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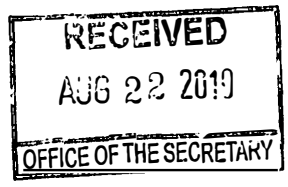

BEFORE THE UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C.

UPPER STREET MARKETING INC. an Oklahoma corporation, and JOSEPH EARLE, a shareholder,

Petitioners

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Respondent

Petition to the United States Securities and Exchange Commission pursuant to Rule 550 of the Commission's Rules of Practice

Securities and Exchange Act of 1934,
Release No. 34-8622 (June 27, 2019)

OPENING BRIEF OF PETITIONERS UPPER STREET MARKETING INC. AND JOSEPH EARLE

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INTRODUCTION

Is Upper Street Marketing Inc. ("UPPR") worth saving? Is microcap worth saving? Petitioners UPPR and Joseph Earle ("Earle") believe so and ask the United States Securities and Exchange Commission (the "Commission") to reverse its premature, unconstitutional June 27, 2019, trading "suspension" in order to restore UPPR and fellow Petitioner Earle, aged 65, to their former financial and legal positions. Because of the Commission's sudden trading suspension of UPPR's stock, UPPR's largest shareholder, Petitioner Earle, will have lost the company he was building and the monies he and his wife were counting on for their retirement; meanwhile, the other shareholders of UPPR will have lost at least the entire value of their respective investments in UPPR's "publicly traded" stock.

So why is UPPR's stock still not trading publicly today? After all, the Commission's regulations and applicable federal laws require FINRA Market Makers to quote OTC issues ***within three days*** (maybe even "five hours") after an OTC non-reporting issuer's request? The Commission itself assumes that the process is speedy and will take mere hours to complete:

> The Commission estimates that it will take a broker-dealer *about three hours* to collect, review, record, retain, and supply to the NASD [FINRA] the information pertaining to a [SEC] reporting issuer, and *five hours* to collect, review, record, retain, and supply to [FINRA] the information pertaining to a non-[SEC] reporting [OTC] issuer.

SEC Release No. 34-39670 (File No. S7-3-98) (emphasis added.). The Commission assumed, when making its suspension decision, that there were **11 Market Makers** ready and able to make a market for UPPR's stock once the suspension expired. The Commission's assumptions on these points are outdated and wrong. There are not 11 such Market Makers waiting in the wings, able to reboot the trading in UPPR or any other OTC stock in a speedy fashion. As of July 2019, in fact, there is only one Market Makers left in this country who will file a Form 211

with FINRA for an OTC-reporting company like UPPR. *See* Declaration of David Lopez ("Lopez Decl.") at ¶ 6. The pool of Market-Makers for OTC stocks has dramatically dried up in the past few years due to the Commissions actions. Lopez Decl. at ¶ 6. Additionally, the piggyback provision expires after four days so that avenue is not meaningful in this context. Lopez Decl. at ¶ 4. This material factual error regarding the state of the market for Marker-Makers is central to understanding why the trading suspension operated as a final order for due process purposes and lies at the crux of the Petitioners' arguments below. The whole process of commencing the retrading of OTC stocks is broken. The Commission needs to step in here and fix the harm it has caused through its failure to follow basic due process requirements and its poor assumptions based on inaccurate facts.

The Commission exists for multiple reasons, but one of its chief purposes is to protect investors. Here, that axiom is turned on its head. The Commission's actions are doing more harm than good to safeguard OTC investors, thus leaving the OTC investing public exposed to extreme market risks and volatility. The law in this area already perfectly covers Joe Q. Public's investment risks, but for some reason, the Staff still promotes the old, tired narrative that the OTC microcap markets shall forever be populated, corrupted and tarnished by bad boy promoters and sleazy "IR" lounge lizards from Florida. Accordingly, the Commission has been led by the Staff into ***not enforcing*** critically important Commission laws and regulations which define and control, for instance, how and when FINRA Market Makers must process new Form 211s for OTC companies.

The Commission has the opportunity here to address, for the positive, the prospective future of the OTC microcap market. This matter involves an *ad hoc* investigation by the Staff after the Commission issued its June 27, 2019 suspension order (the "Order") barring trading of UPPR's

stock on the OTC "Link" exchange (formerly known as the "Pink Sheets").[1] The Commission summarily determined, without any notice or comment from anyone, that UPPR's trading status should be suspended because it allegedly had failed to provide accurate or adequate information about its OTC-reporting stock based upon the Commission's erroneous assumptions and a core misunderstanding of the true facts.

These Petitioners respectfully request that the Commission address time-critical public policy factors specific to the OTC's microcap platforms, which immediately compel:

a. The Commission's strict enforcement of, rather than complete disregard for, FINRA's three-day notice rule under FINRA Rule 6432, in order to engender more Form 211 filings by Market Makers for OTC-reporting companies;

b. The Commission's remedying of the fundamental lack of due process afforded to UPPR and Earle here; and

c. The Commission's cessation of its unlawful exercise of *ultra vires* authority over OTC companies.

The Commission should reverse UPPR's trading suspension forthwith. The Commission should not require UPPR to file a new Form 211 (or initiate any other legal or administrative process) in order for UPPR's stock to resume trading again on OTC Link immediately.

[1] SEC Release No. 34-86228 (June 27, 2019).

PROCEDURAL HISTORY

1. *The Commission Suspended Trading in UPPR*

Before June 27, 2019, the shares of UPPR traded via the OTC market system; its shares did not trade via one of the exchanges. Declaration of Joseph Earle ("Earle Decl."), at ¶ 19.[2] Accordingly, most of the Commission's statutes, regulations, and rules do not apply to UPPR.

On June 27, 2019, the Commission suspended trading in the securities of UPPR based on the Staff's concerns about the accuracy and adequacy of information publicly disseminated by someone concerning UPPR since November 2018. Earle Decl. at ¶ 20. This information included: (a) UPPR's own public statements dated May 8, 2019 and May 23, 2019 concerning a $10.55 million financing for UPPR; (b) UPPR's public statements dated April 30, 2019 and May 23, 2019 denying its retention of an investor relations firm despite apparent possible promotional activity by third parties on behalf of UPPR; and (c) UPPR's purportedly inadequate statements since at least November 2018 concerning a possible private stock offering to raise $3 million. *Id.*

2. *UPPR Voluntarily Amended the Filings Referenced in the Order*

Within two weeks of the Commission's Order, UPPR voluntarily amended its relevant filings to address the Commission's issues. Earle Decl. at ¶ 21. Had the Staff provided UPPR with proper notice and an opportunity to cure these issues in advance of the Order, UPPR could have and would have responded to the Staff's concerns much more expeditiously and cured most, if not all, problems in UPPR's filings. Earle Decl. at ¶ 22. Specifically, by July 12, 2019, UPPR had amended its OTC filings to provide the investing public with a more detailed and accurate description of: (a) the investor relations firms engaged by UPPR; (b) the law firms engaged by

[2] Petitioner Earle is travelling from the East Coast today (August 21, 2019) and has been unable to execute and scan a signed copy of the attached declaration. He reviewed a draft of the attached on August 20, 2019 and the attached version reflects his input. We anticipate filing an executed declaration identical or substantially similar to the attached later this week.

UPPR; (c) UPPR's independent auditors; (d) the merger and acquisition transaction; and (e) the history of UPPR's financings. *See* Earle Decl. at ¶ 14.

