UNITED STATES OF AMERICA
before the
SECURITIES and EXCHANGE COMMISSION

November 16, 2020

SECURITIES EXCHANGE ACT OF 1934

ADMINISTRATIVE PROCEEDING
File No. 3-19896

In the Matter of the Application of

SILVER LEAF PARTNERS, LLC

For the Review of Disciplinary Action Taken by the

Financial Industry Regulatory Authority, Inc.

Reply Brief

Pursuant to Securities and Exchange Commission ("SEC" or the "Commission") Rule 450, Silver Leaf Partners, LLC, submits this reply brief[1] to FINRA's November 2, 2020 Brief in Opposition (the "Opposition Brief") to Silver Leaf Partners, LLC ("Silver Leaf") Application for Review (the "Review" or the "Appeal") of the Financial Industry Regulatory Authority, Inc. ("FINRA") National Adjudicatory Council ("NAC") June 29, 2020 decision ("Decision") in the matter of FINRA Department of Enforcement ("Enforcement") versus Silver Leaf Partners, LLC ("Silver Leaf") in proceeding number 2014042606902 heard on appeal by the NAC (the "Hearing") after an extended proceeding (the "Proceedings") before FINRA's Office of Hearing Officers (the "OHO" or the "Panel") issuing a lower decision on January 29, 2019.

[1] Defined terms used herein shall have the same meaning as ascribed to them in the Opening Brief.

REALITY AND THE ARCHITECTURAL BLUEPRINT OF FINRA'S JURISDICTION

Federal law matters! A concept which FINRA seems to think is mere suggestive rather than proscriptive. The Commission, however, is obligated to consider federal law. *Mathis v. United States Sec. & Exch. Comm'n*, 671 F.3d 210, 216 (2d Cir. 2012) ("Under the Administrative Procedure Act, we will set aside the SEC's actions, findings, or conclusions of law only if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." ") *See also Mathis v. United States Sec. & Exch. Comm'n*, 671 F.3d 210, 216 (2d Cir. 2012) ("We will not disturb the SEC's choice of sanction unless it is 'unwarranted in law or without justification in fact.'" *VanCook,* 653 F.3d at 137 (quoting *Butz v. Glover Livestock Comm'n Co.,* 411 U.S. 182, 186, 93 S.Ct. 1455, 36 L.Ed.2d 142 (1973)).")

Federal law matters…and it will most certainly matter to the Second Circuit Court of Appeals. *Mathis v. United States Sec. & Exch. Comm'n*, 671 F.3d 210, 215 (2d Cir. 2012). ("The SEC's order is subject to review by this Court. *See, e.g., Heath v. SEC,* 586 F.3d 122, 131 (2d Cir. 2009).") 15 U.S.C. § 78y ("**(a) Final Commission orders; persons aggrieved; petition; record; findings; affirmance, modification, enforcement, or setting aside of orders; remand to adduce additional evidence (1)** A person aggrieved by a final order of the Commission entered pursuant to this chapter may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.")

"FINRA is a non-profit Delaware corporation that was formed in July 2007, when the National Association of Securities Dealers, Inc. ("NASD") consolidated with the regulatory arm of the New York Stock Exchange. *See Standard Inv. Chartered, Inc. v. Nat'l Ass'n of Sec. Dealers, Inc.,*637 F.3d 112, 114 (2d Cir.2011). As a result of this consolidation, FINRA is the sole SRO providing member firm regulation for securities firms that conduct business with the public in the United States. *Fin. Indus. Regulatory Auth., Inc. v. Fiero,* 853 N.Y.S.2d 267, 882 N.E.2d 879, 880 n. * (N.Y.2008)." *Fiero v. Financial Industry Regulatory*, 660 F.3d 569, 572 n.1 (2d Cir. 2011).

FINRA is a government-sanctioned monopoly akin to a utility. It is the only game in town. Accordingly, because entities like Silver Leaf are forced to become a "member" of FINRA to engage in a chosen business, application of FINRA's rules to victims such as Silver Leaf should

be considered in terms of a contract of adhesion. *JLM Indus., Inc. v. Stolt-Nielsen SA*, 387 F.3d 163, 169 (2d Cir. 2004) ("First, we note that a contract of adhesion is a contract formed as a product of a gross inequality of bargaining power between parties. A court will find adhesion only when the party seeking to rescind the contract establishes that the other party used high pressure tactics, or deceptive language, or that the contract is unconscionable. Typical contracts of adhesion are standard-form contracts offered by large, economically powerful corporations to unrepresented, uneducated, and needy individuals on a take-it-or-leave-it basis, with no opportunity to change the contract's terms. *Klos v. Polskie Linie Lotnicze,* 133 F.3d 164, 168 (2d Cir. 1997) (internal citations and quotation marks omitted).") Members like Silver Leaf have absolutely no ability to change the contract's terms, *i.e.*, FINRA rules.

FINRA rules are routinely interpreted as terms of a contract. "Upon joining FINRA, a member organization agrees to comply with FINRA's rules." *See* FINRA Bylaws art. 4 § 1. As a FINRA member, therefore, [Silver Leaf] is bound to adhere to FINRA's rules and regulations, including its Code and relevant arbitration provisions contained therein. With respect to these provisions, the Federal Arbitration Act, 9 U.S.C. § 1*et seq.,* "requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.,*489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989); *see also Bensadoun v. Jobe–Riat,*316 F.3d 171, 176 (2d Cir.2003) (FINRA Rules must be interpreted in accordance with principles of contract interpretation). *UBS Financial Services, Inc. v. West Virginia University Hospitals, Inc.*, 660 F.3d 643, 648-49 (2d Cir. 2011). *See also N.Y. Bay Capital, LLC v. Cobalt Holdings*, 1:19-cv-3618-GHW, at *11 (S.D.N.Y. Apr. 27, 2020) ("But the Court is bound to apply the Second Circuit's clear holding in *Abbar* that "[t]he arbitration rules of an industry self-regulatory organization such as FINRA are interpreted like contract terms[.]" 761 F.3d at 274 (footnote omitted).")

