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November 9, 2020

VIA EMAIL

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Email: apfilings@sec.gov

RE: In the Matter of the Application of Donald Anthony Wojnowski
Administrative Proceeding No. 3-19014

Dear Ms. Countryman:

Enclosed please find FINRA's Brief in Opposition to the Application for Review in the above-captioned matter.

Please contact me at (202) 728-8985 if you have any questions.

Very truly yours,

/s/ Celia L. Passaro

Celia L. Passaro

Enclosure

cc: Erica J. Harris, Esq. (via email)
Owen Harnett, Esq. (via email)

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application of

Donald Anthony Wojnowski

File No. 3-19014

For Review of Action Taken by
Financial Industry Regulatory Authority

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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November 9, 2020

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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
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In the Matter of the Application of

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File No. 3-19014

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FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

I. Introduction

This matter concerns applicant Donald Anthony Wojnowski's attempt to commence a proceeding in FINRA's arbitration forum, FINRA's Office of Dispute Resolution ("Dispute Resolution"), seeking the expungement of certain customer complaint information from his record in FINRA's Central Registration Depository ("CRD" ®). While FINRA rules allow associated persons like Wojnowski to seek expungement of certain matters from CRD in an arbitration proceeding, the Director of Dispute Resolution (the "Director") properly exercised his discretion under FINRA rules to deny Wojnowski the arbitration forum here. The former FINRA member that disclosed the customer complaint information on Wojnowski's CRD record, and that Wojnowski named as the respondent in his arbitration statement of claim, filed for bankruptcy and is in liquidation proceedings. Thus, all actions against it, including this arbitration, are automatically stayed pursuant to the United States Bankruptcy Code (the "Bankruptcy Code"). Consequently, Dispute Resolution was unable to serve the respondent with notice of the arbitration as required by FINRA rules and therefore properly dismissed the

arbitration without prejudice. The Director's denial of the arbitration forum in this case was consistent with federal law and applicable FINRA rules.

Additionally, the Commission should grant FINRA's motion to adduce an explanatory letter, sent after FINRA's initial letter denying forum. This letter explained the grounds for the Director's decision to deny Wojnowski the arbitration forum. The letter is relevant to the key issue on appeal—i.e., whether Wojnowski's claim is eligible for arbitration given the respondent's pending liquidation proceedings—and there were reasonable grounds for omitting the letter from the record because the letter did not exist at the time the certified record was filed with the Commission. Moreover, because the letter merely explains the initial rationale for the Director's decision and does not present an alternate or "new" basis for that decision, the Commission may accept it and consider it without remanding the case back to FINRA.

If the Commission grants FINRA's motion to adduce and admits the Director's explanatory letter into the record on appeal, Dispute Resolution would have provided Wojnowski with sufficient specific grounds for its denial of the arbitration forum. Those grounds are consistent with federal law and FINRA rules. Accordingly, the Commission should dismiss the application for review.

II. Factual and Procedural Background

A. Wojnowski

Wojnowski has been in the securities industry for more than 30 years and has been associated with several FINRA members. (R. at 17-23.)[1] The claim at issue in this case arose

[1] "R. ___" refers to the page numbers in the certified record filed by FINRA.

while Wojnowski was associated with E.F. Hutton.[2] (R. at 1, 37-8.) Wojnowski is currently registered with Paulson Investment Company LLC. (R. at 17-18, 25-40.)

B. The Customer Claim

On August 12, 1987, Wojnowski's customers, Lynn Reeves and Robert Reeves, filed a complaint against him seeking more than $51,000 in compensatory damages. (R. at 37-39.) The Reeves alleged that they were unaware of unprofitable transactions in their account and that many transactions in their account were unauthorized. (*Id.*) E.F. Hutton reported on Wojnowski's record in CRD that the Reeves' claim was settled for $31,396.45. (R. at 38-39.)

C. Wojnowski Files a Statement of Claim with FINRA Dispute Resolution Seeking Expungement

On January 23, 2019, more than 30 years after the Reeves filed their customer complaint, Wojnowski filed a statement of claim with Dispute Resolution[3] seeking to expunge the

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[2] Wojnowski named E.F. Hutton & Company, Inc. ("E.F. Hutton") as the respondent in his statement of claim. In 1989, however, E.F. Hutton merged with Lehman Brothers and terminated its FINRA membership. *See* CRD printout attached as Exhibit A. CRD is the central licensing and registration system used by the U.S. securities industry and its regulators. In general, the information in the CRD system is submitted by registered securities firms, brokers, and regulatory authorities in response to questions on uniform registration forms. FINRA makes specific CRD information publicly available through BrokerCheck. The Commission may take official notice of the information in CRD. *See* Commission Rule of Practice 323, 17 C.F.R. § 201.323; *James Lee Goldberg*, Exchange Act Release No. 66549, 2012 SEC LEXIS, at *3 n.2 (Mar. 9, 2012) (taking official notice of information in CRD).

In September 2008, Lehman Brothers filed for bankruptcy and Lehman Brothers, Inc. ("Lehman"), its FINRA member broker-dealer affiliate, commenced liquidation proceedings under the Securities Investor Protection Corporation Act of 1970 ("SIPA"). *See* Exhibit B ("Order Commencing Liquidation").