3. *The Commission's Formal Investigation Began July 29, 2019*

Approximately one month after the Commission issued the Order, on or about July 29, 2019, the Commission commenced its investigation regarding UPPR. *See Earle Decl.* at ¶ 23. Then, on August 2, 2019, the Staff issued subpoenas to various entities and persons including UPPR, Petitioner Earle, and UPPR's former counsel, Jonathan Leinwand Esq., with return dates of August 20, 2019. The Staff required UPPR and Petitioner Earle to produce the first batch of records by August 20. The Staff is requiring UPPR, Earle and Mr. Leinwand to produce the remaining records by August 30, 2019 – five days before its opposition brief is due here. Thus, it is clear that the Staff is using the Commission's subpoena power to obtain information to use in the Staff's opposition brief, a privilege that is denied to Petitioners at this stage.

4. *The Commission Set A Briefing Schedule On Or About July 30, 2019*

On or about July 30, 2019,[3] the Commission granted Petitioners' request and issued a briefing schedule that required the Staff to provide by August 7, 2019, "all the information that was before the Commission at the time of the Trading Suspension Order's issuance." This brief is filed pursuant to this July 30 order.

5. *The Tercero Declaration*

On August 7, 2019, UPPR received a copy of the Information before the Commission at the Time of the Trading Suspension (the "Information"). Earle Decl. at ¶ 24. The Information attached the Declaration of Robert A. Tercero (the "Tercero Declaration"). *Id.* In the Tercero

[3] On July 30, 2019, Petitioners received the Commission's undated order setting a briefing schedule in this matter.

Declaration, on behalf of the Commission, Mr. Tercero set forth the facts that the Commission relied upon to issue the suspension Order on June 27, 2019.

What this procedural history demonstrates is that instead of investigating first before acting, the Commission chose to act first and investigate later. Of course, this is backwards from how things are supposed to work within our regulatory environment and the law.

ARGUMENT

A. The Commission Relied Upon Incorrect Facts When It Suspended Trading In UPPR's Stock

By its actions on June 27, 2019, the Commission triggered a *de facto,* indefinite trading suspension (i.e., termination by slow demise) of UPPR's stock on the OTC after which the Commission immediately opened a formal investigation of UPPR (and its management and advisors). This order of events is the wrong way around. By getting the proper sequence of events wrong, the Commission has plunged another small OTC issuer into the abyss from its humble trading platform somewhere amongst the old-but-still-legal-and-revived "Pink Sheets."

Pursuant to the Commission's order setting this matter for briefing on August 7, 2019, the Staff filed the Tercero Declaration. While the Petitioners have had some time to gather evidence to address the facts in the Tercero Declaration, that process is still continuing. Here are some of the factual inaccuracies / factual clarifications that the Petitioners have uncovered to date:

1. *Error – Number Of Directors*

At Paragraph Two of the Tercero Declaration, the Commission states that Gordon McDougall is UPPR's sole director. As of June 27, 2019, Petitioner Earle was UPPR's second director, along with Gordon McDougall. Earle Decl. at ¶ 17.

2. *Correction – UPPR Is A Hemp Company, Not A Cannabis Company*

At Paragraph Seven of the Tercero Declaration, the Commission recites that UPPR had disclosed through the OTC Markets system that UPPR was a cannabis and hemp company. By July 12, 2019, UPPR had corrected this misstatement on the OTC to clarify that UPPR is only a hemp company; it is not a cannabis company. *Id.* at ¶ 28. Petitioner Earle was not the original source of this error. *Id.*

3. *Error – Number Of Market Makers Available To UPPR*

At Paragraph Ten of the Tercero Declaration, the Commission states that UPPR's stock had **11 Market Makers,** but makes no reference to the time period to which he referred, the source of this "fact" or the identity of these Market Makers. This crucial assertion is erroneous for the reasons disclosed below. There is only **one** possible Market Makers left in this country who would file a Form 211 with FINRA for an OTC-reporting company like UPPR. *See* Lopez Decl. at ¶ 6. This material factual error is central to understanding why UPPR's trading suspension operated, in fact, as a termination of all trading in UPPR's stock, and as a final order for purposes of due process analysis. In addition, UPPR is not eligible for the "piggyback" exception referenced at Paragraph 10 of the Tercero Declaration. It was odd to include a cite to it because this exception does not apply to any security for which more than four business days have passed without a quotation. 17 C.F.R. § 240.15c2-11(f)(3)(i) and (ii); *see also* Lopez Decl. at ¶ 4. Thus it has no application to the facts here.

4. *Correction – The Private Raise Of $3 Million*

At Paragraphs 11and 12 of the Tercero Declaration, the Commission recites that in UPPR's April 30, 2019 OTC filing it had not disclosed the private raise of $3 million. By July 12, 2019, UPPR had corrected this impression to state that UPPR had raised $3.4 million via a restricted 144

offering in October 2018 at an average price of approximately $0.20 per share. Earle Decl. at ¶¶ 6 and 28.

5. *Error And Correction – The $10 Million In Financing*

At Paragraphs 13 through 15 of the Tercero Declaration, the Commission recites that in UPPR's April 30, 2019 and May 23, 2019 OTC filings UPPR had failed to disclose the receipt of financing for $10 million. However, the Commission acknowledges at Paragraph 13 that this contingent financing was disclosed via a press release on or about May 8, 2019. By July 12, 2019, UPPR had filled in more details and provided a detailed description of this contingent financing transaction. Earle Decl. at ¶ 27.

6. *Error And Correction – The Hemp Processing Facilities*

At Paragraph 18 of the Tercero Declaration, the Commission recites that in UPPR's May 23, 2019 OTC filing UPPR had failed to disclose its ownership of a hemp processing plant in Colorado. However, at Paragraphs 16 and 17 the Commission acknowledges that on May 3, 2019 UPPR disclosed in a press release that it had acquired a hemp processing plant for $1.1 million. The Commission also noted that UPPR updated its investors on June 19 through a press release that the facilities are approximately 16 weeks away from being able to process hemp. The Commission also noted that UPPR disclosed in its May 23, 2019, OTC filing that it had acquired a second processing facility in San Diego. By July 12, 2019, UPPR had filled in more details and provided a more complete understanding of its processing facilities. *See* Earle Decl. at ¶ 29.

7. *Error – Cold Calls And Buying Into Their Accounts*

At Paragraph 19 of the Tercero Declaration, the Commission relates that FINRA stated, in an unrecorded May 2019 interview with FINRA, that Petitioner Earle said that UPPR had hired an "investor relations firm in February or March 2019 to cold-call brokers and recommend that they buy UPPR shares for their own accounts." Petitioner told FINRA that he had retained Venado

Media from Houston as UPPR's investor relations firm. Earle Decl. at ¶ 30. He did not tell FINRA that he told them to "cold-call" brokers and "recommend that they buy UPPR shares for their own accounts." *Id.*

8. *No Connection – Windermere, Ritman, And Bay Hill*

At paragraphs 20–21 of the Tercero Declaration, the Commission relates, without any names, conversations between others connected to Windermere about UPPR. UPPR through Petitioner Earle cannot respond because Petitioner Earle does not know Windermere. *See* Earle Decl. at ¶¶ 32–34.

At paragraphs 22–25 of the Tercero Declaration, the Commission seeks to show that UPPR, through Petitioner Earle, hired the Ritman firm to contact brokers about UPPR and paid Ritman $150,000 for these services. While UPPR contracted with the Venado Media investor relations firm, this firm was not the Ritman Agency, Windermere, or Bay Hill Partners, as the Commission contends. Earle Decl. at ¶¶ 33–34. Any connection between UPPR's retained investor relations firm of Venado and Ritman, Windermere, or Bay Hill was not due to any conduct or knowledge by Earle. Earle Decl. at ¶¶ 32–34. Additionally, again, the FINRA investigator's version of events was wrong; Petitioner Earle did not mention Ritman in the interview and did not say he had paid $150,000 to the Ritman company. Earle Decl. at ¶ 31. He said he had hired Venado in around February / March of 2019 and had paid Venado some money. *Id.*

In paragraph 26 of the Tercero Declaration, the Commission noted that UPPR had failed to disclose its association with any investor relation firm in its April and May OTC filings. By July 12, 2019, UPPR had included in its OTC filings details about its retention of Venado Media, and another firm (Money Channel) in connection with their investor relations work for UPPR. Earle Decl. at ¶ 31.

