

FRANKLIN OGELE, P.A.  
*Attorney at Law*  
One Gateway Center, 26<sup>th</sup> FL  
Newark, NJ 07102  
[www.ogelelaw.com](http://www.ogelelaw.com)  
Email: [fogele@msn.com](mailto:fogele@msn.com)

**Office: (973) 277 4239**  
**Fax: (862) 772 3985**

**Bar Admissions:**  
**New York and New Jersey**

May 21, 2020

Vanessa Countryman  
Secretary  
United States Securities and  
Exchange Commission  
100 F. Street, NE  
Room 10915  
Washington, DC 20549-1090

**Re: *In the Matter of the Application of BlackBook Capital Inc. and Franklin Ogele  
for Review of FINRA Action, Admin. Proceeding No. 3-19771***

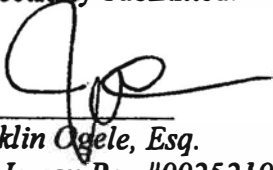
Dear Ms. Countryman:

Enclosed herein are:

- 1 One original and two copies of Petitioners Reply and Brief In Opposition to Motion to Dismiss by Respondent, The Financial Industry Regulatory Authority, Inc and Motion for Leave to File Amended Petition.
  
- 2 Certificate of Service of the initial Petition upon Alan Lawhead, Esq.

*Apex Companies, 245 Park Avenue, 39<sup>th</sup> Fl,  
New York, New York 10167*

Respectfully submitted.



*Franklin Ogele, Esq.*  
*New Jersey Bar #00252190*  
*New York Bar # 2364974*  
*One Gateway Center, 26<sup>th</sup> 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 May 21<sup>st</sup>, 2020 I served the foregoing on Respondent by service on the counsel of record as follows:

VIA US MAIL  
Andrew Love  
Associate General Counsel  
FINRA  
1735 K. Street, NW  
Washington, DC 20006  
(202) 728 – 8281  
[Andrew.love@finra.org](mailto:Andrew.love@finra.org)



Franklin I. Ogele

BEFORE THE UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

---

BLACKBOOK CAPITAL, INC.  
FRANKLIN OGELE

Admin Proceeding No. 3-19771

Petitioners

THE FINANCIAL INDUSTRY  
REGULATORY AUTHORITY, INC.  
Respondent.

---

**PETITIONERS' BLACKBOOK CAPITAL INC. AND FRANKLIN  
OGELE'S REPLY AND BRIEF IN OPPOSITION TO MOTION TO  
DISMISS BY RESPONDENT, THE FINANCIAL INDUSTRY  
REGULATORY AUTHORITY, INC. AND MOTION FOR LEAVE TO  
FILE AMENDED PETITION**

Petitioners, BlackBook Capital Inc., ("BlackBook") represented by Franklin Ogele, Esq. and Franklin Ogele, appearing pro se, files the within Reply and Brief In Opposition to Motion to Dismiss by The Financial Industry Regulatory Authority, Inc. ("Respondent") and Motion for Leave to File Amended Petition and will show as follows:

**PRELIMINARY STATEMENT**

It is clear from the Motion to Dismiss that Respondent does not wish to address Petitioners challenge to the constitutionality of FINRA's Board, which is at the heart of our complaint. Moreover, Petitioners are skeptical of the Commission's competence to adjudicate the constitutional challenge to FINRA any more than the

Franklin Ogle  
One Lafayette Ct  
Bethesda  
Me 5056 NS 07102



Andrew Love, Esq.  
FIRTH A  
1735 K. Street,  
Washington DC



Commission was in *Free Enterprise Fund*. See *Free Enterprise Fund v. Public Accounting Oversight Board*, 561 U.S. 477, 624 at Pp. 489-491.

See *Thunder Basin Coal v. Reich*, 510 U.S. 200, 212-213, *United States v. Ruzicka*, 329 U.S. 287 (1946), and *Johnson v. Robinson*, 415 U.S. 361, 373 (1974) for the dictum that technical regulatory matters belong to regulatory agencies while standard questions of constitutional and common law adjudications belong to the courts.

### FACTS AND LEGAL ARGUMENT

In our Petition, we seek a declaratory order that FINRA is unconstitutional under the emerging jurisprudence of Separation of Powers and Appointments Clause. See *Free Enterprise Fund v. Public Accounting Oversight Board*, 561 U.S. 477, 624, *David F. Brandimere v. United States Securities and Exchange Commission*, 844 F. 3d 1168, *Freytag et. al v. Commissioner of Internal Revenue*, 501 U.S. 868 (1991), *Myers V. United States*, 272, U.S. 52, *United States V. Perkins*, 116 U.S. 183 and *Morrison v. Olson*, 487 U.S. 654; not on 5<sup>th</sup> Amendment Due Process grounds which appears to be the focus of FINRA's brief.

We respectfully submit that the SEC has no power to grant declaratory relief. 15 U.S.C. §1331 provides that federal courts have original jurisdiction over all "civil actions under the Constitution, laws and treaties of the United States" and 15 U.S.C. § 2201 reserves declaratory judgments to the exclusive province of the federal

courts. The rest of our claims also belong the federal court under the supplemental jurisdiction of 28 U.S.C. § 1367.<sup>1</sup>

Petitioners brought their grievance to the SEC for two reasons: to protect their right to SEC review because the statutes of limitations on our libel claim was about to run out *and* to have the SEC weigh in as urged by FINRA in its motion to dismiss before Judge Vasquez. By bringing our grievance to the Commission, we have obliged FINRA to have the SEC weigh similar to David F. Brandimere whose grievance also went through the SEC's administrative judicial process before making it to the United States Court of Appeals, Tenth Circuit where he was ultimately vindicated.<sup>2</sup>

In our view, a fair reading of the emerging jurisprudence of Separation of Powers and Appointments Clause and what constitutes "exercising significant authority pursuant to the laws of the United States." *Buckley v. Valeo*, 424 U.S. 1, 126, 96 S.Ct. 612, 46 L. Ed 2d 659 (1976) (per curiam) and what constitutes being "part of the government" under *Lebron v. National Railroad Corporation*, 513 U.S. 374, 400, including analysis of who is an "Officer" or "Inferior Officer" of the United States, *Brandimere, id.*, juxtaposed against the broad swarth of executive / regulatory powers wielded by FINRA, would lead to the inevitable conclusion that an

---

<sup>1</sup> See *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978); *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966) and the superseding Supreme Court treatment of pendent party jurisdiction in *Finley v. United States*, 490 U.S. 545 (1989).

<sup>2</sup> *David F. Brandimere challenged the constitutionality of SEC's ALJ on Separation of Powers and Appointments Clause grounds. The case made its way through the SEC administrative process and to the United States Appeals Court, Tenth Circuit where Brandimere prevailed and the registration violation action against him by the SEC was declared null and void. See David F. Brandimere v. United States Securities and Exchange Commission*, 844 F. 3d 1168, at p. 1172.

unaccountable FINRA Board, removed from the direct or indirect control of the President of the United States, is unconstitutional.<sup>3</sup>

Our case is not untimely. Petitioner Ogele *discovered* the harm to his good name caused by FINRA's false publication in August 2019 when a financing source would not do business with Ogele because FINRA had falsely published that BlackBook, a firm associated with Ogele, was expelled for failure to pay \$50,000.00 when the actual amount was only \$7,599.85 – a 557% exaggeration.

New York and New Jersey case law recognizes the principle of discovery as a rebuttal to the statutes of limitations defense. Our libel claim is also of a *continuing* nature which is also a rebuttal to statutes of limitations defense. Equally, our claim of discriminatory enforcement of Rule 17a-5 was only *discovered* only in April 2019 when Ogele, in representing a client in the purchase of a broker-dealer similar to BlackBook *discovered* that FINRA was not requiring the broker-dealer to file monthly FOCUS Reports, an illegal and discriminatory imposition which drove BlackBook out of business.

---

<sup>3</sup> *As we argued in our Petition, the level of Presidential control over FINRA Board, if any, is even less than the dual-for-cause standard deemed unconstitutional under Free Enterprise v. PCOAB. The fact that FINRA was not created or incorporated directly by the government of the United States does not make it any less than "part of the government" than The Defense Homes Corporation and the Tennessee Valley Associated Cooperatives, Inc. which were never incorporated by the United States but were still deemed "part of the government." Therefore, the focus in our view, should be whether FINRA exercises "significant authority pursuant to the laws of the United States" and therefore, "part of the government" and if so whether the FINRA Board constitutes a "Department" similar to the SEC as formally adopted by US Supreme in Free Enterprise, id. or if not, whether the FINRA Board constitutes "Inferior Officer" who under the Appointments Clause should be appointed by either the President, the Courts of Law or by Head of a Department. See also Joseph McLaughlin, Esq. in Financial Services and E-Commerce, Is FINRA Constitutional?*

Petitioners other common law causes of action, including, but not limited to, negligence, all flow from the discrimination and libel claims *discovered* in April and August 2019, respectively. Petitioners filed the Original Complaint in the federal court in December 2020 and this instant Petition in April 2020. Until the parties conduct extensive discovery, it is rather premature for Respondent to simply wish away the claims by way untimeliness defenses.

Petitioners are not challenging the 2014 AWC. Respondent appears to be conflating the matters. Petitioners challenge the discriminatory regulatory action by FINRA, *discovered* in 2019, supervised by an unconstitutionally insulated FINRA Board, which drove BlackBook out of business and also resulted in disciplinary action against Ogele as we alleged in the Amended Complaint annexed herein per *Exhibit A*.

Petitioners also aver that just as the Tenth Circuit court's determination of the unconstitutionality of the ALJs in Brandimere resulted in the nullification of the SEC's charge of registration violation against Brandimere, that a judicial determination that FINRA Board is unconstitutional should also result in the nullification of expulsion of the BlackBook and the disciplinary action against Ogele.

Finally, Petitioners challenge the falsehood, and therefore the libelous statement that BlackBook failed to \$50,000.00 when the amount owed was only \$7,599.85. Petitioners do not understand why it is so difficult for FINRA to understand the simple concept that a person who is obligated to pay \$50,000.00 but pays \$42,400.15 can only be foreclosed for \$7,599.85 and not for entire \$50,000.00.



