identified targeted prospective purchasers, at least insofar as it related to TMR or the issuer. Both testified that they had no experience with small broker dealers that filed unaudited financial statements in compliance with the single issuer exemption, and instead they showed skepticism that a broker dealer would ever intentionally limit its business to the representation of a single affiliated issuer and still be conducting an active securities business.

Whatever biases these FINRA witnesses possessed, they were passed along to the FINRA investigation team and FINRA prosecution team. Instead of independently validating the skepticism of

the examiners the investigation team made an inexplicable rush to judgment and amplified the skepticism – even after the examiners acknowledged the skepticism as a mistake and confirmed that TMR had shown it was conducting an active securities business. (See Mr. Albaum's testimony before the FINRA Panel). The details of the botched investigation were improperly withheld from TMR. Nonetheless, the regular red flags of injustice were evidenced in full in this case even with the limited transparency provided by the FINRA prosecutorial team – ie., rush to judgment, inept investigation, inexperience, manipulation of evidence, suppression of evidence, abuse of prosecutorial discretion and overzealous prosecution. It is beyond dispute that TMR was not provided with the discovery materials in FINRA's possession that were required to be produced under FINRA Rule 9251(a). TMR moved for the FINRA Panel to compel the production, the FINRA prosecutor acknowledged that it had not complied and argued against compliance, and the Panel declined to enforce the Rule. As a result, TMR had no or very limited ability to confront the accusers, assess the investigation undertaken, present exculpatory evidence collected or cross-examine witnesses.

What little that is known of the investigation is shocking. The investigator providing testimony admitted to having no experience with the single issuer exemption. The investigator did not take a statement or conduct an interview with the accused. The investigator made no effort to contact any other party with first hand knowledge of the business of the accused, including the identified single issuer client or any of the target companies identified as potential acquirors. That the investigator had a result in mind notwithstanding the complete lack of any independent corroboration of facts or any first hand witness interviews is evident from the sole communication provided by the FINRA prosecutor relating the investigation undertaken or lack thereof. (See Exhibit JX-14). While the prosecution team submitted this exhibit in support of its own claims, it is respectfully submitted that as evidence it does nothing other than demonstrate a rush to judgment and an improper attempt to guide or manufacture evidence to be presented as hearsay at trial. The prosecutor had this witness and others testify for literally the majority

of the hearing time regarding in abstract terms as to how the risk to the public of regulating this broker dealer could only be mitigated by requiring a PCAOB audit of its annual financial statements, including those which at that point were already several years old. Seriously?? A look at this broker dealer, its financials and the facts relating to its business set forth in the introductory paragraph of this brief, compared to any average broker dealer with debt, expenses and the possession of customer funds and securities, exposes the sham of this entire line of testimony. The entire exercise was nothing but spin. If one were to instead believe that this evidence was not spin and was presented in good faith, it would require the even more alarming conclusion that the investigator witness and the FINRA prosecutor really were incapable of assessing the varying levels of risk taken by the broker dealers that are supervised within the Woodbridge District, which ironically included Madoff Securities and other colossal failures of historical regulatory oversight.

No FINRA witness professed to be a lawyer or to otherwise possess any expertise that would qualify their opinions as to the abstract interpretation of any legal requirements they testified to as anything other than inadmissible speculation. They all admitted to having no experience with the single issuer exemption. None of the witnesses had any first hand knowledge of the facts at issue. Mr. Albaum's skepticism regarding whether it was permissible for a broker dealer to limit its business to a single affiliated issuer and still conduct business was recanted on the stand at trial. None of the FINRA witnesses provided testimony to impeach the documents and testimony provided by the accused with any first hand facts. None of them provided any testimony that demonstrated any dishonesty on the part of the accused or any non-parties identified in documents in evidence such as those involving the business of Chad Roberts (ie., the single issuer affiliate) or the targeted potential acquirors. Instead, these witnesses provided days of testimony constituting opinion or spin as to collateral matters such as those addressed above and whether TMR's principal should charge the broker dealer and the broker dealer should charge its client when his personal cell phone was used for a business call or when he attended a meeting or

made a business trip.