9. *No Connection – Clayton*

In paragraphs 27-28 of the Tercero Declaration, the Commission seeks to demonstrate that someone named William Clayton, through Tezi Advisory Inc., F.A. Ventures and Natal Holdings LLC sold about one million shares of UPPR and netted nearly $900,000 in profits. The Commission seeks to try and tie it back to UPPR through director Gordon McDougall's ownership of a business entity called Tezi.

William Clayton ("Clayton") may be a person who was in the Commission's crosshairs for a number of years. Petitioner Earle was unaware of any Tezi connection between Clayton and McDougall. Earle Decl. at ¶ 17. Indeed, the only connection presented by the Commission is that McDougall is a stockholder in UPPR through a business entity named Tezi Advisory which has been disclosed in the OTC filings, Clayton is associated with an entity with a similar name, and Clayton is involved with two other entities that are UPPR shareholders. McDougall has not sold any of his UPPR holdings. Earle Decl. at ¶ 18. Until recently, Petitioner Earle had never heard of William Clayton, Tezi, F.A. Ventures or Natal Holdings. *See* Earle Decl. at ¶ 17. This is insufficient to find a nefarious link between Earle and Clayton.

Each of UPPR's amendments could have been made much earlier and without the need for suspension had the Commission investigated *first*, and then resorted to suspension if investigation and negotiation did not resolve these issues.

B. The Commission's Actions Exceeded Its Congressional Authority

1. *Public Policy Compels The Commission To Enforce More Strictly Its Own Existing Regulations Which Mandate How Quickly FINRA Market Makers Must Turn Around Quotes (And Form 211s) For OTC Companies Like UPPR*

For nearly two decades, the Staff has allowed OTC investor protections to erode more and more each year because of the Commission's many trading suspensions of OTC companies.

As OTC investors get trapped in purported "temporary" trading suspensions, which quickly morph into never-ending terminations that inevitably gut the issuer's operations and access to capital, their investors' equity is quickly and predictably rendered forever illiquid and worthless. *See* Lopez Decl. at ¶¶ 4, 7–9.

The Commission's decision in this case could critically change the entire face of microcap. The Commission must decide here whether or not the Staff may act without law or regulation in the exercise of its unbridled discretion to terminate, ***permanently***, any OTC company whose shares suffer a trading suspension for any reason. Trading suspensions of OTC companies are, by federal statute, supposed to be merely temporary, not permanent. *See* Exchange Act of 1934, Rule 15c2-11 ("Rule 211"). Nonetheless, despite the absence of any law or regulation requiring or permitting "automatic termination" of any OTC company (the trading of whose shares has been suspended), the Commission suspended, and then refused to reinstate, trading of UPPR's shares even after the ten-day "temporary" suspension period expired.

FINRA Rule 6432 provides only that a Form 211 must be filed at least three days prior to a broker-dealer initiating a quotation in the subject security. Neither Rule 6432 nor Form 211 makes reference to any review or approval by FINRA prior to a broker-dealer initiating a quote. By FINRA's own rules, **Form 211 is designed to be a notice filing, not a filing requiring FINRA approval.** Unfortunately, FINRA in every instance takes much, much longer than "three" days to respond to each Form 211. An average turnaround time for FINRA approval of a Form 211 is actually about 9 months to two years. In other words, even when the system works for the OTC issuer, this unregulated approval process for Form 211s filed by OTC issuers is extremely slow and unfairly punishers both OTC companies and their investors. *See* Lopez Decl. ¶¶ 4–7.

In the absence of any identifiable law or regulation, the Staff has now developed a well-seasoned "practice" of automatically flushing every OTC issuer whose stock ever ends up temporarily suspended. The present dearth (or sometimes the *complete absence*, depending upon the month) of FINRA Market Makers for OTC issuers critically impairs a "suspended" OTC company like UPPR from ever filing and completing a new 211 application in a timely manner or, maybe, ever. The number of FINRA Market Makers willing to quote OTC stocks has been in steep hyper-decline during the past two years; market realities now compel the Commission to consider all of the practical consequences of validating the Staff's automatic trading termination of any suspended OTC stock, like UPPR. The representation in the Tercero Declaration (Paragraph 10) that there are 11 Market Makers whom UPPR could use to get its stock up and trading on OTC Link again is materially incorrect. *See* Lopez Decl. ¶ 6.

If the Commission now acts *to validate* the Staff's position with UPPR and treat a trading suspension as the automatic termination of an OTC company, the Commission will be stepping outside the scope of the SEC's Congressional mandate and clearly above and beyond even the SEC's own regulations. More importantly, because FINRA Market Makers basically no longer can service the penny stock market efficiently, or at all, UPPR and its fellow OTC brethren companies stand little chance of protecting their stock price or preserving their listing as long as their stock will be permanently flushed by a mere "temporary" trading suspension.

The Commission is targeting OTC companies unfairly while relying upon an improper informal rule that demands automatic re-filing of a Form 211 by a Market Maker if the issuer's trading is suspended, even temporarily. This is not rooted in law or regulation. To remedy this constitutionally deficient process, UPPR urges the Commission to vacate, rescind and void the Suspension and Order so that no one is required to follow the process outlined in 17 C.F.R

Section 240.15c2-11 for the shares of UPPR to commence trading again immediately on OTC Link.

2. *Suspending The Trading Of OTC Stocks Indefinitely Is Not Within The Commission's Congressional Mandate*

The OTC is a thicket of complex, interactive regulatory regimes, including the Commission, FINRA, OTC, DTC, stock exchanges and listing services, as well as State securities and "blue sky" administrators. In today's OTC market, unfortunately, once an investor puts money into an OTC company, that investor can never be assured she will get her investment back out. OTC investors are at the whims and mercy of the Staff, as well as FINRA, and now even the so-called "OTC Markets" regulators, each of whom can permanently destroy the trading of any non-reporting OTC company with lightly sourced fraud allegations or the like. Investors can still put their money into shares of an OTC company, but they just cannot seem to trade it and cash out anymore; overzealous FINRA and SEC regulators, mixed with the understandable concerns of OTC investors' about potential litigation and regulatory risks, have choked microcap liquidity.

In order to avoid further crisis, the OTC obviously needs more FINRA Market Makers to service OTC issuers like UPPR. The Staff, meanwhile, has made no efforts to remedy the plight of the OTC investor to achieve trading liquidity; instead, in reliance upon the unauthorized *de facto* termination "rule," "policy," or unwritten "practice" (whatever FINRA calls it every month), the Staff has become expert in quickly flushing OTC issuers "off the Pinks." Not much of an accomplishment in light of the OTC markets' dire need for: (a) enforcement of the simple three-day trading notification to FINRA under Rule 6432 (not approval); (b) more oversight by the Commission over FINRA's enforcement of its own rules, especially Rule 6432; and (c) more FINRA Market Makers to quote OTC issues.

Because of the trading suspension (*i.e.*, the trading *termination*), UPPR's stock has cratered. In today's anti-Penny Stock regulatory culture, how can an investor cash in on an investment in an OTC company like UPPR? The Commission Staff already knows the unfortunate and dubious answer to this hopeful, yet ultimately tragic, question for every OTC investor in UPPR's stock:

> "If there is no market to trade the shares, they may be worthless. Investors may want to contact their financial or tax advisers to determine how to treat such a loss on their tax returns."