In view of the foregoing, we ask the Commission to DENY Petitioners Motion to Dismiss and stay action on our Petition pending a ruling by Hon. Judge Michael Vasquez, USDJ, United States District Court of New Jersey.<sup>4</sup>

## MOTION FOR LEAVE TO FILE AMENDED PETITION

### INTRODUCTION

1 Petitioners initially filed this petition on April 23, 2020.

2 The petition seeks declaratory judgment on FINRA's constitutionality, along with other causes of action.

3 Petitioners now wish to file an Amended Complaint to add Breach of Implied Contract and Bad Faith.

### ARGUMENT

Rule 15(a) provides that leave to amend shall be freely given when justice requires. "Leave to amend a complaint should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility." *Richardson v. United States*, 193 F.3d 545, 548-49 (D.C. Cir. 1999). The United States Supreme Court has declared that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Davis v. Liberty Mut. Ins. Co.*, 871 F.2d 1134, 1136 (D.C. Cir. 1989). Thus, the burden is on the opposing party to show that there is reason to deny leave. *In re Vitamins Antitrust Litigation*,

---

<sup>4</sup> *The Commission may also choose to dismiss our Petition on jurisdictional grounds at which point Petitioners would immediately seek appellate de novo review, with a motion to consolidate the amended Petition with the case currently before Judge Vasquez.*

217 F.R.D. 30, 32 (D.D.C. 2003). The Supreme Court explained that “if the underlying facts or circumstances relied upon by a plaintiff may be a proper source of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman*, 371 U.S. at 182.

The law is well-settled that leave to amend a pleading should be denied only where there is undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice, or futility of amendment. *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996). The grant or denial of leave to amend is committed to the sound discretion of the district court. *Anderson v. USAA Cas. Ins. Co.*, 218 F.R.D. 307, 310 (D.D.C. 2003).

I Petitioners are entitled to amend their petition because there has not been undue delay

Petitioners have not unduly delayed in bringing this motion to amend. The United States Court of Appeals for the District of Columbia has held that “[w]here an amendment would do no more than clarify legal theories or make technical corrections . . . delay, without a showing of prejudice, is not a sufficient ground for denying the motion.” *Harrison v. Rubin*, 174 F.3d 249, 253 (D.C. Cir. 1999); *see also Atchinson v. District of Columbia*, 73 F.3d 418, 426 (D.C. Cir. 1996) (holding that in order to determine the severity of the delay, the court considers any resulting prejudice the delay may cause); *Estate of Gaither v. District of Columbia*, 272 F.R.D. 248, 252 (D.D.C. 2011) (“[T]he mere passage of time does not preclude amendment—the delay must result in some prejudice to the judicial system or the opposing party.”).

Petitioners proposed amendment would merely clarify the claims upon which they rely without significantly expanding or altering the scope of this action. Even if respondent claim that there was undue delay in Petitioners' attempt to amend their complaint, any alleged delay has been slight, particularly since this case is still at an early stage in litigation.

Thus, there is no risk or unduly increasing discovery or delaying trial. *N. Am. Catholic Educ. Programming Found., Inc v. Womble, Carlyle, Sandridge & Rice, PLLC*, 887 F. Supp. 2d 78, 83 (D.D.C. 2012); *Heller v. District of Columbia*, No. 08-1289, 2013 U.S. Dist. LEXIS 38833, at \*8 (D.D.C. Mar. 20, 2013) (“A case’s position along the litigation path proves particularly important in that [hardship] inquiry: the further the case has progressed, the more likely the opposing party is to have relied on the unamended pleadings.”); *Harrison*, 174 F.3d at 253. In fact, courts have granted leave to amend even after Petitioners had “five previous attempts to state [a] cognizable claim . . . because [the] Federal Rules suggest [that the] ‘artless drafting of a complaint should not allow for the artful dodging of a claim.’” *Driscoll v. George Washington Univ.*, No. 12-0690, 2012 U.S. Dist. LEXIS 127870, at \*7 (D.D.C. Sept. 10, 2012) (alteration in original) (quoting *Poloron Prods., Inc. v. Lybrand Ross Bros. & Montgomery*, 72 F.R.D. 556, 561 (S.D.N.Y. 1976)). There is thus no undue delay, and Petitioners should be allowed to file their amended complaint.

II Petitioners are entitled to amend their petition because respondent will not be prejudiced

Respondent will not be prejudiced by Petitioners' amended complaint. The "liberal concepts of notice pleading" is to make the defendant aware of the *facts*." *Harrison*, 174 F.3d at 253 (emphasis added) (quoting *Hanson v. Hoffman*, 628 F.2d 42, 53 (D.C. Cir. 1980)). Accordingly, Petitioners are not bound by the legal theories originally alleged unless a respondent is prejudiced on the merits. *Id.*

The adding of Breach of Implied Contract and Bad Faith claim does not substantially change the theory on which the case has been proceeding, as Petitioners continue to allege basically the same causes of action of: declaratory judgment on the unconstitutionality of FINRA on separation of powers, appointments clause and non-delegation grounds, abuse of discretion, unfair and discriminatory regulatory enforcement scheme, libel, constructive expulsion and negligence. *See Djourabchi v. Self*, 240 F.R.D. 5, 13 (D.D.C. 2006) ("Where 'the amendment substantially changes the theory on which the case has been proceeding and is proposed late enough so that the opponent would be required to engage in significant new preparation the court may deem it prejudicial.'") (quoting *Zenit Radio Corp v. Hazeltine Research Inc.*, 401 U.S. 321 (1971)); *Heller*, 2013 U.S. Dist. LEXIS 38833, at \*8. Therefore, Respondent will not be "required to engage in significant new preparation" in responding to Plaintiff's new claims. *Id.*

The Commission has not previously entertained a motion by Petitioners to amend their complaint.

III. Petitioners are entitled to amend their complaint because the amendments would not be futile

Petitioners proposed amendments are not futile. “A district court may deny a motion to amend a complaint as futile if the proposed claim would not survive a motion to dismiss.” *Hettinga v. United States*, 677 F.3d 471, 480 (D.C. Cir. 2012) (citing *James Madison Ltd by Hecht v. Ludwig*, 82 F.3d 1085, 1099 (D.C. Cir. 1996)). In order to survive a motion to dismiss, a complaint must have facial plausibility allowing the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The court must construe the complaint in favor of the plaintiff and grant plaintiff the benefit of all inferences derived from the facts. *Schuler v. United States*, 617 F.2d 605, 608 (D.C. Cir. 1979).

As stated, Federal Rule of Civil Procedure Rule 15(d) provides that a party may, with leave of the court, “serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.”

“The court should freely give leave [to amend or supplement] when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see also Wildearth Guardians*, 592 F. Supp. 2d at 23 (“The decision whether to grant leave to amend or supplement a complaint is within the discretion of the district court, but leave ‘should be freely given unless there is good reason . . . to the contrary’” (quoting *Willoughby v. Potomac Elec. Power Co.*, 100 F.3d 999, 1003 (D.C. Cir. 1996))). “[T]he nonmovant bears the burden of persuasion that a motion to amend should be denied,” and absent a “sufficient reason,” “it is an abuse of . . . discretion to deny a motion to amend.” *Nichols v. Greater Se. Cmty. Hosp.*, No. 03-cv-2081 (JDB), 2005 WL 975643, at \*1

# EXHIBIT A

BEFORE THE UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

---

BLACKBOOK CAPITAL, INC.  
FRANKLIN OGELE

Admin Proceeding No. 3-19771

Petitioners

FIRST AMENDED 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.

---

**FIRST AMENDED 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, BREACH OF IMPLIED CONTRACT  
AND BAD FAITH 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, files this First Amended 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 Breach of Implied Contract and allege as follows:

### **PRESERVATION OF RIGHTS**

Petitioners file this amended Petition to continue 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 amended 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.



## THE PURPOSE OF THE AMENDED PETITION

The Amended Petition adds Breach of Implied Contract and Bad Faith as a cause of action.

### GRAVAMEN OF THE PETITION

1 This amended 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 Depository ("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 \$50,000 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<sup>1</sup> 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.

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<sup>2</sup> 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.*

---

<sup>1</sup> The total projected capital outlay for the 26 buildings, 520 Units, Summit Shores, Myrtle Beach, SC development is \$134,641,970.

<sup>2</sup> 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.

## 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<sup>3</sup> and in favor of big investment banking firms where FINRA staff usually land enormously lucrative positions after their short gigs at FINRA.

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

---

<sup>3</sup> 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.

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.<sup>4</sup>

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<sup>5</sup> as well as Chairman of Governing Board of the NASD<sup>6</sup>. It was not until 2008 that the SEC filed charges against Madoff and Madoff Investment<sup>7</sup> leading to Mr. Madoff's conviction and imprisonment. *See Exhibit 4 supra.*

---

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

<sup>5</sup> [https://en.wikipedia.org/wiki/Bernie\\_Madoff](https://en.wikipedia.org/wiki/Bernie_Madoff).

<sup>6</sup> [https://money.cnn.com/2008/12/11/markets/madoff\\_fraud/](https://money.cnn.com/2008/12/11/markets/madoff_fraud/)

<sup>7</sup> *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.*

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.<sup>8</sup> See Exhibit 4 supra.

22 In or about 2012<sup>9</sup>, FINRA imposed a monthly FOCUS Reporting requirement on BlackBook.

---

<sup>8</sup> <http://www.brokeandbroker.com/98/madoff-finra/>

<sup>9</sup> The exact date of the imposition would be determined in discovery.

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 Upon information and belief, FINRA knew that the imposition was illegal because they [FINRA] never included the requirement that BlackBook to file monthly FOCUS Reports in any stipulation entered into or executed by BlackBook.

26 Unlike Audited Annual Reports 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.<sup>10</sup>

27 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, BlackBook's FINRA coordinator, 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.

---

<sup>10</sup> 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.

28 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.

29 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.

30 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.

31 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.

32 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.

33 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.

34 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.

35 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.

36 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,<sup>11</sup> 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.

37 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<sup>12</sup> – required of ABN Amro to take on the Eirles Four Limited Notes.