FINRA's rules are also often so generalized in nature that they don't easily and clearly apply to member conduct which, as in here, affords FINRA the ability to exploit rules as the bases to extract fines for possible – or marginal – "misconduct". FINRA members are therefore at the mercy of the "good sense" of FINRA personnel who may not, in fact, have good sense. Or experience.

FINRA rules cannot violate override or change established law. *Burns v. New York Life Ins. Co.*, 202 F.3d 616, 620-21 (2d Cir. 2000) ("*Chisolm v. Kidder, Peabody Asset Management,*

Inc., 810 F. Supp. 479, 481 n. 2 (S.D.N.Y. 1992) (applying the SEC's definition on grounds that 'the NASD bylaw cannot override the meaning of the Exchange Act')"). In other words, FINRA cannot force members into a one-sided contract of adhesion and by the terms of that contract make something "illegal" which is *not* "illegal" in the "real world" and vice versa. *Quinn v. Gulf Western Corp.*, 644 F.2d 89, 94 (2d Cir. 1981) ("A court of law will not enforce an agreement which is illegal for the parties to make.")

FINRA rules cannot make foreign transactions "illegal" by its own rules when no less than the U.S. Supreme Court has held that U.S. securities laws are not concerned with foreign transactions. *See Morrison v. National Australia Bank Ltd.,* 561 U.S. 247 (2010) and *United States SEC v. Benger*, 934 F. Supp. 2d 1008 (N.D. Ill. 2013). FINRA deliberately fails to abide by the scope of its own jurisdiction or ignorantly fails to understand said scope. On page 24 of its Brief in Opposition it dismissively states that "Silver Leaf cites no authority holding that conduct related to foreign securities is outside FINRA's jurisdiction." In the next sentence it says Morrison and Benger merely "…interpreted the scope of the Exchange Act, not FINRA's jurisdiction over its members." Shocking! Such ignorance of the law about FINRA's origin and jurisdiction by FINRA itself—in writing, no less—is simply shocking!

The Exchange Act is from whence FINRA derives its very existence and jurisdiction. *Mathis v. United States Sec. & Exch. Comm'n*, 671 F.3d 210, 215 (2d Cir. 2012) ("The Exchange Act requires FINRA to promulgate rules "to prevent fraudulent and manipulative acts and practices" and to discipline its members when they violate those rules. Exchange Act §15A(b)(6), 15 U.S.C. § 78 *o*–3(b)(6).") If activity is not prohibited under the Exchange Act or deemed "fraudulent and manipulative acts and practices" then FINRA cannot and does not possibly have jurisdiction! And, by God, FINRA should know that and should be expected and held accountable for investigating whether or not an activity is prohibited under the Exchange Act ***first*** before it starts looking for ways to force that activity to fall under its rules so it can shake down a member firm like Silver Leaf. But, to the man with the hammer the world is a nail, right?

The foreign transactions which are the genesis of this FINRA witch hunt against Silver Leaf were certainly not then and still arguably are not now "fraudulent and manipulative acts and practices" under the Exchange Act according to Justice Antonin Scalia's opinion in *Morrison v. National Australia Bank Ltd.,* 561 U.S. 247 (2010) and a federal judge *United States SEC v. Benger*, 934 F. Supp. 2d 1008 (N.D. Ill. 2013). Yes, those cases interpreted the scope of the

Exchange Act which, by definition, interpreted the scope of FINRA's jurisdiction in this matter. It had none. All that it "found" during the course of its severely lacking and negligent "investigation" is fruit of the poisonous tree and should be considered inadmissible and inappropriate for consideration by the NAC and the Commission.

At the outset hereof we noted that the Commission is obligated to consider federal law. *Mathis v. United States Sec. & Exch. Comm'n*, 671 F.3d 210, 216 (2d Cir. 2012) ("Under the Administrative Procedure Act, we will set aside the SEC's actions, findings, or conclusions of law only if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." ") *See also Saad v. Sec. & Exch. Comm'n*, 873 F.3d 297, 302 (D.C. Cir. 2017) ("We defer to the Commission's sanction decision if it is reasonable and reasonably explained, and will overturn it only if it is "arbitrary, capricious, or an abuse of discretion." *Saad* , 718 F.3d at 910 (quoting *Siegel v. SEC* , 592 F.3d 147, 155 (D.C. Cir. 2010)).")

