**BEFORE THE**
**SECURITIES AND EXCHANGE COMMISSION**
**WASHINGTON, DC**

In the Matter of the Application of

Robbi J. Jones and Kipling Jones & Company, Ltd.

For Review of

FINRA Disciplinary Action

File No. 3-20209

# FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW


Alan Lawhead
Vice President and
Director – Appellate Group

Michael Smith
Associate General Counsel

Colleen Durbin
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8816 – Telephone
202-728-8264 – Facsimile


May 17, 2021

**OS Received 05/17/2021**

## TABLE OF CONTENTS

**Page**



**OS Received 05/17/2021**

**OS Received 05/17/2021**

## TABLE OF AUTHORITIES

### Federal Decisions



### SEC Decisions and Releases

**Federal Rules and Statutes**



**FINRA Decisions**



**FINRA By-Laws, Guidelines, and Rules**





**OS Received 05/17/2021**

**BEFORE THE**
**SECURITIES AND EXCHANGE COMMISSION**
**WASHINGTON, DC**

In the Matter of the Application of

Robbi J. Jones and Kipling Jones & Company, Ltd.,

For Review of

FINRA Disciplinary Action

File No. 3-20209

# FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

## I. INTRODUCTION

Robbi Jones and Kipling Jones & Co. ("KJC") (collectively, "Applicants") appeal a December 17, 2020 decision of the National Adjudicatory Council. RP 5008-10.[1] The record unequivocally demonstrates that Jones and her firm, KJC, engaged in serious reporting and record-keeping violations, and that Jones repeatedly failed to respond completely and truthfully to FINRA's request for documents and information.

This matter arose from FINRA's 2014 cycle examination of KJC. In November 2014, FINRA asked KJC for various financial records, including proof of all allowable assets reported by the firm. Among the assets KJC reported was a certificate of deposit ("CD") with an accrued balance of approximately $70,000. FINRA's request for information about this CD was problematic for Jones. Since the end of 2011, she had been reporting the CD as an allowable asset to boost KJC's net capital. But as Jones well knew, the CD was not an allowable asset

[1] "RP" refers to the record page number in the certified record.

**OS Received 05/17/2021**

because she had pledged it to secure a $70,000 loan she took from the same bank to buy the CD. For months following FINRA's initial request for information about the CD, Jones obfuscated and repeatedly failed to comply with FINRA's requests while offering various excuses for doing so.

Jones's prevarications extended to FINRA's efforts to obtain information regarding an investigation by the City of Houston into whether Jones had improperly charged the city for personal travel expenses. FINRA's request was prompted by its discovery of a $2,500 legal expense recorded in KJC's general ledger. The Houston Office of Inspector General ("OIG") had concluded that Jones used a city credit card to pay for airline tickets for personal travel to Birmingham, Alabama and Chicago. When FINRA asked Jones for information about the OIG's investigation, she attempted to misdirect FINRA by providing information about credit card charges for two other flights that she had paid for herself. When she eventually provided information about the relevant flights, she claimed that she had paid for the tickets with a credit card belonging to her mother, an explanation belied by the appearance of the charges for the flights on the city's credit card statement. Jones then attempted to thwart FINRA's follow-up inquiries, going so far as to falsely claim her mother was dead, and thus she could not help secure additional information from her credit card issuer. When FINRA staff asked Jones at her on the record interview ("OTR") whether her mother actually had died, she refused to answer, protesting that questions about her mother were "personal" and not pertinent to FINRA's investigation.

Based on the evidence, the Hearing Panel found that Jones and KJC committed several violations of securities laws and FINRA rules. The Hearing Panel concluded that Jones knew all along that the CD was not an allowable asset and that she had attempted to conceal the resulting



**OS Received 05/17/2021**

recordkeeping and reporting violations during FINRA's cycle exam and in her OTR. It found that she repeatedly misled and lied to FINRA staff. In assessing sanctions, the Hearing Panel identified a host of aggravating factors and rejected Jones's claim that the purported stress she was under at the time mitigated her serial dishonesty and obstruction. The Hearing Panel fined KJC $38,000, fined Jones a total of $70,000, and imposed on Jones separate two-year, all-capacities suspensions (to be served consecutively—a four-year suspension), and a bar from associating with any member firm in any supervisory or principal capacity.