38 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.

39 This amended 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

---

<sup>11</sup> <https://www.linkedin.com/in/pamela-cangelosi-b52404110/>

<sup>12</sup> See "Open Contractual Commitments" - <https://www.law.cornell.edu/efr/text/17/240.15c3-1>



to this amended petition because it will show a pattern and practice of FINRA letting off easy “the big firms” while squeezing the life out of “little guys.”

40 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**

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

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

43 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**

44 The SEC has jurisdiction over FINRA actions pursuant to 15 U.S. Code § 78s.

**HISTORY OF FINRA AND GOVERNING BOARD**  
**THE UNCONSTITUTIONALITY OF FINRA**

45 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.<sup>13</sup> The Exchange Act requires that broker-dealers register with a national securities association in order to participate in the over-the-counter market.<sup>14</sup> 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.<sup>15</sup>

46 FINRA is a private, nonprofit corporation that is comprised of sixteen to twenty-five governors who are elected by the regulated members.<sup>16</sup> FINRA’s jurisdiction extends to member broker-dealers and associated persons who involuntarily register.<sup>17</sup> “Associated persons” are broadly defined as anyone “who is directly or indirectly controlling or controlled by a member”<sup>18</sup>

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

---

<sup>13</sup> Jonathan Macey & Caroline Novograd, *Enforcing Self-Regulatory Organization’s Penalties, and the Nature of Self-Regulation*, 40 *HOFSTRA 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.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 968-69

<sup>16</sup> See *FINRA MANUAL: OFFICIAL PUBLICATION OF THE FINANCIAL INDUSTRY REGULATORY 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](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.

<sup>17</sup> See *id.* at Art. I, cl. Ff.

<sup>18</sup> *Id.*

to this amended petition because it will show a pattern and practice of FINRA letting off easy “the big firms” while squeezing the life out of “little guys.”

40 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**

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

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

43 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**

44 The SEC has jurisdiction over FINRA actions pursuant to 15 U.S. Code § 78s.

**HISTORY OF FINRA AND GOVERNING BOARD**  
**THE UNCONSTITUTIONALITY OF FINRA**

45 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.<sup>13</sup> The Exchange Act requires that broker-dealers register with a national securities association in order to participate in the over-the-counter market.<sup>14</sup> 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.<sup>15</sup>

46 FINRA is a private, nonprofit corporation that is comprised of sixteen to twenty-five governors who are elected by the regulated members.<sup>16</sup> FINRA’s jurisdiction extends to member broker-dealers and associated persons who involuntarily register.<sup>17</sup> “Associated persons” are broadly defined as anyone “who is directly or indirectly controlling or controlled by a member”<sup>18</sup>

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

---

<sup>13</sup> Jonathan Macey & Caroline Novograd, *Enforcing Self-Regulatory Organization’s Penalties, and the Nature of Self-Regulation*, 40 *HOFSTRA 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.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 968-69

<sup>16</sup> See *FINRA MANUAL: OFFICIAL PUBLICATION OF THE FINANCIAL INDUSTRY REGULATORY 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](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.

<sup>17</sup> See *id.* at Art. I, cl. Ff.

<sup>18</sup> *Id.*

48 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 statutes, SEC rules, and [FINRA] rule<sup>19</sup>

49 ..... FINRA has expansive powers to govern the entire industry of broker-dealers relations.<sup>20</sup> FINRA’s [Membership Regulation] program oversees more than 3,900 brokerage firms, more than 160,000 branch offices and nearly 629,849 registered representatives.<sup>21</sup> Market Regulation “monitors approximately 99 percent of the equities market and approximately 70 percent of the options market.<sup>22</sup> 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.<sup>23</sup> The Office of Fraud Detection and Market Intelligence “referred more than 785” matters of potential fraud and misconduct to the SEC.<sup>24</sup> FINRA also promulgates rules that must be approved by the SEC and issues the qualifying examinations that all securities professionals must pass.<sup>25</sup>

---

<sup>19</sup> *IRS Chief Counsel, Mem. 201623306 (May 2, 2016)*, <https://www.irs.gov/pub/irs-wd/201623306.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.

<sup>20</sup> 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.

<sup>21</sup> See <https://www.finra.org/media-center/statistics#key> (last visited January 10, 2020)

<sup>22</sup> 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.

<sup>23</sup> See note 25 *supra*.

<sup>24</sup> *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.

<sup>25</sup> *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>

50 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.<sup>26</sup>

51 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.<sup>27</sup>

52 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.*

<sup>26</sup> *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.*

<sup>27</sup> *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.

53 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.<sup>28</sup>

---

<sup>28</sup> <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*

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

55 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.

56 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.

57 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”<sup>29</sup>

---

<sup>29</sup> *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.*

58 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<sup>30</sup>

59 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.

60 The actions of FINRA against Petitioners alleged in this amended Petition, which drove BlackBook out of business and resulted in sanctions against Ogele, supervised by an unconstitutionally insulated FINRA Board is therefore null and void.

61 The actions occurred in or about 2012 while BlackBook operated out of New York and continued while BlackBook operated out of New Jersey.

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

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

63 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

---

<sup>30</sup> *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.

by law, allow the President, the Courts or the Heads of Departments to appoint inferior officers without the consent of the Senate.

64 The nondelegation doctrine stands for the proposition that actors in each tier of our government cannot evade the Framers' carefully constructed scheme by delegating their federal lawmaking power to unaccountable private parties, individual beyond the direct legal and political control of superior federal officials and the electorate.

65 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).

66 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.

67 The actions of FINRA against Petitioners alleged in this amended Petition, which drove BlackBook out of business and resulted in sanctions against Ogele, supervised by an unconstitutionally insulated FINRA Board is therefore null and void.

68 The actions occurred when FINRA imposed the illegal FOCUS Reporting obligation while BlackBook operated out of New York and continued while BlackBook operated out of New Jersey.

## **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 all the actions of FINRA hereinabove and hereunder against Petitioners.
- a) an order and judgment nullifying and voiding the actions of FINRA against Petitioners alleged in this amended 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**

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

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

71 Indeed, the amount owed to FINRA was only \$7,599.85.<sup>31</sup>

72 Upon information and belief, the violation alleged in this cause of action continues because FINRA

---

<sup>31</sup> See Exhibit 1 supra.

has not corrected the record.

73 The abuse of discretion occurred in 2016 while BlackBook operated out of New Jersey.

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.

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

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

75 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<sup>32</sup> Reporting.

---

<sup>32</sup> 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.

76 In or about 2012<sup>33</sup> when BlackBook operated out of New York, FINRA imposed a monthly FOCUS Reporting requirement on BlackBook, which imposition continued when BlackBook moved to New Jersey.

77 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.

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

79 Upon information and belief, FINRA knew that the imposition was illegal because they [FINRA] never included the requirement that BlackBook to file monthly FOCUS Reports in any stipulation entered into or executed by BlackBook.

80 Unlike Annual Audit Reports 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.<sup>34</sup>

81 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,

---

<sup>33</sup> *The exact date of the imposition would be determined in discovery.*

<sup>34</sup> *See footnote 10 Id.*

Ogele, insisting that FINRA was requiring similar firms, i.e., firms that do not carry nor clear customer accounts, to file monthly FOCUS Reports.

82 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.

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

84 Petitioners only *discovered* the discriminatory regulatory treatment of BlackBook 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.

85 SEC Rule 17a-5(a)(2)(iii) requires broker-dealers who clear customer trades and carry customer accounts to file monthly FOCUS Reports.<sup>35</sup>

86 Petitioner, BlackBook never cleared nor carried customer accounts.

---

<sup>35</sup> Congress' statutory scheme is that small broker-dealers who do not clear customer trades nor carry customer accounts would file FOCUS Reports on a quarterly basis so that the Compliance Staff would have adequate time to deal with the myriads of regulatory compliance matters required of broker-dealers. However, in the case of BlackBook, FINRA flouted the rules, imposing the extraordinary and time consuming monthly FOCUS filing requirement. The consequence as we allege in this amended petition was clear: because as BlackBook's compliance and supervisory staff was hobbled with complying monthly FOCUS filing, there was no time to comply with other regulatory requirements, including complying with the Taping Rule and proper supervision of a BlackBook stockbroker which led to sanctions against Petitioner, Ogele.

87 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.

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

89 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.

90 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.

91 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.

92 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<sup>36</sup>, missed the applicable ratio threshold by a couple of points over a very short period of time in violation of Rule 3170.

---

<sup>36</sup> *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*

93 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.

94 Upon information and belief, and in the hurry to impose the Taping Rule on BlackBook, and drive BlackBook out of business, 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.

95 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.

96 The illegal imposition of monthly FOCUS Report filing also resulted in Petitioner, Ogele’s alleged failure to properly supervise a BlackBook stockbroker, leading to \$5,000.00 fine and 45 days suspension of Ogele because as Petitioner, Ogele, the sole Compliance and Financial Reporting person at BlackBook was hobbled with monthly FOCUS Reporting and submission of the underlying supporting financial records and the inevitable back and forth explanations of the entries to the FINRA Staff, there was little time to properly review the brokerage activities of a BlackBook stockbroker who allegedly engaged in sales abusive conduct.

97 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.

98 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

---

*employment of BlackBook to simultaneously even out the ratio and save the BlackBook from the Taping Rule.*

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.<sup>37</sup>

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.
- 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**

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

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

101 Petitioner, BlackBook never cleared nor carried customer accounts.

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

---

<sup>37</sup> [https://en.wikipedia.org/wiki/Emergency\\_Economic\\_Stabilization\\_Act\\_of\\_2008](https://en.wikipedia.org/wiki/Emergency_Economic_Stabilization_Act_of_2008)

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.

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

104 Upon information and belief, FINRA knew that the imposition was illegal because they [FINRA] never included the requirement that BlackBook to file monthly FOCUS Reports in any stipulation entered into or executed by BlackBook.

105 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.<sup>38</sup>

106 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.<sup>39</sup>

107 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.

---

<sup>38</sup> *Consequently, in the course of this litigation, our discovery will necessarily investigate whether FINRA imposes disparate regulatory scheme on similarly situated member firms.*

<sup>39</sup> *See footnote 35 id.*

108 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.