See Investor Bulletin: Trading Suspensions, Office of Investor Education and Advocacy, Securities and Exchange Commission (Dec. 3, 2018).[4] The Staff thus acknowledges and confirms online the proverbial "flushing," or de-listing, of any and all OTC companies which suffers a trading suspension. Nonetheless, the Staff's online message to the public provides UPPR's investors with the sad news that their investment has been wiped out, and they can still declare a tax loss on their investment. Not surprisingly, an unexpected tax loss was not what UPPR's investors hoped for or intended when they first invested in UPPR.

Exactly what are these practical consequences of the Staff's application of this unauthorized SEC policy of trading termination for technically just "suspended" OTC issues? To wit, so far:

a. The potential end of microcap because the market place for OTC Market-Makers has dried up because of excessive SEC and FINRA scrutiny and contingent liability; without

[4] Available at https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-trading-suspensions.

regulatory incentives (discussed in Section B.3. *infra*), how then can the SEC attract and regulate FINRA Market-Makers back to the penny stock market?

b. The dire and immediate evisceration of UPPR's stock value and the stockholders' investment once the *de facto* trading "termination" (not just a suspension) occurred.

The Staff has demonstrated in this case that the Commission will now effectively hold non-reporting Pinks (now called "OTC Link" companies) to Exchange Act standards even though they are not Exchange Act companies. OTC companies like UPPR are only required to fill out a simple form, an "OTC Disclosure Statement," which UPPR previously filed with the OTC. Nothing else was required in order for UPPR to be OTC compliant in its reporting. UPPR was thus in compliance with OTC standard practices, regulations and rules. What disclosure standard is the Commission imposing upon and requiring of UPPR, a simple non-reporting Pink or Link company? This is particularly true where some of the issues the Commission complains of here were disclosed through UPPR's press releases. The company sought to inform its investors of important events and published those press releases on its own website for the public to read.

Discretionary use by the Staff of third party investigators from self-regulatory or quasi-regulatory organizations who lack jurisdictional authority over OTC companies like FINRA, including its OTC "investigative unit" who mysteriously appeared, participated, and then disappeared in the initial stages of this case, just bring problems and introduces error into the process. What is the basis of their legal authority and involvement with UPPR? What statutory charter anoints these investigators to communicate information about UPPR to the Staff? What information, specifically, did FINRA's staff disclose to the Staff about UPPR? Why was the interview called "routine" and not recorded but used to take down trading in UPPR stock? We do not believe that much of the information provided in this case by FINRA to the Staff was reliable.

The report prepared by FINRA was not provided to Petitioners with the Commission's August 7th disclosure. We are just left to ponder. But what we know for certain is that the FINRA investigators had no authority with this OTC company.

The OTC's market capitalization was a whopping $246.7 billion in 2017, so why should the Commission dismissively relegate OTC issuers, as a group, to least preferential treatment status for trading suspensions? It makes no economic sense. This volume of capital exceeds the GDP for the countries of Iraq and Portugal. Unless the Commission cures the temporary suspension rule for OTC issuers, thousands of start-up companies may go unfunded, overall growth in key industry sectors could be squashed, capital frozen, and jobs lost, thereby suppressing liquidity and inducing de-listing of almost any company similarly situated to UPPR – and there are many such OTC issuers. Unlike the fervor of the Commission regarding the Jobs Act, the Commission through its own regulatory inaction concurrently has caused the almost complete demise of the penny stock markets due to the trading "suspension" rule and the lack of eligible and motivated FINRA Market Makers.

3. *Approval For A New Form 211 Presently Takes Any OTC Issuer, Like UPPR, Somewhere Between Nine Months And Never*

While FINRA Rule 6432 provides that a Form 211 must be received by FINRA three days prior to a broker-dealer initiating a quotation, FINRA's review invariably takes substantially longer to complete. FINRA's lengthy Form 211 reviews deprive investors of the well-established benefits of a transparent public trading market in OTC securities. The Commission does not appear to hold FINRA accountable for its "review" delays or for the substance of its sometimes shoddy Form 211 reviews which "time violate" FINRA Rule 6432. Rather than using its people as investigators, it should be asking FINRA to speed up the approval process.

Unless FINRA is engaging in a substantive review of OTC companies in a manner outside the scope of Rule 15c2-11 and FINRA Rule 6432, there is no reason that a Form 211 review of these OTC companies should take longer than the three-day notice period. The FINRA review period should be brought in line with the three-day notification requirement outlined in FINRA's rules. We ask the Commission to work with FINRA to oversee and streamline this important process and avoid further burdens on Market-Makers, issuers like UPPR and the investing public.

4. *The Commission's Informal Rule Violates The Administrative Procedures Act*

The circumstances here also present a classic administrative law problem. The Commission appears to be relying on an informal rule. If so, that would violate the Administrative Procedures Act because this rule was not passed pursuant to the APA.[5] The informal rule here is that a trading suspension requires the filing of new Form 211 attesting to compliance with 17 C.F.R § 240.15c2-11 despite the fact that Rule 211 does not actually require a new Form 211 after the suspension of an OTC stock.[6] An agency's informal rule cannot bind affected persons; it may only bind the agency internally in connection with its governance of its personnel. Stewart v. Smith, 673 F. 2d 485, 498 (D.C. Cir. 1982) ("a rule may not be characterized as one of 'management' or 'personnel' if it has a substantial effect on persons outside the agency."). This impermissible informal rule has harmed UPPR's shareholders in three ways. (1) UPPR's shareholders now cannot trade for many months, if ever, and their investment has become illiquid; (2) UPPR's shareholders concurrently have experienced substantial dilution from predatory lenders who have added shares as the stock now remains dormant or "gray;" and (3) if trading ever re-opens, the

[5] *See* 5 U.S. Code § 553 (setting forth the notice and comment requirements for rule making).

[6] Here is one place the informal rule is found: https://www.sec.gov/investor/alerts/tradingsuspensions.pdf

"old" stock price shall plummet. This whole process hurts investors, and it should not be imposed here.

This informal rule was not passed by the agency as a regulation. Instead, 17 CFR § 240.15c2-11 has been interpreted into a mere *policy* requiring that broker-dealers file a "new 211" every time information about the issuer goes stale. But a suspension does not mean that the information about the OTC filer is stale. The informal rule should be rescinded here. The Commission should waive its informal rule for Petitioners.

C. The Commission's Temporary Trading Suspension Of UPPR's Stock Was Unconstitutional Because The Commission Failed To Provide Procedural Due Process To UPPR And Its Shareholders

1. *The Regulatory Scheme, As Applied To Suspend Trading In UPPR, Violates Procedural Due Process.*

i. General Rule Of Notice And Opportunity To Be Heard

The Commission issued its Order on an *ex parte* basis without providing UPPR or its shareholders with any notice of the action or opportunity to be heard prior to the Suspension; the Commission also did not obtain this extraordinary relief from a neutral judicial officer. For these reasons, the Staff should have contacted UPPR, discussed the issues, and allowed this small company to correct its issues – this would have been the right approach. Our Constitution mandates the use of such an approach. The "root requirement" of the due process clause is to give notice and an opportunity to be heard *before* an agency acts. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985) (emphasis in original). An individual must be "given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." Boddie v. Connecticut, 401 U.S. 371, 378-79 (1971). Cf. Villani v. New York Stock Exchange, Inc., 348 F. Supp. 1185, 1188 fn. 1 (S.D.N.Y. 1972) ("It is now beyond

dispute that the Fifth Amendment due process requirements as to federal action apply to the disciplinary hearings conducted by the Exchange."). A hearing helps avoid decisions that are based on erroneous facts. See Silver v. New York Stock Exchange, 373 U.S. 341, 366 (1963) ("Experience teaches, however, that the affording of procedural safeguards, which by their nature serve to illuminate the underlying facts, in itself often operates to prevent erroneous decisions on the merits from occurring."). It is for this reason that Petitioners outlined above in Section A the number and degree of errors that the Commission relied upon to issue its Order.

ii. The Commission's Order Did Not Provide UPPR With Any Notice And Opportunity To Be Heard.

