



UNITED STATES OF AMERICA  
BEFORE THE  
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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In the Matter of the Application of :  
Arthur Mansourian : Administrative Proceeding  
For Modification of Action Taken by FINRA : File No. 3-18990  
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REPLY BRIEF IN FURTHER SUPPORT OF APPLICATION OF ARTHUR  
MANSOURIAN FOR MODIFICATION OR REVERSAL OF DECISION OF  
THE FINANCIAL INDUSTRY REGULATORY AUTHORITY'S  
NATIONAL ADJUDICATORY COUNCIL

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**TABLE OF CONTENTS**

|  | <b>Page</b> |
|--|-------------|
| I. PRELIMINARY STATEMENT.....  | 1           |
| II. ARGUMENT.....  | 2           |
| A. Mitigating Factors Warrant a Reduced Sanction for Mr. Mansourian.....                       | 2           |
| i. The Compliance Records Provided to FINRA.....   | 2           |
| ii. The Sanctions Imposed on Mr. Mansourian Should be Reduced.....                             | 3           |
| III. PRIOR DISCIPLINARY PROCEEDING RULINGS SUPPORT LESSER<br>SANCTIONS FOR MR. MANSOURIAN..... | 6           |
| IV. CONCLUSION.....  | 7           |

**TABLE OF AUTHORITIES**

| <b>STATUTES &amp; RULES</b>  | <b>Page</b> |
|--|-------------|
| Commission’s Rules of Practice, Rule 450.....  | 1           |
| FINRA Rule 2010.....   | 2           |
| FINRA Rule 4511.....   | 2           |
| FINRA Rule 8210.....   | 4           |
| <br><b>OTHER AUTHORITIES</b>   |             |
| <i>Blair C. Mielke</i> , Exchange Act Release No. 75981, 2015 SEC LEXIS 3927,<br>at *65-69.....                                    | 6           |
| <i>Dep’t of Enforcement v. Cohen</i> , Complaint No. EAF0400630001, 2010 WL 3295149<br>(NASD) NAC Aug. 18, 2010).....              | 6           |
| <i>Dep’t of Enforcement v. Harrington</i> , Disciplinary Proceeding No. 2015047303901, 2018<br>WL 6630196 (OHO Nov. 12, 2018)..... | 6           |

## **I. PRELIMINARY STATEMENT**

Pursuant to Rule 450 of the Securities and Exchange Commission's (the "**Commission**") Rules of Practice, Arthur Mansourian ("**Mr. Mansourian**") hereby submits this reply brief in further support of his application for modification or reversal of the decision by the Financial Industry Regulatory Authority's ("**FINRA**") National Adjudicatory Council ("**NAC**"), dated January 8, 2019 (the "**NAC Decision**") ("**Reply Brief**"). For the reasons set forth in the Opening Brief in Support of Application of Arthur Mansourian for Modification or Reversal of Decision of the Financial Industry Regulatory Authority's National Adjudicatory Council ("**Opening Brief**") and as further demonstrated herein, the Commission should modify or reverse the NAC Decision by ordering a reasonable lesser sanction against Mr. Mansourian.

In FINRA's Brief in Opposition to the Application for Review ("**Opposition Brief**"), FINRA averred its position that the NAC Decision was correct in affirming the FINRA Office of Hearing Officers' Extended Hearing Panel's ("**OHO Panel**") extended Hearing Panel Decision ("**OHO Decision**") to permanently bar Mr. Mansourian from associating with any FINRA member firm in any capacity. FINRA's arguments in support of upholding the NAC Decision relied largely upon conclusory statements that are not supported by any evidence in the record. Such approach is to be expected, because the OHO Decision's and the NAC Decision's findings of fact were not supported by any evidence in the record and specific grounds for the OHO Decision and the NAC Decision did not exist in fact. FINRA's Opposition Brief is replete with defective reasoning and mischaracterizations of the record, and has relied substantially on unfair and improper assumptions with no factual basis.

FINRA's Opposition Brief has conveniently and unfairly discounted glaring evidence in the record that substantiates Mr. Mansourian's position, and highlights the fundamentally unfair

manner in which the proceedings have been conducted to date. As demonstrated in Mr. Mansourian's Opening Brief and further detailed herein, the permanent bar that the NAC imposed on Mr. Mansourian is an overly severe remedy that was not substantiated by the underlying record. Accordingly, the NAC Decision is erroneous, fundamentally unfair, and should be modified or reversed with a reasonable lesser sanction imposed.