The Commission may not engage in "manifest disregard of federal law." ("Although we have often recognized this judicially-created ground for modifying or vacating an arbitration award, *e.g.*, *Merrill Lynch, Pierce, Fenner Smith, Inc. v. Bobker*, 808 F.2d 930, 933 (2d Cir. 1986) (citing Wilko v. Swann, 346 U.S. 427, 436-37 (1953)); *Carte Blanche (Singapore) PTE., Ltd. v. Carte Blanche Int'l, Ltd.*, 888 F.2d 260, 265 (2d Cir. 1989), we have also emphasized that the reach of the manifest disregard doctrine is "severely limited." *Government of India v. Cargill Inc.*, 867 F.2d 130, 133 (2d Cir. 1989). Indeed, we have cautioned that manifest disregard "clearly means more than error or misunderstanding with respect to the law." *Bobker*, 808 F.2d at 933. The error must have been obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator. Moreover, the term "disregard" implies that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it. *Id.* Thus, to modify or vacate an award on this ground, a court must find both that (1) the "arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether," and (2) the "law ignored by the arbitrators . . . [was] `well defined, explicit, and clearly applicable'" to the case. *Folkways Music Publishers, Inc. v. Weiss*, 989 F.2d 108, 112 (2d Cir. 1993) (internal citations omitted); *Bobker,* 808 F.2d at 933-34.) *DiRussa v. Dean Witter Reynolds, Inc.*, 121 F.3d 818, 821 (2d Cir. 1997)

Morrison and *Benger*, as well as other related literature, are obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator. FINRA

cannot turn a blind eye to established federal law defining the scope of its jurisdiction. Federal law like *Morrison* and *Benger* is "clearly governing principle" and FINRA intentionally and/or recklessly ignored it or paid no attention to it. According to *DiRussa* above, *Morrison* and *Benger*'s interpretation of the scope of the Exchange Act was "well defined, explicit and clearly applicable to the case."

The Commission simply cannot let stand the fines levied against Silver Leaf by FINRA. To do so would facilitate extortion and racketeering. FINRA has no legitimate jurisdiction or legal purpose under the Exchange Act, *Morrison* and *Benger* to take money from Silver Leaf any more than a thug in an alley. FINRA has no authority. Neither does the Commission. If FINRA has no authority to pursue activity under its rules according to the scope of its jurisdiction granted by the Exchange Act as interpreted by federal case law, then the Commission has no authority to uphold an NAC decision emanating from FINRA's lack of jurisdiction.

To take money under the fallacy of a "remedial fine" from Silver Leaf under these circumstances would violate Silver Leaf's due process rights under Fourth Amendment and the "Takings Clause" of the Fifth Amendment to the United States Constitution. To use "evidence" obtained by FINRA in a proceeding not properly within its scope of jurisdiction under the Exchange Act to take hundreds of thousands of dollars as a "fine" which may very well put the business out of business is a prima facie violation of that business' due process rights under the U.S. Constitution.

SUMMARY IN SPITE OF THE FOREGOING REALITY CHECK

FINRA's Opposition Brief largely fails to directly address the NAC's reasoning and Decision as well as Silver Leaf's Opening Brief which challenges the process of the underlying Proceedings and, ultimately, the bases of the NAC's Decision.

As the Decision itself states, the NAC conducted, or claims to have conducted, a *de novo* review and FINRA's Opposition Brief should have limited itself to the matters discussed and addressed in the Decision and the Opening Brief instead of attempting to re-reconcile the evidentiary record of the underlying Proceedings.

Further, the Opposition Brief once again demonstrates that FINRA has no grounding in the institutional nature of Silver Leaf's Institutional Brokerage, Fund Marketing and Corporate Advisory businesses or, worse, continues to pretend that it does not understand.

Fortunately, the Commission understands the nature of Silver Leaf's Fund Marketing and Corporate Advisory business lines. To wit, on October 7, 2020 the SEC "voted to propose a new limited, conditional exemption from broker registration requirements for 'finders' who assist issuers with raising capital in private markets from accredited investors[2]". This is ***exactly*** what Silver has done for 14 years does as part of its Fund Marketing and Corporate Advisory business.

The contrast between FINRA's machinations about Silver Leaf's business versus the SEC's understanding of Silver Leaf's business could not be more stark!

Whereas FINRA treats Silver Leaf's business the same as retail business affecting unsophisticated investors, the SEC sees Silver Leaf's brokers business activities as being so limited in nature and institutional only that it warrants the *extraordinary step* of exemptive relief for certain persons engaged in the very same business activities as Silver Leaf.

In the SEC's recent Notice of Propose Exemptive Order[3] Granting Conditional Exemption From the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders (the "SEC Notice"), the Commission exactly describes the activities of Silver Leaf's brokers as a "Tier II Finder" therein.

This definition of a Tier II Finder is ***exactly*** the services provided by Silver Leaf's brokers as part of the firm's Fund Marketing and Corporate Advisory business. As described in the SEC's Fact Sheet, *a person would not even have to register as a broker* ***at all*** and "could solicit investors on behalf of an issuer, but the solicitation-related activities would be limited to: (i) identifying, screening, and contacting potential investors; (ii) distributing issuer offering materials to investors; (iii) discussing issuer information included in any offering materials, provided that the Tier II Finder does not provide advice as to the valuation or advisability of the investment; and (iv) arranging or participating in meetings with the issuer and investor. [4]"

With this backdrop of FINRA's utter ignorance of and about Silver Leaf's business, we now directly reply to the Opposition Brief in spite of its impermissibly expanded scope[5].

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[2] *See* https://www.sec.gov/news/press-release/2020-248.

[3] https://www.federalregister.gov/documents/2020/10/13/2020-22565/notice-of-proposed-exemptive-order-granting-conditional-exemption-from-the-broker-registration#:~:text=Notice%20of%20Proposed%20Exemptive%20Order%20Granting%20Conditional%20Exemption,by%20the%20Securities%20and%20Exchange%20Commission%20on%2010%2F13%2F2020.

[4] *See* https://www.sec.gov/news/press-release/2020-248.

[5] For the sake of reply, this Reply will use the same section headings found in the Opposition Brief.

REPLY

I. Facts

A. Silver Leaf's Business

As discussed in the Opening Brief, the issues here actually related to Silver Leaf's payroll practices, unauthorized payments by Chapler, and the firm's Institutional Brokerage business.