The Commission's Order immediately suspended the trading of UPPR stock and essentially set the value of such stock to zero, depriving UPPR stock holders of the value of their property. The Commission issued its Order on an *ex parte* basis without notice to UPPR. In doing so, the Commission deprived UPPR of the opportunity to be heard in response to the Commissions allegations and the Commission did so without a valid government interest in postponing the hearing.

Rather than sending a notice, the Commission took the drastic step of disallowing any trade of UPPR to go forward, with a follow-on requirement that it needed to have a Market Maker apply to list the stock again. In its Order, the Commission announced that it had issued a trading suspension of UPPR stock due to questions about the "accuracy and adequacy" of information publicly disseminated by or about UPPR in three key areas. Had UPPR been given the opportunity to respond to the allegations in the Order prior to the Suspension, the Commission would have discovered that the information on which the Order was based was, in part, factually inaccurate. As the Commission can see from the discussion in Section A, *supra*, several of the factual errors were material. All in all, the Commission's knowledge and insights on June 27 do not justify it

having acted when it did and as it did. With neither notice nor warning of the impending suspension, UPPR was unable to respond to the Commissions allegations before the Commission unilaterally devalued UPPR.

Moreover, at the time of the Suspension, the Commission lacked a valid government interest for taking this severe action when something more modest would have been sufficient. There was no need to proceed without providing a pre-deprivation hearing. Although due process requirements may be met if a hearing is held after the deprivation of property, a post-hoc hearing is only acceptable in "extraordinary situations." See Boddie, 401 U.S. at 378-79. The evidence provided in the Order and in Tercero's Declaration show there was no extraordinary situation. Nothing was urgent. Nothing that Petitioner Earle was doing required extraordinary steps. Nothing provided a valid government interest to justify delaying a hearing on the issues. When suspending the trade of UPPR stock, the Commission made allegations against UPPR's business practices, but did so with little, if any, real investigation; it had yet to open a formal investigation.

As such, the Commission did not comply with "the root requirement" of the due process clause to give notice *before* acting. As discussed above in Section B, a suspension order that halts the trading of an OTC stock causes permanent harm to the stockholders, including Petitioner Earle, because the system to bring the stock back into a trading status is broken. Accordingly, the action of the Commission here caused great harm and did so without constitutional protections. The Commission's failure to apply the root requirement of due process here has brought about irreparable harm.

iii. A Post-Order Hearing Is Insufficient Because The Trading Suspension Was A Final Order.

With respect to actions taken by administrative agencies like the Commission, the Supreme Court has built in an exception to the general rule and held that the demands of due process may

not require a hearing at the initial stage **so long as** a meaningful hearing is held *before* the final order becomes effective. Opp Cotton Mills v. Administrator, 312 U.S. 126, 152, 153 (1941).

The Commission may argue that the Order is not final. For OTC companies, however, a trading suspension is a final order that will bring about the demise of the company if its shares cannot be traded. The Commission's Order is not preliminary. No further order is needed. Not only is there no further action that the Commission needs to take, the consequences of the onerous 211 process that the Commission requires have lasting effects for OTC companies. This process essentially makes a suspension of trading a termination of trading, as the end of a ten-day suspension of an OTC stock does not mean the stock will automatically resume trading. This process differs for exchange traded stocks.

To the extent that the Commission may rely on a case that held that plaintiff's due process rights were not denied by a prompt post-deprivation review of the trading suspension, Xumanii Int'l Holdings Corp. v. SEC, that case does not control here. 670 Fed. Appx. 508 (9th Cir. Oct. 19, 2016). Xumanii does not establish whether or not the Court considered the onerous burden of the Rule 15c2-11 process, delaying the re-trading of the stock until a Market Maker goes through the process of relisting it, in its decision that Xumanii's due process rights were adequately protected. *See id.* The harmed shareholder has no ability to cause the stock to start trading again. For the reasons discussed in Section B, the injured company equally has no ability to cause the stock to re-trade. Accordingly, a suspension without a hearing or process prior makes it final in reality.

The overall case law on trade restrictions is similarly inapplicable here, as those cases tend to deal with non-OTC stocks, which, unlike OTC stocks, automatically resume trading after a suspension. See, e.g., Intercontinental Industries, Inc. v. American Stock Exchange, 452 F.2d 935, 943 (5th Cir. 1971), cert. den. 409 U.S. 842 (1972) (holding that only an exchange hearing was

sufficient to delist the trade of common stock in a company because "[t]here is no statutory requirement that the Commission hold a hearing before granting a delisting application."). The trading of OTC stock is completely different than the trading of exchange-listed stocks.

Furthermore, the application of this practice is patently unfair to OTC issuers. A trading suspension for an OTC company equates to an unconstitutional de-listing. The key here is that before the temporary action becomes final, the agency must provide full procedural due process notice and an opportunity to be heard to those impacted by the temporary action before it becomes final. The Commission could have that rule (and must to meet constitutional scrutiny). The suspension can be temporary without any other rules or policies applying. A full due process hearing can be held by the Commission or adjudicated in a federal court. If the Commission prevails, the suspension becomes final, and all the rules and policies about permitting the stock to trade again come into effect then. Now, instead, we have a broken system where the full brunt of the Commission's action is borne by the shareholders without proper due process protections. This is backwards from the basic mission of the Commission to protect investors. This process is harming investors. Without meaningful access to Market Makers, the system is broken. A trading suspension is now a death knell for an OTC stock.

Rule 211 does not facially discriminate against OTC stocks. Still, based upon the steadfast application of FINRA and Commission "policy," the process of temporary suspension kills an OTC stock. When the Constitution requires a hearing, it requires a fair one, held before a tribunal that meets currently prevailing standards of impartiality. Wong Yang Sung v. McGrath, 339 U.S. 33, 50 (1950). A party must be given an opportunity not only to present evidence before a suspension, but also to know the claims of the opposing party and to meet them. Those brought into contest with the government in a quasi-judicial proceeding aimed at control of their activities

are entitled to be fairly advised of the agency's intent and basis for such before the agency acts. Post action review via the Commission's administrative process is not sufficient because the harm to an OTC company is irrevocable. See Margan v. United States, 304 U.S. 1, 18–19 (1938). No such protections occurred here.

Someone like Petitioner Earle has been hurt and likely will not be able to trade his UPPR stock without intervention by the Commission here or later review by a district court. He is holding an illiquid asset that was taken from him without due process. Here, the Commission did not hold a hearing before implementing this suspension which, in fact, amounted to a *de facto* de-listing of UPPR's stock off of the OTC exchange.

2. *The Commission Committed An Illegal Taking.*

Without being able to buy and sell it, stock is worthless. A stock's inherent value is in its ability to be traded. Suspending trading essentially stripped Petitioner Earle's stock of its value, as it makes it illiquid and worthless. Relisting is a theoretical possibility here but without a Market Maker, it cannot happen. Given the loss of value of the stock, without a hearing prior to the Suspension and without compensation for such loss, the suspension of an OTC stock amounts to an unlawful taking.

