BEFORE THE UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

BLACKBOOK CAPITAL, INC.
FRANKLIN OGELE

Petitioners

PETITION FOR REVIEW OF ACTION OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC PURSUANT TO 15 U.S. Code § 78s AND MOTION TO STAY ACTION PENDING RULING BY HON. MICHAEL VASQUEZ, USDJ, DISTRICT OF NEW JERSEY IN CASE No. 2:19-CV-21772-JMV-JBC

v

THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.
Respondent.

PETITION FOR REVIEW OF ACTION OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. ("FINRA") AND CHALLENGING THE CONSTITUTIONALITY OF FINRA ON SEPARATION OF POWERS, APPOINTMENTS CLAUSE AND NON-DELEGATION DOCTRINE GROUNDS ALONG WITH ANCILLARY CLAIMS FOR ABUSE OF DISCRETION, UNFAIR AND DISCRIMINATORY REGULATORY ENFORCEMENT SCHEME, LIBEL, CONSTRUCTIVE EXPULSION, NEGLIGENCE AND MOTION TO STAY ACTION PENDING RULING BY HONORABLE MICHAEL VASQUEZ, USDJ, DISTRICT OF NEW JERSEY IN CASE NO. 2:19-CV-21772-JMV-JBC.

Petitioner, BlackBook Capital Inc. ("BlackBook") represented herein by Franklin Ogele, Esq., and Petitioner, Franklin Ogele, ("Ogele") appearing pro se, each a Petitioner, but collectively, Petitioners, bring this Petition for Review of The Financial Industry Regulatory Authority, Inc. ("FINRA") action challenging the constitutionality of FINRA on Separation of Powers, Appointments Clause and Non-Delegation Grounds along with ancillary claims for Abuse of

Discretion, Unfair and Discriminatory Regulatory Enforcement Scheme, Libel, Constructive Expulsion, Negligence and allege as follows:

PRESERVATION OF RIGHTS

Petitioners file this Petition to preserve their rights to review by the Securities and Exchange Commission (the "SEC") pursuant to 15 U.S. Code § 78s pending a ruling by Honorable Judge Michael Vasquez on their Complaint before the United States District Court for the District of New Jersey in the matter of BlackBook Capital Inc. et. al v. The Financial Industry Regulatory Authority, Inc. et. al Docket No. 2:19-CV-21772-JMV-JBC (the "Original Complaint").

BACKGROUND OF THE COMPLAINT

Petitioners filed the Complaint on December 30, 2019. The Complaint has been challenged on various grounds including failure of Petitioners to exhaust administrative remedies and on statute of limitations grounds. Petitioners have filed pleadings in opposition to Defendant's motion to dismiss. To preserve Petitioners right to review under 15 U.S. Code § 78s in the event of unfavorable ruling in the Original Complaint before Judge Vasquez, Petitioners hereby submit this Petition.

MOTION TO STAY ACTION

Petitioners ask that the SEC stay action on this matter until Honorable Judge Michael Vasquez rules on the Original Complaint. Such stay of action will not unduly prejudice Respondent but will aid the cause of justice in that it would preserve Petitioners rights to bring their grievance before the SEC within the statute of limitations period in the event of unfavorable ruling by Honorable Judge Vazquez. Moreover, as Petitioners have shown in the pleadings hereunder, Petitioners are likely to prevail in their challenge to the constitutionality of FINRA and in the ancillary claims.

GRAVAMEN OF THE PETITION

1 This petition stems from the actions of FINRA, including the publication of falsehood in regard to the expulsion of BlackBook from FINRA which publication has damaged, tarnished, and continues to damage and tarnish the reputation of Petitioners.

2 Put simply, FINRA falsely published on FINRA Central Registration Depositary ("FINRA/CRD") that BlackBook was expelled from FINRA for failing to pay a fine of Fifty Thousand Dollars ($50,000.00).

3 The publication is pure and blatant falsehood.

4 The outstanding amount of the fine at the time BlackBook withdrew its FINRA Membership was Seven Thousand, Five Hundred and Ninety Nine Dollars and Eighty Five Cents ($7,599.85); not the $50,0000 falsehood published by FINRA.

5 There is a world of difference between being a deadbeat for $50,000.00 and $7,599.85. This singular falsehood by FINRA has damaged business opportunities for Ogele as a search of Franklin Ogele on the internet inevitably pulls up BlackBook as a $50,000.00 deadbeat.

6 During on or about August and October 2019, Ogele sought financing on a Phase 1, $60,000,000 real estate development project in Myrtle Beach, SC[1] and for a $100,000,000 hotel and condominiums development in St Thomas, United States Virgin Islands.

7 The funding sources conducted a search of Ogele on the internet and withdrew from the transaction after the search disclosed that Ogele was associated with BlackBook expelled by FINRA for failure to pay $50,000.00 in fine.

8 For the record, Ogele had advised FINRA in writing in or about June 2019 that the amount owed by BlackBook at the time BlackBook withdrew its membership of FINRA was $7,599.85, not $50,000.00.

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[1] *The total projected capital outlay for the 26 buildings, 520 Units, Summit Shores, Myrtle Beach, SC development is $134,641,970.*

9 Put simply, FINRA could not have *"expelled"* a member for failing to pay $50,000.00 when the member had already paid $42,400.15 out of the $50,000.00[2] leaving a balance of only $7,599.85. *See Exhibit 1.*

10 The publication in FINRA/CRD is false and designed to bring and has had the effect of bringing Ogele to public disrepute and opprobrium. The falsehood alleged herein is the claim that the member failed to pay $50,000.00 instead of $7,599.85 which was the amount owed at time of the expulsion. *See Exhibit 2.*

FACTS

11 BlackBook was a broker-dealer registered with the SEC pursuant to the Securities Exchange Act of 1934 and a member of FINRA. In or about 2014, FINRA conducted a routine examination of BlackBook and identified certain infractions of FINRA rules. To avoid the expense of litigating the alleged infractions and without admitting to the alleged infractions, BlackBook and FINRA agreed to settle the alleged infractions for a fine of $50,000.00. *See Exhibit 3.*

12 As part of the settlement, BlackBook agreed to make an initial payment of 25% of the $50,000.00 and a monthly payment of $1,700.00. BlackBook made the initial 25% down payment and diligently paid the monthly $1,700.00 through on or about December 2016 when it could no longer afford the payments, because over the years, BlackBook was subjected to unrelenting and unfairly burdensome examinations and extraordinary financial reporting obligation stemming from FINRA's New York City's notorious bias against small firms[3] and in favor of big investment banking firms where FINRA staff usually land enormously lucrative positions after their short gigs at FINRA.

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[2] *A homeowner that purchases a home for $50,000.00 and pays $42,400.85 over time on the mortgage and defaults on $7,599.85 cannot be foreclosed on the $50,000.00. The foreclosure amount is $7,599.85. FINRA should not be any different.*

[3] *Article 1(jj) of FINRA's By Laws – defines a small firm as "any broker or dealer admitted to membership in the Corporation which, at the time of determination, has at least one and no more than 150 registered persons.*

13 The reason for the bias is obvious: FINRA staff usually land enormously lucrative jobs at large investment banking firms after short gigs at FINRA. Therefore, they are less likely to make trouble with a big firm where they are likely to land a job after FINRA.

14 The SEC should note that rule infractions by small FINRA member firms pose less overall risk to the economy than violations by large firms. A good example is the recent near economic collapse caused by the mortgage meltdown. While the big investment banking firms and FINRA member firms were implicated in the economic hari-kari, there is little evidence that small FINRA member firms were involved. However, the small firms are always more likely to be driven out of business due to FINRA bias.

15 Another example of FINRA's bias in favor of the powerful is the case of Mr. Barney Madoff ("Madoff"), the convicted Ponzi scheme fraudster who is now serving 150 years in federal penitentiary for scamming investors a staggering $65,000,000,000.[4]

16 For almost 30 years, Mr. Madoff ran the most wide-ranging Ponzi scheme in the annals of financial scams, defrauding investors to the tune of $65,000,000,000, using, upon information and belief, Madoff Investment Securities LLC, ("Madoff Investment") a FINRA member firm to execute trades for his victims. However, for almost all those 30 years, there was not a single enforcement action brought by FINRA against Madoff that drew the type of severe penalty of $50,000.00 fine as was imposed on BlackBook for minor infractions. *See Exhibit 4.*

17 Remarkably, FINRA and its predecessor, the NASD, took no meaningful action against Madoff Investment during the crime spree because Mr. Madoff, the owner, was at various times, the powerful Chairman of NASDAQ, Inc., the automated quotation system operated by the NASD[5] as well as Chairman of Governing Board of the NASD[6]. It was not until 2008 that the SEC filed

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[4] *https://www.nytimes.com/2009/06/30/business/30madoff.html?mtrref=www.google.com&gwh=EE9534DCC3FC5A1E85BF3BCFDF28ABB9&gwt=pay&assetType=REGIWALL.*

[5] *https://en.wikipedia.org/wiki/Bernie_Madoff.*

charges against Madoff and Madoff Investment[7] which led to Mr. Madoff's conviction and imprisonment. *See Exhibit 4 supra.*

18 It is also remarkable that Madoff Investment used, upon information and belief, by Mr. Madoff to mastermind a $65,000,000,000 heist, right under FINRA's nose, was never *"expelled"* by FINRA but was allowed to *"liquidate"*; but BlackBook which had minor infractions [with absolutely no single customer complaint stemming from the alleged infractions], was fined $50,000.00; struggled and paid $42,400.15 out of the $50,000 fine until it withdrew from FINRA membership, and was still punished with *"expulsion"* for failing to pay $50,000.00 and libeled along the way in terms of the amount owed at the time of the *"expulsion"*.

19 Indeed a search of Madoff Investment, a firm notoriously synonymous with the largest financial heist of the century, on FINRA/CRD only discloses that *"[This] firm is no longer in business (due to liquidation)"* and *"Not currently registered as a broker,"* but BlackBook with no record of anything near the financial mayhem caused by Madoff was *"expelled"*.

20 Clearly, Madoff Investment's *"....no longer in business"* and *"not currently registered as a broker"* disclosed on FINRA/CRD does not evoke the opprobrious stench of wrongdoing that BlackBook's *"expulsion"* evokes which disclosure has damaged Ogele's reputation as a result of Ogele's association with BlackBook. *See Exhibit 6.*

21 The fact remains that apart from minor fines on Madoff Investments during its 30 years run, there was not a single regulatory enforcement action by FINRA against Madoff Investments that came close to SEC Rule 10b-5 violation, the charge that ultimately brought down Madoff and Madoff Investments 30 years criminal enterprise.[8] *See Exhibit 4 supra.*

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[6] https://money.cnn.com/2008/12/11/markets/madoff_fraud/

[7] *The SEC should take judicial notice that Madoff Investment Securities LLC, the FINRA member firm, was prominently featured in the Madoff criminal complaint per Exhibit 5.*

[8] http://www.brokeandbroker.com/98/madoff-finra/

22 In or about 2012[9], FINRA imposed a monthly FOCUS Reporting requirement on BlackBook.

23 Upon information and belief, the FINRA's official who imposed the monthly FOCUS Reporting requirement on BlackBook was Ms. Evelyn Kriegel, currently a FINRA Deputy District Director.