Jones and KJC appealed to the National Adjudicatory Council ("NAC"). Before the NAC, Jones and KJC conceded liability but argued that the sanctions the Hearing Panel imposed were too severe. The NAC disagreed. The NAC affirmed the fine imposed on KJC, and it concluded that, due to the egregiousness of Jones' misconduct, two bars were warranted for her misconduct.

On appeal to the Commission, Jones and KJC attempt to minimize Jones's misconduct as merely "imperfect." They argue that the NAC improperly increased the sanctions on Jones, and that the sanctions the NAC imposed are punitive and unwarranted under the circumstances. Jones and KJC also make several other arguments that have been rejected by the Commission and federal courts on numerous occasions.

The NAC's findings of violations are fully supported by the record and the sanctions it imposed are neither excessive nor oppressive. Jones's misconduct was far from merely imperfect, and the NAC appropriately increased the sanctions for that misconduct to reflect the egregiousness of Jones's misconduct. FINRA respectfully asks the Commission to follow well-established precedent and affirm the NAC's findings of violations and the sanctions it imposed.



**OS Received 05/17/2021**

## II. FACTUAL BACKGROUND

### A. Jones and KJC

Jones entered the securities industry in 1991 and registered as a municipal securities representative. She later registered as a general securities representative and principal. In 2007, she formed KJC, a small broker-dealer based in Houston, Texas. KJC is registered with the Commission as a municipal advisor and has been a member of FINRA since 2007. KJC derives its income primarily from municipal advisor activities. RP 184, 185. During the relevant period, Jones was the firm's president, CEO, and CCO. From May 2013 forward, she also served as KJC's financial and operations principal ("FINOP"), and, for a brief period, acted as its CFO. RP 3024-25, 3218-19, 3221, 3232, 3365, 4392.

### B. Jones Inflates KJC's Net Capital By Borrowing Money to Buy a CD

In late 2011, Jones wanted to increase the amount of net capital to be reported in KJC's fourth-quarter FOCUS report in order to improve KJC's prospects of winning new business. RP 3304-05, 3307. To that end, she bought a $70,000, one-year CD ("CD No. 0331") from Commonwealth National Bank ("CNB") to be listed as an asset in KJC's net capital computation. To pay for the CD, Jones took a one-year loan from CNB and pledged CD No. 0331 as collateral. CNB's president clearly told Jones at the time that she herself would have to have an ownership interest in the CD to pledge it as collateral for the loan. RP 2374-76, 2401. The CD accordingly was titled in both Jones's and KJC's names. RP 3680. To effect the transaction, Jones signed a promissory note. RP 4378. In a box situated immediately to the left of the signature line and captioned "SECURITY," the note recited that it was "separately secured by" CD No. 0331. *Id.* By its terms, CD No. 0331 was to renew automatically on its maturity date, December 30, 2012. To effect the renewal, however, Jones also had to renew the personal



**OS Received 05/17/2021**

loan she had taken to pay for the CD and sign a new promissory note. In December 2012, Jones renewed the loan by signing a new promissory note. Like the note she had signed a year earlier, the new promissory note recited that it was secured by CD No. 0331. RP 3918-19.

### C. FINRA Places KJC on Heightened Surveillance After KJC's Independent Auditor Determines that KJC Improperly Included CDs Pledged as Collateral in its Net Capital Computation

In April 2013, FINRA placed KJC on heightened surveillance because of the firm's accounting practices related to other CD's that KJC had purchased in December 2007 and December 2010 (i.e., not CD No. 0331). RP 2615-16. KJC had included these CDs as assets in its net capital computation. The CDs, however, were pledged in support of personal loans Jones had executed in December 2011 and April 2012, respectively. In early 2013, KJC's independent auditor determined that, because the CDs had been pledged as collateral for Jones's loans, they were non-allowable assets in the computation of KJC's net capital. RP 4367-69. This meant that KJC had maintained inaccurate books and records and had filed inaccurate FOCUS reports. When FINRA learned about the auditor's determination, it placed KJC on heightened surveillance and required the firm to submit to FINRA staff on a monthly basis its general ledger, trial balance, and balance sheet. In response to questions from FINRA about the auditor's findings, Jones stated that she had been "unclear as to her responsibility to notify the CFO of the pledging of the CDs," and that she had since taken and passed the Series 28 (FINOP) exam "to better understand the financial reporting requirements for the firm." RP 4372. Despite Jones's representations to FINRA, however, KJC continued to include CD No. 0331 in its net capital computation, even though, like the firm's other CDs, it was a non-allowable asset because it had been pledged as collateral for a loan.