A taking exists when "private property [is] taken for public use, without just compensation." U.S. Const. Amend. V. "[A] property owner has a Fifth Amendment entitlement to compensation as soon as the government takes his property without paying for it." Knick v. Twp. Of Scott, 139 S.Ct. 2162, 2170 (2019). This immediate compensation is true even if there are "post-taking remedies that may be available to the property owner." *Id.* When a property owner "has been called upon to sacrifice all economically beneficial uses in the name of the common good," then "he has suffered a taking." Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1019 (1992). Under the Fifth Amendment, a taking is only proper if it is (a) for a public

use and (b) just compensation is paid to the owner of the property. Brown v. Legal Foundation of Washington, 538 U.S. 216, 231-32 (2003).

The Order effected a taking of Mr. Earle's property by removing its value without compensation until the 211 process is complete, which may never happen for the reasons discussed in Section B. The ability to trade stock is central to the type of interest one has in stock ownership; it is from trading that the economic benefit of stock exists. When that right is taken away, the owner of such stock has been deprived of the economic benefit of his or her property.

The Order destroyed any investment-backed expectations that current or potential stock owners may have in UPPR. The Commission openly admits this, as noted above, stating: "If there is no market to trade the shares, they may be worthless." *See Investor Bulletin: Trading Suspensions,* Office of Investor Education and Advocacy, Securities and Exchange Commission (Dec. 3, 2018).

Moreover, the Order removed the value of UPPR stock neither for a public use nor with just compensation. Although the Commission purports to protect the investing public when it suspends the trade of a stock, that it not the case with OTC suspensions. Suspension orders of OTC companies as they exist now produce unnecessary volatility in the OTC market, exposing OTC companies and public investors to extreme risk. Instead of helping the investing public, a suspension order hurts the public. The main point of a taking for public use is for public benefit, not public harm. And, to deprive a property owner, such as UPPR, of its property for a public use without just compensation, the Commission's Order equates to an illegal taking.

CONCLUSION

Petitioners UPPR and Earle respectfully request that the Commission:

a. Correct the fundamental lack of due process afforded to UPPR and Earle in the current regulatory regime;

b. Enforce strictly FINRA's three-day notice rule under FINRA Rule 6432 in order to engender more Form 211s filings by Market Makers for OTC-reporting companies; and

c. Cease its unlawful exercise of *ultra vires* authority over OTC companies.

The Commission is targeting OTC companies unfairly while relying upon an informal rule that violates the Administrative Procedures Act that demands an automatic re-filing of a 211 by a Market Maker if the issuer's trading is suspended, even temporarily. Accordingly, for the reasons stated above, the Petitioners request that the Commission vacate, rescind and void its June 27, 2019, Order and direct that no one is required to follow the process outlined in 17 C.F.R Section 240.15c2-11 for the shares of UPPR to commence trading again immediately on OTC Link. Petitioners should be returned to their previous financial and legal positions.

Respectfully submitted,

FOLEY & LARDNER LLP

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Pamela L. Johnston, Esq.

KRÜEGER LLP
Blair Krueger

Attorneys for Petitioners UPPER STREET MARKETING INC. and JOSEPH EARLE

DATE: August 21, 2019

CERTIFICATE OF COMPLIANCE

I certify that the attached Opening Brief uses a 12-point, Times New Roman font and contains 7702 words.

Dated: August 21, 2019

Respectfully submitted,

FOLEY & LARDNER LLP

Pamela Johnston /A.L.J.

Pamela Johnston, Esq.
Attorneys for Petitioners UPPER STREET MARKETING INC. and JOSEPH EARLE

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2019, I caused copies of the foregoing **OPENING BRIEF OF PETITIONERS UPPER STREET MARKETING INC. AND JOSEPH EARLE** to be served on the parties listed below via the methods set forth for each recipient.

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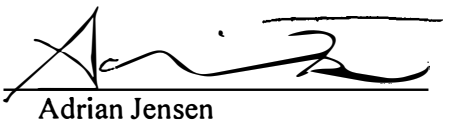
Dated: August 21, 2019



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DECLARATION OF JOSEPH EARLE

I, Joseph Earle, declare:

1. I am the President of Upper Street Marketing Inc. I have had a long and successful business career of over 43 years: first, for two decades as a licensed stock broker; then second, over 30 years as executive management for a variety of both private and public operating companies.
2. From 1979 through 1998, I held a number of securities licenses with FINRA (then "NASDR"). Those various licenses included a Series 1 license, a Series 7, 24, 63 and others. I voluntarily let these licenses expire in 1998 through non-renewal. During these two decades, I had no disclosures or regulatory issues anywhere as reflected in my U-4.
3. During the past 24 years of my business career, I have served as a CFO, a CEO, and a COO of multiple technology and operating companies. These technologies include, but are not limited to, telecommunications, pharmaceuticals, medical devices, hardware and software engineering, electronic manufacturing as well as mechanical engineering and manufacturing. I have successfully executed numerous mergers, acquisitions and other exit strategies for these businesses.
4. In approximately April 2018, I was retained to manage and operate a water technology company, Growing Springs LLC ("Growing Springs") which provided their technology to hemp growers.
5. In August 2018, I expanded this opportunity to a dormant public company, Upper Street Marketing Inc. (OTC trading symbol: "UPPR"), in order to pursue opportunities in the Hemp and CBD markets domestically and internationally. In September 2018, I executed a reverse take-over of UPPR (the "RTO"). Since the RTO, and before, UPPR has never

engaged to any degree in any business pursuit within the so-called "Cannabis industry," specifically, or in a segment or sub-segment of any type of commercial Cannabis enterprise, generally. The Petitioner, UPPR, is not and never was a cannabis company.

6. UPPR made a restricted 144 offering in October 2018 that has resulted in approximately $3.4 million in capital at an average price of approximately $0.20 per share. UPPR has raised this money to execute its business plan of hemp cultivation and CBD extraction.
7. Since September 2018, UPPR has successfully acquired the use of over 1,200 acres needed to grow industrial hemp in and around Center, Colorado. UPPR has planted and is cultivating these 1,200 acres in order to produce 2,000,000 pounds of biomass needed to extract CBDs. The crop is expected to be ready for harvest this fall.
8. UPPR has purchased a 100,000 square foot CBD processing facility at 701 3rd St, Center, Colorado.
9. UPPR has leased a 12,000 square foot laboratory at 3444 Tripp Court, San Diego, California, needed to process and manufacture CBDs.
10. UPPR is poised to be one of the largest producers of CBDs in the world.
11. The Securities and Exchange Commission (the "Commission") personally served me with the Cease Trade Order on behalf of the Petitioner on July 3, 2019. *See* Trading Suspension Order date June 27, 2019 (the "Order"), Commission Release No. 34- 86228, *www.sec.gov/litigation/suspensions/2019/34-86228.pdf.*
12. All UPPR press releases are on the OTC Markets website. Anything not on the OTC site is bogus or from unrelated and unknown third parties, bloggers, or others not affiliated with UPPR. UPPR has never at any time released false and misleading information in its press releases.

13. UPPR began selling restricted 144 stock to accredited investors in September 2018. These stock sales pre-dated the reference to a $10.55 million facility in the Order. Under the terms of the Harbor Gate Financing, on or about April 26, 2019, UPPR and Harbor Gate LLC entered into a financing agreement with two important components: (a) a $550,000 bridge loan fundable to UPPR immediately; and (b) a $10,000,000 equity line fundable for UPPR upon (i) UPPR's uplisting to the OTCQB and (ii) UPPR's filing of an S-1 Registration Statement with the Commission, whichever event occurs later. Accordingly, the $10 million in financing was contingent on the completion of two key events that have not fully succeeded yet.