B. Silver Leaf Fails to Supervise Its Corporate Advisory Business; Pays Transaction-Based Compensation to Halim

1. Chapler Registers with Silver Leaf; Brings High-Risk Corporate Advisory Business with Him

FINRA distorts the testimony of Khan. Khan's testimony was strictly related to there being no "team effort" at the firm amongst its brokers.

As for the oft – and ominously – referenced "stock loan business," FINRA makes much of nothing. A stock loan is cash lent to a borrower who provides securities that they own as collateral therefor. There, we are all now experts and no one needs to be "specialized" to introduce – as a Tier II Finder – parties to one another in furtherance of such a transaction.

Further, as discussed in the Opening Brief, this particular type of Tier II Finder's services by Chapler was different than the business activity that he indicated when he initially joined the firm, and his firm override was adjusted accordingly.

FINRA breathlessly jumps to conclusions and fabricates meaning from this testimony out of whole cloth.

2. Chapler Introduces Silver Leaf to BHP

FINRA's summary of the facts is unsupported by the record. First, they misspell Dorey's name. Second, Scott Dorey was an industry executive holding senior positions at firms like Lehman Brothers where he reported directly to a well-known Wall Street executive, Dick Fuld.

These were facts known to Khan, others at Silver Leaf and others in the industry even if not making their way into the record of the proceedings or known to FINRA's inexperienced Investigator.

FINRA mostly correctly describes the Tier II Finder's services that Silver Leaf and Chapler would provide to BHP. These services were to BHP and not to any counterparties that BHP might conduct business with.

3. Chapler Introduces Silver Leaf to Halim

Halim's status as a U.S. citizen was not known at the time of the firm's interactions with him. He was also the son of Sam Halim, Sr. who was a retired senior executive of ABM AMRO Bank N.V.

4. Chapler Agrees to Share Commissions with Halim

We agree that Chapler agreed to pay Halim. *Silver Leaf* did not pay or agree to pay Halim, and Silver Leaf had specific procedures for Chapler to receive pre-approval from his supervisor if he wished to pay any one other than firm brokers which he did not request or receive. Silver Leaf is entitled to rely on its procedures. No firm can be expected to know the contents of every email of every broker; and there was no evidence of any other such instance in the firm's business history making FINRA's conclusions thereon unlikely and implausible.

5. Silver Leaf Increases Its Override on Chapler to Compensate for the Firm's Increased Risk From His Corporate Advisory Business

The staff of FINRA appear to watch too many spy movies. Chapler was engaging in a different line of business than the one he indicated when joining the firm as indicated in the quoted testimony[6], and his firm override was adjusted accordingly.

FINRA jumps to conclusions and invents meaning from this testimony out of whole cloth.

6. Silver Leaf Pays Transaction-Based Compensation to Halim for the UCAK Block Trade

Despite the heading title of this section, all discussion and references show that Chapler paid Halim without securing any prior approval to do so as required by Silver Leaf's supervisory procedures.

7. Silver Leaf Facilitates Three Troubled Corporate Advisory Transactions for BHP

a. The LTHOL Stock Loan Ends With Threat of Litigation

Without evidence or ever speaking to anyone at BHP, Erdogan, or Latek Holding, FINRA recites its theory of what transpired with no corroboration or factual support whatsoever.

[6] Although Meehan and Khan "very much like the opportunities that [Chapler's] business model presents[,] . . . it is different from what we had anticipated. It has the possibilities for greater success fees but also puts [Silver Leaf] in the direct role of brokering a transaction; that's good but also risky." RP 4621

Further, FINRA intentionally or recklessly confuses issues related to the underlying transaction between BHP and Latek, and payments by Chapler to Halim related thereto that were never authorized by Silver Leaf.

Additionally, FINRA foists duties and obligations upon Silver Leaf in favor of Latek when Silver Leaf's only service contract was in favor of BHP as Tier II Finder for BHP.

Finally, neither BHP, Erdogan or Latek Holdings brought any legal action against Silver Leaf, issued any complaint about Silver Leaf to any regulatory body or issued any complaint directly implicating the services provided by Silver Leaf.

Even in the most liberal rendering of FINRA's baseless assumptions, Latek and Erdogan's complaints were about BHP, and not Silver Leaf.

b. The UCAK Stock Loan Ends With a Regulatory Investigation

FINRA disturbingly presses on with its baseless assumptions.

In fact, there was no regulatory investigation against Silver Leaf associated with the UCAK Stock Loan.

In further fact, there was no regulatory investigation against BHP associated with the UCAK Stock Loan.

The Turkish Capital Markets Board was investigating Latek and Erdogan!

Without evidence or ever speaking to anyone at the Turkish Capital Markets Board, BHP, Erdogan, or Latek Holding, FINRA recites its theory of what transpired with no corroboration or factual support whatsoever. Yet, FINRA has a duty to investigate competently does it not?

FINRA's negligent failure to investigate reveals a desire to "manage the narrative" so as not to allow any information that would prevent it from reaching its pre-determined end result.

c. The GAMA Block Trade Ends With a $20 Million Arbitration Award Against the Firm

FINRA's recitation of facts and assumptions leaves unanswered the only question that matters: What did Silver Leaf do wrong? What rule was violated? What conduct was categorizable as misconduct?

FINRA states that the arbitration panel concluded that Silver Leaf, BHP, and Floyd "were negligent in their failure to disclose material facts and in making other misrepresentations and omissions which led to BTIG's damages." RP 4354. Where, in the record of *these Proceedings* is there any evidence to support this conclusion?