**OS Received 05/17/2021**

### D. The Bank Liquidates the CD But KJC Continues to Include the CD in its Net Capital Computation

On October 28, 2013, CNB advised Jones that the loan she used to pay for CD No. 0331 would expire on December 30, 2013, and that she had to either pay off the loan or renew it by that date. RP 3924. The bank told Jones that if she wanted to renew the loan, she needed to submit, among other things, a credit application and proof of income. *Id.* Jones, however, did not pay off the loan or renew it by the expiration date. In February 2014, Jones attempted to renew the loan but she failed to provide to the bank the required proof of income. RP 3012-13, 3917. On February 19, 2014, the bank sent Jones a letter by certified mail advising her that the loan had expired and that, if she did not renew it by February 21, 2014, the bank would consider the loan in default and use the funds deposited under CD No. 0331 to pay off the outstanding balance on the loan. RP 3915-16. Jones did not renew the loan, and on March 5, 2014, CNB used the funds deposited under CD No. 0331 to pay off the $70,313 balance Jones owed on the loan. RP 3909. Although CD No. 0331 no longer had any value, KJC continued to carry the CD as an asset on its general ledger, balance sheets, and trial balances. RP 2671-72, 3927, 3937, 3987. KJC also continued to show CD No. 0331 as an allowable asset in its monthly FOCUS reports and amended FOCUS reports for March through December 2014. RP 4229-42.

### E. The City of Houston Determines that Jones Charged Personal Travel to a City Credit Card Without Authorization

In May 2013, the City of Houston's controller's office opened an investigation into Jones's suspected unauthorized use of a city credit card to pay for airline tickets in Jones's name.[2] One such ticket was for a roundtrip Southwest Airlines flight from Houston to

[2] Applicants maintain that the city of Houston's investigation involved five flights and that Jones was able to "disprove" any misconduct related to three of the flights. Brief at 3. This is irrelevant. The complaint alleges, and the Hearing Panel and NAC found, that Jones did not

Birmingham, Alabama, in September 2012. Another ticket was for a flight from Chicago to Houston in April 2013. The controller's office discovered the purchases while reconciling charges posted to the city's credit card account. RP 2181-82, 3796, 4107-10. The controller's office asked Jones for documentation of expenses she had incurred for travel on behalf of Houston. In response, Jones provided copies of a ticket purchase confirmation for a roundtrip Southwest Airlines flight from Houston to Newark in April 2013, and an eTicket for a roundtrip United Airlines flights from Houston to Memphis in November 2012. RP 4083, 4089-90, 4091-92. Jones did not provide information about the Birmingham and Chicago flights. The controller's office referred the matter to the city's office of inspector general ("OIG") for further investigation.

The OIG concluded that Jones was responsible for the unauthorized use of the city's credit card to pay for the Birmingham and Chicago flights. On June 16, 2014, the Inspector General sent a letter to Jones in care of her brother, an attorney, with a copy to a criminal defense attorney retained by Jones during the OIG's investigation. RP 3180, 3330. The Inspector General's letter informed Jones that the OIG had concluded that Jones was responsible for the unauthorized use of the city's credit card on two occasions to book flights for herself for non-city business. RP 3886.

### F. Jones Fails to Fully Respond to FINRA's Requests for Information about KJC's Finances

On November 11, 2014, at the start of its cycle examination of KJC, FINRA asked Jones for various financial records, including KJC's general ledger for the month of September 2014, a

---

respond truthfully to FINRA's requests for information about the two flights upon which the City of Houston's investigation eventually focused, and for which the City of Houston found Jones liable for misusing a city credit card. RP 4644, 4972.

trial balance and balance sheet as of September 30, 2014, and proof of all allowable assets claimed in KJC's net capital computation. RP 2061-64, 3653. Jones provided the general ledger, balance sheet, and trial balance on November 25. RP 2064-65, 3925. She did not, however, provide proof of KJC's claimed allowable assets. RP 3661. The ledger, balance sheet, and trial balance identified CD No. 0331 as an asset with an accrued balance of $70,313.09, which corresponded to the amount shown for "exempted securities" on KJC's September 30, 2014, FOCUS report as an allowable asset. RP 3927, 3937, 3987, 4287. Jones did not provide documents supporting the reported balance of the CD.