14. Since the date of the Order, UPPR has filed amendments to its filings with the OTC since September 2018. These amendments include and address each of the issues identified by the Commission in its Order, to wit:

    a. Identifying names of, and details about, investor relations firms hired by UPPR in order to correct omissions or misstatements in UPPR's public OTC filings on April 30, 2019 and May 23, 2019;

    b. Identifying names of, and details about: (a) the law firms engaged by UPPR; (b) UPPR's independent auditor; and (c) the merger and acquisition transaction, in order to correct omissions or misstatements in UPPR's public OTC filings;

    c. Rectifying inadequate statements in public filings dated May 8 and May 23, 2019 of UPPR by providing, by amendment to its public OTC filings, a detailed description of the Harbor Gate transaction (with exhibits);

    d. Rectifying inadequate or unintentionally omitted statements in public filings since November 2018 concerning the Harbor Gate Financing and other matters; and

e. Amending UPPR's public filings for December 31, 2018 and its quarterly report dated March 31, 2019.

The amendments to each of UPPR's filings are now presently available on the web at the following link to the OTC website: *www.otcmarkets.com/stock/UPPR/disclosure.*

15. The recent Commission Order executed against Upper Street Marketing Inc. has greatly damaged me, my wife, and our family. Personally, I own 35 million shares of UPPR stock and 10 million Common Stock purchase warrants for a total of 45 million common shares, making me the largest shareholder of UPPR. Prior to the Order, the most recent price was $1.50 per share. The effective value of my personal holdings was over $67 million dollars. I am not able to trade my shares now; if this situation does not change, I will have lost $67 million. At age 65, the Order, if not rescinded, may likely cause a substantial loss to me personally, which in turn shall dramatically affect my plans for our retirement. Prior to the Order, my wife and I were making a number of detailed retirement plans for the next few years that will likely be significantly impaired by the Order. Additionally, my wife and I were making plans for our children and grandchildren that are also impacted by the Order. It is my wish that the Commission reconsider its position and immediately rescind this unfair Order, let UPPR repair this damage, and get UPPR back to its true mission and corporate purpose.
16. The Order is doing irreparable damage to UPPR.
17. I am one of two directors for UPPR. The other director as of June 27, 2019, was Gordon McDougall. McDougall owns an entity named Tezi. Prior to the Commission's suspension and formal investigation of UPPR, I was unaware of any connection between

Tezi and William Clayton. I had seen the names of Tezi and F.A. Ventures because they and others were legacy holders of UPPR stock from a period that pre-dated my connection with UPPR. I only heard of Clayton in 2019 when UPPR had to contact the State of Oklahoma in order to revive its Certificate of Good Standing. I have never met Clayton nor do I have contact information for him.

18. To my knowledge McDougall has not sold any of his UPPR holdings, let alone to Clayton, Tezi, F.A. Ventures, or Natal Holdings.

19. UPPR traded on OTC Link (formerly known as "Pink Sheets"), operated by OTC Markets Group, Inc., under the ticker symbol UPPR. UPPR traded on a small market—it did not trade via one of the exchanges. Nonetheless, trading on the OTC Markets does not make a security "undisclosed." Instead, these securities are instead reported at a lesser level than required under the 1934 Securities Act because they are not required to adhere to Commission exchange standards of disclosure.

20. On June 27, 2019, the Commission suspended trading of UPPR shares. The Commission conveyed that this suspension was based on the Staff's concerns about the accuracy and adequacy of information publicly disseminated by someone concerning UPPR since November 2018. This information included: (a) UPPR's own public statements dated May 8, 2019 and May 23, 2019 concerning a $10.55 million financing for UPPR; (b) UPPR's public statements dated April 30, 2019 and May 23, 2019 denying its retention of an investor relations firm despite apparent possible promotional activity on behalf of UPPR; and (c) UPPR's purportedly inadequate statements since at least November 2018 concerning a possible private stock offering to raise $3 million.

21. By July 12, 2019, UPPR had voluntarily amended its relevant filings to address the Commission's issues.

22. Had the Commission informed me, or someone at UPPR, prior to the suspension, I would have ensured UPPR amended its filings to address these concerns without the need for a suspension.

23. I learned that on or about July 29, 2019, approximately two weeks after the Commission issued its order suspending trading, the Commission commenced an investigation regarding UPPR by formal order.

24. On August 7, 2019, UPPR received a copy of the Information (of the same date) before the Commission at the Time of the Trading Suspension. The Information was contained in the Declaration of Robert A. Tercero.

25. As of June 2019, UPPR had about 120 million shares, with another 10–20 million involved in compensation agreements entered into and required to be issued. There are also stock shares subscribed and paid for with cash, but not yet issued.

26. In UPPR's OTC Markets submission on April 30, 2019, it disclosed that it had raised $3.0 million through private means. UPPR amended this submission by July 12, 2019 to clarify that it had raised this money through via the sale of restricted 144 stock to accredited investors.

27. On or about May 8, 2019, via a press release, UPPR announced that it was going to be getting $10 million in financing. By July 12, 2019, UPPR had amended its filings to provide a more fulsome understanding of this contingent financing.

28. One of UPPR's OTC Market submissions left the impression that UPPR was both a hemp and a cannabis company. I did not catch this error earlier. UPPR is solely a hemp

company, and by July 12, 2019, UPPR had corrected this statement to clarify the scope of its reach. I did not intend to make any statements that UPPR was involved in the cannabis industry.

29. In UPPR's May 23 OTC Markets filing, it omitted the disclosure of UPPR's acquisition of a hemp processing facility in Colorado, but it did disclose the existence of a second processing facility in San Diego. However, UPPR disclosed this Colorado acquisition in a May 3 press release, and also informed its investors on June 19 through another press release that the Colorado facility was approximately 16 weeks away from being able to process hemp. By July 12, 2019, UPPR had revised its OTC filings to provide a more complete understanding of its processing plants.

30. In my May 2019 meeting with FINRA, I did affirm that UPPR contracted with an investor relations firm. However, I did not tell FINRA that I advised this firm to "cold-call" brokers and "recommend that they buy UPPR shares for their own accounts."

31. I also did not mention The Ritman Agency in my interview with FINRA, nor did I state that I or UPPR had paid $150,000.00 to the The Ritman Agency. I stated that I had hired Venado Media, from Houston, Texas, in or around February or March 2019, and that I had paid them for their services. I also told them that UPPR had retained the services of Money Channel as well.

32. I do not know of Windermere Media Group or of anyone connected with Windermere. Therefore, I cannot speak as to discussions with Windermere and others about UPPR, or the basis for those conversations.

33. To my knowledge, no one associated with UPPR, including McDougall, has ever heard of The Ritman Agency, Windermere, or Tamara Kidd, or any other related persons to this organization in Orlando.

34. UPPR did contract with Venado Media in or around February / March 2019 to provide investor relations services, but this firm was not The Ritman Agency, Windermere, or Bay Hill Partners as far as I knew. Any connection between Venado and Ritman, Windermere, or Bay Hill was not known to me at the time UPPR contracted with Venado and was not known until I read such allegations in the Commission's August 7 document.

35. UPPR omitted the retention of its investor relation firms in its April and May OTC Markets filings, but included this information in its amended filings by July 12, 2019.

36. As of June 2019, UPPR had about 120 million shares, with another 10–20 million involved in compensation agreements entered into and required to be issued. There are also stock shares subscribed and paid for with cash, but not yet issued.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this __ day of August 2019 in _____.

_____

Joseph Earle

DECLARATION OF DAVID LOPEZ

I, David Lopez, declare:

1. I have been a FINRA registered securities principal in multiple capacities since 1996. I have directly worked with staff members of the SEC, FINRA and multiple state regulators for nearly 25 years. I have overseen retail brokerage divisions, main office and SRO branch office functions, market making, proprietary trading and market making, private placements and public offerings of securities, anti-money laundering compliance, BSA compliance, financial reporting and audits, corporate finance due diligence efforts and brokerage and transfer agency regulatory reporting requirements. I feel I have had a successful career in the financial industry.