109 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 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.

110 The constructive eviction alleged herein commenced when BlackBook operated out of New York and continued until on or about June 21, 2016 when Petitioner BlackBook operated out of New Jersey and 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:

- a) awarding to Petitioner, Ogele as owner of BlackBook, actual damages in an amount to be determined at trial for the loss of BlackBook.
- b) awarding to Petitioner, Ogele as owner of BlackBook, punitive damages in an amount to be determined at trial for the loss of BlackBook.
- c) awarding to Petitioner, BlackBook attorneys' fees for prosecuting this matter.
- 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 Fifth Cause of Action – Libel**

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

112 FINRA libeled BlackBook by falsely publishing that BlackBook was expelled for failing to pay \$50,000.00 in fines. The false publication occurred in 2016 while BlackBook operated out of New Jersey.

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

114 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<sup>40</sup> and for a \$100,000,000 hotel and condominiums development in St Thomas, United States Virgin Islands.

115 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.

116 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.

---

<sup>40</sup> The total projected capital outlay for the 26 buildings, 520 Units, Summit Shores, Myrtle Beach, SC development is \$134,641,970.

117 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.

118 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 Depository ("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.
- 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**

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

120 FINRA's actions have consequences.

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

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

123 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.

124 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.

125 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.

126 The violation alleged in this cause of action is of continuing nature.

127 The violation alleged herein occurred while BlackBook in 2016 while BlackBook operated out of New Jersey.

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.

**As of the Seventh Cause of Action – Breach of Implied Contract and Bad Faith**

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

129 At the time BlackBook became a member of FINRA, there existed an implied contract pursuant to which FINRA was to act in good faith and deal fairly with BlackBook.

130 At all times relevant to this matter, beginning from when BlackBook operated out of New York City to when BlackBook moved to New Jersey, BlackBook was subjected to various examinations, including routine, branch and cause examinations, and illegal imposition of monthly FOCUS Reporting.

131 In or about 2012, while BlackBook operated out of New York and through 2016 when BlackBook operated in New Jersey, FINRA imposed a monthly FOCUS Reporting requirement on BlackBook.

132 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.

133 The imposition was discriminatory and a breach of implied contract and an act of bad faith because other similarly situated broker-dealers were not required to file monthly FOCUS Reports.

134 Upon information and belief, FINRA knew that the imposition was illegal because they [FINRA] never included the requirement that BlackBook to file monthly FOCUS Reports in any stipulation entered into or executed by BlackBook.

135 Unlike Annual Audit Reports 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.<sup>41</sup>

136 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 similarly situated member firms, i.e., firms that do not carry nor clear customer accounts, to file monthly FOCUS Reports.

137 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.

---

<sup>41</sup> See footnote 10 *Id.*

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

139 Petitioners only *discovered* the discriminatory regulatory treatment of BlackBook 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.

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

141 Petitioner, BlackBook never cleared nor carried customer accounts.

142 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.

143 The imposition of unwarranted, unjustified, and extraordinary monthly financial reporting obligation on BlackBook which neither cleared customer trades nor carried customer accounts was a breach of implied contract and an act of bad faith by FINRA.

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

- a) awarding to Petitioners in an amount to be determined at a hearing for breach of implied contract and bad faith.
- b) awarding to Petitioner, Ogele as owner of BlackBook, compensatory damages


in an amount to be determined at a hearing stemming from the breach of implied contract and bad faith.

- c) awarding to Petitioner, Ogele as owner of BlackBook, punitive damages in an amount to be determined at a hearing for the breach of implied contract and bad faith.
- d) awarding to Petitioner, BlackBook, attorneys' fees.
- e) 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.

Respectfully submitted.


Dated this 21<sup>st</sup> May 2020

  
Franklin Ogele  
*Franklin Ogele, Esq.*  
*New Jersey Bar #00252190*  
*New York Bar # 2364974*  
*One Gateway Center, 26<sup>th</sup> 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 May 21<sup>st</sup>, 2020 I served the foregoing Amended Petition on Respondent by service on the counsel of record as follows:

VIA US MAIL  
Andrew Love  
Associate General Counsel  
FINRA  
1735 K. Street, NW  
Washington, DC 20006  
(202) 728 - 8281  
[Andrew.love@finra.org](mailto:Andrew.love@finra.org)

  
\_\_\_\_\_  
Franklin I. Ogele

# EXHIBIT 1



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 processed with the firm or the computer printout confirming FINRA/CRD prior processing membership fee
- A newly executed FINRA certification statement

Investor protection. Market integrity.

Finance  
9509 Key West Avenue  
Rockville, MD  
20850

[www.finra.org](http://www.finra.org)

June 14, 2016

Page 2

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

<b><u>Section Title</u></b>	<b><u>Page(s)</u></b>
Report Summary	1
Registration and Withdrawal	2
Firm Profile	3 - 5
Firm History	6
Firm Operations	7 - 12
Disclosure Events	13

## 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:

- o 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
- o 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](http://brokercheck.finra.org)



For additional information about the contents of this report, please refer to the User Guidance or [www.finra.org/brokercheck](http://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](http://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

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

---

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

---

## **Firm Profile**

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

## **Indirect Owners**

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**



### **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:**
  - o 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:**
  - o 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:**
  - o 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.
  - o 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](http://www.finra.org/awardsonline).

#### Disclosure 1 of 1

<b>Reporting Source:</b>	Regulator
<b>Type of Event:</b>	ARBITRATION
<b>Allegations:</b>	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
<b>Arbitration Forum:</b>	FINRA
<b>Case Initiated:</b>	06/06/2016
<b>Case Number:</b>	<u><a href="#">16-01492</a></u>
<b>Disputed Product Type:</b>	
<b>Sum of All Relief Requested:</b>	\$1,029,409.82
<b>Disposition:</b>	AWARD AGAINST PARTY
<b>Disposition Date:</b>	07/14/2017
<b>Sum of All Relief Awarded:</b>	\$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

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



**End of Report**



**This page is intentionally left blank.**

EXHIBIT 3

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2011025700901**

**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

manner and in the time frame specified in FinCEN's request, any positive matches.<sup>2</sup>

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-

---

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.

<sup>2</sup> *Id.*

rewritable, 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: 

Frank J. Cyke  
[Print Name]

MANAGING MEMBER  
[Title]

Reviewed by: 

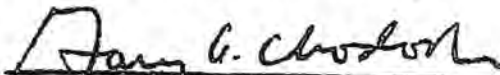
Michael Utilla, Esq.  
Counsel for Respondent  
The Law Office of  
Michael Utilla & Associates  
25 Court Street, suite 2601  
Brooklyn, New York 11242  
(718) 852-8400

Accepted by FINRA:

May 5, 2014

Date

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



Gary A. Chodos

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](http://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 Pension'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

# EXHIBIT 4

**BrokerCheck Report**

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

CRD# 2625

<b><u>Section Title</u></b>	<b><u>Page(s)</u></b>
Report Summary	1
Firm Profile	2 - 4
Firm History	5
Firm Operations	6 - 11
Disclosure Events	12

## 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:

- o 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
- o 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](http://brokercheck.finra.org)



For additional information about the contents of this report, please refer to the User Guidance or [www.finra.org/brokercheck](http://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](http://www.finra.org).

## BERNARD L. MADOFF INVESTMENT SECURITIES LLC Report Summary for this Firm



CRD# 2625

SEC# 8-8132

### Main Office Location

885 THIRD AVENUE  
NEW YORK, NY 10022

### Mailing Address

885 THIRD AVENUE  
NEW YORK, NY 10022

### Business Telephone Number

212-230-2424

This firm is a brokerage firm and an investment adviser firm. For more information about investment adviser firms, visit the SEC's Investment Adviser Public Disclosure website at:

<https://www.adviserinfo.sec.gov>

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 New York on 01/01/2001.

Its fiscal year ends in October.

### 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	9
Civil Event	1

## Firm Profile

This firm is classified as a limited liability company.

This firm was formed in New York on 01/01/2001.

Its fiscal year ends in October.



## 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.

### **BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

Doing business as **BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

**CRD#** 2625

**SEC#** 8-8132

### **Main Office Location**

885 THIRD AVENUE  
NEW YORK, NY 10022

### **Mailing Address**

885 THIRD AVENUE  
NEW YORK, NY 10022

### **Business Telephone Number**

212-230-2424

## 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):** MADOFF, BERNARD LAWRENCE  
316687

**Is this a domestic or foreign entity or an individual?** Individual

**Position** SOLE MEMBER/PRINCIPAL

**Position Start Date** 01/2001

**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):** MADOFF, PETER BARNETT  
316688

**Is this a domestic or foreign entity or an individual?** Individual

**Position** SENIOR MANAGING DIRECTOR/CHIEF COMPLIANCE OFFICER

**Position Start Date** 06/1969

**Percentage of Ownership** Less than 5%

**Does this owner direct the management or policies of the firm?** Yes

**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.



**This firm was previously:** BERNARD L. MADOFF

**Date of Succession:** 01/01/2001

**Predecessor CRD#:** 2625

**Predecessor SEC#:** 8-08132

**Description** EFFECTIVE JANUARY 1, 2001, PREDECESSOR WILL TRANSFER TO SUCCESSOR ALL OF PREDECESSOR'S ASSETS AND LIABILITIES, RELATED TO PREDECESSOR'S BUSINESS. THE TRANSFER WILL NOT RESULT IN ANY CHANGE IN OWNERSHIP OR CONTROL.