TMR's Evidence and Testimony

The corollary to the absence of any admissible first hand evidence presented by the FINRA witnesses regarding the business relationship between TMR and the affiliated single issuer client operated by Chad Roberts is of course the presence and presentation of that evidence from the accused. If both of the first hand parties to a business relationship present documentary evidence of that relationship on a consistent basis over a period of years, and that documentation is disclosed with complete transparency when created, then a prima facie case as to the existence of that relationship has to exist (until it can be impeached, if that is possible). Likewise, if annual sworn statements as to the existence of a state of facts regarding the limitation of the accused's business is provided by the party with first hand knowledge of the state of facts, then a prima facie case as to the existence of those facts has to exist (again, until it can be impeached, if that is possible). In the course of challenging the documentary evidence, if potential ambiguities from the text are argued or the dates to which the document applies are challenged then the documents may be supplemented with clarification from the author or a party with first hand knowledge of the facts. In the absence of supplemental clarification the usual and plain meaning of the document and its intended purpose should be accorded. Testimony from a witness without first hand knowledge (or any knowledge at all) is not probative or admissible, and "testimony" from the prosecutor is even moreso problematic. While the documents provided to prove the business relationship at issue between the accused and the affiliated single issuer client (see Exhibits JX-2 and JX-9) are not perfect and free from any strained interpretation that may suggest ambiguity, they do specifically reference and evidence a business relationship that is consistent and longstanding over an indeterminate period of time starting before and ending after the fiscal periods that were at issue in this case. Well, one might say, how can you be sure that this business relationship didn't start and then stop and then start again, leaving a fiscal period in question where no business relationship existed? Maybe the ongoing representation referenced

in the May 7, 2017 letter of Chad Roberts only referenced an ongoing representation starting within the preceding 5 weeks, and thereby after the end of TMR's March 31, 2017 fiscal year end date? Aside from that not being a usual and plain meaning of the document and its intended purpose, a party with first hand knowledge provided uncontested clarification and that testimony was not in any way impeached by a competent witness with first hand or any other knowledge of the facts. The testimony was provided by telephone, so facial expression or any other indication of credibility assessment cannot be applicable to the proper meaning of the testimony, and it should be assessed as it appears – uncontradicted - in the transcript.

Burden of Proof and Strained Interpretation of the Single Issuer Exemption

Based on the foregoing lack of any first hand witness testimony on the part of FINRA, the complete lack of any investigation or taking of statements from first hand witnesses on the part of FINRA, and the unimpeached first hand testimony and annual sworn statements of the accused, it is respectfully submitted that the burden of proving compliance with the single issuer exemption has been met no matter what the standard. However, the Rule itself does not require by its terms any particular standard of proof, and it certainly does not require the proof that no other possible interpretation of facts exists beyond any reasonable (or unreasonable) doubt – ie., uncontestable proof of any possible negative. TMR is unaware of any precedent or guidance describing the burden of proof specifically applicable to the single issuer exemption, and TMR did specifically inquire (see Exhibit JX-6) as to FINRA's preferences or practices as to proving compliance with the Rule's requirements in 2015. If a precedent exists then TMR is unaware of it (after due inquiry to demonstrate good faith), and if a precedent does not exist then it is respectfully submitted that the annual sworn statements in evidence (see Exhibit JX-1) along with supplemental identification of the single issuer represented and evidence from the financial statements that no extraneous income is recorded from other than the identified single issuer would suffice to more than establish a prima facie case of compliance. None of the precedents that TMR is aware of in which a

broker dealer was determined to be not in compliance with the single issuer exemption involved a broker dealer who could meet this prima facie test of compliance. It is respectfully submitted that in this case, the FINRA Panel set a burden of proof standard that is higher than that applicable in all known precedents and as such improperly undercut and amended the proper availability of an exemption that was the product of properly delegated Rulemaking authority exercised by the SEC.