In the following weeks, FINRA staff continued trying to obtain documents and information from Jones regarding KJC's finances. On December 11, 2014, FINRA staff sent Jones an email detailing the many documents they had requested but not yet received. RP 3661-63. That email included another request for proof of the reported $70,313 balance for CD No. 0331, which FINRA had first requested a month earlier. *Id.* FINRA staff sent Jones another email on December 15, 2014, noting the many outstanding requests. RP 3761.

On December 18, 2014, Jones sent an email to FINRA staff in which she claimed that CNB was unable to provide a statement reflecting CD No. 0331's balance as of September 30, 2014, and that CNB would instead provide a "screenshot" showing that balance. RP 3667-68. Jones wrote that she would forward the screenshot to FINRA as soon as she received it. *Id.* Later that day, Jones forwarded, among other documents, a screenshot showing the balances of CD No. 0331 from December 30, 2011, through December 30, 2013. *Id.* Jones did not provide any information showing the CD's balance as of September 30, 2014. *Id.*

On December 26, 2014, FINRA staff asked Jones to contact CNB to find out the early withdrawal penalty on CD No. 0331. Jones responded later that day by email and claimed that



**OS Received 05/17/2021**

she was trying to get the requested information. Jones told FINRA staff that she had contacted CNB, but had reached only reached a teller supervisor, who was not able to answer the question. RP 3696-97. FINRA staff sent additional requests for information by email on December 30, 2014, January 5, January 9, and January 13, 2015. Jones continued to delay and provide insufficient responses to those requests. RP 3393-96.

Meanwhile, on December 30, 2014, in the midst of FINRA's examination of KJC's finances, Jones took a new loan from CNB to buy a new, two-year $70,000 CD ("CD No. 0577"). RP 3911. Like the loan she had taken in 2011 to buy CD No. 0331, the new loan was secured by the new CD she bought with the loan's proceeds. RP 3920-23. Thereafter, as she had done with CD No. 0331, Jones included CD No. 0577 in the firm's net capital computation, even though it was not an allowable asset because it was pledged as collateral. RP 3394.

### G. After Jones Fails to Provide Requested Documents and Information, FINRA Issues a Notice of Net Capital Deficiency

In February 2015, because Jones had failed to respond to multiple prior requests, FINRA began requesting information and documents from Jones pursuant to FINRA Rule 8210. During February and March, Jones continued to make excuses for why she could not provide the requested information and documents, representing that the documentation was forthcoming from CNB. *e.g.*, RP 3713, 3717-33, 3741-44, 3745, 3747-75, 3755-58, 3759, 3771, 3781, 3783-84, 3787, 3791, 3798-99.

In March 2015, FINRA issued a "Notice of Current Net Capital Deficiency Identified by FINRA." The notice was based in part on KJC's failure to provide sufficient documentation to verify CD No. 0331, which "br[ought] into question the balance of this allowable asset." RP 3798-99.



**OS Received 05/17/2021**

### H. FINRA Investigates Jones's Use of the Houston Credit Card to Pay for Personal Travel Expenses; Jones Claims She Cannot Respond to FINRA's Requests for Information Due to Her Mother's Death

As part of its examination, FINRA discovered a $2,500 payment to an attorney on KJC's general ledger and asked Jones for an explanation of the nature of the payment. RP 3939. On December 23, 2014, Jones forwarded to FINRA staff a letter signed by the criminal defense attorney on his firm's letterhead in which he asserted—incorrectly—that Jones had been "cleared of any wrongdoing" in the City of Houston's investigation into her travel expenses. RP 3691-92.

On February 5, 2015, after Jones had repeatedly failed to satisfy requests for information and documents, FINRA staff sent Jones a letter pursuant to FINRA Rule 8210 requesting, among other items, a written statement regarding the City of Houston's investigation into her travel expenses. RP 2123, 3713-16. Jones responded by providing two separate written statements, both dated February 13, 2015, and a handful of documents. RP 3712-31, 4097. Jones's response to the FINRA's requests pertained only to the airline tickets for the Memphis and Newark trips, which she had paid for; Jones's response did not address the tickets for the Birmingham and Chicago trips, which were the two charges the OIG had determined were unauthorized. *Id.* Not until one month later, in mid-March 2015, did Jones admit the truth to a FINRA examiner that Houston had investigated payments made for her trips to Birmingham and Chicago. RP 3793-94, 3795-96.