---

## 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 currently registered with the SEC, 0 SROs and 0 U.S. states and territories.**

Federal Regulator	Status	Date Effective
SEC	Approved	01/19/1960

### SEC Registration Questions

This firm is registered with the SEC as:

A broker-dealer: Yes

A broker-dealer and government securities broker or dealer: No

A government securities broker or dealer only: No

This firm has ceased activity as a government securities broker or dealer: No



## 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 2 types of businesses.**

#### Types of Business

Broker or dealer making inter-dealer markets in corporation securities over-the-counter

Trading securities for own account

#### Other Types of Business

This firm does 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 not refer or introduce customers to other brokers and dealers.**

## **Operations**

### **Storage Arrangements**



**firm does not have books or records maintained by a third party.**

**firm does not have accounts, funds, or securities maintained by a third party.**

**firm does not have customer accounts, funds, or securities maintained by a third party.**

### **Control Persons/Financing**

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

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

## 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, 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.**

**MADOFF SECURITIES INTERNATIONAL LTD. is controlled by the firm.**

<b>Business Address:</b>	12 BERKELEY STREET MAYFAIR, LONDON W1X58AD
<b>Effective Date:</b>	12/31/1998
<b>Foreign Entity:</b>	Yes
<b>Country:</b>	UNITED KINGDOM
<b>Securities Activities:</b>	Yes
<b>Investment Advisory Activities:</b>	No
<b>Description:</b>	BERNARD L. MADOFF OWNS 30.8% OF MADOFF SECURITIES INTERNATIONAL LTD., A REGISTERED COMPANY IN THE UNITED KINGDOM. THE COMPANY IS A MEMBER OF THE LONDON STOCK EXCHANGE.

**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.

	<b>Pending</b>	<b>Final</b>	<b>On Appeal</b>
Regulatory Event	0	9	0
Civil Event	1	0	0



## 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:**
  - o 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:**
  - o 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:**
  - o 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.
  - o 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 9

**Reporting Source:** Regulator

**Current Status:** Final



**Allegations:** THE FIRM HAS CEASED TO DO BUSINESS AS A BROKER-DEALER AND A RECEIVER HAS BEEN APPOINTED TO LIQUIDATE THE FIRM.  
**Initiated By:** CALIFORNIA DEPARTMENT OF CORPORATIONS  
**Date Initiated:** 11/30/2010  
**Docket/Case Number:**  
**URL for Regulatory Action:**  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:** Revocation  
**Other Sanction(s)/Relief Sought:**  
**Resolution:** Order  
**Resolution Date:** 02/14/2011  
**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:** THE BROKER-DEALER CERTIFICATE OF THIS FIRM WAS REVOKED UNDER CALIFORNIA CORPORATIONS CODE SECTION 25242, INsofar AS THE FIRM HAS CEASED TO DO BUSINESS.

---

#### Disclosure 2 of 9

**Reporting Source:** Regulator  
**Current Status:** Final

**Allegations:** THE ENTRY OF THE ORDER TO SHOW CAUSE, TEMPORARY RESTRAINING ORDER, AND ORDER FREEZING ASSETS AND GRANTING OTHER RELIEF, BY THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OF DECEMBER 12, 2008, UPON EMERGENCY APPLICATION OF THE SEC FOR AN ORDER, AND UPON CONSENT OF DEFENDANTS MADOFF AND BMIS, IS THE PREDICATE FOR DISQUALIFICATION AND SUSPENSION - COMMENCING DECEMBER 30, 2008 – OF RESPONDENT MADOFF'S



REGISTRATION AS A SALESPERSON, AND RESPONDENT BMIS'  
REGISTRATION AS A DEALER IN THE STATE OF ILLINOIS, PURSUANT TO  
SECTION 8.E.(1)(K) OF THE ACT.

**Initiated By:** ILLINOIS  
**Date Initiated:** 12/30/2008  
**Docket/Case Number:** 0800608  
**URL for Regulatory Action:**  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:** Suspension  
**Other Sanction(s)/Relief Sought:**  
**Resolution:** Order  
**Resolution Date:** 02/18/2009  
**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** Yes  
**Sanctions Ordered:** Suspension  
**Other Sanctions Ordered:** NONE  
**Sanction Details:** PERMANENT  
**Regulator Statement** IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT DANIEL TUNICK AT 312/793-3384.

---

#### Disclosure 3 of 9

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:** ON MARCH 5, 2009, THE SECURITIES DIVISION ENTERED A FINAL ORDER AGAINST BERNARD L. MADOFF AND BERNARD L. MADOFF INVESTMENT SECURITIES LLC (COLLECTIVELY "RESPONDENTS"). THE SECURITIES DIVISION HAD PREVIOUSLY ISSUED A SUMMARY ORDER SUSPENDING SECURITIES SALESPERSON AND BROKER-DEALER REGISTRATION AND



NOTICE OF INTENT TO REVOKE REGISTRATION ON DECEMBER 30, 2008. THE SECURITIES DIVISION FINDS THAT BERNARD L. MADOFF ENGAGED IN DISHONEST AND UNETHICAL PRACTICES BY OPERATING A PONZI SCHEME THROUGH BERNARD L. MADOFF INVESTMENT SECURITIES LLC IN WHICH INVESTORS LOST BILLIONS OF DOLLARS. IN ADDITION, THE SECURITIES DIVISION FINDS THAT BERNARD L. MADOFF INVESTMENT SECURITIES LLC IS INSOLVENT AND FAILED TO SUPERVISE ITS SECURITIES SALESPERSON BERNARD L. MADOFF. THE FINAL ORDER REVOKES THE REGISTRATIONS OF BERNARD L. MADOFF AND BERNARD L. MADOFF INVESTMENT SECURITIES LLC. THE RESPONDENTS HAVE A RIGHT TO JUDICIAL REVIEW OF THE FINAL ORDER.

**Initiated By:** WASHINGTON

**Date Initiated:** 03/05/2009

**Docket/Case Number:** S-08-429-09-FO01

**URL for Regulatory Action:**

**Principal Product Type:** Other

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:** Revocation

**Other Sanction(s)/Relief Sought:** REVOKE REGISTRATION

**Resolution:** Order

**Resolution Date:** 03/05/2009

**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** Yes

**Sanctions Ordered:** Revocation/Expulsion/Denial

**Other Sanctions Ordered:**

**Sanction Details:** IT IS HEREBY ORDERED THAT THE SECURITIES SALESPERSON REGISTRATION FOR BERNARD L. MADOFF IS REVOKED. IT IS FURTHER ORDERED THAT THE BROKER-DEALER REGISTRATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC IS REVOKED. THE REGISTRATION REVOCATION SHALL NOT BE APPLICABLE WHEN BERNARD L. MADOFF INVESTMENT SECURITIES LLC IS ACTING UNDER THE SUPERVISION AND AUTHORITY OF THE FEDERAL DISTRICT COURT.

**Regulator Statement**

CONTACT: JILL VALLELY 360-902-8801

**Disclosure 4 of 9****Reporting Source:**

Regulator

**Current Status:**

Final

**Allegations:**

ORDER OF SUSPENSION NO.OS-2008-0037 ALONG WITH NOTICE OF RIGHT TO A HEARING ATTACHED AND MADE A PART THEREOF, GIVING RESPONDENTS 28 DAYS TO PERFECT A HEARING WAS ISSUED BY THE COMMISSION. ON DECEMBER 12, 2008 SEC FILED AN INJUNCTION AGAINST MADOFF FOR ENGAGING IN DISHONEST BUSINESS PRACTICES.DUE TO NO RESPONSE FROM ALL RESPONDENTS, OS-2008-0038 HAS BEEN MADE A FINAL ORDER OF THE COMMISSION. CONTACT LISA TOLAR AT 334-242-2984. PURSUANT TO SUSPENSION ORDER, NO RESPONSE RESULTED IN REVOCATION OF REGISTRATION.

**Initiated By:**

ALABAMA

**Date Initiated:**

12/17/2008

**Docket/Case Number:**

OS-2008-0038

**URL for Regulatory Action:****Principal Product Type:**

Other

**Other Product Type(s):**

ORDER OF SUSPENSION

**Principal Sanction(s)/Relief Sought:**

Suspension

**Other Sanction(s)/Relief Sought:**

ORDER OF SUSPENSION NO.OS-2008-0037 ALONG WITH NOTICE OF RIGHT TO A HEARING ATTACHED AND MADE A PART THEREOF, GIVING RESPONDENTS 28 DAYS TO PERFECT A HEARING WAS ISSUED BY THE COMMISSION. ON DECEMBER 12, 2008 SEC FILED AN INJUNCTION AGAINST MADOFF FOR ENGAGING IN DISHONEST BUSINESS PRACTICES.DUE TO NO RESPONSE FROM ALL RESPONDENTS, OS-2008-0038 HAS BEEN MADE A FINAL ORDER OF THE COMMISSION. CONTACT LISA TOLAR AT 334-242-2984. PURSUANT TO SUSPENSION ORDER, NO RESPONSE RESULTED IN REVOCATION OF REGISTRATION.

**Resolution:**

Order

**Resolution Date:**

02/11/2009



**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:**

ORDER OF SUSPENSION NO.OS-2008-0037 ALONG WITH NOTICE OF RIGHT TO A HEARING ATTACHED AND MADE A PART THEREOF, GIVING RESPONDENTS 28 DAYS TO PERFECT A HEARING WAS ISSUED BY THE COMMISSION. ON DECEMBER 12, 2008 SEC FILED AN INJUNCTION AGAINST MADOFF FOR ENGAGING IN DISHONEST BUSINESS PRACTICES.DUE TO NO RESPONSE FROM ALL RESPONDENTS, OS-2008-0038 HAS BEEN MADE A FINAL ORDER OF THE COMMISSION. CONTACT LISA TOLAR AT 334-242-2984. PURSUANT TO SUSPENSION ORDER, NO RESPONSE RESULTED IN REVOCATION OF REGISTRATION.

**Regulator Statement**

ORDER OF SUSPENSION NO.OS-2008-0037 ALONG WITH NOTICE OF RIGHT TO A HEARING ATTACHED AND MADE A PART THEREOF, GIVING RESPONDENTS 28 DAYS TO PERFECT A HEARING WAS ISSUED BY THE COMMISSION. ON DECEMBER 12, 2008 SEC FILED AN INJUNCTION AGAINST MADOFF FOR ENGAGING IN DISHONEST BUSINESS PRACTICES.DUE TO NO RESPONSE FROM ALL RESPONDENTS, OS-2008-0038 HAS BEEN MADE A FINAL ORDER OF THE COMMISSION. CONTACT LISA TOLAR AT 334-242-2984. PURSUANT TO SUSPENSION ORDER, NO RESPONSE RESULTED IN REVOCATION OF REGISTRATION.