24 The imposition was discriminatory because other similarly situated broker-dealers were not required to file monthly FOCUS Reports.

25 Unlike Audited Annual Report required of broker-dealers and available on SEC's Edgar, information as to who files monthly FOCUS Report is not publicly available; as a result, it was difficult for Petitioners to uncover the discriminatory practice imposed on BlackBook by FINRA.[10]

26 When Petitioner, Ogele inquired as to whether other broker-dealers who do not carry nor clear customer trades were being asked by FINRA to file monthly FOCUS Reports, FINRA's Tanya Crosbourne concealed the facts of the discriminatory enforcement regime from Petitioner, Ogele, insisting that FINRA was requiring similar firms, i.e., firms that do not carry nor clear customer accounts, to file monthly FOCUS Reports.

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[9] *The exact date of the imposition would be determined in discovery.*

[10] *See, for example, https://www.sec.gov/cgi-bin/browse-edgar?company=blackbook+capital+&owner=exclude&action=getcompany, for BlackBook and https://www.sec.gov/cgi-bin/browse-edgar?company=AARDVARK+SECURITIES+LLC&owner=exclude&action=getcompany, for Aardvark Securities LLC showing only Audited Annual Reports filed in the FOCUS Report formats but not monthly FOCUS Reports.*

27 During all times relevant to this litigation, Petitioner, Ogele would diligently search SEC's Edgar to see whether other broker-dealers similar to BlackBook were being asked to file monthly FOCUS Report without success.

28 The active concealment of the facts of the disparate practice and the fact that information of monthly FOCUS filing is not public, made it impossible for Petitioners to timely uncover the wrongdoing.

29 Petitioners only ***discovered*** the discriminatory regulatory regime in or about ***April 2019*** when Petitioner Ogele was representing Client A in the purchase of Broker-Dealer B, a FINRA member firm similar to BlackBook, which was not required by FINRA to file monthly FOCUS Reports.

30 The case of BlackBook is not first time FINRA had discriminated against a broker-dealer founded by Petitioner, Ogele with disparate and unfair regulatory enforcement regime.

31 In or about 2003, FINRA also forced out of business, Hopewell Capital Group ("Hopewell"), a broker-dealer and FINRA member firm, founded by Ogele, with discriminatory enforcement action.

32 The facts of Hopewell is as follows: In or about 2003, Hopewell contracted to act as agent in the distribution of $115,000,000.00 of Eirles Four Limited Series Credit Select Notes (the "notes") issued by Eirles Four Ltd., a Special Purpose Vehicle, sponsored by Deutsche Bank.

33 Hopewell's engagement was purely on best efforts, agency basis, meaning that if Hopewell did not place the Notes, the Notes will go back to the inventory of the issuer. However, as an additional assurance and out of concern for liability in the event the trade failed, Hopewell sought and procured a Guarantee from ABN Amro Incorporated, ("ABN Amro") the Chicago-based broker-dealer subsidiary of ABN AMRO Bank N.A. and the clearing agent for Hopewell.

34 Following the execution of the trades, approximately $105,000,000.00 of the trade failed when the customer who bought the Notes failed to pay on settlement date.

35 However, although Hopewell had procured a Guarantee from ABN Amro [which had deeper pockets] to back the trade in the event of failure, which Guarantee would have obligated ABN Amro to absorb the failed trade, FINRA acting through Ms. Pamela Cangelosi,[11] insisted that Hopewell be held liable for the trade. As a result of FINRA's discriminatory action, the ensuing deficit from the failed trade caused Hopewell to be under capital for purposes of the Net Capital Rule and forced Hopewell to shut down.

36 To date and to the best of Petitioners information and belief, FINRA never took any enforcement action against ABN Amro or even investigated whether ABN Amro, the Guarantor of the Notes, had on its balance sheet, the 30% of $115,000,000.00 [or approximately $34,500,000.00] required to support the trade under the Open Contractual Commitments provisions of SEC Rule 15c3-1(c)(viii) – the Net Capital Rule[12] – required of ABN Amro to take on the Eirles Four Limited Notes.

37 The facts of the Net Capital Rule violation on the part of ABN Amro was right there in open sight. FINRA had ABN Amro's FOCUS Report which show that it [ABN Amro] never had $34,500,000.00 on its net capital at the time it guaranteed the trade. However, instead of going after ABN Amro, FINRA went after the little guy, Hopewell and forced it [Hopewell] out of business.

38 This petition is not intended to litigate the Hopewell matter; however, as Petitioners will show in the course of this litigation, the Eirles Four trade failure will be relevant to this petition

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[11] *https://www.linkedin.com/in/pamela-cangelosi-b52404110/*

[12] *See "Open Contractual Commitments" -https://www.law.cornell.edu/cfr/text/17/240.15c3-1*

because it will show a pattern and practice of FINRA letting off easy "the big firms" while squeezing the life out of "little guys."

39 In the course of this litigation, Petitioners intend to fully develop through discovery the factual basis of FINRA's historical regulatory bias in favor of big firms and powerful individuals. Petitioners also expect the discovery to include SEC's FINRA and Securities Industry Oversight ("FSIO") Reports on SEC's overall supervision of FINRA, including reports on FINRA's New York City District Office, in particular, and FINRA's biased and discriminatory enforcement of SEC Rule 17a-5, which illegal imposition on BlackBook ultimately led to the demise of BlackBook. Petitioners reserve the right to amend this Petition as additional facts are developed in discovery.

PARTIES

40 Petitioner, BlackBook Capital Inc. is a Delaware corporation and a former broker-dealer and member of FINRA.

41 Petitioner, Franklin Ogele, is a former registered principal of BlackBook and owner of more than 75% of BlackBook.

42 Respondent, The Financial Industry Regulatory Authority, Inc. is a Delaware corporation with offices located in major United States cities, including an office at 581 Main Street, Suite 710, Woodbridge, New Jersey.

JURISDICTION

43 The SEC has jurisdiction over the matter pursuant to 15 U.S. Code § 78s.

HISTORY OF FINRA AND GOVERNING BOARD
THE UNCONSTITUTIONALITY OF FINRA

44 The Maloney Act of 1938 amended the Securities Act of 1934, allowing for the creation of Self-Regulatory Organizations ("SROs") to assist the SEC in some aspects of financial regulation.[13] The Exchange Act requires that broker-dealers register with a national securities association in order to participate in the over-the-counter market.[14] In 2007, the sole broker-dealer association, the National Association of Securities Dealers, and the largest exchange, the New York Stock Exchange Member Regulation, merged to form a single regulatory body known as FINRA.[15]

45 FINRA is a private, nonprofit corporation that is comprised of sixteen to twenty-five governors who are elected by the regulated members.[16] FINRA's jurisdiction extends to member broker-dealers and associated persons who involuntarily register.[17] "Associated persons" are broadly defined as anyone "who is directly or indirectly controlling or controlled by a member"[18]

46 FINRA works in conjunction with the SEC to protect investors and ensure market integrity.

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[13] *Jonathan Macey & Caroline Novograd, Enforcing Self-Regulatory Organization's Penalties, and the Nature of Self-Regulation, 40 HOFSRA L. REV. 963,968 (2012) as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 635.*

[14] *Id.*

[15] *Id. at 968-69*

[16] *See FINRA MANUAL: OFFICIAL PUBLICATION OF THE FINANCIAL INDUSTRY REGULTORY AUTHORITY, FIN INDUSTRY REGULATORY AUTHORITY, at Art. VII §§4(a), 13 (2011), http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=47 as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 636. Currently, the Board is composed of 24 members.*

[17] *See id. at Art. I, cl. Ff.*

[18] *Id.*

47 FINRA "performs much of the day-to-day oversight of the securities markets and broker-dealers under [its] jurisdiction. [FINRA] is primarily responsible for establishing standards under which members conduct business; monitoring how that business is conducted; and bringing disciplinary actions against members for violating applicable federal statues, SEC rules, and [FINRA] rule[19]

48 ….. FINRA has expansive powers to govern the entire industry of broker-dealers relations.[20] FINRA's [Membership Regulation] program oversees more than 3,900 brokerage firms, more than 160,000 branch offices and nearly 629,849 registered representatives.[21] Market Regulation "monitors approximately 99 percent of the equities market and approximately 70 percent of the options market.[22] In 2018, the enforcement division "brought 921 disciplinary actions against registered individuals and member firms, and levied $61 million and $25.5 million in fines and restitution orders respectively.[23] The Office of Fraud Detection and Market Intelligence "referred more than 785" matters of potential fraud and misconduct to the SEC.[24] FINRA also promulgates rules that must be approved by the SEC and issues the qualifying examinations that all securities professionals must pass.[25]

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[19] *IRS Chief Counsel, Mem. 201623306 (May 2, 2016), https://www.irs.gov/pub/irs-wd/201623006.pdf as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 636.*

[20] *See Macey & Novograd, supra note 17 at 968-69 as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 637.*

[21] *See https://www.finra.org/media-center/statistics#key (last visited January 10, 2020)*

[22] *See Member Regulation, FIN. INDUSTRY REG. AUTHORITY, http://www.finra.org/industry/market-regulation (last visited Feb.28,2017) as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 637.*

[23] *See note 25 supra.*

[24] *Office of Fraud Detection and Market Information (OFDMI), FIN. INDUSTRY REG. AUTHORITY, http://www.finra.or/industry/ofdmi (last visited Feb 28, 2017) as quoted by See Member Regulation, FIN. INDUSTRY REG. AUTHORITY, http://www.finra.org/industry/market-regulation as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 638.*

[25] *Qualifying Exams, FIN. INDUSTRY REG. AUTHORITY, http://finra.org/industry/qualification-exams as quoted by See Member Regulation, FIN. INDUSTRY REG. AUTHORITY, http://www.finra.org/industry/market-regulation*

49 The Internal Revenue Service has also concluded that:

> FINRA is a corporation as an agency or instrumentality of the government of the United States ..... when performing its federally mandated duties under the Securities Exchange Act of 1934.....[and] conducting enforcement and disciplinary proceedings related to compliance with federal securities laws, regulations, and FINRA Rules promulgated pursuant to that statutory and regulatory authority.[26]

50 FINRA is an indirectly government created private entity pursuant to the Exchange Act which wields significant authority pursuant to the laws of the United States.[27]

51 Article 7 Section 1 of FINRA's Bylaws provides as follows in regard to the powers of FINRA's governing board:

Sec. 1. (a) The Board shall be the governing body of the Corporation and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the Corporation and the promotion of the Corporation's welfare, objects, and purposes. In the exercise of such powers, the Board shall have the authority to:

(i) adopt for submission to the membership, as hereinafter provided, such By-Laws and changes or additions thereto as it deems necessary or appropriate.

(last visited Feb.28,2017) as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 638.