[3] FINRA has since changed the name of the Office of Dispute Resolution to FINRA Dispute Resolution Services.

disclosures in CRD about the Reeves' complaint and its settlement.[4] (R. at 1-3.) Wojnowski named E.F. Hutton, the member firm that reported the complaint and its settlement, as the respondent in the arbitration. (*Id.*)

A few days later, on January 29, 2019, Dispute Resolution notified Wojnowski that the Director had determined that his claims were not eligible for arbitration. (R. at 7.) The notice cited FINRA Rule 13203(a) as the basis for the Director's authority to decline the arbitration. (*Id.*) Consequently, Dispute Resolution closed Wojnowski's case without prejudice and refunded his filing fees. (*Id.*)

D. Wojnowski Files an Application for Review with the Commission

On February 22, 2019, Wojnowski filed an application with the Commission asking it to review the Director's determination that his claim was not eligible for arbitration. (R. at 9-12.) On April 5, 2019, the Commission ordered the parties to submit briefs limited to the issue of whether the Commission has jurisdiction over this appeal.

E. Dispute Resolution Sends Wojnowski a Second Letter

On April 8, 2019, Dispute Resolution sent a second letter to Wojnowski further explaining the basis for the Director's decision to deny the arbitration forum.[5] (*See* April 8, 2019 letter attached to FINRA is April 10, 2019 Motion to Adduce Additional Evidence (the "April 8, 2019 letter"). In the April 8, 2019 letter, Dispute Resolution explained that "CRD indicates that E.F. Hutton terminated its FINRA registration and merged with Lehman Brothers in 1989." (*Id.*)

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[4] In addition to expungement of the customer claim information, Wojnowski's statement of claim requested compensatory damages of $1.

[5] This letter is the subject of FINRA's April 10, 2019 Motion to Adduce Additional Evidence. The merits of FINRA's Motion to Adduce are addressed below (*see infra* III.B.)

The letter further explained that Lehman Brothers filed for bankruptcy and all claims, including Wojnowski's arbitration, are stayed while the bankruptcy case is pending. (*Id.*) Consequently, Dispute Resolution explained that it was unable to serve the statement of claim as required under Rule 13300(c) and thus "unable to accept the claim for arbitration." (*Id.*)

On August 19, 2020, the Commission issued an order finding that it had jurisdiction over this appeal pursuant to its decision in *Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 SEC LEXIS 3312 (Aug. 6, 2020), and ordered the parties to submit briefing on the merits (the "Scheduling Order").[6]

III. Argument

Under Exchange Act Section 19(f), the Commission must dismiss Wojnowski's application for review if it finds that: (1) the specific grounds on which FINRA based its action exist in fact; (2) FINRA's denial of the arbitration forum was in accordance with its rules; and (3) those rules were applied in a manner consistent with the purposes of the Securities Exchange Act of 1934 (the "Exchange Act"). 15 U.S.C. § 78s(f). FINRA's action here meets these standards. The Director's denial of FINRA arbitration forum was based on the fact that Wojnowski named as a respondent in his statement of claim a firm that filed for bankruptcy and is in liquidation proceedings, and therefore protected by the automatic stay provisions of the Bankruptcy Code. The automatic stay prevented Dispute Resolution from serving Lehman, as successor to E.F. Hutton, with notice of Wojnowski's arbitration claim and proceeding with the

[6] Wojnowski filed his opening brief on September 18, 2020, and we cite it herein as "Wojnowski Br. at __." Wojnowski's brief does not contain page numbers, but we have presumed numbering for purposes of citation.

arbitration.

The Director's decision was an appropriate exercise of his discretion under FINRA rules and was consistent with the requirements of the Bankruptcy Code and FINRA rules. Moreover, the Commission should grant FINRA's motion to adduce and, if it does, Wojnowski was provided with appropriate notice of the basis for the Director's denial of the FINRA arbitration forum.

A. FINRA's Determination that Wojnowski's Claim was Ineligible for Arbitration was Consistent with Federal Law and FINRA Rules

1. Respondent is in a Pending SIPA Liquidation and Thus Subject to an Automatic Stay Under the Bankruptcy Code

When a debtor files a bankruptcy petition or commences liquidation proceedings under SIPA, Section 362(a) of the Bankruptcy Code broadly and immediately prohibits a number of acts against the debtor and its estate, including the commencement or continuation of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the filing of the bankruptcy petition, including arbitrations. 11 U.S.C. § 362(a); *see In re R.S. Pinellas Motel P'ship*, 2 B.R. 113, 117-18 (Bankr. M.D. Fla. 1979) (stating that "[t]here is no doubt that the scope of the [automatic stay] protection is broad and was designed to reach all proceedings, including license revocations, arbitrations, administrative and judicial proceedings and its operation is no longer limited to civil action, but includes proceedings even if they are not before governmental tribunals"). Any action taken in violation of the automatic stay is void. *In re Smith*, 86 B.R. 92 (W.D. Mich. 1988), *aff'd in part and rev'd in part*, 876 F.2d 524 (6th Cir. 1989). Moreover, the penalties for violating the automatic stay can be severe, including actual damages, costs, and attorneys' fees. 11 U.S.C. § 362(k); *see In re Johnson*, 580 B.R. 766, 789-95 (Bankr. S.D. Ohio 2019) (explaining that an award of actual

damages and attorneys' fees and costs is mandatory where there is a willful violation of the automatic stay and awarding punitive damages where the violation of the automatic stay was intentional).