**Disclosure 5 of 9**

**Reporting Source:**

Regulator

**Current Status:**

Final

**Allegations:**

NASD RULES 8211, 8213 - BERNARD L. MADOFF INVESTMENT SECURITIES LLC FAILED TO REPORT ACCURATE TRADING INFORMATION THROUGH THE SUBMISSION OF ELECTRONIC BLUE SHEETS IN RESPONSE TO FINRA REQUESTS FOR SUCH INFORMATION - THE FIRM FAILED TO INCLUDE THE SHORT SALE INDICATOR FOR ELECTRONIC BLUE SHEETS RECORDS.

**Initiated By:**

FINRA

**Date Initiated:**

08/27/2008

**Docket/Case Number:**

2005002508102

**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:** 08/27/2008

**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 \$25,000.00

**Other Sanctions Ordered:**

**Sanction Details:** WITHOUT ADMITTING OR DENYING THE FINDINGS, THE FIRM CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS; THEREFORE, THE FIRM IS CENSURED AND FINED \$25,000.

**Reporting Source:** Firm

**Current Status:** Final

**Allegations:** THE FIRM SUBMITTED INACCURATE "BLUE SHEET" INFORMATION TO FINRA RELATED TO SHORT SALE INDICATORS.

**Initiated By:** FINRA

**Date Initiated:** 08/27/2008

**Docket/Case Number:** 20050025081-02

**Principal Product Type:** No Product

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:** Censure

**Other Sanction(s)/Relief Sought:**





**Resolution:** Acceptance, Waiver & Consent(AWC)

**Resolution Date:** 08/27/2008

**Sanctions Ordered:** Censure  
Monetary/Fine \$25,000.00

**Other Sanctions Ordered:** NONE.

**Sanction Details:** THE DISPOSITION RESULTED IN A FINE OF \$25,000.00 AGAINST THE FIRM.

**Firm Statement** WITHOUT ADMITTING OR DENYING THE FINDINGS, THE FIRM CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS. THE FIRM WAS CENSURED AND FINED \$25,000.00.

---

**Disclosure 6 of 9**

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:** SEC RULE 604, NASD RULE 2110, INTERPRETATIVE MATERIAL 2110-2 - BERNARD L. MADOFF INVESTMENT FAILED TO DISPLAY IMMEDIATELY CUSTOMER LIMIT ORDERS IN NASDAQ SECURITIES IN ITS PUBLIC QUOTATION WHEN EACH SUCH ORDER WAS AT A PRICE THAT WOULD HAVE IMPROVED THE FIRM'S BID OR OFFER IN EACH SUCH SECURITY; OR WHEN THE ORDER WAS PRICED EQUAL TO THE FIRM'S BID OR OFFER AND THE NATIONAL BEST BID OR OFFER FOR EACH SUCH SECURITY, AND THE SIZE OF THE ORDER REPRESENTED MORE THAN A DE MINIMIS CHANGE IN RELATION TO THE SIZE ASSOCIATED WITH THE FIRM'S BID OR OFFER IN EACH SECURITY. THE FIRM FAILED TO COMTEMPORANEOUSLY OR PARTIALLY EXECUTE CUSTOMER LIMIT ORDERS IN MULTIPLTE NASDAQ SECURITIES AFTER IT TRADED EACH SUBJECT SECURITY FOR ITS OWN MARKET-MAKING ACCOUNT AT A PRICE THAT WOULD HAVE SATISFIED EACH CUSTOMER'S LIMIT ORDER.

**Initiated By:** NASD

**Date Initiated:** 02/27/2007

**Docket/Case Number:** 20050009132-01

**Principal Product Type:** Other

**Other Product Type(s):** NASDAQ SECURITIES

**Principal Sanction(s)/Relief Sought:**

**Other Sanction(s)/Relief Sought:**



**Resolution:** Acceptance, Waiver & Consent(AWC)

**Resolution Date:** 02/27/2007

**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 \$8,500.00

**Other Sanctions Ordered:**

**Sanction Details:** WITHOUT ADMITTING OR DENYING THE FINDINGS, THE FIRM CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS; THEREFORE, THE FIRM IS CENSURED AND FINED \$8,500.

.....

**Reporting Source:** Firm

**Current Status:** Final

**Allegations:** THE FIRM SUBMITTED AN AWC THAT WAS ACCEPTED BY THE NASD FOR VIOLATIONS OF LIMIT ORDER DISPLAY AND LIMIT ORDER PROTECTION.

**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

**Date Initiated:** 02/26/2007

**Docket/Case Number:** 2005009132/20050010261

**Principal Product Type:** Equity - OTC

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:** Civil and Administrative Penalt(ies) /Fine(s)

**Other Sanction(s)/Relief Sought:** CENSURE

**Resolution:** Acceptance, Waiver & Consent(AWC)

**Resolution Date:** 02/27/2007

**Sanctions Ordered:** Censure  
Monetary/Fine \$8,500.00

**Other Sanctions Ordered:**

**Sanction Details:** WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, THE FIRM



CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS, THEREFORE THE FIRM WAS CENSURED AND FINED \$8,500.00.

---

**Disclosure 7 of 9**

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:** SEC RULE 11AC1-4 - MEMBER FIRM FAILED TO DISPLAY IMMEDIATELY CUSTOMER LIMIT ORDERS IN NASDAQ SECURITIES IN ITS PUBLIC QUOTATION, WHEN EACH SUCH ORDER WAS AT A PRICE THAT WOULD HAVE IMPROVED FIRM'S BID OR OFFER IN EACH SUCH SECURITY; OR WHEN THE ORDER WAS PRICED EQUAL TO FIRM'S BID OR OFFER AND THE NATIONAL BEST BID OR OFFER FOR EACH SUCH SECURITY, AND THE SIZE OF THE ORDER REPRESENTED MORE THAN A DE MINIMIS CHANGE IN RELATION TO THE SIZE ASSOCIATED WITH FIRM'S BID OR OFFER IN EACH SUCH SECURITY.

**Initiated By:** NASD

**Date Initiated:** 07/06/2005

**Docket/Case Number:** CLG050081

**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:** 07/06/2005

**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 \$7,000.00

**Other Sanctions Ordered:**

**Sanction Details:** WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, MADF, CONSENTED



TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS,  
THEREFORE THE FIRM IS CENSURED AND FINED \$7,000.

---

**Reporting Source:** Firm

**Current Status:** Final

**Allegations:** SEC RULE 11AC1-4 - THE FIRM FAILED TO DISPLAY IMMEDIATELY CUSTOMER LIMIT ORDERS IN NASDAQ SECURITIES IN ITS PUBLIC QUOTATION, WHEN EACH SUCH ORDER WAS AT A PRICE THAT WOULD HAVE IMPROVED THE FIRM'S BID OR OFFER IN EACH SUCH SECURITY; OR WHEN THE ORDER WAS PRICED EQUAL TO THE FIRM'S BID OR OFFER AND THE NATIONAL BEST BID OR OFFER FOR EACH SECURITY, AND THE SIZE OF THE ORDER REPRESENTED MORE THAN A DE MINIMUS CHANGE IN RELATION TO THE SIZE ASSOCIATED WITH THE FIRM'S BID OR OFFER IN EACH SECURITY

**Initiated By:** NASD

**Date Initiated:** 07/06/2005

**Docket/Case Number:** CLG050081

**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:** 07/06/2005

**Sanctions Ordered:** Censure  
Monetary/Fine \$7,000.00

**Other Sanctions Ordered:**

**Sanction Details:** WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, THE FIRM CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS, THEREFORE THE FIRM IS CENSURED AND FINED \$7,000.00.

---

**Disclosure 8 of 9**

**Reporting Source:** Regulator



**Current Status:** Final  
**Allegations:**  
**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
**Date Initiated:** 07/01/1963  
**Docket/Case Number:** NY-802  
**Principal Product Type:**  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:**  
**Other Sanction(s)/Relief Sought:**  
**Resolution:** Decision  
**Resolution Date:** 12/08/1963  
**Sanctions Ordered:** Censure  
 Monetary/Fine \$500.00  
**Other Sanctions Ordered:**  
**Sanction Details:**  
**Regulator Statement** COMP. NY-802 FILED 07/01/63.  
 DECISION RENDERED 11/08/63; CENSURED,  
 FINED \$500.00 PLUS COSTS OF \$60.50.  
 COMPLAINT FINAL 12/08/63.  
 FINES & COSTS PAID 11/20/63.

---

**Reporting Source:** Firm  
**Current Status:** Final  
**Allegations:** VIOLATION OF NASD RULES 2230 AND 2110  
**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
**Date Initiated:** 07/01/1963  
**Docket/Case Number:** COMPLAINT NO. NY-802  
**Principal Product Type:** No Product  
**Other Product Type(s):**



**Principal Sanction(s)/Relief Sought:** Censure

**Other Sanction(s)/Relief Sought:**

**Resolution:** Decision

**Resolution Date:** 11/08/1963

**Sanctions Ordered:** Censure  
Monetary/Fine \$500.00

**Other Sanctions Ordered:**

**Sanction Details:** FINED IN THE AMOUNT OF \$500 AND ASSESSED COSTS OF THE PROCEEDING IN THE AMOUNT OF \$60.65. THE FINE AND COSTS OF THE PROCEEDINGS WERE PAID IN FULL IN NOVEMBER 1963.

**Firm Statement** THE FINDING OF A VIOLATION OF NASD RULE 2230 WAS LIMITED TO A TECHNICAL INFRACTION.

---

**Disclosure 9 of 9**

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:**

**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

**Date Initiated:** 11/22/1974

**Docket/Case Number:** N-VS-86

**Principal Product Type:**

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:**

**Other Sanction(s)/Relief Sought:**

**Resolution:** Decision

**Resolution Date:** 01/02/1975

**Regulator Statement** NASDAQ COMPLAINT N-VS-86  
FILED: 11-22-74  
ACCEPTED: 12-4-74, PAID \$25.00



FINAL: 1-2-75

---

**Reporting Source:** Firm  
**Current Status:** Final  
**Allegations:** INFORMATION NO LONGER AVAILABLE DUE TO AGE OF THE COMPLAINT.  
**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
**Date Initiated:** 11/22/1974  
**Docket/Case Number:** N-NV-86  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:** Other  
**Other Sanction(s)/Relief Sought:** FINE  
**Resolution:** Decision  
**Resolution Date:** 11/19/1974  
**Sanctions Ordered:** Monetary/Fine \$25.00  
**Other Sanctions Ordered:**  
**Sanction Details:** FINE IN THE AMOUNT OF \$25.00. NO OTHER INFORMATION IS AVAILABLE DUE TO THE AGE OF THE COMPLAINT.