## **II. ARGUMENT**

### **A. Mitigating Factors Warrant a Reduced Sanction for Mr. Mansourian**

As Mr. Mansourian's Opening Brief detailed, the OHO Panel and the NAC found that Mr. Mansourian: (1) violated FINRA Rule 2010 by participating in obtaining backdated outside business activity ("**OBA**") forms and private securities transaction ("**PST**") forms that were to be provided to FINRA using his personal email; and (2) violated FINRA Rules 4511 and 2010 by causing a member firm to maintain inaccurate books and records. In its Opposition Brief, FINRA asserted that the serious nature of Mr. Mansourian's conduct and the alleged aggravating factors detailed in its Opposition Brief support barring Mr. Mansourian. *See* Opposition Brief at 13. In addition, FINRA argued that the mitigating factors that Mr. Mansourian advanced are not applicable in this matter. *See id.* FINRA's position is erroneous, however, because Mr. Mansourian's Opening Brief detailed several mitigating factors that are substantiated by the record and warrant a reduced sanction for Mr. Mansourian.

#### **i. The Compliance Records Provided to FINRA**

Mr. Mansourian's Opening Brief noted that he does not deny that his participation in obtaining the replacement OBA and PST forms violated FINRA rules. *See* Opening Brief at 9. Mr. Mansourian only participated in the backdating of the OBA and PST forms at his supervisor and Chief Compliance Officer ("**CCO**") Richard Tabizon's ("**Tabizon**") request, and was only

replacing documents that were previously part of NMS Securities' books and records. *Id.* at 8. Mr. Mansourian was a largely inexperienced general securities representative at the time of his conduct at issue in this matter who was following the instructions of his supervisor, and had no prior experience working in a compliance capacity. *Id.* at 7. Although such factors are not a defense for Mr. Mansourian's rule violations in this matter, they warrant consideration in determining whether such conduct warrants a lifetime bar (i.e., the securities industry equivalent of a death sentence). The record is devoid of any indication that Mr. Mansourian would have engaged in the conduct at issue in this matter if he had not been instructed to do so by his supervisor, and nothing in the record suggests that a one-time act of assisting his supervisor in obtaining replacement OBA and PST forms warrants the questioning of Mr. Mansourian's judgment and/or his ability to conduct himself ethically in the securities industry. Since the incident at issue in this matter, Mr. Mansourian also received his Series 24 and completed continuing education. *Id.* at 8. He has not been found to violate any FINRA rules in the several years since then, although his conduct was the subject of several examinations and audits during this time.

**ii. The Sanctions Imposed on Mr. Mansourian Should be Reduced**

As expected, FINRA argued that a permanent bar is an appropriate sanction for Mr. Mansourian despite the mitigating factors detailed in Mr. Mansourian's Opening Brief. *See* Opposition Brief at 13. Such position reflects FINRA's continued refusal to acknowledge significant portions of the underlying record in this matter.

Mr. Mansourian explicitly acknowledged that he engaged in conduct that violated FINRA Rules. *See* Opening Brief at 7-9. However, FINRA erroneously asserted that Mr. Mansourian has not taken responsibility for his conduct. *See id.* FINRA's assertion that Mr. Mansourian has failed

to take responsibility for his conduct is disingenuous. FINRA has repeatedly mischaracterized any effort by Mr. Mansourian to discuss mitigating circumstances as a failure to accept responsibility. For example, FINRA argued that Mr. Mansourian “continues to point the finger at his supervisor (first [Mr.] Saliba, and then Tabizon) and claim ignorance.” *See* Opposition Brief at 13. In addition, FINRA further argued that Mr. Mansourian “attempts to minimize his misconduct by suggesting that he simply replaced documents that allegedly were in existence.” *See* Opposition Brief at 14. However, Mr. Mansourian’s attempt to explain the mitigating circumstances surrounding his conduct does not diminish his recognition of the wrongfulness of his conduct. FINRA’s repeated argument that Mr. Mansourian resisted acceptance of responsibility is simply contrary to the record and untrue. Mr. Mansourian continues to take responsibility for his violative conduct, and simply requests that the Commission acknowledge and take into account the mitigating factors that the NAC ignored.

In addition, the record contains uncontroverted evidence that Mr. Mansourian suffered from obsessive-compulsive disorder, a medical condition that affected (1) his conduct during the underlying investigation into this matter, and (2) the OHO Panel’s credibility determination of Mr. Mansourian. *See* Opening Brief at 4. The record further establishes that the NAC discounted Mr. Mansourian’s [REDACTED] (a [REDACTED] causes Mr. Mansourian to [REDACTED] [REDACTED], and for which he has been [REDACTED]). *See* Opening Brief at 4-5. Rather than afford Mr. Mansourian’s [REDACTED] a fair amount of consideration, FINRA’s position is that Mr. Mansourian has failed “to establish his claimed condition and its effect on his testimony . . .” *Opposition Brief* at 17. To the contrary, Mr. Mansourian has remained consistent regarding his medical condition since first advising FINRA of its existence. RBN 002477 – RBN 002479. Although FINRA could have utilized Rule 8210

to request that Mr. Mansourian produce medical records to substantiate the obsessive-compulsive disorder if FINRA felt Mr. Mansourian was being less than honest about it, FINRA never questioned such medical condition. Now, in connection with this matter, FINRA has chosen to hide behind the notion that Mr. Mansourian has somehow failed to establish his condition. Opposition Brief at 17. Mr. Mansourian's Opening Brief has done just that by (1) advancing Mr. Mansourian's obsessive-compulsive disorder as a mitigating factor, (2) identifying the portions of the underlying record that establish the [REDACTED] and (3) pointing out how the [REDACTED] associated with [REDACTED] played a role in his inaccurate testimony and being forced to correct such inaccurate testimony. Opening Brief at 4-5, 8-9. Nothing in the record suggests that Mr. Mansourian, having never previously conducted an on-the-record interview ("OTR"), would have known that [REDACTED] or related [REDACTED] would impact his ability to testify. Common sense dictates that Mr. Mansourian would have [REDACTED] if he had known that it would cause such significant issues.