FINRA's negligent failure to investigate reveals a desire to "manage the narrative" so as not to allow any information that would prevent it from reaching its pre-determined end result.

C. Silver Leaf Pays Transaction-Based Compensation to Nonmember Entities

FINRA restates a narrative about what transpired by and between the SEC without ever speaking to anyone at the SEC.

Further, as more fully described in the Opening Brief, the *new* payroll process established by Silver Leaf resulted in payments to the individual brokers as reflected in the firm's payroll records[7]. The subsequent depository function was believed to be, and intended to be, compliant.

Further, this action was not hidden from anyone. The firm acted reasonably, transparently and its records fully reflected the individual brokers who owned single-member LLCs as the payees of record.

Finally, FINRA's heavy-handed investigation of the firm's brokers revealed that no one but the firm's brokers received and retained payments made to them as a result of this payroll process.

II. Procedural History

No comment or reply.

III. Argument

The Proceedings were bereft of any facts to support the Decision.

A. FINRA Has Jurisdiction over Silver Leaf's Misconduct

By dint of its own regulatory references, FINRA's disciplinary authority is ***only*** "broad enough to encompass business-related activity that contravenes [its] standards even if that activity does not involve a security." As discussed at the open, FINRA has no jurisdiction over any activity that falls outside the purview of the Exchange Act if such activity is not "fraudulent and manipulative acts and practices" under the Exchange Act.

Here, FINRA professes ignorance as to the holdings of *Morrison* and *Benger* and never states with any particularity what standards were applicable to *each and every* allegation of payment or misconduct. It never met the two-prong test. To wit, it must first set a standard and then demonstrate *with particularity* how that standard was violated. More importantly, no private corporation – which is what FINRA is – can grant itself the authority to trump federal law.

[7] *See* RX-30, RX-31, RX-32, RX-33, RX-34, RX-35, and RX-36.

Here, as more fully argued in Silver Leaf's Opening Brief, *Morrison v. National Australia Bank Ltd.,* 561 U.S. 247 (2010) and *United States SEC v. Benger*, 934 F. Supp. 2d 1008 (N.D. Ill. 2013) govern FINRA's actions. Not the other way around.

Further, it is not Silver Leaf's obligation to indicate how any part of its business activity was outside of FINRA's jurisdiction. It is FINRA's obligation to establish jurisdiction *before* bringing an enforcement action and FINRA never met this burden.

Dispositively, FINRA's Investigator testified that FINRA had ***no*** evidence to support its jurisdiction of the payments at issue in the underlying Proceedings. FINRA essentially admitted that it was violating Silver Leaf's due process rights by abusing its SEC-granted authority to shake down Silver Leaf for money despite having no evidence or proof of its jurisdiction or authority to do so! From the August 15, 2018 Investigator testimony, see page FINRA 003435:

> 18-20 Silver Leaf: "You have no proof that those payments to those LLCs did not originate from foreign transactions; do you?"
>
> 21-22 Investigator: "**I can't show you any documentation related to those fees.**" [Emphasis added]
>
> This behavior literally falls within the definition of "racketeering activity" in 18 U.S.C. § 1961 (RICO).

B. Silver Leaf Paid Transaction-Based Compensation to Nonmembers

NASD Rule 2420 prohibits payments to a "nonmember broker or dealer." The evidence in the record of these proceedings shows the firm paying its registered brokers. As a secondary matter, the firm's payroll company would deposit the amount to the account of a disregarded entity as acknowledged by federal law.

1. Silver Leaf Paid Transaction-Based Compensation to Halim

The only evidence in the record of the Proceedings is that Silver Leaf paid Chapler and that Chapler, without authority and approval, paid Halim.

In light of specific firm procedures governing payments to persons, FINRA seeks to ignore the firm's procedures in the very same way that Chapler ignored those procedures when it seeks to invest in Meehan a function, role and responsibility that he did not hold.

2. Silver Leaf Paid Transaction-Based Compensation to Non-Member Entities

FINRA invents a narrative of broker appeasement without any evidence thereof or without ever discussing the same with any of the firm's brokers to support this assumption masquerading as a fact.

3. Enforcement Is Not Required to Establish a Violation of the Exchange Act to Prove a Violation of NASD Rule 2420

Without authority, and in direct contraction of its Investigators testimony, FINRA now, ***for the first time***, states in conclusory fashion that the payments in question are subject to NASD Rule 2420 because they are each a "payment of commissions or fees **derived from a securities transaction**…" [Emphasis added]

Where, *in the record of these proceedings*, has it been established that any of the payments were "derived from a securities transaction"? It simply does not exist. Further, the burden was on FINRA to establish this fact for *each and every payment* which it did not do.

Dispositively, FINRA's Investigator testified that FINRA had ***no*** evidence to support its jurisdiction of the payments at issue in the underlying Proceedings. From the August 15, 2018 Investigator testimony, see page FINRA 003435:

18-20 Silver Leaf: "You have no proof that those payments to those LLCs did not originate from foreign transactions; do you?"

21-22 Investigator: "**I can't show you any documentation related to those fees.**" [Emphasis added]

Finally, FINRA's rules derive from legislative and agency mandates granted by the federal legislation and the SEC and, as a result, are subject to the Exchange Act and federal law just like every other entity doing business in the United States; and FINRA offers no authority, other than reference to itself, for this self-created special status to operate outside of federal law and federal statute.