Generally, the automatic stay is in effect until the bankruptcy is closed or dismissed, or a party obtains affirmative relief from the bankruptcy court to proceed notwithstanding the protections of the automatic stay. *See* 11 U.S.C. §§ 362(c), (d). Section 362(a) applies to SIPA liquidations by its own terms. 11 U.S.C. § 362(a); *see also In re Bernard L. Madoff Inv. Sec., LLC*, 2013 U.S. Dist. LEXIS 143956, at *34-35 (S.D.N.Y. Sept. 30, 2013) (noting that the automatic stay under the Bankruptcy Code applies in liquidations filed under SIPA). The automatic stay under § 362(a) applies to all civil actions against the debtor, including specifically FINRA arbitration proceedings. *See In re Wolf Fin. Grp., Inc.*, 1994 Bankr. LEXIS 2350, at *11 (Bankr. S.D.N.Y. Dec. 15, 1994) (noting that there is "no dispute" that the automatic stay under § 362 stays arbitration proceedings conducted by FINRA's predecessor, NASD").[7]

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[7] Section 362(b)(25) of the Bankruptcy Code (and reiterated in Lehman's Order Commencing Liquidation) provides an exception to the automatic stay for:

> (A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;
>
> (B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or
>
> (C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.

11 U.S.C. § 362(b)(25).

[Footnote cont'd on next page]

It is undisputed that when Wojnowski filed his statement of claim, Lehman, the successor to E.F. Hutton, was in SIPA liquidation proceedings. (R. at 5; *see also* Ex. B.) Further, the record contains no evidence that the provisions of the automatic stay had been lifted in connection with Wojnowski's claim; nor does Wojnowski claim that the stay was lifted or modified to allow his arbitration to proceed. Accordingly, the automatic stay imposed by § 362(a) of the Bankruptcy Code applies to all actions that could have been brought against Lehman prior to its liquidation proceeding, including Wojnowski's arbitration here.

2. Dispute Resolution Is Prohibited by the Automatic Stay From Serving a Claim Notification as Required by FINRA Rules

Under Rules 13300(c)(1) and 13302(c) of the Code of Arbitration for Industry Disputes (the "Code of Arbitration"), when a statement of claim is filed, the Director is required to serve a Claim Notification Letter on the named respondent. The Claim Notification Letter is a "notice provided by the Director to respondent(s) that they have been named as a party in a statement of claim." FINRA Rule 13100(f). The Claim Notification Letter tells a respondent how to obtain a copy of the statement of claim and provides additional important information, including the hearing location and the time for filing an answer to the statement of claim. The Claim Notification Letter effectively provides service of process notifying a respondent of the

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[cont'd]

Applicant's arbitration against Lehman does not fall within this exception, which applies to actions brought by self-regulatory organization like FINRA against a debtor, in furtherance of its regulatory mission and only when no monetary sanction is sought. *See, e.g.*, *Dep't of Enforcement v. Pellegrino*, Complaint No. C3B050012, 2008 FINRA Discip. LEXIS 10, at *80 (FINRA NAC Jan. 4, 2008) (imposing a principal bar against respondent, but declining to impose a fine because the automatic stay had not been lifted in respondent's personal bankruptcy for an action to enforce a decision imposing monetary sanctions), *aff'd*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843 (Dec. 19, 2008). The exception does not apply to applicant's private civil action against Lehman, whether in FINRA's arbitration forum or any other forum.

commencement of an arbitration case. *See Lawrence v. Raymond James Fin. Servs.*, 2019 U.S. Dist. LEXIS 2337, at *7-8 (S.D.N.Y. Jan. 4, 2019) (finding that FINRA arbitrators did not ignore or refuse to apply the governing legal principle that service of process is necessary to give notice of an arbitration where the arbitrators found that the respondent was properly served under FINRA Code of Arbitration Rules 13300, 13301, and 13302).

When Wojnowski filed his statement of claim seeking expungement, in order to proceed with the arbitration, the Director was obligated to serve a Claim Notification Letter on Lehman as the successor to the named respondent. As discussed above (*see supra* Part III.A.1), however, the Director was prohibited from serving the Claim Notification letter on Lehman because of the automatic stay triggered by its liquidation proceedings. Indeed, such service would have been void under the Bankruptcy Code and FINRA would have been in the position of violating, or aiding a violation of, the automatic stay. Under these circumstances, the Director properly exercised his discretion to deny Wojnowski the arbitration forum.

3. The Director Properly Exercised His Discretion to Deny the Arbitration Forum in this Case

FINRA Rules 12203(a) and 13203(a) establish a gatekeeper role for the Director by authorizing him to exclude inappropriate arbitration claims from the FINRA arbitration forum.[8] The rules are identical and provide:

> (a) The Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or

[8] FINRA Rule 12203(a) applies in the context of customer arbitrations and 13203(a) applies to arbitrations between industry members. FINRA Rule 13203(a) applies in this case of an arbitration filed by an associated person against a member firm.

> safety of arbitrators, staff, or parties or their representatives.

FINRA Rules 12203(a),13203(a); *see, e.g.*, *Bayme v. Groupargent Sec., LLC*, 2011 U.S. Dist. LEXIS 79296, at *13 (S.D.N.Y. July 19, 2011) (explaining that FINRA Rule 13203 allows the Director to "weed out early on the disputes [where the] 'subject matter is inappropriate' in light of the purposes of FINRA and the intent of the Code").