Rather than acknowledging the uncomfortable nature of addressing his [REDACTED] in the underlying disciplinary proceeding, the OHO Panel belittled Mr. Mansourian's condition by questioning whether the OHO Panel could believe any of Mr. Mansourian's testimony, while the NAC upheld the OHO Panel's inappropriate conduct by further ignoring the mitigating nature of Mr. Mansourian's medical condition. *Id.*; RBN 006417 – RBN 006456. Had the NAC reviewed the matter fairly, it would have noted that Mr. Mansourian's [REDACTED] warranted careful scrutiny and the ultimate reversal of the OHO Panel's credibility findings. The NAC's failure to do so rendered the NAC Decision subject to modification or reversal by the Commission.



### **III. PRIOR DISCIPLINARY PROCEEDING RULINGS SUPPORT LESSER SANCTIONS FOR MR. MANSOURIAN**

Prior FINRA disciplinary proceeding decisions, as well as the NAC's review of those decisions, illustrate that lesser sanctions are appropriate for Mr. Mansourian. For example, in *Dep't of Enforcement v. Cohen*, Complaint No. EAF0400630001, 2010 WL 3295149 (NASD NAC Aug. 18, 2010), a FINRA disciplinary panel imposed permanent bars on two non-supervisory registered representatives for creating and maintaining inaccurate books and records related to variable annuity trades at their member firm. After noting their low level at their firm but still recognizing aggravating factors, the NAC reduced both registered representative's permanent bars to 18-month suspensions in all capacities while requiring that they requalify before acting in any capacity requiring requalification. Similarly, in *Dep't of Enforcement v. Harrington*, Disciplinary Proceeding No. 2015047303901, 2018 WL 6630196 (OHO Nov. 12, 2018), a FINRA disciplinary panel held that a registered representative falsified wire request forms, caused her firm to maintain inaccurate books and records, and provided false forms to FINRA. That registered representative was suspended for two separate one-year terms, to run consecutively. In determining such sanction, the disciplinary panel noted the following mitigating factors: (1) the registered representative was acting at the direction of her supervisor, (2) who authorized the registered representative to alter the document and (3) assured her that the alteration was permissible. Such conduct is extremely similar to the conduct in this matter, and Mr. Mansourian respectfully requests that the Commission be guided by the legal authority he has cited in this section.

In the Opposition Brief, FINRA relied upon *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at \*65-69 (Sept. 24, 2015) to support the notion that "falsifying compliance documents, including backdating documents provided to FINRA, is serious misconduct that warrants a bar." See Opposition Brief at 12. In that matter, however, the

registered representatives at issue were found to have (1) engaged in private securities transactions without providing written notice to, or obtaining written approval from, their member firm; (2) engaged in outside business activities without providing prompt written notice to their member firm; (3) failed to provide requested information in connection with a FINRA investigation; (4) failed to timely appear for an OTR, (5) made misstatements on firm compliance schedules; (6) misused customer funds; and (7) caused their member firm to maintain inaccurate books and records. The Commission's determination to sustain FINRA's bar against those registered representatives is hardly probative in determining whether Mr. Mansourian's sanction in this matter is excessive and unfair, and FINRA's attempted reliance upon such case is erroneous.

The legal authority provided herein demonstrates that a lesser sanction for Mr. Mansourian is both fair and in alignment with multiple other disciplinary proceedings. In light of the underlying facts relating to Mr. Mansourian, the sanction of a permanent bar is excessive.

#### **IV. CONCLUSION**

Mr. Mansourian engaged in conduct that violated FINRA Rules and accepts that he should be sanctioned. However, considering the mitigating factors associated with Mr. Mansourian's violative conduct should lead any fair-minded reviewer to determine that Mr. Mansourian's conduct does not warrant a permanent bar from the securities industry. For the reasons set forth in Mr. Mansourian's Opening Brief and herein, Mr. Mansourian respectfully requests that the Commission modify or reverse the NAC Decision by ordering a reasonable lesser sanction against

Mr. Mansourian. Additionally, Mr. Mansourian respectfully renews his request that the Commission allow oral argument in connection with this matter.

Dated: July 2, 2019

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that, on July 2, 2019, I caused a true and correct copy of the foregoing document to be served upon the following by overnight mail and email transmission addressed to:

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