C. Silver Leaf Failed to Reasonably Supervise Its Business

A reader of these pleadings might be surprised to learn that Silver Leaf had more than 65 brokers and dozens and dozens of other clients at the time of its association with Chapler and BHP. The pains to which FINRA has gone to paint the entirety of the firm as revolving around one person (Chapler) and one client (BHP) to reach broad conclusions of failures to ***reasonably*** supervise its business is simply astounding.

Like Chapler, FINRA ignores Silver Leaf's reasonable procedures as tailored to its *actual* business activities. Like Chapler, FINRA's own conduct was and is, in fact, not reasonable.

Here, no red flags existed with regard to BHP or Chapler *in real time*. FINRA's separate investigation of Chapler yielded information that FINRA itself would not have otherwise had to then allow it to collaterally attack this firm.

1. Silver Leaf Failed to Supervise Its Corporate Advisory Business

Silver Leaf engaged with BHP to introduce it to other sophisticated counterparties. The firm did not take on any additional obligations for the benefit of BHP or other obligations for the benefit of such counterparties. We acted as a Tier II Finder.

Further, Chapler's very particular relationship with Halim is the exact sort of outlier event that is nearly impossible to detect.

FINRA references "red flags" but does it in a very sneaky way. The actual instance that it complains of functions as the red flag *itself*. In reality, a red flag is a pre-occurring event that gives suspicion of a future event. Here, all we have are events surrounding one client, one broker and one operational practice with no prior conditions of red flags.

Let's take a closer look at BHP: First, in the GAMA Block Trade transaction, BHP *performed its side of that transaction exactly as it indicated that it would do*. Second, there is no evidence to indicate that BHP did anything wrong in the Latek transaction, and every evidence that Latek was at fault since the Turkish regulatory investigation was *against Latek*.

Let's take a closer look at Chapler: There was no other instance revealed – even in spite of a separate and thorough collateral investigation of Chapler by FINRA – that revealed that Chapler engaged in any other type of misconduct other than paying fees to his future business partner, Halim.

The only instance of misconduct revealed in these Proceedings is Chapler's payment to Halim which were done in direct contravention of *existing* and *reasonable* supervisory procedures discussed more fully in the Opening Brief.

The only other possible instance of reasonable – but possibly incorrect – action on the part of Silver Leaf is a payroll practice reasonably considered and transparently implemented.

All the smoke and shadows are assumptions entirely manufactured by FINRA.

2. Silver Leaf Failed to Supervise Its Payment of Transaction-Based Compensation

In fact, and in contradistinction to FINRA's assertions, the firm's compensation practices were very particular to its business.

In further fact, if there was any failing on the part of Silver Leaf it was that its compensation practices were *too tailored*.

Silver Leaf did not hide any part of its compensation practice, kept detailed records on how and why it did what it did, gave full and complete access to every investigator & examiner, and reasonably believed that the federally disregarded nature of single-member LLCs brought its compensation practice *reasonably* within the requirements of FINRA's rules even if FINRA's rules did not ultimately apply to each and every payment.

As for Chapler's payments, he paid Halim. And he did so in spite of *reasonable* procedures precluding him from doing without approval of his designated supervisor, Khan.

D. The Alleged "Process Deficiencies" Have No Merit

"De novo" review? What a self-serving sleight of hand. Where is the evidence that a full *de novo* review was conducted or could have been conducted when the process itself was broken and insufficient as more fully described herein and the Opening Brief?

Trust us, FINRA says. Trust with verification is demanded when the good name of a longstanding member firm is at stake.

1. Silver Leaf Had Notice of the Charges Against It and an Opportunity to Defend Itself

FINRA does not dispute, because it cannot dispute, that its Investigator had no prior experience. Here, FINRA argues with basic common sense, and not with Silver Leaf. Just as you would not accept a diagnosis of cancer from a first-year medical student on campus for less than 30 days so too can a diagnosis of supervisory failures from a neophyte Investigator be rejected.

2. There Is No Evidence the Hearing Panelists Were Unable to Discharge Their Duties

It is FINRA that subjects its members to process that is not transparent. It is FINRA that tells the membership to "trust us", we will empanel a qualified panel and run a fair process. In our Opening Brief, we provide the business record of the Industry Panelists which reveals no previous

experience with this firm's Tier II Finder's services that are a part of the firm's Fund Marketing and Corporate Advisory business activities.

3. There Is No Evidence of Hearing Officer Bias

It is FINRA that subjects its members to process that is not transparent. It has vested itself with the roles of investigator, judge, jury, and executioner. A member is quite literally at the mercy of FINRA's self-determinations and has no agency whatsoever in the process.

From the record of the Proceedings, the Hearing Officer's excessive indulgence of FINRA's case prosecution is, in our view, transparent from the record.

The Commission has the ability to review FINRA's internal records relating to the reassignment of the underlying Proceedings to the new Hearing Officer.

4. The Hearing Officer Properly Denied Admission of Irrelevant Evidence

The ability and conduct of an inexperienced Investigator is inherently suspect. FINRA's negligent failure to understand the actual business activities of this firm is inherently suspect. FINRA's negligent failure to conduct an adequate investigation with readily available sources of corroboration is inherently suspect. FINRA's negligent reliance on the mere fact of an arbitration decision as indicia of misconduct is inherently deficient and suspect and violative of Silver Leaf's due process rights when considered against FINRA's ignorance of the scope of its own jurisdiction and authority pursuant to *Morrison* and *Benger*.

Therefore, all matters related thereto are certainly likely to "[make] a fact of consequence more or less likely" and should have been admitted as evidence since FINRA's limited investigation and process intentionally and/or unintentionally kept facts out of the Proceedings. Yet, FINRA controlled the "likeliness" of evidence from beginning to end in violation of Silver Leaf's due process rights once more.