In its approval order for FINRA Rules 12203 and 13203, the Commission underscored that the rules empowered the Director to act to preserve the arbitration forum for claims that are consistent with the purpose of the forum. Specifically, the Commission noted that Rules 12203 and 13203 would "facilitate excluding cases from the [FINRA] arbitration forum that are beyond its mandate, allowing it to focus on the cases that are appropriately in the forum." *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto*, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007). At the time of these statements, the Commission was approving the *expansion* of the Director's discretionary authority under FINRA Rules 12203 and 13203.

In this case, the Director properly exercised his discretion under FINRA Rule 13203 where service of the Claim Notification Letter and continuation of the arbitration against Lehman would violate the automatic stay under the Bankruptcy Code.[9] Accordingly, the Director's decision to deny the arbitration forum in this case was consistent with federal law and

[9] Wojnowski suggests that whether the customer dispute is eligible for expungement should be determined by an arbitration panel, not the Director. (Wojnowski Br. at 3.) The Director's decision, however, does not concern whether the disclosure should be expunged, but rather whether the arbitration proceeding may continue at this time considering Lehman's liquidation and the applicable automatic stay.

FINRA rules.

B. FINRA Has Met the Standard of Commission Rule of Practice 452 and the Commission Should Grant FINRA's Motion to Adduce

Under Commission Rule of Practice 452, the Commission may permit the introduction of new evidence if the moving party shows that (a) "such additional evidence is material" and (b) "there were reasonable grounds for failure to adduce such evidence previously." 17 C.F.R. § 201.452. The April 8, 2019 letter meets the criteria of Rule 452 and therefore should be admitted into evidence.

The April 8, 2019 letter is material to the ultimate issue on appeal—i.e., whether the Director properly denied the arbitration forum in this case. The April 8, 2019 letter explains the reasons why Wojnowski's case is ineligible for arbitration. Wojnowski argues that FINRA's Motion to Adduce states that the April 8, 2019 letter is only relevant to the issue of jurisdiction, which has already been decided. (Wojnowski Br. at 8.) Wojnowski misreads FINRA's motion. To the contrary, FINRA explains in the motion to adduce that "[t]he April 8[, 2019] Letter is material because it further explains why Dispute Resolution determined that Wojnowski's request for expungement of the 1987 settlement was not eligible for arbitration—i.e., the dispositive decision by FINRA for which Wojnowski now seeks Commission review." (FINRA's Motion to Adduce at 2.) There is no question that the April 8, 2019 letter is directly relevant to the ultimate issue on appeal.

Moreover, FINRA had reasonable grounds for failing to adduce the April 8, 2019 letter previously because the letter did not exist when FINRA filed the certified record in this appeal. The certified record was filed with the Commission on March 14, 2019, approximately three weeks before the April 8, 2019 letter was sent. FINRA moved to adduce the April 8, 2019 letter on April 10, 2019, two days after it was sent to Wojnowski. The Commission has previously

granted motions to adduce under Rule 452 where the document in question did not previously exist. *See e.g.*, *Irfan Mohammed Amanat*, Exchange Act Release No. 54708, 2006 SEC LEXIS 2545 at *46 n.59 (Nov. 3, 2006) (finding that there were reasonable grounds for the Division's failure to adduce documents previously because they did not exist until after the hearing before the law judge); *Fog Cutter Capital Grp., Inc.*, 58 S.E.C. 1049, 1050 n.3 (Dec. 21, 2005) (granting a motion to adduce additional evidence where the evidence was material and none of it existed when the record closed).

The April 8, 2019 letter is material to the key issue on appeal and FINRA moved pursuant to Rule 452 to adduce it as additional evidence just two days after it was sent to Wojnowski. Accordingly, the Commission should grant FINRA's Motion to Adduce.

1. FINRA Did Not Send Wojnowski the April 8, 2019 Letter Before His Appeal Because FINRA Did Not Believe that the Director's Exercise of Discretion under Rule13203(a) was Reviewable Under Exchange Act Section 15A(h)(2)

Under Exchange Act Section 15A(h)(2), in any proceeding where FINRA limits access to services, FINRA must provide notice of the specific grounds for limiting access to services. *See* 15 U.S.C. § 78o-3(h)(2). Prior to the Commission's order on August 6, 2020, *see Consolidated Arbitration*, Exchange Act Release No. 89495, 2020WL 4569083 (Aug. 6, 20202), FINRA did not believe it was obligated to comply with Exchange Act Section 15A(h)(2) because it did not believe access to its arbitration forum for expungement was an essential service subject to the Commission's jurisdiction under Exchange Act Section 19(d)(2). While these applications for review (including Wojnowski's) were pending, FINRA sent an additional supporting statement to certain claimants to further explain FINRA's prior decision denying the claimants access to the forum. FINRA did so to assist the Commission, permit the parties to be able to address more fully FINRA's actions in briefs before the Commission, and out of an abundance of caution

should the Commission find that it had jurisdiction. In other words, at the time FINRA sent Wojnowski the initial letter denying access to the arbitration forum, FINRA did not believe it would be subject to Commission review under the Exchange Act