In March 2015, Jones sent the FINRA examiner an email in which she said she had been unable to provide documents in response to the staff's outstanding requests because there had been a death in the family. Upon receiving the email, the examiner called Jones and asked if it

was her mother who had died.[3] Jones responded that it was. RP 2673-74. In fact, Jones's mother had not died.

### I. FINRA Schedules Jones's OTR; Jones Requests that FINRA Staff Not Ask Her About Her Health During the OTR

On March 30, 2015, FINRA staff sent Jones a FINRA Rule 8210 letter directing her to appear for testimony on April 10, 2015, at FINRA's New Orleans district office. RP 3808-09. When Jones failed to appear at the appointed time, a FINRA examiner emailed Jones that her failure to appear could result in disciplinary action. RP 3811. Within the hour, FINRA received an email purportedly from an acquaintance of Jones stating that Jones had been hospitalized and likely had not seen the staff's March 30, 2015 letter. RP 3818. Jones then spoke with the examiner by telephone, and the examiner agreed to reschedule the OTR for April 17, 2015. RP 3815. On April 16, 2015, Jones emailed FINRA requesting another postponement. In her email, Jones wrote that she had been unable to secure legal representation because she had "misunderstood" FINRA's letter rescheduling the OTR for April 17. FINRA agreed to reschedule the OTR for April 23, 2015. RP 3816-17, 3833, 3835-37. Minutes before 5 p.m. on April 22, 2015, the day before the scheduled OTR, FINRA received an email from Jones's new attorney in which he asked that the OTR be postponed until May 8 because he had a trial in bankruptcy court on May 5 and 6. RP 3839-40. FINRA staff agreed to reschedule the OTR for May 8, 2015. RP 3841.

On May 7, 2015, the day before the OTR, Jones emailed FINRA staff asking "that I not be asked anything whatsoever about my health on [sic] tomorrow." RP 3851. She went on to explain that her attorney was her brother's "best friend," and she did not want information

[3] The FINRA examiner asked Jones if it was her mother that passed away because on prior occasions, Jones had mentioned to the examiner that her mother was in poor health.

regarding her health to get back to her family. FINRA's response, in its entirety, read, "Your request is noted. We will only be discussing business-related items tomorrow." *Id*.

### J. Jones Testifies that She Never Pledged CD No. 0331 as Collateral and Claims that She Paid for the Birmingham and Chicago Flights Using Her Mother's Credit Card

Jones's OTR went forward on May 8, 2015. RP 2823-24. When FINRA staff asked Jones whether she had ever pledged CD No. 0331 as collateral, she responded: "I did not use it for collateral for anything." RP 4175-76. She further testified that, as far as she knew, CD No. 0331 had been renewed at the end of 2013 as it had been at the end of 2012. RP 4176. Jones also claim that, at the end of 2014, she "changed" CD No. 0331 "to a two-year instrument." RP 4178.

With respect to the Houston OIG's investigation, Jones testified that she was questioned about five different flights, but that the two that "became really problematic" were the Birmingham and Chicago flights. She claimed that she paid for the Birmingham and Chicago tickets using her mother's credit card, and that the travel was unrelated to Houston business. RP 4149-50. She testified that, after showing the Inspector General documents that appeared to show charges made to a credit card in Jones's mother's name, the Inspector General told her that the last four digits of her mother's credit card account were the same as the last four digits of the Houston credit card to which the charges for the Birmingham and Chicago tickets were billed. RP 4150. But Jones was unable to explain to FINRA how, if she had bought the tickets using her mother's credit card, the charges for the tickets could possibly have appeared on the City of Houston's credit card statement, as they had. RP 4154-55.

The subject of Jones's mother's death came up only after Jones claimed that she had tried unsuccessfully to determine the full 16-digit account number of the credit card used to buy the Birmingham and Chicago tickets. When the FINRA examiner asked Jones if her mother was



**OS Received 05/17/2021**

still alive, Jones refused to answer, contending that was "personal" information. RP 4181-86. When the examiner explained that the question went to whether Jones's mother was available to request duplicate account statements from her credit card issuer, Jones nonetheless persisted in refusing to answer. *Id.* She also refused to answer questions about whether she had told another FINRA examiner that her mother had died. *Id.*

**K. Jones Continues to Obfuscate after the OTR**

On June 15, 2015, FINRA staff issued another FINRA Rule 8210 request to Jones seeking information about CD No. 0331 and the loan Jones had taken to purchase it. FINRA staff asked Jones whether (1) CD No. 0331 existed with a balance of $70,313.09 on September 30, 2014, as reflected in KJC's FOCUS filing dated September 30, 2014; (2) CD No. 0331 existed with a balance of $70,313.09 on October 31, 2014, as reflected in KJC's FOCUS filing dated October 30, 2014; and (3) CD No. 0331 existed with a balance of $70,313.09 as of November 30, 2014, as reflected in KJC's FOCUS filing dated November 30, 2014. FINRA staff also asked Jones to explain how and when the proceeds of CD No. 0331 were disposed. RP 3854-55.