5. The Re-Assignment of Hearing Officers Was Proper

It is FINRA that subjects its members to process that is not transparent. It has vested itself with the roles of investigator, judge, jury, and executioner. A member is quite literally at the mercy of FINRA's self-determinations and has no agency whatsoever in the process.

From the record of the Proceedings, the Hearing Officer's excessive indulgence of FINRA's case prosecution is, in our view, transparent from the record.

The Commission has the ability to review FINRA's internal records relating to the reassignment of the underlying Proceedings to the new Hearing Officer.

E. FINRA's Sanctions Are Appropriately Remedial

With no evidence of Silver Leaf paying Halim, with no evidence of a rule violation associated with any of the BHP transactions, and with $0.00 dollars *actually paid* by Silver Leaf to anyone other than its brokers, the Decision's application of sanctions (which amount to a small fortune for this small member firm with no prior instances of misconduct *ever before*) is not remedial. It is punitive, excessive, and indulgent.

Further, since January of 2017, nearly four years ago, Meehan is no longer associated with the firm aand Silver Leaf has gone beyond the requirements of an independent consultant and has hired one of the premier out-sourced FinOp and accounting services provider, SDDCo (www.sddco.com), to handle all aspects of its financial operations and accounting processes pursuant to the terms of a January 18, 2017 Accounting & FinOP Services Agreement which we can provide to the Commission; *see* SDDCo Affidavit included as an exhibit herewith.

1. Several Aggravating Factors Apply to All Violations

Defending against trumped-up charges is not a refusal to accept responsibility. The NAC's conclusion in this regard is particularly troubling. It is even chilling: It amounts to a "take your medicine and shut up or else" attitude reminiscent of attitudes held by authoritarian bureaucrats. How dare we seek to call out FINRA's deficiencies and misconduct? Is it not the right of every American and American enterprise to defend against spurious charges? Doubling down on its punishment of this firm for exercising its constitutionally-protected rights has no place in our society, and FINRA's view to the contrary speaks volumes about FINRA – and not this firm.

2. A $50,000 Fine Is Appropriately Remedial for Silver Leaf's Payments of Transaction-Based Compensation to Nonmembers

The NAC's decision to look to registration violations when there was no evidence that any of the business activities conducted by Silver Leaf's brokers or the payments associated therewith were subject to FINRA's rules is simply outrageous.

FINRA's Investigator testified that FINRA had ***no*** evidence to support its jurisdiction of the payments at issue in the underlying Proceedings. From the August 15, 2018 Investigator testimony, see page FINRA 003435:

18-20 Silver Leaf: "You have no proof that those payments to those LLCs did not originate from foreign transactions; do you?"

21-22 Investigator: "**I can't show you any documentation related to those fees.**" [Emphasis added]

3. A $50,000 Fine, an Order to Retain an Independent Consultant, and a Business-Line Suspension Are Appropriately Remedial for Silver Leaf's Supervisory Failures

Systematic supervisory failures? Really? Not catching one broker sharing fees from foreign transactions with his future business partner, adopting a reasonable compensation practice, and introducing *one* client to sophisticated counterparties which resulted in no proffered evidence of misconduct by Silver Leaf associated therewith is evidence of systematic supervisory failures? Clearly not. It is an exaggeration. An indulgent exaggeration.

Absence of mitigating factors? Really? In fact, there are many:

1. FINRA offers no evidence demonstrate, as found by the BTIG Arbitration panel that Silver Leaf was "negligent in [its] failure to disclose material facts and in making other misrepresentations and omissions which led to BTIG's damages." It simply says that there was an adverse decision. Where is the supporting evidence? It is not offered because it does not exist.

2. The one payment to Halim associated with the escrow services was disclosed to Khan by Chapler and authorized by Silver Leaf *but* the other payments that Chapler wanted to hide were not disclosed to Khan and authorized by Silver Leaf *but* were buried in attachments to emails and never discussed with or authorized by Khan in violation of the firm's procedures.

3. The firm's payment process complained of by FINRA had no actual instance of payment to anyone other than the intended brokers.

In every regard of claimed misconduct and supervisory failures there existed mitigating factors.

Whatever may or may not be otherwise said about the Decision and underlying Proceedings, it is fact that there were many mitigating factors that were simply disregarded by the NAC as it conformed its Decision to the expectations of its colleagues and huffed at Silver Leaf for challenging its self-granted entitlements.

4. Silver Leaf Failed to Establish Its Inability to Pay

The Guidelines state that "[a]djudicators are required to consider a respondent's bona fide ability to pay when imposing a fine or ordering restitution." *Castle Securities Corp.*, 58 S.E.C.

826, 837 (2005) declares a two-prong requirement stating that "It is well settled that a respondent bears the burden of demonstrating an inability to pay, and that [FINRA] is entitled to make a searching inquiry into any such claim."

Where was the "searching inquiry" by FINRA in the record of the Proceedings? If what was presented was insufficient, does standing moot on the matter amount to a "searching inquiry" or an inquiry into Silver Leaf's *bona fide* ability to pay when imposing a fine or ordering restitution? Clearly not.

Today, the devastation of the COVID-19 pandemic is, without more, evidence of this small firm's inability to pay fines that are excessive to the conduct in question.

IV. Conclusion

FINRA's Rules were not written for regulatory indulgence but for real world issues having real world impact. Even granting FINRA the most liberal of considerations, nothing more exists here than a "we will because we can" effort by FINRA to exploit its mandate for its own gain and self-interest.