The cases the Commission cites in the Scheduling Order support granting FINRA's Motion to Adduce the April 8, 2019 letter and considering it in deciding this case on the merits. In *Rhea Lana, Inc. v. U.S. Dep't of Labor*, the court allowed the submission of a post hoc declaration explaining the grounds for the Department of Labor's determination of whether certain individuals were employees rather than volunteers. 925 F.3d 521, 524-25 (D.C. Cir. 2019). In *Rhea Lana*, like here, when the agency made its determination, it was unaware the decision would be deemed final agency subject to judicial review. *Id.* The court based its decision on the fact that the declaration came from the same official who made the initial determination and that the declaration did not present an entirely new theory for the determination. *Id.* The same is true here. The April 8, 2019 letter came from the Director who initially determined pursuant to his discretion under Rule 13203(a) that Wojnowski's claim was not eligible for arbitration. Moreover, there is no evidence that the April 8, 2019 letter presented a new theory for the Director's determination. To the contrary, the April 8, 2019 letter simply further explained the grounds for the Director's determination and is consistent with the reasoning provided in similar cases. *See, e.g.*, *Matter of the Application of Maurice James Acriche*, Administrative Proceeding No. 3-19786.[10]

Oliveras v. Transp. Sec. Admin. also supports the Commission's acceptance and consideration of the April 8, 2019 letter. 819 F.3d 454, 463-64 (D.C. Cir. 2016). In that case,

[10] Wojnowski is represented by the same attorneys who represent the applicant in *Matter of the Application of Maurice James Acriche*, Administrative Proceeding No. 3-19786.

the agency initially provided no rationale for its denial of the petitioner's application for flight training. *Id.* After the petitioner filed his appeal, however, the agency submitted a declaration and other internal documents setting forth the grounds and rationale for the agency's decision. *Id.* The court accepted this post hoc declaration, explaining that it "furnishes an explanation of the administrative action that is necessary to facilitate effective judicial review" and further explained that because it did not offer any new rationalizations it was "thus admissible for [the court's] consideration."[11] *Oliveras*, 819 F.3d at 464. The same rationale applies here. The April 8, 2019 letter is necessary for the Commission's review and it offers no new rationale for the Director's exercise of discretion in refusing the arbitration forum to Wojnowski. Accordingly, the Commission should grant FINRA's motion to adduce the letter and consider it in making a decision on the merits.

2. The Record Is Sufficient for the Commission to Discharge Its Review Function

If the Commission grants FINRA's motion to adduce and considers the Director's April 8, 2019 letter explaining the reason for his decision, the record will be sufficient for the Commission to discharge its review function. The Commission should grant FINRA's motion for the reasons stated herein. Moreover, remanding this matter back to FINRA to issue another supporting statement for its decision would serve no purpose because FINRA simply would

[11] Not surprisingly, Wojnowski's brief does not mention either *Rhea Lana* or *Oliveras*, despite the Commission citing these cases in the Scheduling Order. Instead, Wojnowski cites two cases that are inapposite. *SEC v. Chenery Corp.*, 332 U.S. 194 (1947), concerns the court's scope of review of an administrative order by an agency that sets forth a new principle. In this case, the court upheld the SEC's determination where it was based on substantial evidence and was consistent with the authority granted the SEC by Congress. *Id.* In *Burlington Truck Lines v. United States*, 371 U.S. 156 (1962), the court remanded the case to the agency where there was insufficient justification for the agency's action to justify the remedy imposed. Neither of these cases are pertinent here.

provide another letter stating it cannot accept Wojnowski's statement of claim due to the liquidation proceedings prohibiting FINRA from serving a Claim Notification Letter on Lehman. *See Tourus Records, Inc. v. DEA*, 259 F.3d 731, 739 (D.C. Cir. 2001) ("Indeed, a remand to correct the initial notice would serve no purpose, as the agency could and no doubt would simply retransmit its internal memoranda to petitioner.").

C. FINRA's Letters Accurately Informed the Applicant of the Director's Decision

Under Exchange Act Section 15A(h)(2), in any proceeding where FINRA limits access to services, FINRA must provide notice of the specific grounds for limiting access to services. *See* 15 U.S.C. § 78o-3(h)(2). Specifically, a determination by FINRA limiting access to services offered by FINRA "shall be supported by a statement setting forth the specific grounds on which the . . . limitation is based." *Id.*

The Director considered Wojnowski's statement of claim and sent two letters accurately informing him of the Director's decision to deny access to FINRA's arbitration forum and setting forth the specific grounds on which the prohibition was based.[12] FINRA's notice stated that the decision was made pursuant to the Director's discretion under Rule 13203(a) and that the specific grounds for the denial of the arbitration forum was the automatic stay triggered by Lehman's liquidation proceedings. The April 8, 2019 letter also invited Wojnowski's counsel to contact the Director if he had any questions or required additional information—thereby providing Wojnowski with another opportunity to be heard.

Despite the accuracy of FINRA's notice, Wojnowski nonetheless claims that the notice

[12] As also required by Exchange Act 15A(h)(2), FINRA also maintained a record of its action in this matter which was submitted as the certified record on appeal. *See* 15 U.S.C. § 78o-3(h)(2).

was inadequate, and that the Director's decision did not comply with FINRA rules. Wojnowski suggests that a FINRA Senior Case Specialist, and not the Director, made the decision to deny him the arbitration form. (Wojnowski Br. at 6-7.) There is no support in the record for this contention. To the contrary, the Dispute Resolution's first notice references the rule indicating that the decision was made by the Director. (R. at 7.) The fact that another FINRA staff member completed the administrative task of preparing and sending the notice of the Director's decision to the parties is not an indication that that staff person exercised improperly the Director's discretion. FINRA rules do not require that the Director himself communicate his decision to deny the forum. By referencing FINRA Rule 13203(a), it is axiomatic that the Director exercised his authority under the rules, regardless of whether he personally signed the letter communicating his decision or whether the letter explicitly referenced that "the Director," as opposed to "FINRA," made the decision.