Since 1995, I have held a state insurance license and a number of securities licenses with FINRA (and earlier with NASDR), including:

Florida Health, Life and Variable Annuities license

Series 7 – General Securities

Series 63 – Uniform Securities Agent

Series 24 – General Securities Principal

Series 4 – Options Principal

Series 27 – Financial and Operations Principal

Series 79 – Investment Banking

Series 99 – Operations Professional

Series 55 (now 57) – Securities Trader

2. I attended college at the University of South Florida and in 1995 I received a B.S. degree in Finance. Since graduating, I have continuously worked in the securities industry. I originally started as a registered representative (retail stockbroker); however, within months I was given an opportunity to move to the trading desk as the assistant to the head trader of the firm. After 10 months, I was promoted to the head trader's position.

3. I remained solely a market maker and a proprietary trader until 2000. Thereafter, my roles in the industry have included head trader (non-trading principal of the trading desk), compliance officer, AML officer and financial & operations principal (FINOP). Since 2006, I have also been the compliance officer of two SEC registered and DTCC limited participant (FAST participant) stock transfer agencies.

4. In my understanding, a 12(k) SEC trading suspension is a method of protecting investors from the potential of harm caused by an unknown or unidentified provisional circumstance that has interfered with the public marketplace or investors' ability to obtain accurate information about the issuer. In most cases, the 12(k) suspensions are enacted without warning and without any opportunity for the issuer to rectify or clarify the circumstance prior to the suspension. The trading suspensions are only temporary, specifically for a duration of 10 days; however, in virtually all cases they are permanent for OTC companies. For a market maker to reinitiate a quotation in the security on a non-exchange OTC marketplace (i.e., "OTC Link", formerly the Pink Sheets), done in compliance with SEC Rule 15c2-11 and FINRA Rule 6432, a Form 211 application must be filed by the market maker and cleared by FINRA. Market makers may also file to quote a security utilizing the exemption provided under 15c2-11(f)(3), known as piggyback eligible, only in circumstances where the security had been quoted in the OTC marketplace for 12 of the most recent 30 calendar days and with no more than 4 business

days in succession without a quotation. The SEC seems to rationalize that temporary trading suspensions are of minimal consequence because only a simple Form 211 application filed by a market-maker is all that is required to reinitiate a quotation of the shares. While this proclamation itself is theoretically correct, the reality of the situation is starkly different. In my opinion, the problem with such a simplified justification of an assumed inconsequential trading suspension is that getting a Form 211 filed again, let alone cleared by FINRA, is nearly impossible. Additionally, market makers that previously quoted a temporarily suspended security could not rely on the exemption provided under 15c2-11(f)(3) to reinitiate the quotation because the trading suspension is for a duration of 10 days that falls beyond the no more than 4 business days in succession without a quotation requirement.

5. Allegations can be made that a market maker that files a Form 211 after a trading halt can be on the hook for the inaccuracy or unreliability of any and all information, past and present, disseminated by the issuer. Rule 15c2-11 requires that a market maker determine that issuer information is accurate and obtained from a reliable source before initiating a quotation in the security. The requirements under Rule 15c2-11 are to help investors avoid being tricked or misguided when investing into or trading securities where no or limited information is available. The market maker's review is supposed to help ensure that information about an issuer is readily available to the public and that the available information is accurate before initiating a quotation. Information being available on the SEC EDGAR system or on the OTC Markets website is not a requirement; rather, the OTC company must have accurate and current information available in a manner that can be accessed by investors.

6. Unfortunately, the current over-burdensome and ever increasing regulatory scrutiny of the OTC marketplaces and the professionals that service the micro-cap industry has

led to an all but complete abandonment of this financial sector. Over the last 10 years market makers appear to have decided the regulatory risks involved in initiating a quotation in OTC securities are far too great to justify doing; in particular when FINRA rules prohibit market makers from charging a fee or even being reimbursed for the time and expense required to perform ample reviews of issuer information. Though the SEC has previously stated Form 211 applications do not require the same level of review as a due diligence effort involved in an underwriting, SEC allegations in recent enforcement actions brought against market makers appear to contradict that prior viewpoint. As stated by the SEC in Release No. 34-39670; File No. S7-3-98, The Commission estimated that it would take a broker-dealer about three hours to collect, review, record, retain, and supply to the NASD (now known as FINRA) the information pertaining to a reporting issuer, and five hours to collect, review, record, retain, and supply to the NASD the information pertaining to a non-reporting issuer. However, the time it currently takes a market maker to comply with the new SEC and FINRA standards - though the Rule itself has not changed – can average well beyond a month before a Form 211 application is cleared by FINRA for a quotation to be initiated.

In that regard, I am only aware of one active market maker left in the U.S., Glendale Securities Inc., which is an ongoing filer of Form 211 applications willing to initiate a quotation of shares for a U.S. domiciled company that is not also acting as a placement agent or underwriter for the issuer. I, myself, am not aware of any market makers willing to file a Form 211 application to initiate the quotation of shares for an alternative reporting company (one that is not filing reports under the 1934 Act) that is not also acting as a placement agent or underwriter for the issuer's offering.

7. Every SEC notice of a temporary trading halt includes specific language similar to: "The Commission temporarily suspended trading in the securities because of questions about the accuracy and adequacy of information." In that regard, a market maker cannot reach the level of certainty that the SEC now seems to require to effectively comply with Rule 15c2-11 when filing a Form 211 for shares involved in a trading halt. When FINRA reviews the Form 211 they can simply point to the SEC language that questions the accuracy and adequacy of information. FINRA then asks how the market maker complied with 15c2-11 to address all of the potential problems with the accuracy and adequacy identified by the SEC. The market maker cannot answer how it complied with any certainty because, in most cases, the SEC never identifies specifically what information was in question.

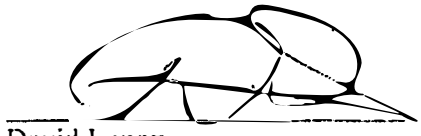
8. In most cases, the only way a market-maker can meet the burden of complying with 15c2-11 is (a) for the SEC to state that all information in question was determined to be accurate and adequate, or, (b) for the SEC to state exactly what information was in question so the market-maker can adequately address those particular issues. The problem that arises is the SEC appears not to be required, does not have the ability or is unwilling to state whether they have determined if all information was accurate or adequate. The SEC also does not appear to be required, does not have the ability or is unwilling many times to provide guidance on what specific information was in question. Therefore, a market-maker can never comply with the standard both the SEC and FINRA now seems to feel are required under 15c2-11. Without the full cooperation of the SEC staff, it is an impossible task for a market maker to comply with Rule 15c2-11 and is why in most cases market makers decide to not file applications to quote shares that were temporarily halted by the SEC.

9. In summary, there seems to be two primary SEC interpretive issues that are impeding the re-initiation of quotations of OTC-reporting companies' shares that have previously suffered trading suspension:

First, with the SEC continuously changing and adding to a market-makers' obligations and regulatory requirements under Rule 15c2-11, market makers cannot feel certain about their efforts to comply without concern of regulatory enforcement action being taken against them; in particular with the market makers inability to charge a fee or to be reimbursed for the expenses required to comply with the additional standards now being applied. SEC enforcement actions now seem to be commonplace against 211 filing market makers and the cost to defend against such actions is astronomical.

Second, the SEC does not appear to provide an avenue for due process that I am aware of for an issuer to address whatever situation brought forth the trading halt. Without resolution to the causes of the halt, a market maker cannot fully comply with Rule 15c2-11 and, therefore, cannot get the 211 application appropriately cleared by FINRA prior to initiating a quotation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 21st day of August 2019 in St. Petersburg, Florida.



David Lopez