## Civil - Pending

This type of disclosure event involves a pending civil court action that with seek an injunction to cease certain investment-related activity or alleges a violation of any investment-related statute or regulation.

### Disclosure 1 of 1

**Reporting Source:** Regulator

**Current Status:** Pending

**Allegations:** ON DECEMBER 11, 2008, THE UNITED STATE SECURITIES AND EXCHANGE COMMISSION FILED A COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, ALLEGING THAT BERNARD L. MADOFF INVESTMENT SECURITIES, LLC VIOLATED SECTIONS 206(1) AND 206(2) OF THE INVESTMENT ADVISERS ACT OF 1940, SECTION 17(A)(1), 17(A)(2) AND 17(A)(3) OF THE SECURITIES ACT OF 1933, AND SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 10B-5 THEREUNDER. THE COMPLAINT ALLEGES THAT THE FIRM AND ITS OWNER DIRECTLY OR INDIRECTLY, SINGLY OR IN CONCERT, KNOWINGLY OR RECKLESSLY, THROUGH THE USE OF THE MAILS OR INSTRUMENTALITY OF INTERSTATE COMMERCE, WHILE ACTING AS AN INVESTMENT ADVISER WITHIN THE MEANING OF SECTION 202(11) OF THE ADVISERS ACT EMPLOYED, OR ARE EMPLOYING OR ABOUT TO EMPLOY DEVICES, SCHEMES AND ARTIFICES TO DEFRAUD ANY CLIENT OR PROSPECTIVE CLIENT; OR HAVE ENGAGED, ARE ENGAGING, OR ARE ABOUT TO ENGAGE IN ACTS, PRACTICES OR COURSES OF BUSINESS WHICH OPERATES AS A FRAUD OR DECEIT UPON ANY CLIENT OR PROSPECTIVE CLIENT. THE FIRM, AND ITS OWNER, IN THE OFFER AND SALE OF SECURITIES, BY THE USE OF THE MEANS AND INSTRUMENTS OF TRANSPORTATION AND COMMUNICATION IN INTERSTATE COMMERCE OR BY THE USE OF THE MAILS, DIRECTLY OR INDIRECTLY, HAVE EMPLOYED AND ARE EMPLOYING DEVICES, SCHEMES AND ARTIFICES TO DEFRAUD AND KNEW OR WAS RECKLESS IN NOT KNOWING OF THESE ACTIVITIES. THE FIRM IN THE OFFER AND SALE OF SECURITIES, BY THE USE OF THE MEANS AND INSTRUMENTS OF TRANSPORTATION AND COMMUNICATION IN INTERSTATE COMMERCE OR BY THE USE OF THE MAILS, DIRECTLY AND INDIRECTLY, HAVE OBTAINED AND ARE OBTAINING MONEY AND PROPERTY BY MEANS OF UNTRUE STATEMENTS OF MATERIAL FACTS OR OMISSIONS TO STATE MATERIAL FACTS NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING, [CONTINUED IN COMMENTS.]

**Initiated By:** UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**Court Details:** UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, CIVIL ACTION NO. 08 CIV 10791

**Date Court Action Filed:** 12/11/2008





**Principal Product Type:** Other

**Other Product Types:** UNSPECIFIED TYPE OF SECURITIES

**Relief Sought:** Injunction

**Other Relief Sought:** TEMPORARY AND PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, DISGORGEMENT OF ILL-GOTTEN GAINS, PLUS PREJUDGMENT INTEREST THEREON, CIVIL MONETARY PENALTIES

**Regulator Statement** AND HAVE ENGAGED AND ARE ENGAGING IN TRANSACTIONS, PRACTICES OR COURSES OF BUSINESS WHICH HAVE OPERATED AND WILL OPERATE AS A FRAUD AND DECEIT UPON INVESTORS. THE FIRM, AND ITS OWNER, IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES, DIRECTLY OR INDIRECTLY, BY THE USE OF THE MEANS AND INSTRUMENTALITIES OF INTERSTATE COMMERCE OR OF THE MAILS, HAVE EMPLOYED AND ARE EMPLOYING INSTRUMENTALITIES OF INTERSTATE COMMERCE OR OF THE MAILS, HAVE EMPLOYED AND ARE EMPLOYING DEVICES, SCHEMES AND ARTIFICES TO DEFRAUD; HAVE MADE AND ARE MAKING UNTRUE STATEMENTS OF MATERIAL FACT AND HAVE AND ARE OMITTING TO STATE MATERIAL FACTS NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING; AND HAVE ENGAGED AND ARE ENGAGING IN ACTS, PRACTICES AND COURSES OF BUSINESS WHICH OPERATED AS A FRAUD AND DECEIT UPON INVESTORS. THE FIRM WAS RECKLESS IN NOT KNOWING OF THESE ACTIVITIES. THE FIRM AND ITS OWNER HAVE BEEN CONDUCTING A PONZI-SCHEME THROUGH THE INVESTMENT ADVISER SERVICES OF THE FIRM.  
 SEC LITIGATION RELEASE 20834, DECEMBER 19, 2008: SEC LITIGATION RELEASE 20834, DECEMBER 19, 2008: THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ANNOUNCED THAT ON DECEMBER 18, 2008 A FEDERAL JUDGE IN THE SOUTHERN DISTRICT OF NEW YORK ENTERED A PRELIMINARY INJUNCTION ORDER, BY CONSENT, AGAINST BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BMIS"). THE PRELIMINARY INJUNCTION ORDER CONTINUES THE RELIEF ORIGINALLY OBTAINED ON DECEMBER 12, 2008, IN RESPONSE TO THE COMMISSION'S APPLICATION FOR EMERGENCY PRELIMINARY RELIEF THAT SOUGHT A TEMPORARY RESTRAINING ORDER, AN ORDER FREEZING ASSETS, AND OTHER RELIEF AGAINST BMIS BASED ON HIS ALLEGED VIOLATIONS OF THE FEDERAL SECURITIES LAWS.

**End of Report**



**This page is intentionally left blank.**

# EXHIBIT 5

**JAMES CLARKSON (JC-7697)**  
**ACTING REGIONAL DIRECTOR**  
**Andrew M. Calamari (AC-4864)**  
**Alexander M. Vasilescu (AV-2575)**  
**Israel Friedman (IF-1958)**  
**Preethi Krishnamurthy (PK-2809)**  
**Attorneys for Plaintiff**  
**SECURITIES AND EXCHANGE COMMISSION**  
**New York Regional Office**  
**3 World Financial Center**  
**New York, NY 10281**  
**(212) 336-1100**

**08 CIV 10791**

**JUDGE STANTON**

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION**

**Plaintiff,**

**- against -**

**BERNARD L. MADOFF,**  
**BERNARD L. MADOFF INVESTMENT**  
**SECURITIES LLC,**

**Defendants.**



**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Bernard L. Madoff ("Madoff") and Bernard L. Madoff Investment Securities LLC ("BMIS"), alleges:

**SUMMARY**

1. The Commission brings this emergency action to halt ongoing fraudulent offerings of securities and investment advisory fraud by Madoff and BMIS, a broker dealer and investment adviser registered with the Commission. From an indeterminate period through the present, Madoff and BMSI has committed fraud through the investment adviser activities of

BMIS. Yesterday, Madoff admitted to one or more employees of BMIS that for many years he has been conducting a Ponzi-scheme through the investment adviser activities of BMIS and that BMIS has liabilities of approximately \$50 billion. Madoff told these employees that he intends to distribute any remaining funds at BMIS to employees and certain investors in the investment advisor business, such as family and friends. Such a distribution will be unfair and inequitable to other investors and creditors of BMIS.

2. Expedited relief is needed to halt the fraud and prevent the Defendants from unfairly distributing the remaining assets in an unfair and inequitable manner to employees, friend and relatives, at the expense of other customers.

3. To halt the ongoing fraud, maintain the status quo and preserve any assets for injured investors, the Commission seeks emergency relief, including temporary restraining orders and preliminary injunctions, and an order: (i) imposing asset freezes against the Defendants; (ii) appointing a receiver over BMIS; (iii) allowing expedited discovery and preventing the destruction of documents; and (iv) requiring the Defendants to provide verified accountings. The Commission also seeks permanent injunctions, disgorgement of ill-gotten gains, plus prejudgment interest and civil monetary penalties against all of the Defendants.

#### VIOLATIONS

4. By virtue of the conduct alleged herein:

- a. All Defendants directly or indirectly, singly or in concert, have engaged, and are engaging, in acts, practices, schemes and courses of business that constitute violations of Sections 206(1) and 206(2) of the Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§.80b-6(1), (2)], and Section 17(a) of

the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

#### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

7. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d)(1) of the Exchange Act, 15 U.S.C. § 78u(d)(1), seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices and courses of business alleged herein.

8. In addition to the injunctive and emergency relief recited above, the Commission seeks: (i) final judgments ordering Defendants to disgorge their ill-gotten gains with prejudgment interest thereon; and (ii) final judgments ordering the Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

#### **JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to Section 214 of the Advisers Act [15 U.S.C. § 80b-14], Section 22(a) of the Securities Act [ 15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [ 15 U.S.C. §§ 78u(e) and 78aa].

11. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein. A substantial part of the events

comprising Defendants' fraudulent scheme that gives rise to the Commission's claims occurred in the Southern District of New York, including that BMIS is located and headquartered in this District and certain of Madoff and BMIS committed their fraudulent securities and adviser activities in this District.