Wojnowski also erroneously argues that the Commission cannot consider FINRA's April 8, 2019 letter. According to Wojnowski, the April 8, 2019 letter altered the reasoning for the Director's decision and should not be considered. (Wojnowski Br. at 7.) Wojnowski further argues that only the first letter may be considered and that it provides no grounds for the denial of the arbitration forum. (*Id.*) Wojnowski cites no authority holding that, once an application for review has been filed with the Commission, FINRA cannot provide additional information explaining the reasoning behind its challenged action. Such a rule would make little sense. Indeed, in the analogous context of a judicial proceeding to review an agency's action, when needed, an agency may provide additional information explaining its decision, even after litigation has begun. *Bolden v. Blue Cross & Blue Shield Ass'n.*, 669 F. Supp. 1096, 1102 (D.D.C. 1986), *aff'd*, 848 F.2d 201 (D.C. Cir. 1988) ("But where the bare administrative record

does not fully disclose the factors the agency considered, it is proper to require the agency to provide a more adequate explanation of its reasons, even though litigation has commenced."); *see also Airport Impact Relief, Inc. v. Wykle*, 192 F.3d 197, 209 (1st Cir. 1999) ("So long as the new material is explanatory of the decisionmakers' action at the time it occurred (which we are convinced that it is) and does not contain post-hoc rationalizations for the agency's decision (which we are convinced that it does not), the new material may be considered."). The Commission should consider the Director's April 8, 2019 letter because it provides necessary additional information about his decision.

Moreover, as discussed above (*see supra* III.B.1), Wojnowski is wrong that the Director altered its rationale for denying the arbitration forum. The April 8, 2019 letter simply provides an explanation of the rationale of the Director's initial decision.

Finally, there is no indication that Wojnowski was unfairly prejudiced by the Director's submission of a second letter on April 8, 2019. FINRA sent the April 8, 2019 letter to Wojnowski approximately a year and half before Wojnowski's opening brief on the merits was due. And there is no reason to believe that Wojnowski does not understand the specific grounds for the Director's decision.

IV. Conclusion

The Director properly exercised his discretion under FINRA rules by denying the arbitration forum where serving a Claim Notification Letter and proceeding with the arbitration would have run afoul of the automatic stay triggered by Lehman's liquidation proceedings. The Director's decision was consistent with federal law and FINRA's rules. The Commission should grant FINRA's motion to adduce a letter, which accurately informed Applicant of the specific

grounds for that decision. Accordingly, the specific grounds on which FINRA based its action exist in fact, FINRA's denial of the arbitration forum was in accordance with its rules, and those rules were applied in a manner consistent with the purposes of the Exchange Act as required by Exchange Act Section 19(f). 15 U.S.C. § 78s(f). Consequently, the Commission should dismiss the application for review.

Respectfully submitted,

/s/ Celia L. Passaro

_____

Celia Passaro
Assistant General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
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November 9, 2020

Exhibit A

CRD/IARD Organization Search

Simple Search **Advanced Search**

Search For: Shearson Lehman Hutton, Inc. **Advanced Search**

Tip: You can enter firm name, CRD number or SEC number in the box above.

Search

Records per Page: 25 Total Records: 3

Name (CRD Number)	Other Names	SEC Number	Home State	BD Active	IA Active	Relying Advisers (CRD Number)
LEHMAN BROTHERS INC. (7506)	LEHMAN BROTHERS; LEHMAN BROTHERS MARKET MAKERS; LEHMAN BROTHERS, INC.; SHEARSON LEHMAN BROTHERS INC.; SHEARSON LEHMAN HUTTON INC.; SHEARSON LEHMAN/AMERICAN EXPRESS INC.; SHEARSON LOEB RHOADES INC.; SHEARSON/AMERICAN EXPRESS INC.	8-12324	NY	Y	N	
LEHMAN BROTHERS PUERTO RICO INC. (10890)	E.F. HUTTON PUERTO RICO INC.; SHEARSON LEHMAN HUTTON PUERTO RICO INC.	8-28179		N		
LEHMAN SPECIAL SECURITIES INC. (7242)	LEHMAN SPECIAL SECURITIES INCORPORATED; SHEARSON LEHMAN HUTTON SPECIAL SECURITIES INCORPORATED; SHEARSON LEHMAN SPECIAL SECURITIES INCORPORATED	8-20860		N		

Records per Page: 25 Total Records: 3

Exhibit B

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS SECURITIES INVESTOR PROTECTION CORPORATION	**DEFENDANTS** LEHMAN BROTHERS INC.
ATTORNEYS (Firm Name, Address, and Telephone No.) Hughes Hubbard & Reed LLP, Counsel for the SIPA Trustee One Battery Park Plaza New York, New York 10004 212.837.6000	**ATTORNEYS** (If Known) James B. Kobak, Jr. Christopher K. Kiplok Jeffrey S. Margolin
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☒ Other ☐ Trustee	**PARTY** (Check One Box Only) ☒ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Liquidation of Broker-Dealer Lehman Brothers Inc. pursuant to Securities Investor Protection Act, 15 U.S.C. §78aaa et seq.