The FINRA Panel also appears to have adopted a strained interpretation of the plain meaning of a limitation to business activities as used in the single issuer exemption. In business, a limitation of business is commonly known to be working only for a single client or within a single area of expertise from which all or substantially all your revenue is derived. In this case, the FINRA Panel cited an email exchange with a third party not a client who could potentially become a client with the occurrence of a number of conditions that did not occur (including the decision to abandon the single issuer exemption limitation that was being observed, in order to expand the business), as evidence that the business was not limited as required by the single issuer exemption. This logic is almost entirely circular and would preclude any properly limited business from ever considering expansion or even talking to third party that might some day in different circumstances be in need of services and become a client. Proving the negative of this meaning of the concept of limiting business activities to a single client within any given fiscal year would obviously be chaotic and beyond the apparent intent of the rulemakers who provided for the exception included in the single issuer exemption. In the alternative, if that really is the appropriate interpretation for the single issuer exemption's application, then that bright line restriction should be broadly communicated to the industry, and particularly those who have communicated an intention to FINRA of reliance on the exemption, and then the restriction should be applied fairly across the board to all broker dealers on a going forward basis after notice of the restriction is provided.

The irony of this superposition of conflicting interpretations and requirements of the FINRA Panel becomes apparent when you put together the FINRA prosecutor's position that TMR had no clients

because it had no revenues and potentially ambiguous client engagement documentation with its identified single issuer client during some or all of the fiscal periods in question, while at the same time TMR had too many clients to qualify for the single issuer exemption because it had thoughts that might potentially lead to an expansion of its business with a non-client while it also represented its identified single issuer client and its subsidiary. This death of common sense should yield to the plain meaning of the requirements of the single issuer exemption rule and the first person testimony of the only party who provided services during the fiscal year periods in question (and the confirmatory letter written by the brother who received the services). The FINRA Panel's failure to restrict its adoption in full of all FINRA positions regardless of the lack of investigation, witness testimony or evidence, even to the extent of adopting two theories presented in the alternative when they are mutually inconsistent with one another, undermines the independence of the FINRA Panel and renders its findings arbitrary and capricious.

Penalties

Just like the FINRA prosecution team made no effort to discern whether to this was an appropriate case to prosecute versus educate and settle, the FINRA Panel made no effort to consider the fines, costs and remedial action it imposed to drive this broker dealer out of business based on the paper thin case so aggressively pursued by the FINRA prosecution team. It is respectfully submitted that the complete failure on the part of the FINRA Panel to consider the penalties imposed requires an immediate reversal of the suspension imposed and some appellate guidance as to appropriate measures to be considered. In particular, it is instructive to note the SEC's reversal of penalties in the Sharemaster case where the non-compliance by Sharemaster was substantive and intentional, and Sharemaster did not forego any revenues or opportunities by limiting its business to a single affiliated issuer. Before the FINRA Panel hearings, TMR proposed to the FINRA prosecution team that the substantive requirements for compliance with the single issuer exemption requirements be agreed upon, along with procedural requirements for review and validation by FINRA, and TMR would meet those requirements if was able to do so in the future

(or abandon reliance upon the single issuer exemption if it could not or chose not to do so). With regard to the past, TMR argued that a no enforcement action position was appropriate given the passage of several years, the inconsistent positions taken by FINRA during that period, the good faith efforts of TMR to remain in compliance and the injustice of the dog law standard that FINRA sought to apply (and did apply). That settlement proposal from TMR remains in effect and constitutes a sensible way of disposing of this case and ensuring the continuation of TMR's business as well as its compliance in the future. If FINRA continues to press for more, there is ample precedent for the SEC to review remedies and penalties, and effectuate such a settlement in an order.

FINRA Systemic Bias

Much has been written in the industry press regarding the disappearance of small broker dealers from the market due to over regulation and FINRA oppression. A small minority of large firm members have placed themselves firmly in control of FINRA at the expense of the thousands of smaller members who have perished due to the burdens of meeting large firm compliance standards coupled with the hostility displayed by FINRA to having to spend time regulating thousands of firms instead of a just a handful of larger ones controlling its Board and providing most of its revenues. If FINRA is to continue with a monopoly on membership allowing firms and individuals to engage in the securities business then surely the smaller firms will need protection from the large firm bias in order to survive. As TMR has discovered in this case, any small firm seeking to limit its business in compliance with the requirements of the single issuer exemption will be about as welcome within FINRA as the plague. It is not up to FINRA to kill what the SEC through its rulemaking authority has provided for in the single issuer exemption because FINRA does not like the burden of dealing with small firms that are different from the large controlling firms to which it is beholden.

Respectfully submitted,
TMR Bayhead Securities LLC