[26] *I.R.S. Chief Couns. Mem. 201623006, supra note 23 as quoted by See Member Regulation, FIN. INDUSTRY REG. AUTHORITY, http://www.finra.org/industry/market-regulation as quoted by Robert Botkin in FINRA and the Developing Appointments Clause Doctrine in Wake Forest Journal of Business and Intellectual Property Law, 638.*

[27] *Although originally conceived as an SRO, with the 2006 merger of NYSE Corp and Archipelago Holdings, Inc. which created NYSE Euronext, a publicly traded company and the spin-off NASDAQ from then NASD into a publicly traded company and the folding of NASD Regulation into NYSE regulatory arm creating what became FINRA in 2007, which merger severed the remaining connections between the regulators and industry professionals and trading markets, there is "not much left in the self in the SRO any longer" argues Joseph McLaughlin, Esq. in Financial Services and E-Commerce, Is FINRA Constitutional?*

(ii) adopt such other Rules of the Corporation and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change, or addition to such Rules.

(iii) make such regulations, issue such orders, resolutions, exemptions, interpretations, including interpretations of these By-Laws and the Rules of the Corporation, and directions, and make such decisions as it deems necessary or appropriate.

(iv) prescribe rules for the required or voluntary arbitration of controversies between members and between members and customers or others as it shall deem necessary or appropriate.

(v) establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof.

(vi) require all over-the-counter transactions in securities between members, other than transactions in exempted securities as defined in Section 3(a)(12) of the Act, to be cleared and settled through the facilities of a clearing agency registered with the Commission pursuant to the Act, which clears and settles such over-the-counter transactions in securities.

(vii) organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the Corporation or by one or more independent firms under contract with the Corporation as the Board may deem necessary or appropriate. The Board may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others.

(viii) require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered by the Corporation, a division or subsidiary thereof, or a clearing agency registered under the Act; and

(ix) engage in any activities or conduct necessary or appropriate to carry out the Corporation's purposes under its Restated Certificate of Incorporation and the federal securities laws.

(b) In the event of the refusal, failure, neglect, or inability of any Governor to discharge such Governor's duties, or for any cause affecting the best interests of the Corporation the

sufficiency of which the Board shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such Governor and declare such Governor's position vacant and that, subject to the Restated Certificate of Incorporation, such position shall be filled in accordance with these By-Laws; provided, that during the Transitional Period, (i) a Governor that is a member of the NYSE Group Committee may only be removed by the affirmative vote of a majority of the Governors who are members of the NYSE Group Committee and (ii) a Governor that is a member of the NASD Group Committee may only be removed by the affirmative vote of a majority of the Governors who are members of the NASD Group Committee.

(c) To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Corporation may delegate any power of the Corporation or the Board to a committee appointed pursuant to Article IX, Section 1, the NASD Regulation Board, the NASD Dispute Resolution Board, or the Corporation's staff in a manner not inconsistent with the Delegation Plan; provided, that during the Transitional Period, no such delegation shall occur without the prior affirmative vote of two-thirds of the Governors then in office.

52 FINRA's Board of Governors ("the Board") is currently composed of 24 industry and public members, with 10 seats designated for industry members, 13 seats designated for public members and one seat reserved for FINRA's Chief Executive Officer. Seven of the industry governor seats—three small firm governors, one mid-size firm governor and three large firm governors—are designated for individuals associated with FINRA members that corresponds to each firm size. A small firm employs at least one and no more than 150 registered persons, a mid-size firm employs at least 151 and no more than 499 registered persons and a large firm employs 500 or more registered persons. The remaining industry seats are reserved for one Floor Member Governor, one Independent Dealer/Insurance Affiliate Governor and one Investment Company Affiliate Governor. [28]

[28] *https://www.finra.org/about/governance/finra-board-governors.*

CAUSES OF ACTION

As of the First Cause of Action – Violation of Separation of Powers / Improper Exercise of Executive Power

53 Petitioners reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

54 Article II, § 1 of the United States Constitution provides that "[t]he executive Power shall be vested in a President" and that "he shall take Care that the Laws be faithfully executed", Article II, § 2. These provisions vests all executive power, including the power to enforce the law, in the President of the United States.

55 As set forth above, the Board exercises significant authority over the securities broker-dealer industry under the Exchange Act, to enact wide ranging rules and regulations, including enforcements of SEC rules and regulations, conducting inspections of broker-dealers and investment banks, conducting investigations and disciplinary proceedings, imposing sanctions and otherwise enforcing compliance with the Securities Act, the rules of FINRA, including standards of commercial honor and principles of trade.

56 Although not directly created or appointed by the government, FINRA's exercise of wide ranging significant authority over the securities markets arguably makes it [FINRA] "part of the government"[29]

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[29] *That FINRA was not directly created by an Act of the Congress does not make it any less part of the "part of the government." As the Supreme Court noted in Lebron v. National Railroad Corporation, 513 U.S. 374, 400, there have been many private corporations that were "part of the government" because they exercised "significant authority pursuant to the laws of the United States" without any specific Federal statute authorizing their charter. The Defense Homes Corporation and the Tennessee Valley Associated Cooperatives, Inc. were all deemed "part of the government" because they exercised significant authority even though there was not specific Federal authority for their creation, 561 U.S. at 389.*

57 The FINRA Board is not appointed nor removable by the President. To the contrary, the Board is elected by FINRA member firms or appointed the Board itself. The Board's exercise of "significant authority" over the securities broker-dealer industry, a core executive power, immune from Presidential oversight, impermissibly impedes and undermines the President's ability to perform his constitutional duties and prerogatives[30]

58 As a result, the Board, as currently structured *and* in the implementation of responsibilities in pursuant of Section 15A of the Act, violates the separation of powers.

59 The actions of FINRA against Petitioners alleged in this Petition, supervised by an unconstitutionally insulated FINRA Board is therefore null and void.

As of the Second Cause of Action – Violation of the Appointments Clause and the Non-Delegation Doctrine

60 Petitioners reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

61 Article 2, § 2, Clause 2 of the United States Constitution provides that the President of the United States shall nominate, by and with the advice and consent of the Senate, shall appoint principal officers of the United States. The Appointments Clause also provides that Congress can by law, allow the President, the Courts or the Heads of Departments to appoint inferior officers without the consent of the Senate.

62 The nondelegation doctrine stands for the proposition that actors in each tier of our government cannot evade the Framer's carefully constructed scheme by delegating their federal

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[30] *In Free Enterprise Fund et. al v. Public Accounting Oversight Board et. al, 561 U.S. 477, 624, the United States Supreme Court analyzed the "dual for cause" limitations of the removal of the PCOAB Board and held that it [the dual-for-cause requirement] was unconstitutional because it unduly insulated the PCOAB Board from Presidential authority. However, in the case of FINRA, the President's ability to control FINRA is even less than that deemed insufficient in the Free Enterprise Fund case.*

lawmaking power to unaccountable private parties, individual beyond the direct legal and political control of superior federal officials and the electorate.

63 The Board wields significant authority over the broker-dealer industry pursuant to the laws of the United States; the Board members are therefore officers of the United States whose appointments must comply with Appointments Clause of the United Constitution (art. II, sec. 2).

64 In the alternative, the Board members are inferior officers whose appointments must be made by the President, a court of law, or a head of department or an Officer of the United States. Since neither the President, nor a court of law or a head of department or an Officer of the United States currently appoints the Board, the Board therefore is unconstitutional and in violation of the Appointments Clause.

65 The actions of FINRA against Petitioners alleged in this Petition, supervised by an unconstitutionally insulated FINRA Board is therefore null and void.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the SEC enter order in favor of Petitioners and against the Respondent as follows:

a) an order and judgement declaring unconstitutional the Board and declaring null and void the actions of FINRA against Petitioners.

a) an order and judgment nullifying and voiding the actions of FINRA against Petitioners alleged in this Petition.

b) an order and judgment enjoining the Board and its Members from carrying out any powers as delegated to them under Section 15A or Section 19 of the Exchange Act or by FINRA Bylaws.

c) awarding costs and attorneys' fees pursuant to any applicable statute or authority, and

d) granting to Petitioners such other, further, and different relief as the SEC

deems just and proper.

As for the Third Cause of Action – Abuse of Power and Discretion

66 Petitioners reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

67 The expulsion of BlackBook for failure to pay $50,000.00 in fines is an abuse of power and/or discretion.

68 Indeed, the amount owed to FINRA was only $7,599.85.[31]

69 Upon information and belief, the violation alleged in this cause of action continues because FINRA has not corrected the record.

WHEREFORE, Petitioners respectfully request that the SEC enter judgment in favor of Petitioners and against the Respondent as follows:

(a) awarding to Petitioners actual damages in an amount to be determined at hearing.

(b) awarding Petitioner Ogele punitive damages for the loss of BlackBook stemming from FINRA's abuse of Power and Discretion.

(c) awarding to Petitioner, BlackBook attorneys' fees.

(d) awarding to Petitioners the costs and expenses of this action; and

granting to Petitioners such other, further, and different relief as the SEC deems just and proper.

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[31] *See Exhibit 1 supra.*

As of the Third Cause of Action – Biased and Unfair Discriminatory Regulatory Enforcement Scheme, including Enforcement of SEC Rule 17a-5.

70 Petitioners reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

71 At all times relevant to this matter, Petitioner, BlackBook was subjected to various examinations, including routine, branch and cause examinations, and illegal imposition of monthly FOCUS[32] Reporting.

72 In or about 2012[33], FINRA imposed a monthly FOCUS Reporting requirement on BlackBook.

73 Upon information and belief, the FINRA official who imposed the monthly FOCUS Reporting requirement on BlackBook was Ms. Evelyn Kriegel, currently a FINRA Deputy District Director.

74 The imposition was discriminatory because other similarly situated broker-dealers were not required to file monthly FOCUS Reports.

75 Unlike Annual Audit Report required of broker-dealers and available on SEC's Edgar, information as to who files monthly FOCUS Report is not publicly available; as a result, it was difficult for Petitioners to uncover the discriminatory practice imposed on BlackBook by FINRA.[34]

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[32] *FOCUS Report is the Financial and Operational Combined Uniform Single format for providing broker-dealer financial statements. It is the format stipulated by regulation for submission of financial reports to FINRA and the SEC.*

[33] *The exact date of the imposition would be determined in discovery.*

[34] *See footnote 10 Id.*

76 When Petitioner, Ogele inquired as to whether other broker-dealers who do not carry nor clear customer trades were being asked by FINRA to file monthly FOCUS Reports, FINRA's Tanya Crosbourne concealed the facts of the discriminatory enforcement regime from Petitioner, Ogele, insisting that FINRA was requiring similar firms, i.e., firms that do not carry nor clear customer accounts, to file monthly FOCUS Reports.

77 During all times relevant to this litigation, Petitioner, Ogele would diligently search SEC's Edgar to see whether other broker-dealers similar to BlackBook were being asked to file monthly FOCUS Report without success.

78 The active concealment of the facts of the disparate practice and the fact that information on monthly FOCUS filing is not public, made it impossible for Petitioners to timely uncover the wrongdoing.

79 Petitioners only discovered the discriminatory regulatory action in or about April 2019 when Petitioner Ogele was representing Client A in the purchase of Broker-Dealer B, a FINRA member firm similar to BlackBook, which Petitioner Ogele discovered was not required by FINRA to file monthly FOCUS Reports.

80 SEC Rule 17a-5(a)(2)(iii) requires broker-dealers who clear and carry customer accounts to file monthly FOCUS Reports.