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☒ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Lehman Brothers Holdings Inc., et al.	BANKRUPTCY CASE NO. 08-13555 (JMP)	
DISTRICT IN WHICH CASE IS PENDING Southern District of New York	DIVISION OFFICE	NAME OF JUDGE James M. Peck

RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE September 19, 2008	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants**. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

'08 CIV 8119

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. LEHMAN BROTHERS INC. Defendant.	Civil Action No. 08-__

ORDER COMMENCING LIQUIDATION[1]

On the Complaint and Application of the Securities Investor Protection Corporation ("SIPC"), it is hereby:

I. ORDERED, ADJUDGED and DECREED that the customers of the defendant Lehman Brothers Inc. ("LBI") are in need of the protection afforded by the Securities Investor Protection Act of 1970, as amended ("SIPA"). 15 U.S.C. §78aaa et seq.

II. ORDERED that pursuant to 15 U.S.C. §78eee(b)(3), James W. Giddens is appointed Trustee (the "Trustee") for the liquidation of the business of LBI with all the duties and powers of a trustee as prescribed in SIPA, and the law firm of Hughes Hubbard & Reed LLP is appointed counsel for the Trustee. The Trustee shall file a fidelity bond satisfactory to the Court in the amount of $100,000.00.

1. The "LBI Liquidation Order"

III. ORDERED that all persons and entities are notified that, subject to the other provisions of 11 U.S.C. §362, the automatic stay provisions of 11 U.S.C. §362(a) operate as a stay of:

A. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other proceeding against LBI that was or could have been commenced before the commencement of this proceeding, or to recover a claim against LBI that arose before the commencement of this proceeding;

B. the enforcement against LBI or against property of the estate of a judgment obtained before the commencement of this proceeding;

C. any act to obtain possession of property of the estate or property from the estate;

D. any act to create, perfect or enforce any lien against property of the estate;

E. any act to create, perfect or enforce against property of LBI any lien to the extent that such lien secures a claim that arose before the commencement of this proceeding;

F. any act to collect, assess or recover a claim against LBI that arose before the commencement of this proceeding;

G. the setoff of any debt owing to LBI that arose before the commencement of this proceeding against any claim against LBI; and

H. the commencement or continuation of a proceeding before the United States Tax Court concerning LBI's tax liability for a taxable period the Bankruptcy Court may determine.

IV. ORDERED that all persons and entities are stayed, enjoined and restrained from directly or indirectly removing, transferring, setting off, receiving, retaining, changing, selling, pledging, assigning or otherwise disposing of, withdrawing or interfering with any assets or property owned, controlled or in the possession of LBI, including but not limited to the books and records of LBI, and customers' securities and credit balances, except for the purpose of effecting possession and control of said property by the Trustee.

V. ORDERED that pursuant to 15 U.S.C. §78eee(b)(2)(B)(i), any pending bankruptcy, mortgage foreclosure, equity receivership or other proceeding to reorganize, conserve or liquidate LBI or its property and any other suit against any receiver, conservator or trustee of LBI or its property, is stayed.

VI. ORDERED that pursuant to 15 U.S.C. §§78eee(b)(2)(B)(ii) and (iii), and notwithstanding the provisions of 11 U.S.C. §§362(b) and 553, except as otherwise provided in this Order, all persons and entities are stayed, enjoined and restrained for a period of twenty-one (21) days, or such other time as may subsequently be ordered by this Court or any other court having competent jurisdiction of this proceeding, from enforcing liens or pledges against the property of LBI and from exercising any right of setoff, without first receiving the written consent of SIPC and the Trustee.

VII. ORDERED that, pursuant to 15 U.S.C. §78eee(b)(2)(C)(ii), and notwithstanding 15 U.S.C. §78eee(b)(2)(C)(i), all persons and entities are stayed for a period of twenty-one (21) days, or such other time as may subsequently be ordered by this Court or any other court having competent jurisdiction of this proceeding, from foreclosing on, or disposing of, securities collateral pledged by LBI, whether or not with respect to one or more of such contracts or agreements, securities sold by LBI under a repurchase agreement, or securities lent

under a securities lending agreement, without first receiving the written consent of SIPC and the Trustee.

VIII. ORDERED that the stays set forth in paragraphs three – six shall not apply to:

A. any suit, action or proceeding brought or to be brought by the United States Securities and Exchange Commission ("Commission"), the Commodity Futures Trading Commission ("CFTC"), or any self-regulatory organization of which LBI is now a member or was a member within the past six months; or

B. the exercise of a contractual right of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in 11 U.S.C. §§101, 741, and 761, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by LBI, whether or not with respect to one or more of such contracts or agreements; or

C. the exercise of a contractual right of any securities clearing agency to cause the liquidation of a securities contract as defined in 11 U.S.C. §741(7) and the contractual right of any derivatives clearing organization to cause the liquidation of a commodity contract as defined in 11 U.S.C. §761(4); or

D. the exercise of a contractual right of any stockbroker or financial institution, as defined in 11 U.S.C. §101, to use cash or letters of credit held by it as collateral, to cause the liquidation of its contract for the loan of a security to LBI or for the pre-release of American Depository Receipts or the securities underlying such receipts; or

E. the exercise of a contractual right of any "repo" participant, as defined in 11 U.S.C. §101, to use cash to cause the liquidation of a repurchase agreement, pursuant to which LBI is a purchaser of securities, whether or not such repurchase agreement meets the definition set forth in 11 U.S.C. §101(47); or