#### **THE DEFENDANTS**

12. Madoff is a resident of New York City and is the sole owner of BMIS. BMIS' website indicates that Madoff founded BMIS in the early 1960s and that he is an attorney. Madoff is a former Chairman of the board of directors of the NASDAQ stock market. BMIS is both a broker-dealer and investment adviser registered with the Commission. Madoff oversees and controls the investment adviser services at BMIS as well as the overall finances of BMIS.

13. BMIS is a broker-dealer and investment advisor registered in both capacities with the Commission. BMIS engages in three different operations, which include investment adviser services, market making services and proprietary trading. BMIS' website states that it has been providing quality executions for broker-dealers, banks and financial institutions since its inception in 1960;" and that BMIS, "[w]ith more than \$700 million in firm capital, Madoff currently ranks among the top 1% of US Securities firms." The most recent Form ADV for BMIS filed in January 2008 with the Commission stated that BMIS had over \$17 billion in assets under management, and 23 clients. BMIS represented that its trading strategy for adviser accounts involved trading in baskets of equity securities and options thereon.

#### **FACTS**

14. From an indeterminate time to the present, Madoff and BMIS have been conducting a Ponzi-scheme through the investment adviser services of BMIS.

15. Madoff conducts certain investment advisory business for clients that is separate from the BMIS' proprietary trading and market making activities.

16. Madoff ran his investment adviser business from a separate floor in the New York offices of BMIS.

17. Madoff kept the financial statements for the firm under lock and key, and was "cryptic" about the firm's investment advisory business when discussing the business with other employees of BMIS.

18. In or about the first week of December 2008, Madoff told a senior employee that there had been requests from clients for approximately \$7 billion in redemptions, that he was struggling to obtain the liquidity necessary to meet those obligations, but that he thought that he would be able to do so. According to this senior employee, he had previously understood that the investment advisory business had assets under management on the order of between approximately \$8-15 billion.

19. On or about December 9, 2008, Madoff informed another senior employee that he wanted to pay 2008 bonuses to employees of the firm in December, which was earlier than employee bonuses are usually paid.

20. Bonuses traditionally have been paid at BMIS in February of each year for the previous year's work.

21. On or about December 10, 2008, the two senior employees referenced above visited Madoff at the offices of BMIS to discuss the situation further, particularly because Madoff had appeared to these two senior employees to have been under great stress in the prior weeks.



22. At that time, Madoff informed the senior employees that he had recently made profits through business operations, and that now was a good time to distribute it. When the senior employee challenged his explanation, Madoff said that he did not want to talk to them at the office, and arranged a meeting at Madoff's apartment in Manhattan. At that meeting Madoff stated, in substance, that he "wasn't sure he would be able to hold it together" if they continued to discuss the issue at the office.

23. At Madoff's Manhattan apartment, Madoff informed the two senior employees, in substance, that his investment advisory business was a fraud. Madoff stated that he was "finished," that he had "absolutely nothing," that "it's all just one big lie," and that it was "basically, a giant Ponzi scheme." In substance, Madoff communicated to the senior employees that he had for years been paying returns to certain investors out of the principal received from other, different, investors. Madoff stated that the business was insolvent, and that it had been for years. Madoff also stated that he estimated the losses from this fraud to be approximately \$50 billion. One of the senior employees has a personal account at BMIS in which several million had been invested under the management of Madoff.

24. At Madoff's Manhattan apartment, Madoff further informed the two senior employees referenced above that, in approximately one week, he planned to surrender to authorities, but before he did that, he had approximately \$200-300 million left, and he planned to use that money to make payments to certain selected employees, family, and friends.

**FIRST CLAIM FOR RELIEF**

**Violations of Sections 206(1) and 206(2) of the Advisers Act  
(Against Madoff and BMIS)  
(Fraud Upon Advisory Clients and Breach of Fiduciary Duty  
by Investment Adviser)**

25. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth fully herein.

26. Madoff and BMIS at all relevant time were investment advisers within the meaning of Section 201(11) of the Advisers Act [15 U.S.C. § 80b-2(11)]

27. Madoff and BMIS directly or indirectly, singly or in concert, knowingly or recklessly, through the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. §80b-2(11)]: (a) have employed, are employing, or are about to employ devices, schemes, and artifices to defraud any client or prospective client; or (b) have engaged, are engaging, or are about to engage in acts, practices, or courses of business which operates as a fraud or deceit upon any client or prospective client.

28. As described in the paragraphs above, Madoff and BMIS violated Sections 206(1) and 206(2) of the Advisers Act[15 U.S.C. §§ 80b-6(1), (2)] and unless enjoined will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

**SECOND CLAIM FOR RELIEF**

**Violations of Section 17(a)(1) of the Securities Act  
(Against all Defendants)  
(Antifraud violations)**

29. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth

fully herein.

30. From at least 2005 through the present, the Defendants, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud.

31. The Defendants knew or were reckless in not knowing of the activities described above.

32. By reason of the activities herein described, the Defendants have violated and are violating Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

**THIRD CLAIM FOR RELIEF**

**Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act  
(Against all Defendants)  
(Antifraud violations)**

33. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth fully herein.

34. From at least 2005, the Defendants, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails, directly and indirectly, have obtained and are obtaining money and property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and have engaged and are engaging in transactions, practices or courses of business which have operated and will operate as a fraud and deceit upon investors.

35. By reason of the activities herein described, the Defendants have violated and are

violating Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and §77q(a)(3)].

**FOURTH CLAIM FOR RELIEF**

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5**  
(Against all Defendants)  
(Antifraud violations)

36. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth fully herein.

37. From at least 2005 through the present, the Defendants, in connection with the purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails, have employed and are employing devices, schemes and artifices to defraud; have made and are making untrue statements of material fact and have and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged and are engaging in acts, practices and courses of business which operated as a fraud and deceit upon investors.

38. Defendants knew or were reckless in not knowing of the activities described above.

39. By reason of the activities herein described, the Defendants have violated and are violating Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that the Court grant the following relief:

**I.**

Enter judgment in favor of the Commission finding that the Defendants each violated the securities laws and rules promulgated thereunder as alleged herein;

**II.**

An Order temporarily and preliminarily, and Final Judgments permanently, restraining and permanently enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of Section Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1) and 80b-6(2)].

**III.**

An Order temporarily and preliminarily, and Final Judgments permanently, restraining and permanently enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5.

IV.

An order directing the Defendants to disgorge their ill-gotten gains, plus prejudgment interest thereon.

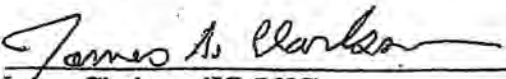
V.

Final Judgments directing the Defendants to pay civil money penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9], Section 20(d) of the Securities Act [15 U.S.C. § 77f(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VII.

Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York  
December 11, 2008

By:   
James Clarkson (JC-7697)  
Associate Regional Director  
Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
3 World Financial Center  
New York, NY 10281-1022  
(212) 336-0178

Of Counsel:  
Andrew M. Calamari  
Alexander M. Vasilescu  
Israel Friedman  
Preethi Krishnamurthy

Approved:

*Marc Litt*  
MARC LITT  
Assistant United States Attorney

Before: HONORABLE DOUGLAS F. EATON  
United States Magistrate Judge  
Southern District of New York

-----x

UNITED STATES OF AMERICA	:	<u>COMPLAINT</u>
- v. -	:	Violation of
BERNARD L. MADOFF,	:	15 U.S.C. §§ 78j(b),
Defendant.	:	78ff; 17 C.F.R. §
	:	240.10b-5
	:	COUNTY OF OFFENSE:
	:	NEW YORK

-----x

SOUTHERN DISTRICT OF NEW YORK, ss.:

THEODORE CACIOPPI, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

COUNT ONE  
(Securities Fraud)

1. From at least in or about December 2008 through the present, in the Southern District of New York and elsewhere, BERNARD L. MADOFF, the defendant, unlawfully, wilfully and knowingly, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, in connection with the purchase and sale of securities, would and did use and employ manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, MADOFF deceived investors by operating a securities business in which he traded and lost investor money, and then paid certain

# EXHIBIT 6



MADOFF INVESTMENTS  
FINRA/CRD REPORT

# BERNARD L. MADOFF INVESTMENT SECURITIES LLC

(BERNARD L. MADOFF, BERNARD L. MADOFF INVESTMENT SECURITIES LLC, MADOFF, BERNARD LAWRENCE)

CRD#: 2625/SEC#: 801-67134,8-8132

PR Previously Registered Brokerage Firm

Investment Adviser Firm  Visit SEC

This firm is no longer in business (due to liquidation).

Not currently registered as broker

10 Disclosures	Approved and SEC Registered Status	Report Location Company Company Type	Other Responsibility Links
-------------------	---	---	----------------------------------

Disclosures

10 Total Disclosures



For details of these disclosures refer to the Detailed Report.

General Information


Established in New York since 01/01/2001

Type Limited Liability Company

Fiscal Year End October

## Direct Owners and Executive Officers

MADOFF, BERNARD LAWRENCE (CRD#:316687)  
SOLE MEMBER/PRINCIPAL



**BLACKBOOK CAPITAL  
FINRA/CRD REPORT**

**BLACKBOOK CAPITAL, LLC** Show All (7) v

(BLACKBOOK CAPITAL LLC, BLACKBOOK CAPITAL, INC., BLACKBOOK CAPITAL, LLC, ET SECURITIES, INC., FRANKLIN CHRISTOPHER INVESTMENT BANKERS, INC....)

CRD#: 123234/SEC#: 8-65577

**PR** Previously Registered Brokerage Firm

**EXPELLED**

FINRA expelled this firm from the securities industry in June 2016.

Not currently registered as broker

Blackbook Capital, LLC	Registered Investment Advisor (RIA) Registration Status	Registered Investment Advisor (RIA) Registration Expiration Date	RIA Registration Status
------------------------	---	--	-------------------------

Disclosures

6 Total Disclosures

Regulatory Event		4
Arbitration		1
Judgment/Lien		1

For details of these disclosures refer to the Detailed Report.

General Information

Established in Delaware since 11/10/2009

Type Limited Liability Company

Fiscal Year End December

Direct Owners and Executive Officers

OGELE, FRANKLIN IHENDU (CRD#:2197820)  
CEO, PRESIDENT, FINOP, CCO