81 Petitioner, BlackBook never cleared nor carried customer accounts.

82 Contrary to the law, Petitioner, BlackBook was subjected to biased and discriminatory, unwarranted, unjustified and illegal monthly financial reporting obligations even though

BlackBook never held nor cleared customer accounts and had no prior history of Net Capital Rule [17 CFR § 240.15c3-1] violation at the time FINRA imposed the illegal monthly financial reporting obligation on BlackBook.

83 Upon information and belief, FINRA did not impose the requirement for monthly FOCUS Reporting on similarly situated member firms.

84 The imposition of unwarranted, unjustified, and extraordinary monthly financial reporting obligation on BlackBook which neither cleared customer trades nor carried customer accounts was in violation of SEC Rule 17a-5(a)(2)iii) and therefore contrary to the law.

85 Upon information and belief, FINRA knew that the unwarranted, unjustified and extraordinary monthly FOCUS Reporting and submission of the underlying supporting financial records imposed on BlackBook with the inevitable back and forth explanations of the entries to the FINRA Staff, would have BlackBook, a small member firm with limited resources, hobbled with financial reporting obligations to the neglect and detriment of other regulatory obligations required of a broker-dealer.

86 Upon information and belief, FINRA knew that the unwarranted, unjustified and extraordinary monthly FOCUS Reporting and submission of the underlying supporting financial records imposed on BlackBook with the inevitable back and forth explanations of the entries to the FINRA Staff, was biased and discriminatory, unfairly burdensome and acted as an *inbuilt headwind* against BlackBook, a small FINRA member firm with limited resources, making it impossible for BlackBook to survive.

87 Upon information and belief, the biased and discriminatory regulatory scheme had the predictable outcome because as BlackBook was distracted and hobbled with the preparation and filing of monthly FOCUS Reporting and submission of the underlying supporting financial records with the inevitable requests for detailed explanations of the entries from FINRA Staff, BlackBook which diligently monitored the number of stockbrokers on its roster who had previously worked

at a "Disciplined Firm" as defined in FINRA Rule 3170[35], missed the applicable ratio threshold by a couple of points over a very short period of time in violation of Rule 3170.

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[35] *In a nutshell, FINRA Rule 3170 – the Taping Rule - requires a broker-dealer that hires stockbrokers associated with a "Disciplined Firm" for more than 90 days within the last 3 years to ensure that the ratio of the stockbrokers from Disciplined Firms vis a viz stockbrokers hired from non-Disciplined Firms on the broker-dealers roster does not exceed 40% or 20% depending on the overall number of stockbrokers working for the firm. In the case of BlackBook, what happened was that BlackBook had hired brokers from John Carris Investments LLC, a Disciplined Firm ("the John Carris Brokers"); however, the majority the John Carris Brokers did not even conduct any business while at John Carris because John Carris was already under FINRA investigation at the time the brokers joined John Carris or had disclosure issues which delayed or made it difficult for them to timely register with the various state securities bureau to conduct any business. In effect, the majority of John Carris Brokers were simply tainted or guilty by association with John Carris and not because they did anything wrong or even conducted any business while associated with John Carris. Naively believing that FINRA would take into consideration that the John Carris Brokers that sought employment at BlackBook did not even conduct any business at John Carris so as to have acquired the abusive sales practice which Rule 3170 was intended to address, BlackBook hired the John Carris Brokers. It is important that the goal of FINRA Rule 3170 be properly situated in the context of its imposition on BlackBook. FINRA Rule 3170 assumes that a stockbroker associated with a Disciplined Firm for more than 90 days in the past 3 years must have acquired abusive sales practices and as such must be closely monitored to avoid his/her contaminating or spreading the bad behavior at his/her new place of employment. However, as stated above, the majority of the John Carris Brokers hired by BlackBook could not have acquired any such bad behavior because they never even conducted a single business at John Carris. Nevertheless, conscious of the strictures of Rule 3170, BlackBook diligently monitored the ratio of John Carris Brokers vis a viz the non-John Carris on its roster to make sure the ratio stayed within the limits prescribed by Rule 3170. However, in the fall of 2015, BlackBook compliance staff was distracted and hobbled with the time-consuming, extraordinary and illegally imposed submission of monthly FOCUS Reports and supporting trial balance and reconciliations and the endless back and forth of explanations of underlying figures with FINRA Staff and suddenly, there was an abrupt departure of some non-John Carris stockbrokers from BlackBook which suddenly upended the closely monitored ratio. BlackBook did not have the clairvoyance to have foreseen the sudden departures of the non-John Carris stockbrokers so as to have laid off the John Carris Brokers prior to the departures to stay within the applicable ratio. As a result, FINRA came down on BlackBook with a sledgehammer, as it were, and swiftly imposed the Taping Rule on BlackBook, a very difficult rule for a small firm to comply with. To reiterate, but for the biased and discriminatory imposition of extraordinary, unjustifiable and illegal monthly FOCUS reporting requirement and supporting trial balance and bank reconciliation submissions which hobbled BlackBook compliance staff, BlackBook would have contemporaneously or immediately laid off or fired the John Carris Brokers on the same day that the non-John Carris brokers left the employment of BlackBook to simultaneously even out the ratio and save the BlackBook from the Taping Rule.*

88 The result was swift; FINRA immediately subjected BlackBook to the "Taping Rule" under Rule 3170, an extraordinarily burdensome rule for a small firm to comply with.

89 Upon information and belief, and in the hurry to impose the Taping Rule on BlackBook, FINRA Staff took the extraordinary step of including a John Carris Broker ***who did not even meet*** the threshold requirement for inclusion in the roster for the calculation of Taping Rule ratio.

90 Upon information and belief, overwhelmed by the unwarranted financial reporting obligation and the consequent taping rule requirement, BlackBook was compelled to withdraw its SEC broker-dealer registration and FINRA membership and was immediately punished with an *"expulsion"* for failing to pay $50,000.00 fine, a blatant falsehood, because the amount owed was only $7,599.85.

91 The violation alleged herein continued until on or about June 21, 2016 when Petitioner BlackBook withdrew its broker-dealer registration by filing SEC Form BDW.

92 Upon information and belief, while FINRA would characteristically come down with a sledgehammer on BlackBook, FINRA did not take any meaningful action on the massive fraud perpetrated by big and powerful investment banks who packaged, sliced and diced and securitized subprime mortgages, which caused a near collapse of the global economy, leading to the $700 billion rescue package of The Emergency Economic Stabilization Act of 2008 and an estimated $29 trillion in total costs to U.S. taxpayers, until after mortgage market collapsed. [36]

WHEREFORE, Petitioners respectfully requests that the SEC enter judgment in favor of Petitioners and against FINRA as follows:

a) awarding to Petitioner, Ogele as owner of BlackBook, actual damages in an amount to be determined at hearing for the loss of BlackBook stemming from FINRA's biased and discriminatory enforcement of SEC Rule 17a-5.

[36] *https://en.wikipedia.org/wiki/Emergency_Economic_Stabilization_Act_of_2008*

b) awarding to Petitioner, Ogele as owner of BlackBook, punitive damages in an amount to be determined at hearing for the loss of BlackBook stemming from FINRA's biased and discriminatory enforcement of SEC Rule 17a-5.

c) awarding to Petitioner, BlackBook attorneys' fees for prosecuting this matter against FINRA for biased and discriminatory enforcement of SEC Rule 17a-5.

d) awarding to Petitioners the costs and expenses of this action; and

granting to Petitioners such other, further, and different relief as the SEC deems just and proper.

As of the Fourth Cause of Action – Constructive Expulsion

93 Petitioners reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

94 SEC Rule 17a-5(a)(2)(iii) requires broker-dealers who clear and carry customer accounts to file monthly FOCUS Reports.

95 Petitioner, BlackBook never cleared nor carried customer accounts.

96 Contrary to the law, Petitioner, BlackBook was subjected to biased and discriminatory, unwarranted, unjustified and illegal monthly financial reporting obligations even though BlackBook never held nor cleared customer accounts and had no prior history of Net Capital Rule [17 CFR § 240.15c3-1] violation at the time FINRA imposed the illegal monthly financial reporting obligation on BlackBook.

97 Upon information and belief, FINRA did not impose the requirement for monthly FOCUS Reporting on similarly situated member firms.

98 Petitioner, Ogele only ***discovered*** that FINRA did not impose the requirement for monthly FOCUS Reporting on similarly situated members; a biased and discriminatory practice that ultimately led to the demise of BlackBook, in or about April 2019.[37]

99 The imposition of unwarranted, unjustified, and extraordinary monthly financial reporting obligation on BlackBook which neither cleared customer trades nor carried customer accounts was in violation of SEC Rule 17a-5(a)(2)iii) and therefore contrary to the law.

100 Upon information and belief, FINRA knew that the unwarranted, unjustified and extraordinary monthly FOCUS Reporting requirement and submission of the underlying supporting financial records with the inevitable back and forth requests for detailed explanations of the entries from FINRA Staff, would have BlackBook, a small member firm with limited resources, hobbled with monthly financial reporting obligations to the neglect and detriment of other regulatory obligations required of a broker-dealer.

101 Upon information and belief, FINRA knew that the unwarranted, unjustified and extraordinary monthly FOCUS Reporting requirement and submission of the underlying supporting financial records with the inevitable requests for detailed explanations of the entries from FINRA Staff, was biased and discriminatory, unfairly burdensome and acted as an *inbuilt headwind* against BlackBook, a small FINRA member firm with limited resources, making it impossible for BlackBook to survive.

102 Upon information and belief, the imposition of discriminatory unwarranted, unjustified and extraordinary monthly FOCUS Reporting requirement and submission of the underlying supporting financial records with the inevitable requests for detailed explanations of the entries from FINRA Staff, constituted Constructive Expulsion of BlackBook from FINRA and/or a *nail on the coffin* of BlackBook because it had the predictable effect of having BlackBook so hobbled with monthly FOCUS filing and little time to react immediately with layoffs of John Carris Brokers

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[37] *Consequently, in the course of this litigation, our discovery will necessarily investigate whether FINRA imposes disparate regulatory scheme on similarly situated member firms.*

on the same day the non-John Carris brokers suddenly left the employment of BlackBook to simultaneously even out the ratio and save the BlackBook from the Taping Rule.

103 The violation alleged herein continued until on or about June 21, 2016 when Petitioner BlackBook withdrew its broker-dealer registration by filing SEC Form BDW.

WHEREFORE, Petitioners respectfully requests that the SEC enter judgment in favor of Petitioners and against the Respondent for Constructive Expulsion as follows:

e) awarding to Petitioner, Ogele as owner of BlackBook, actual damages in an amount to be determined at trial for the loss of BlackBook.

f) awarding to Petitioner, Ogele as owner of BlackBook, punitive damages in an amount to be determined at trial for the loss of BlackBook.

g) awarding to Petitioner, BlackBook attorneys' fees for prosecuting this matter.

h) awarding to Petitioners the costs and expenses of this action; and

granting to Petitioners such other, further, and different relief as the SEC deems just and proper.