F. the exercise of a contractual right, as such term is used in 11 U.S.C. §555, in respect of (i) any extension of credit for the clearance or settlement of securities transactions or (ii) any margin loan, as each such term is used in 11 U.S.C. §741(7), by a securities clearing bank, or the exercise of a contractual right as such term is used in 11 U.S.C. §556 in respect of any extension of credit for the clearance or settlement of commodity contracts by a commodity broker as defined in 11 U.S.C. §101(6). As used herein, "securities clearing bank" refers to any financial participant, as defined in 11 U.S.C. §101(22A), that extends credit for the clearance or settlement of securities transactions to one or more Primary Government Securities Dealers designated as such by the Federal Reserve Bank of New York from time to time; or

G. the exercise of a contractual right, as such term is used in 11 U.S.C. §555, by a person (or such person's agent) in respect of securities that were sold to such person by LBI pursuant to a repurchase transaction (as such term is used in 11 U.S.C. §741(7) and regardless of whether such transaction is a repurchase agreement within the meaning of 11 U.S.C. §101(47)) with LBI that is subject to a Custodial Undertaking in Connection With Repurchase Agreement among LBI, JPMorgan Chase Bank N.A. and such person (or such person's agent); or

H. the exercise of a contractual right, as such term is used in 11 U.S.C. §555, by the Federal Reserve Bank of New York; or

I. any setoff or liquidating transaction undertaken pursuant to the rules or bylaws of any securities clearing agency registered under section 17A(b) of the Securities Exchange Act of 1934, 15 U.S.C.§78q-1(b), or any derivatives clearing organization registered under section 5b of the Commodity Exchange Act, 7 U.S.C. §7a-1, or by any person acting under instructions from and on behalf of such a securities clearing agency or derivatives clearing organization; or

J. any settlement transaction undertaken by such securities clearing agency using securities either (i) in its custody or control, or (ii) in the custody or control of another securities agency with which it has a Commission approved interface procedure for securities transactions settlements, provided that the entire proceeds thereof, without benefit of any offset, are promptly turned over to the Trustee; or

K. any transfer or delivery to a securities clearing agency or derivatives clearing organization by a bank or other depository, pursuant to instructions given by such clearing agency or derivatives clearing organization, of cash, securities, or other property of LBI held by such bank or depository subject to the instructions of such clearing agency or derivatives clearing organization and constituting a margin payment as defined in 11 U.S.C. §741(5); or

IX. ORDERED that the stays set forth in paragraphs three – seven above shall not apply to the exercise of any rights specified in Sections 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560 and/or 561 of the Bankruptcy Code by Barclays Capital Inc. or any affiliate thereof (or any agent of Barclays Capital Inc. or any affiliate thereof), including without limitation rights of foreclosure and disposition referred to in 15 U.S.C. Section 78eee(b)(2)(C)(ii), with respect to any transaction (or any extension, assignment, novation or rollover of such transaction) entered into on or prior to the earlier of (i) consummation of the transactions contemplated by the Asset Purchase Agreement dated September 16, 2008 among Barclays Capital Inc., Lehman Brothers Inc., Lehman Brothers Holdings Inc. and LB 745 LLC and (ii) September 24, 2008;

X. ORDERED that pursuant to 11 U.S.C. §721, the SIPA Trustee is authorized to operate the business of LBI to: (a) conduct business in the ordinary course until 6:00 p.m. on September 19, 2008, including without limitation, the purchase and sales of securities, commodities futures and option transactions, and obtaining credit and incurring debt in relation thereto; (b) complete settlements of pending transactions, and to take other necessary and appropriate actions to implement the foregoing, in such accounts until 6:00 p.m. on

September 23, 2008; and (c) take other action as necessary and appropriate for the orderly transfer of customer accounts and related property.

XI. ORDERED that the Clerk of the Court is directed to immediately open the docket in this proceeding and that this Order be entered on the docket immediately.

XII. ORDERED that the Clerk of the Court is directed to produce seventy-five (75) certified copies of this Order, at the regular cost, immediately upon the Order's entry onto the docket.

XIII. ORDERED that pursuant to 15 U.S.C. §78eee(b)(4), this liquidation proceeding is removed to the United States Bankruptcy Court for the Southern District of New York, and shall be transmitted electronically to by the Clerk of the Court immediately upon entry on the docket.

XIV. ORDERED that the Trustee is authorized to take immediate possession of the property of LBI, wherever located, including but not limited to the books and records of LBI, and to open accounts and obtain a safe deposit box at a bank or banks to be chosen by the Trustee, and the Trustee may designate such of his representatives who shall be authorized to have access to such property.

Date: September 19, 2008

UNITED STATES DISTRICT JUDGE

A TRUE COPY
J. MICHAEL McMAHON, CLERK

BY _____
DEPUTY CLERK

CERTIFICATE OF COMPLIANCE

I, Celia L. Passaro, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 5,251 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

Respectfully submitted,

/s/ Celia L. Passaro

_____

Celia L. Passaro
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202-728-8985 – Telephone
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CERTIFICATE OF SERVICE

I, Celia Passaro, certify that on this 9th day of November 2020, I caused a copy of FINRA's Brief in Opposition to the Application for Review, In the matter of Application of Donald Anthony Wojnowski, Administrative Proceeding File No. 3-19014, to be served by email on:

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090
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Due to office closures related to COVID-19, all parties were served via electronic mail.

/s/ Celia L. Passaro

_____

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