The NAC's findings of violations are not supported by the record of the Proceedings and the sanction imposed are not remedial but punitive.

The Commission should set the Decision aside in its entirety.

Dated: November 16, 2020

Respectfully submitted,

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UNITED STATES OF AMERICA
before the
SECURITIES and EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19896

In the Matter of the Application of

SILVER LEAF PARTNERS, LLC

For the Review of Disciplinary Action Taken by the

Financial Industry Regulatory Authority, Inc.

Certificate of Service

I am at least 18 years of age and, pursuant to SEC rules, I have served a copy of the "Reply Brief" by electronic mail delivery to the SEC's Office of the Secretary and FINRA's Office of General Counsel on November 16, 2020 at the electronic mail addresses indicated below:

1. Securities and Exchange Commission
Office of the Secretary
Attn: Vanessa A. Countryman
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2. Financial Industry Regulatory Authority, Inc.
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Dated: November 16, 2020

Jeffrey A. Sexton, Esq.
Attorney for Silver Leaf Partners, LLC

UNITED STATES OF AMERICA
before the
SECURITIES and EXCHANGE COMMISSION

November 16, 2020

SECURITIES EXCHANGE ACT OF 1934

ADMINISTRATIVE PROCEEDING
File No. 3-19896

In the Matter of the Application of SILVER LEAF PARTNERS, LLC For the Review of Disciplinary Action Taken by the Financial Industry Regulatory Authority, Inc.	Rule 452 Certificate of Compliance

Pursuant to Rule 450(d) of the Rules of Practice and Rules on Fair Fund and Disgorgements Plans of the Securities and Exchange Commission, Silver Leaf Partners, LLC hereby issues this certificate of compliance, and states that the word count of its reply brief is 7000 words.

Dated: November 16, 2020

Respectfully submitted,

_____

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UNITED STATES OF AMERICA
before the
SECURITIES and EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

ADMINISTRATIVE PROCEEDING
File No. 3-19896

In the Matter of the Application of

SILVER LEAF PARTNERS, LLC

For the Review of Disciplinary Action Taken by the

Financial Industry Regulatory Authority, Inc.

AFFIDAVIT

We, Janice Parise and Saule Sundetova, a partner and manager of the SDDco Group (hereinafter referred to as, "SDDco" or "we/our/us"), respectively, provide accounting services and an assigned financial and operations principal ("FinOp") to Silver Leaf Partners, LLC ("Silver Leaf"), and we swear, testify and affirm as follows:

1. In January 2017, SDDco was retained by Silver Leaf to provide accounting services and an assigned FinOp (the "Services") to Silver Leaf and we have provided those Services continuously since then.

2. SDDco assumed the accounting and FinOp responsibilities from Mr. Kevin Meehan, who was a former partner of Silver Leaf.

3. For the duration of our Services engagement, we have retained autonomy to determine proper and compliant processes to comport Silver Leaf's independent contractor payment processes to applicable rules and regulations, based on the information provided to us by Silver Leaf, such as the registered representative that is entitled to be paid on revenue received by Silver Leaf and the applicable percentage to be paid to the registered representative, in our limited capacity as the processor of independent contractor payment.

4. For the duration of our Services engagement, no one at Silver Leaf, including its senior executive, Mr. Fyzul Khan, has asked or directed us to perform our Services in a manner inconsistent with applicable rules and regulations.

5. For the duration of our Services engagement and to the best of our knowledge, no one at Silver Leaf, including its senior executive, Mr. Fyzul Khan, asked or directed us to pay any commissions to unauthorized third-parties. This determination of a representative being authorized to receive payment is made by Silver Leaf's management and is based on the information provided to us by Silver Leaf in our limited capacity as the processor of independent contractor payments.

6. In reliance on the information provided to us by Silver Leaf in our limited capacity as the processor of independent contractor payments as well as the checks and balances processes in place, to the best of our knowledge, no unauthorized third-party has been paid commissions during the entirety of our provision of Services. Our Services and checks and balances process include, but are not limited to, the following:

a. Processing of Silver Leaf's independent contractor payments by an SDDco-designated accountant (the "Payment Processor") who is managed by the FinOp; is a member of our staff and not otherwise employed by Silver Leaf;

b. Prior to releasing the payment, all independent contractor payments are prepared by the Payment processer and reviewed by the broker scheduled to receive such payment as well as senior management of Silver Leaf;

c. Any other payments, i.e. non-payroll disbursements, are prepared by the Payment Processor for review by senior management of Silver Leaf and SDDco's assigned FinOp prior to releasing the payment;

7. For the entirety of our provision of Services, we have not been asked to make any independent contractor payments to persons other than, what we understand to be, registered brokers of Silver Leaf, as determined by Silver Leaf's senior management.

8. For the entirety of our provision of Services, to the best of our knowledge, there has been no instance of independent contractor payments by Silver Leaf to persons other than, what we understand to be, registered brokers as conveyed to us by Silver Leaf management, based on the information that has been provided to us by Silver Leaf in our limited capacity as the processor of independent contractor payments.

9. For the duration of our provision of Services, in our opinion, senior management of Silver Leaf has been professional and supportive of the discharge of our duties consistent with applicable rules and regulations.

10. To date and based on our limited knowledge from within the scope of our Services, our experience with management of Silver Leaf has been one of professionalism, conscientiousness, and a desire to be compliant with laws, regulations, and rules applicable to the firm's business.

IN WITNESS WHEREOF, we execute this affidavit as of the date indicated below.

Dated: November 16, 2020

Respectfully submitted,

Janice Parise, Partner
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