As of the Fifth Cause of Action – Libel

104 Petitioners reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

105 FINRA libeled BlackBook by falsely publishing that BlackBook was expelled for failing to pay $50,0000.00 in fines.

106 Petitioner, BlackBook avers that there is vast difference between owing $50,000.00 and $7,599.85.

107 During on or about August and October 2019, Petitioner, Ogele sought financing on a Phase 1, $60,000,000 real estate development project in Myrtle Beach, SC[38] and for a $100,000,000 hotel and condominiums development in St Thomas, United States Virgin Islands.

108 The funding sources conducted a search of Petitioner, Ogele on the internet and withdrew from the transaction after their search disclosed that Ogele was associated with BlackBook expelled by FINRA for failure to pay $50,000.00 in fine.

109 Petitioner, Ogele *discovered* the harm to his reputation caused by false publication when the funding sources withdrew from the St. Thomas and Myrtle Beach transactions in or about August and October 2019.

110 The blatantly false publication has brought Petitioner, Ogele to public disrepute and opprobrium as potential financiers who google Petitioner, Ogele inevitably read the false publication which associates Petitioner, Ogele with a $50,000.00 deadbeat and quickly withdraw from the financing.

111 Upon information and belief, the violation alleged in this cause of action continues because the libelous publication remains publicly available on FINRA'S Central Registration Depositary ("FINRA/ CRD").

WHEREFORE, Petitioners respectfully requests that the SEC enter judgment in favor of Petitioners and against FINRA as follows:

a) awarding to Petitioner, Ogele, actual damages in an amount to be determined at a hearing.

b) awarding Petitioner, Ogele, presumed damages in an amount to be determined at a hearing.

c) awarding to Petitioner, Ogele, punitive damages in an amount to be determined at a hearing.

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[38] *The total projected capital outlay for the 26 buildings, 520 Units, Summit Shores, Myrtle Beach, SC development is $134,641,970.*

d) awarding to Petitioner, BlackBook attorneys' fees.

e) awarding to Petitioners the costs and expenses of this action.

f) directing FINRA to expunge the false disclosure from FINRA/CRD.

g) directing FINRA to post a public retraction of the false disclosure on FINRA/CRD or such other media forum as determined at a hearing; and

granting to Petitioners such other, further, and different relief as the SEC deems just and proper.

As of the Sixth Cause of Action – Negligence for Failure to Supervise FINRA/CRD Personnel

112 Petitioners reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

113 FINRA's actions have consequences.

114 FINRA owes a duty of care to Petitioners because FINRA publications are widely read by the public and have real life's consequences.

115 FINRA/CRD is the repository of FINRA member information.

116 By failing to properly supervise the FINRA/CRD personnel to ensure the accuracy of the information entered on FINRA/CRD, FINRA violated the duty of care owed to Petitioners.

117 By failing to properly supervise the FINRA/CRD personnel, resulting in the false publication that BlackBook was expelled for failing to pay $50,000.00 when the actual amount owed was only $7,599.85, FINRA violated its duty of care to Petitioners as the publication has falsely cast both Ogele and BlackBook as $50,000.00 deadbeats.

118 As a result of FINRA's negligence and failure to supervise FINRA/CRD personnel, Ogele has been harmed as financing sources have shied away from doing business with Ogele.

119 Upon information and belief, the violation alleged in this cause of action is of continues.

WHEREFORE, Petitioners respectfully request that the SEC enter judgment in favor of Petitioners and against the Respondent as follows:

a) awarding to Petitioners nominal damages in an amount to be determined at a hearing.

b) awarding to Petitioner, Ogele as owner of BlackBook, compensatory damages in an amount to be determined at a hearing stemming from FINRA's negligence.

c) awarding to Petitioner, Ogele as owner of BlackBook, punitive damages in an amount to be determined at a hearing for FINRA's negligent actions.

d) awarding to Petitioner, BlackBook, attorneys' fees.

e) awarding to Petitioners the costs and expenses of this action.

f) directing FINRA to expunge the false disclosure from FINRA/CRD.

g) directing FINRA to post a public retraction of the false disclosure on FINRA/CRD or such other media forum as determined at trial; and

granting to Petitioners such other, further, and different relief as the SEC deems just and proper.

Respectfully submitted.

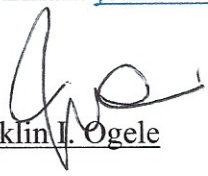
Dated this 23rd April 2020

Franklin Ogele
Franklin Ogele, Esq.
New Jersey Bar #00252190
New York Bar # 2364974
One Gateway Center, 26th Fl
Newark, New Jersey 07102
Phone: 973 277 4239
Fax: 862 772 3985
As Pro Se Petitioner
And as Counsel for Petitioner, BlackBook Capital Inc.

CERTIFICATE OF SERVICE

I, Franklin I. Ogele, an attorney, certify that on April 24th, 2020 I served the foregoing Petition on Respondent by service on the counsel of record as follows:

VIA US MAIL
John P. Mitchell, Esq
105 College Rd East, Suite 300
Post Office Box 627
Princeton, New Jersey 08542-0627
And Email: john.mitchell@faegredrinker.com



Franklin I. Ogele

EXHIBIT 1

FINRA
Financial Industry Regulatory Authority

June 14, 2016

Certified Mail # 7015 1520 0001 2223 6971
Return Receipt Requested

BLACKBOOK CAPITAL, LLC
17 ROOSEVELT DRIVE
HILLSIDE, NJ 07205
Attn: Mr. Franklin I. Ogele

Re: **Notice to Expel Firm from Membership for Failure to Pay Fines and/or Costs**

Dear Mr. Franklin I. Ogele:

Please be advised that the installment payment arrangement in connection with the $50,000.00 fine(s) and/or costs assessed against you in Complaint Number 2011025700901 has been canceled due to your failure to pay on a timely basis.

If payment for the remaining balance of your fine(s) and/or costs in the amount of $7,599.85, is not received within **seven business days from the date of this letter, your firm will be expelled from membership in FINRA in accordance with FINRA Rule 8320.**

If FINRA expels your firm from membership, SEA Rule 17a-5(b) requires that you file Part II or Part IIA of Form X-17A-5 with the Commission's main office in Washington, D.C., and with the appropriate SEC regional office within two business days of the date of expulsion.

Be further advised that, if you attempt to reinstate your FINRA membership after your firm has been expelled, you will be required to submit the following in order for your application to be considered:

- All monetary sanctions must be paid in full
- One complete originally signed and properly notarized Form BD
- One complete and current, originally signed Form U-4 for each individual to be re-registered
- Proof of compliance with the fingerprint rule in the form of a photocopy of the card previously processes with the firm or the computer printout confirming FINRA/CRD prior processing membership fee
- A newly executed FINRA certification statement

Finance
9509 Key West Avenue
Rockville, MD
20850

www.finra.org

You will also be subject to a Membership Interview and/or Examination prior to reinstatement.

To avoid expulsion from membership, your payment must be received by FINRA within seven business days from the date of this letter. Checks should be made payable to FINRA, and mailed in the enclosed envelope to:

FINRA
P.O. Box 418911
Boston, MA 02241-8911
Attention: Fines & Costs

In cases of expedited payment, send your remittance by courier or overnight delivery to:

Bank of America Lockbox Services
FINRA 418911
MA5-527-02-07
2 Morrissey Boulevard
Dorchester, MA 02125

The complaint number 2011025700901 **must** be written on the check to ensure proper credit to your account.

You should also be aware that continued failure to pay your fine(s) and/or costs might result in a referral to an outside agency for collection.

Should you have any questions concerning this letter, please contact Page Rowe at (240) 386-5399.

Sincerely,

Michelle Glunt
Supervisor - Disciplinary Fines Collections
Finance

cc: FINRA District Office

cc: COMPLIANCE DEPARTMENT
Blackbook Capital LLC
17 Roosevelt Drive
Hillside, NJ 07205

cc: MICHAEL UTILLA, ESQ.
The Law Offices of Michael Utilla & Associates
26 Court Street, Suite 2601
Brooklyn, NY 11242

EXHIBIT 2

BrokerCheck Report

BLACKBOOK CAPITAL, LLC

CRD# 123234

About BrokerCheck®

BrokerCheck offers information on all current, and many former, registered securities brokers, and all current and former registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**
- BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.
- Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.
- **Where did this information come from?**
- The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:
  - information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
  - information that regulators report regarding disciplinary actions or allegations against firms or brokers.
- **How current is this information?**
- Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.
- **What if I want to check the background of an investment adviser firm or investment adviser representative?**
- To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at https://www.adviserinfo.sec.gov. In the alternative, you may search the IAPD website directly or contact your state securities regulator at http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P455414.
- **Are there other resources I can use to check the background of investment professionals?**
- FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.

Thank you for using FINRA BrokerCheck.

Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at

brokercheck.finra.org

For additional information about the contents of this report, please refer to the User Guidance or www.finra.org/brokercheck. It provides a glossary of terms and a list of frequently asked questions, as well as additional resources. For more information about FINRA, visit www.finra.org.

BLACKBOOK CAPITAL, LLC

CRD# 123234

SEC# 8-65577

Main Office Location

17 ROOSEVELT DRIVE
HILLSIDE, NJ 07205

Mailing Address

17 ROOSEVELT DRIVE
HILLSIDE, NJ 07205

Business Telephone Number

973-277-4239

Report Summary for this Firm

This report summary provides an overview of the brokerage firm. Additional information for this firm can be found in the detailed report.

Firm Profile

This firm is classified as a limited liability company.

This firm was formed in Delaware on 11/10/2009.

Its fiscal year ends in December.

Firm History

Information relating to the brokerage firm's history such as other business names and successions (e.g., mergers, acquisitions) can be found in the detailed report.

Firm Operations

This brokerage firm is no longer registered with FINRA or a national securities exchange.

Disclosure Events

Brokerage firms are required to disclose certain criminal matters, regulatory actions, civil judicial proceedings and financial matters in which the firm or one of its control affiliates has been involved.

Are there events disclosed about this firm?	**Yes**

The following types of disclosures have been reported:

Type	Count
Regulatory Event	4
Arbitration	1
Judgment/Lien	1

Registration Withdrawal Information

This section provides information relating to the date the brokerage firm ceased doing business and the firm's financial obligations to customers or other brokerage firms.

This firm terminated or withdrew registration on:	06/18/2016
Does this brokerage firm owe any money or securities to any customer or brokerage firm?	No

Firm Profile

This firm is classified as a limited liability company.

This firm was formed in Delaware on 11/10/2009.

Its fiscal year ends in December.

Firm Names and Locations

This section provides the brokerage firm's full legal name, "Doing Business As" name, business and mailing addresses, telephone number, and any alternate name by which the firm conducts business and where such name is used.

BLACKBOOK CAPITAL, LLC

Doing business as BLACKBOOK CAPITAL, LLC

CRD# 123234

SEC# 8-65577

Main Office Location

17 ROOSEVELT DRIVE
HILLSIDE, NJ 07205

Mailing Address

17 ROOSEVELT DRIVE
HILLSIDE, NJ 07205

Business Telephone Number

973-277-4239

Firm Profile

This section provides information relating to all direct owners and executive officers of the brokerage firm.

Direct Owners and Executive Officers

Legal Name & CRD# (if any):	OGELE, FRANKLIN IHENDU 2197820
Is this a domestic or foreign entity or an individual?	Individual
Position	CEO, PRESIDENT, FINOP, CCO
Position Start Date	07/2004
Percentage of Ownership	75% or more
Does this owner direct the management or policies of the firm?	Yes
Is this a public reporting company?	No

Legal Name & CRD# (if any):	APEX HOMES, INC
Is this a domestic or foreign entity or an individual?	Domestic Entity
Position	MEMBER
Position Start Date	10/2015
Percentage of Ownership	10% but less than 25%
Does this owner direct the management or policies of the firm?	No
Is this a public reporting company?	No

Firm Profile

This section provides information relating to any indirect owners of the brokerage firm.

Indirect Owners

No information reported.

Firm History

This section provides information relating to any successions (e.g., mergers, acquisitions) involving the firm.

No information reported.

Firm Operations

Registrations

This section provides information about the regulators (Securities and Exchange Commission (SEC), self-regulatory organizations (SROs), and U.S. states and territories) with which the brokerage firm is currently registered and licensed, the date the license became effective, and certain information about the firm's SEC registration.

This firm is no longer registered.

The firm's registration was from 03/17/2003 to 06/28/2016.

Firm Operations

Types of Business

This section provides the types of business, including non-securities business, the brokerage firm is engaged in or expects to be engaged in.

This firm currently conducts 13 types of businesses.

Types of Business

Broker or dealer making inter-dealer markets in corporation securities over-the-counter
Broker or dealer retailing corporate equity securities over-the-counter
Broker or dealer selling corporate debt securities
Underwriter or selling group participant (corporate securities other than mutual funds)
Mutual fund retailer
U S. government securities broker
Broker or dealer selling variable life insurance or annuities
Put and call broker or dealer or option writer
Non-exchange member arranging for transactions in listed securities by exchange member
Trading securities for own account
Private placements of securities
Broker or dealer selling interests in mortgages or other receivables
Other - APPLICANT OFFERS OTHER INVESTMENT BANKING RELATED SERVICES, INCLUDING BUT NOT LIMITED TO, MERGERS AND ACQUISITIONS, REVERSE MERGERS, RECAPITALIZATION, LEVERAGED BUY-OUTS, MANAGEMENT BUY-OUTS, AND TURNAROUNDS.

Other Types of Business

This firm does not effect transactions in commodities, commodity futures, or commodity options.
This firm does not engage in other non-securities business.

Non-Securities Business Description:

Firm Operations

Clearing Arrangements

This firm does not hold or maintain funds or securities or provide clearing services for other broker-dealer(s).

Introducing Arrangements

This firm does refer or introduce customers to other brokers and dealers.

Name:	STERNE, AGEE & LEACH, INC.
CRD #:	791
Business Address:	2 PERIMETER PARK SOUTH, STE 100W BIRMINGHAM, AL 35243
Effective Date:	05/19/2012
Description:	APPLICANT INTRODUCES ALL ITS TRANSACTIONS ON A FULLY DISCLOSED BASIS PURSUANT TO A FULLY DISCLOSED CLEARING AGREEMENT WITH STERNE AGEE & LEACH, INC.

Firm Operations

Industry Arrangements

This firm does have books or records maintained by a third party.

Name:	STERNE, AGEE & LEACH, INC.
CRD #:	791
Business Address:	2 PERIMETER PARK SOUTH, STE 100W BIRMINGHAM, AL 35243
Effective Date:	05/19/2012
Description:	STERNE AGEE & LEACH, THE APPLICANT'S CLEARING FIRM MAINTAINS SUCH BACK OFFICE RECORDS AS REQUIRED OF CLEARING FIRMS FOR THE APPLICANT.

This firm does have accounts, funds, or securities maintained by a third party.

Name:	STERNE, AGEE & LEACH, INC.
CRD #:	791
Business Address:	2 PERIMETER PARK SOUTH, STE 100W BIRMINGHAM, AL 35243
Effective Date:	05/19/2012
Description:	CLEARING DEPOSIT, APPLICANT'S PROPRIETARY OR INVENTORY POSITIONS, IF ANY, AND COMMISSIONS DUE TO APPLICANT ARE HELD ON BEHALF OF APPLICANT BY STERNE AGEE & LEACH UNDER THE CLEARING AGREEMENT UNTIL PAYMENT TO APPLICANT.

This firm does have customer accounts, funds, or securities maintained by a third party.

Name:	STERNE, AGEE & LEACH, INC.
CRD #:	791
Business Address:	2 PERIMETER PARK SOUTH, STE 100W BIRMINGHAM, AL 35243
Effective Date:	05/19/2012
Description:	CUSTOMER ACCOUNTS, FUNDS AND SECURITIES ARE HELD BY STERNE AGEE & LEACH UNDER THE FULLY DISCLOSED CLEARING AGREEMENT WITH APPLICANT.

Control Persons/Financing

This firm does not have individuals who control its management or policies through agreement.

This firm does not have individuals who wholly or partly finance the firm's business.

Firm Operations

Industry Arrangements (continued)

Firm Operations

Organization Affiliates

This section provides information on control relationships the firm has with other firms in the securities, investment advisory, or banking business.

This firm is not, directly or indirectly:

- **in control of**
- **controlled by**
- **or under common control with**

the following partnerships, corporations, or other organizations engaged in the securities or investment advisory business.

This firm is not directly or indirectly, controlled by the following:

- **bank holding company**
- **national bank**
- **state member bank of the Federal Reserve System**
- **state non-member bank**
- **savings bank or association**
- **credit union**
- **or foreign bank**

Disclosure Events

All firms registered to sell securities or provide investment advice are required to disclose regulatory actions, criminal or civil judicial proceedings, and certain financial matters in which the firm or one of its control affiliates has been involved. For your convenience, below is a matrix of the number and status of disclosure events involving this brokerage firm or one of its control affiliates. Further information regarding these events can be found in the subsequent pages of this report.

	Pending	Final	On Appeal
Regulatory Event	0	4	0
Arbitration	N/A	1	N/A
Judgment/Lien	1	N/A	N/A

Disclosure Event Details

What you should know about reported disclosure events:

1. **BrokerCheck provides details for any disclosure event that was reported in CRD. It also includes summary information regarding FINRA arbitration awards in cases where the brokerage firm was named as a respondent.**
2. **Certain thresholds must be met before an event is reported to CRD, for example:**
   - A law enforcement agency must file formal charges before a brokerage firm is required to disclose a particular criminal event.
3. **Disclosure events in BrokerCheck reports come from different sources:**
   - Disclosure events for this brokerage firm were reported by the firm and/or regulators. When the firm and a regulator report information for the same event, both versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.
4. **There are different statuses and dispositions for disclosure events:**
   - A disclosure event may have a status of *pending, on appeal,* or *final.*
     - A "pending" event involves allegations that have not been proven or formally adjudicated.
     - An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
     - A "final" event has been concluded and its resolution is not subject to change.
   - A final event generally has a disposition of *adjudicated, settled* or *otherwise resolved.*
     - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
     - A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that firms may choose to settle customer disputes or regulatory matters for business or other reasons.
     - A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.
5. **You may wish to contact the brokerage firm to obtain further information regarding any of the disclosure events contained in this BrokerCheck report.**

Regulatory - Final

This type of disclosure event involves (1) a final, formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulator such as the U.S. Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations; or (2) a revocation or suspension of the authority of a brokerage firm or its control affiliate to act as an attorney, accountant or federal contractor.

Disclosure 1 of 4

Reporting Source:	Regulator
Current Status:	Final

Allegations:	RESPONDENT FILED LATE 2015 AUDITED FINANCIAL STATEMENTS.
Initiated By:	NEW HAMPSHIRE BUREAU OF SECURITIES REGULATION
Date Initiated:	09/16/2016
Docket/Case Number:	INV2016-00016
URL for Regulatory Action:	
Principal Product Type:	Other
Other Product Type(s):	
Principal Sanction(s)/Relief Sought:	Suspension
Other Sanction(s)/Relief Sought:	FINE
Resolution:	Order
Resolution Date:	11/28/2016
Sanctions Ordered:	Monetary/Fine $5,000.00 Suspension
Other Sanctions Ordered:	NA
Sanction Details:	SAME AS ABOVE.
Regulator Statement	SAME AS ABOVE.

Disclosure 2 of 4

Reporting Source:	Regulator
Current Status:	Final
Allegations:	RESPONDENT BLACKBOOK CAPITAL, LLC FAILED TO PAY FEES OF $53,908.45 DUE TO FINRA.
Initiated By:	FINRA
Date Initiated:	07/01/2016
Docket/Case Number:	N/A
Principal Product Type:	No Product
Other Product Type(s):	
Principal Sanction(s)/Relief Sought:	Other

Other Sanction(s)/Relief Sought:	CANCELLATION
Resolution:	Other
Resolution Date:	07/22/2016
Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?	No
Sanctions Ordered:	
Other Sanctions Ordered:	CANCELLATION
Sanction Details:	PURSUANT TO FINRA RULE 9553, BLACKBOOK CAPITAL'S MEMBERSHIP WITH FINRA IS CANCELED AS OF JULY 22, 2016 FOR FAILURE TO PAY OUTSTANDING FEES.

Disclosure 3 of 4

Reporting Source:	Regulator
Current Status:	Final
Allegations:	RESPONDENT BLACKBOOK CAPITAL, LLC FAILED TO PAY FINES AND/OR COSTS OF $50,000 IN FINRA CASE #2011025700901.
Initiated By:	FINRA
Date Initiated:	06/28/2016
Docket/Case Number:	2011025700901
Principal Product Type:	No Product
Other Product Type(s):	
Principal Sanction(s)/Relief Sought:	Expulsion
Other Sanction(s)/Relief Sought:	
Resolution:	Other
Resolution Date:	06/28/2016

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?	No
Sanctions Ordered:	Revocation/Expulsion/Denial
Other Sanctions Ordered:	
Sanction Details:	PURSUANT TO FINRA RULE 8320, RESPONDENT BLACKBOOK CAPITAL, LLC IS EXPELLED FROM FINRA MEMBERSHIP AS OF THE CLOSE OF BUSINESS ON JUNE 28, 2016 FOR FAILURE TO PAY FINES AND/OR COSTS.

Disclosure 4 of 4

Reporting Source:	Regulator
Current Status:	Final
Allegations:	WITHOUT ADMITTING OR DENYING THE FINDINGS, THE FIRM CONSENTED TO THE SANCTIONS AND TO THE ENTRY OF FINDINGS THAT IT CHARGED ITS CUSTOMERS $60.50 ON SEPARATE PURCHASE OR SALE TRANSACTIONS IN ADDITION TO OR IN PLACE OF A DESIGNATED COMMISSION CHARGE. THE FINDINGS STATED THAT THE FIRM CHARACTERIZED THE CHARGE ON CUSTOMER TRADE CONFIRMATIONS AS "MISCELLANEOUS" AND/OR AS AN "ADDITIONAL FEE." A SUBSTANTIAL PORTION OF THE $60.50 CHARGE WAS NOT ATTRIBUTABLE TO ANY SPECIFIC COST OR EXPENSE INCURRED BY THE FIRM OR SERVICE PERFORMED BY THE FIRM IN EXECUTING EACH TRANSACTION OR DETERMINED BY ANY FORMULA APPLICABLE TO ALL CUSTOMERS. A SUBSTANTIAL PORTION OF THE CHARGE REPRESENTED A SOURCE OF ADDITIONAL TRANSACTION BASED REMUNERATION OR REVENUE TO THE FIRM, AND WAS EFFECTIVELY A MINIMUM COMMISSION CHARGE. BY DESIGNATING THE CHARGE ON TRADE CONFIRMATIONS AS "MISCELLANEOUS" AND/OR AS AN "ADDITIONAL FEE" IN ADDITION TO OR IN PLACE OF A DESIGNATED COMMISSION CHARGE, THE FIRM MISCHARACTERIZED AND UNDERSTATED THE AMOUNT OF THE TOTAL COMMISSIONS CHARGED BY THE FIRM. THE FINDINGS ALSO STATED THAT THE FIRM FAILED TO CHECK THE NAMES OF PERSONS AND ENTITIES ON THE FINANCIAL CRIMES ENFORCEMENT NETWORK'S (FINCEN) LISTS AGAINST THE FIRM'S CUSTOMER BASE AND THOSE WITH WHOM THE FIRM ENGAGED IN ANY TRANSACTION. THE FIRM'S ANTI-MONEY LAUNDERING (AML) TEST FOR CALENDAR YEAR 2010 WAS NOT INDEPENDENT AND WAS INADEQUATE. THE FIRM'S BOOKKEEPER PERFORMED THE TEST AND HE WAS NOT QUALIFIED TO PERFORM THE TEST AS HE DID NOT HAVE A

	WORKING KNOWLEDGE OF THE APPLICABLE REQUIREMENTS UNDER THE BANK SECRECY ACT AND ITS IMPLEMENTING REGULATIONS. THE AML TEST WAS NOT INDEPENDENT BECAUSE THE BOOKKEEPER REPORTED DIRECTLY TO THE FIRM'S AML COMPLIANCE OFFICER AND TOOK INSTRUCTION FROM THE COMPLIANCE OFFICER IN HOW TO PERFORM THE AML TEST AND WHICH DOCUMENTS TO REVIEW. THE TEST WAS NOT ADEQUATE AS THE BOOKKEEPER FAILED TO ACTUALLY TEST THE ADEQUACY OF THE FIRM'S AML COMPLIANCE SYSTEMS AND INSTEAD RELIED ON WHAT HE WAS TOLD BY THE AML COMPLIANCE OFFICER. THE FINDINGS ALSO INCLUDED THAT FAILED TO PRESERVE HUNDREDS OF BUSINESS-RELATED EMAILS, PRINCIPALLY INTERNAL EMAILS, IN A NON-REWRITEABLE, NON-ERASABLE FORMAT WHEN PERSONNEL USED PERSONAL EMAIL ADDRESSES OUTSIDE OF THE FIRM'S EMAIL DOMAIN TO SEND OR RECEIVE BUSINESS-RELATED EMAILS. THE FIRM'S COMPLIANCE OFFICER TYPICALLY KEPT COPIES OF THOSE EMAILS IN FOLDERS ON HIS PERSONAL EMAIL ACCOUNT PLATFORM, WHICH EMAILS COULD HAVE BEEN ERASED OR ALTERED.
Initiated By:	FINRA
Date Initiated:	05/05/2014
Docket/Case Number:	2011025700901
Principal Product Type:	No Product
Other Product Type(s):	
Principal Sanction(s)/Relief Sought:	
Other Sanction(s)/Relief Sought:	
Resolution:	Acceptance, Waiver & Consent(AWC)
Resolution Date:	05/05/2014
Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?	No
Sanctions Ordered:	Censure Monetary/Fine $50,000.00
Other Sanctions Ordered:	REQUIRED TO COMPLY WITH UNDERTAKINGS AND REVISE THE FIRM'S WRITTEN SUPERVISORY PROCEDURES

Sanction Details: SEE ABOVE

Reporting Source: Firm

Current Status: Final

Allegations: WITHOUT ADMITTING OR DENYING THE FINDINGS, THE FIRM CONSENTED TO THE SANCTIONS AND TO THE ENTRY OF FINDINGS THAT IT CHARGED ITS CUSTOMERS $60.50 ON SEPARATE PURCHASE OR SALE TRANSACTIONS IN ADDITION TO OR IN PLACE OF A DESIGNATED COMMISSION CHARGE. THE FINDINGS STATED THAT THE FIRM CHARACTERIZED THE CHARGE ON CUSTOMER TRADE CONFIRMATIONS AS "MISCELLANEOUS" AND/OR AS AN "ADDITIONAL FEE." A SUBSTANTIAL PORTION OF THE $60.50 CHARGE WAS NOT ATTRIBUTABLE TO ANY SPECIFIC COST OR EXPENSE INCURRED BY THE FIRM OR SERVICE PERFORMED BY THE FIRM IN EXECUTING EACH TRANSACTION OR DETERMINED BY ANY FORMULA APPLICABLE TO ALL CUSTOMERS. A SUBSTANTIAL PORTION OF THE CHARGE REPRESENTED A SOURCE OF ADDITIONAL TRANSACTION BASED REMUNERATION OR REVENUE TO THE FIRM, AND WAS EFFECTIVELY A MINIMUM COMMISSION CHARGE. BY DESIGNATING THE CHARGE ON TRADE CONFIRMATIONS AS "MISCELLANEOUS" AND/OR AS AN "ADDITIONAL FEE" IN ADDITION TO OR IN PLACE OF A DESIGNATED COMMISSION CHARGE, THE FIRM MISCHARACTERIZED AND UNDERSTATED THE AMOUNT OF THE TOTAL COMMISSIONS CHARGED BY THE FIRM. THE FINDINGS ALSO STATED THAT THE FIRM FAILED TO CHECK THE NAMES OF PERSONS AND ENTITIES ON THE FINANCIAL CRIMES ENFORCEMENT NETWORK'S (FINCEN) LISTS AGAINST THE FIRM'S CUSTOMER BASE AND THOSE WITH WHOM THE FIRM ENGAGED IN ANY TRANSACTION. THE FIRM'S ANTI-MONEY LAUNDERING (AML) TEST FOR CALENDAR YEAR 2010 WAS NOT INDEPENDENT AND WAS INADEQUATE. THE FIRM'S BOOKKEEPER PERFORMED THE TEST AND HE WAS NOT QUALIFIED TO PERFORM THE TEST AS HE DID NOT HAVE A WORKING KNOWLEDGE OF THE APPLICABLE REQUIREMENTS UNDER THE BANK SECRECY ACT AND ITS IMPLEMENTING REGULATIONS. THE AML TEST WAS NOT INDEPENDENT BECAUSE THE BOOKKEEPER REPORTED DIRECTLY TO THE FIRM'S AML COMPLIANCE OFFICER AND TOOK INSTRUCTION FROM THE COMPLIANCE OFFICER IN HOW TO PERFORM THE AML TEST AND WHICH DOCUMENTS TO REVIEW. THE TEST WAS NOT ADEQUATE AS THE BOOKKEEPER FAILED TO ACTUALLY TEST THE ADEQUACY OF THE FIRM'S AML COMPLIANCE SYSTEMS AND INSTEAD RELIED ON WHAT HE WAS TOLD BY THE AML COMPLIANCE OFFICER. THE FINDINGS ALSO INCLUDED THAT FAILED TO PRESERVE HUNDREDS OF BUSINESS-RELATED EMAILS, PRINCIPALLY INTERNAL EMAILS, IN A NON-REWRITEABLE, NON-ERASABLE FORMAT WHEN PERSONNEL USED PERSONAL EMAIL ADDRESSES OUTSIDE OF THE FIRM'S EMAIL DOMAIN TO

	SEND OR RECEIVE BUSINESS-RELATED EMAILS. THE FIRM'S COMPLIANCE OFFICER TYPICALLY KEPT COPIES OF THOSE EMAILS IN FOLDERS ON HIS PERSONAL EMAIL ACCOUNT PLATFORM, WHICH EMAILS COULD HAVE BEEN ERASED OR ALTERED.
Initiated By:	FINRA
Date Initiated:	05/05/2014
Docket/Case Number:	2011025700901
Principal Product Type:	No Product
Other Product Type(s):	
Principal Sanction(s)/Relief Sought:	
Other Sanction(s)/Relief Sought:	
Resolution:	Acceptance, Waiver & Consent(AWC)
Resolution Date:	05/05/2014
Sanctions Ordered:	Monetary/Fine $50,000.00
Other Sanctions Ordered:	REQUIRED TO COMPLY WITH UNDERTAKINGS AND REVISE THE FIRM'S WRITTEN SUPERVISORY PROCEDURES.
Sanction Details:	SEE ABOVE

Arbitration Award - Award / Judgment

Brokerage firms are not required to report arbitration claims filed against them by customers; however, BrokerCheck provides summary information regarding FINRA arbitration awards involving securities and commodities disputes between public customers and registered securities firms in this section of the report.
The full text of arbitration awards issued by FINRA is available at www.finra.org/awardsonline.

Disclosure 1 of 1

Reporting Source:	Regulator
Type of Event:	ARBITRATION
Allegations:	ACCOUNT ACTIVITY-BRCH OF FIDUCIARY DT; ACCOUNT ACTIVITY-CHURNING; ACCOUNT ACTIVITY-FRAUD; ACCOUNT ACTIVITY-SUITABILITY; ACCOUNT RELATED-BREACH OF CONTRACT; ACCOUNT RELATED-FAILURE TO SUPERVISE; ACCOUNT RELATED-NEGLIGENCE
Arbitration Forum:	FINRA
Case Initiated:	06/06/2016
Case Number:	16-01492
Disputed Product Type:	
Sum of All Relief Requested:	$1,029,409.82
Disposition:	AWARD AGAINST PARTY
Disposition Date:	07/14/2017
Sum of All Relief Awarded:	$431,023.58

There may be a non-monetary award associated with this arbitration.
Please select the Case Number above to view more detailed information.

Judgment / Lien

This type of disclosure event involves an unsatisfied and outstanding judgment or lien against the brokerage firm.

Disclosure 1 of 1

Reporting Source:	Firm
Judgment/Lien Holder:	INTERNAL REVENUE SERVICE
Judgment/Lien Type:	Tax
Judgment/Lien Amount:	$12,158.63
Date Filed:	12/14/2015
Court Details:	

End of Report

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EXHIBIT 3

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110257009O1

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Blackbook Capital LLC, Respondent
BD No. 123234

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Blackbook Capital LLC ("Blackbook," "Respondent," or "the Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Blackbook hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Blackbook has been registered with the Securities and Exchange Commission and a member of FINRA since March 2003. The firm has three offices, with its main office located in New York City. The firm employs approximately 35 registered persons and engages in securities transactions for retail customers and in investment banking transactions.

RELEVANT DISCIPLINARY HISTORY

Blackbook has no formal disciplinary history with the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any state securities regulator.

OVERVIEW

Between April 2010 and June 2011, Blackbook charged its customers $60.50 on each purchase or sale transaction in addition to or in place of a designated

commission charge. Blackbook listed the charge on customer trade confirmations as "additional fee" or "miscellaneous." The charge was unreasonable and mischaracterized, as the charge was not reasonably related to the Firm's services or costs in processing each transaction and was effectively an undisclosed minimum commission. By reason of the foregoing, Blackbook violated NASD Conduct Rules 2430, FINRA Rule 2010, and Rule 10b-10 of the Securities Exchange Act of 1934 (the "Exchange Act").

Between August 2010 and August 2011, Blackbook failed to search its records in response to requests by the Financial Crimes Enforcement Network of the Department of the U.S. Treasury ("FinCEN"), pursuant to Section 314(a) of the USA PATRIOT Act of 2001. By reason of the foregoing, Blackbook violated FINRA Rules 3310(b) and 2010.

Blackbook also failed to conduct an adequate independent Anti-Money Laundering ("AML") test for calendar year 2010. As a consequence, Blackbook violated FINRA Rules 3310(c) and 2010.

Additionally, between July 2009 and August 2011, Blackbook failed to preserve all of its business-related emails in a non-rewriteable, non-erasable format. As a result, the Firm violated Section 17(a) of the Exchange Act and SEC Rule 17a-4(b)(4) and (f) thereunder, and violated NASD Conduct Rule 3110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Unreasonable Handling Fee Charges and Mischaracterization of Commission Charges

NASD Conduct Rule 2430 (Charges for Services Performed) requires charges, if any, for services performed, including miscellaneous services such as collection of moneys due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

Exchange Act Rule 10b-10 (Confirmation of Transactions) requires broker-dealers to disclose specified information in writing to customers at or before the completion of a transaction. Pursuant to Rule 10b-10, it shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing, among other things, if the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and

some other person, the source and amount of any other remuneration received or to be received by the broker in connection with the transaction.

FINRA Rule 2010 (formerly NASD Conduct Rule 2110) (Standards of Commercial Honor and Principles of Trade) requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Between April 8, 2010 and June 10, 2011, Blackbook charged its customers $60.50 on 4,515 separate purchase or sale transactions in addition to or in place of a designated commission charge. The Firm characterized the charge on customer trade confirmations as "miscellaneous" and/or as an "additional fee."

A substantial portion of the $60.50 charge was not attributable to any specific cost or expense incurred by the Firm or service performed by the Firm in executing each transaction or determined by any formula applicable to all customers. A substantial portion of the charge represented a source of additional transaction based remuneration or revenue to the Firm, and was effectively a minimum commission charge. By designating the charge on trade confirmations as "miscellaneous" and/or as an "additional fee" in addition to or in place of a designated commission charge, Blackbook mischaracterized and understated the amount of the total commissions charged by the Firm.

By reason of the forgoing, Blackbook violated NASD Conduct Rules 2430, FINRA Rule 2010, and Rule 10b-10 of the Exchange Act.

2. **Failure to Review FinCEN 314(a) Requests**

Since November 2002, FinCEN has received requests from law enforcement agencies to help locate financial assets and recent transactions by subjects of criminal investigations that may be involved in terrorism or money laundering. Every two weeks, FinCEN, pursuant to Section 314(a) of the USA PATRIOT ACT, posts a new list of persons and entities of interest to law enforcement inquiries. Pursuant to 31 C.F.R. 103.100, recodified as 31 C.F.R. 1010.520, financial institutions are required to expeditiously search their records to determine whether they maintain or have maintained any account for, or have engaged in any transaction with, each individual, entity, or organization named in FinCEN's request.[1] Financial institutions must report to FinCEN, in the

[1] Pursuant to that Treasury Regulation, except as otherwise provided for in the request, the financial institution must specifically search their records for: (a) Any current account maintained for a named suspect; (b) Any account maintained for a named suspect during the preceding 12 months; and (c) Any transaction, as defined in the regulation, conducted by or on behalf of a named suspects, or any transmittal of funds conducted in which a named

manner and in the time frame specified in FinCEN's request, any positive matches.[2]

Between August 10, 2010 and August 9, 2011, in 28 instances, Blackbook failed to check the names of persons and entities on FinCEN's lists against the Firm's customer base and those with whom the firm engaged in any transaction, in violation of 31 C.F.R. 1010.520.

By reason of the foregoing, Blackbook violated FINRA Rules 3310(b) and 2010.

3. **Failure to Conduct an Adequate Independent AML Test**

FINRA Rule 3310(c) requires annual independent testing of a firm's AML compliance systems. Blackbook's AML test for calendar year 2010 was not independent and was inadequate. RV, the Firm's bookkeeper, performed the test. RV was not qualified to perform the test as he did not have a working knowledge of the applicable requirements under the Bank Secrecy Act and its implementing regulations. The AML test was not independent because RV reported directly to the Firm's AML compliance officer and took instruction from the compliance officer in how to perform the AML test and which documents to review. The test was not adequate as RV failed to actually test the adequacy of the Firm's AML compliance systems and instead relied on what he was told by the AML compliance officer.

By reason of the foregoing, Blackbook violated FINRA Rules 3310(c) and 2010.

4. **Failure to Preserve Emails in the Required Format**

Exchange Act Rule 17a-4(b)(4) requires each member, broker and dealer to "preserve for a period of not less than three years, the first two years in an accessible place . . . [o]riginals of all communications received and copies of all communications sent . . . by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such." Exchange Act Rule 17a-4(f)(2)(ii)(A) further requires that if a firm uses electronic storage media, it must, among other things, "[p]reserve the records exclusively in a non-rewritable, non-erasable format."

From July 2009 through August 25, 2011, Blackbook failed to preserve hundreds of business-related emails, principally internal emails, in a non-

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suspect was either the transmitter or the recipient, during the preceding six months that is required under law or regulation to be recorded and/or maintained by the financial institution. 31 C.F.R. 1010.520.

[2] *Id.*

rewriteable, non-erasable format when personnel used personal email addresses outside of the Firm's email domain to send or receive business-related emails. The Firm's compliance officer typically kept copies of those emails in folders on his personal email account platform, which emails could have been erased or altered.

Consequently, Blackbook violated Section 17(a) of the Exchange Act and SEC Rule 17a-4(b)(4) and (f) thereunder, and violated NASD Conduct Rule 3110 and FINRA Rule 2010.

B. Blackbook also consents to the imposition of the following sanctions:

- A censure;
- A fine of $50,000; and
- An undertaking by Blackbook to certify, within 90 days of FINRA's acceptance of this AWC, that it has implemented the following corrective action:

  (1) The Firm shall identify as a commission or markup/markdown, as the case may be, and not as any charge or fee for postage, handling, miscellaneous, additional fee, or the like, any transaction-based charge or fee that constitutes, in whole or in part, remuneration to the Firm and/or any associated person(s) of the Firm;

  (2) With respect to any transaction-based charge or fee that may be imposed for a service performed or a cost incurred by the Firm (such as a postage charge or a charge imposed by a clearing firm) that is not included as part of the reported commission or markup/ markdown, the Firm shall fully and accurately disclose on trade confirmations and in every written communication with customers or the public in which transaction fees, commissions, or markup/markdown charges are discussed (including fee schedules, if any, or new account documentation that contains such information), the specific service(s) or cost(s) for which the fee or charge relates and, if relating to more than one service or cost, the precise portion of the charge or fee attributable to each, and the Firm must retain detailed records to substantiate the service(s) performed or costs(s) incurred and to demonstrate how the dollar amount of the charge or fee was calculated or determined; and

  (3) The Firm shall revise its written supervisory procedures to address the requirements of this undertaking and provide training to all associated persons relating to same.

Blackbook agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Blackbook has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Blackbook specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Blackbook specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against the Firm;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel. to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Blackbook specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Blackbook further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Blackbook understands that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and

C. If accepted:

1. this AWC will become part of Blackbook's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. Blackbook may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Blackbook may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects (i) Blackbook's testimonial obligations; or (ii) Blackbook's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Blackbook may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of Blackbook, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Blackbook has agreed to its provisions voluntarily; and that no offer, threat, inducement or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Blackbook to submit it.

Blackbook Capital LLC, Respondent

03/25/2014
Date (mm/dd/yyyy)

By: [signature]
Frank J. Ocle
[Print Name]
Managing Member
[Title]

Reviewed by:

[signature]
Michael Utilla, Esq.
Counsel for Respondent
The Law Office of
Michael Utilla & Associates
26 Court Street, suite 2601
Brooklyn, New York 11242
(718) 852-8400

Accepted by FINRA:

May 5, 2014
Date

Signed on behalf of the
Director of ODA, by delegated authority

[signature]
Gary A. Chodosh
Senior Regional Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
Tel. No.: 212-858-4771; Fax No.: 202-721-6564

STATEMENT OF CORRECTIVE ACTION

Examination No. 20110257009

THIS CORRECTIVE ACTION STATEMENT IS SUBMITTED BY THE RESPONDENT. IT DOES NOT CONSTITUTE FACTUAL OR LEGAL FINDINGS BY FINRA, NOR DOES IT REFLECT THE VIEWS OF FINRA.

This submission is respectfully transmitted for purposes of identifying the various remedial measures undertaken by Blackbook (the "Firm") in furtherance of its ongoing objective to maintain supervisory systems reasonably designed to achieve compliance with respect to the applicable securities laws and regulations and rules of FINRA.

1: FINCEN Reports

FINCEN Reports are now transmitted by email on a bi-weekly basis from fincen.gov to Blackbook's President Franklin Ogele's firm issued email address and have been contemporaneously reviewed by him since November 15, 2011.

Mr. Ogele's reviews are evidenced by way of the FINCEN system's generation of search self-verification memoranda containing the details of such access including the corresponding date and time.

2: Email Preservation

Any and all business-related email communications - whether involving the Firm's customers, internal correspondence or otherwise -are being archived by Global Relay and have been captured as such since September 2011.

Global Relay is notably the market leader in compliance archiving and message management.

3: **AML Test**

The Firm has been utilizing the services of reputable third parties with no prior nexus to it (i.e. Quadrant Compliance LLC and VMB Consulting Services, Inc.) for purposes of conducting its annual Independent AML tests for the years 2011, 2012 and 2013.

4: **Miscellaneous Fee Charges**

Contemporaneous with Blackbook having been freed of Penson's rather onerous five thousand dollar ($5,000) per month minimum charges in favor of Stern Agee's more reasonable one thousand dollar ($1,000) per month minimum fee structure, the Firm's prior $60.50 minimum ticket charge was initially reduced to $45.00 in May of 2012 and then promptly reduced yet again to $29.99 in July 2012.

Moreover, upon approval of the Letter of Acceptance, Waiver and Consent, the Firm will timely implement its undertaking set forth in §B (1), (2) and (3) with respect to any remaining transaction based charge or fee that may be imposed for services performed or costs incurred by the Firm that is not specifically included as part of reported commissions or markup/markdowns.

5: **Conclusion**

We respectfully submit that the above referenced remedial measures undertaken by Blackbook Capital stand testament to the firm's ongoing objective of maintaining supervisory systems reasonably designed to achieve compliance with respect to the applicable securities laws and regulations and rules of FINRA.

Thank you for your continued consideration in this matter.

Very truly yours,

Franklin Ogele
President
Blackbook Capital