Through counsel, Jones provided a single narrative reply to all four of the questions in the Rule 8210 request. RP 3858-60. Jones falsely represented that, on December 30, 2011, she had applied to CNB for an unsecured loan, the proceeds from which she had used to buy "the original CD," i.e., CD No. 0331. *Id.* She claimed she did not recall having "giv[en] the bank authority to use the CD as collateral for the loan," and represented that "she would not have obtained the loan under those terms because she knew that she could not then use the CD to meet her capital requirements for her firm." *Id.* She claimed that she had continued making payments on the loan after the bank paid it off in March 2015 using the proceeds from CD No. 0331. *Id.* She



**OS Received 05/17/2021**

stated that, during 2014, she "fell behind on her payments [on the loan she took to buy CD No. 0331], but caught up at some point before December 31, 2014." She claimed she did not learn until March 2015 that CNB had liquidated the CD to pay off the loan, and that she was "unaware that could occur because she understood that the line of credit was unsecured." *Id.* Jones blamed CNB's president for her claimed inability to obtain information and documents needed to satisfy FINRA's requests. *Id.*

## III. PROCEDURAL BACKGROUND

### A. Enforcement's Complaint

In April 2017, FINRA's Department of Enforcement filed a four-cause complaint against Jones and KJC. The first cause alleged that Jones had caused KJC to willfully violate Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 17a-3 and 17a-5, and that Jones and KJC had violated FINRA Rules 4511 and 2010. RP 7-40. Specifically, the first cause charged that Jones caused KJC's books and records to be inaccurate by allowing CD No. 0331 to be shown as an asset through December 30, 2014. Enforcement also alleged that Jones filed, or caused to be filed, materially inaccurate FOCUS reports that inflated KJC's reported net capital by treating CD No. 0331 as an allowable asset, despite the fact that CD No. 0331 had been pledged as collateral for the loan and had been cancelled. RP 31-32.

The second cause alleged that Jones violated FINRA Rule 2010 because she provided false and misleading information to FINRA staff about CD No. 0331, the City of Houston's investigation into her travel expenses, and her mother's purported death. RP 32-38. The third and fourth causes alleged that Jones violated FINRA Rules 8210 and 2010 because she provided false and misleading information to FINRA about CD No. 0331, the Houston investigation, and



**OS Received 05/17/2021**

her mother's purported death and refused to answer questions at her OTR regarding her representations to FINRA about her mother's purported death. RP 38-39. Applicants denied the allegations and a five-day hearing was held.

**B. The Hearing Panel's Decision**

In October 2018, the Hearing Panel issued its decision finding KJC liable under the first cause and Jones liable under all causes. RP 4613-55. Under cause one, the Hearing Panel found that Jones caused KJC to fail to record the cancellation of CD No. 0331 in its general ledger and caused KJC to file FOCUS reports that inaccurately reflected CD No. 0331 as an allowable asset. The Hearing Panel determined that KJC willfully violated Section 17(a) of the Exchange Act, Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010, and that Jones violated FINRA Rules 4511 and 2010. Under cause two, the Hearing Panel found that Jones violated FINRA Rule 2010 by failing to inform FINRA that she had pledged CD No. 0331 as collateral for a personal loan and by misrepresenting to FINRA that her mother had died. Under cause three, the Hearing Panel found that Jones violated FINRA Rules 8210 and 2010 by omitting the Birmingham and Chicago airline tickets from her signed statements describing the Houston investigation and by falsely testifying at her OTR that CD No. 0331 was never pledged as security for a loan. Under cause four, the Hearing Panel found that Jones violated FINRA Rules 8210 and 2010 because she repeatedly refused to respond to questions at her OTR concerning her representations to FINRA about her mother's purported death.

For the violations under the first cause, the Hearing Panel fined KJC $38,000, suspended Jones from associating with any FINRA member firm in any capacity for two years, barred her from associating with any FINRA member firm in any supervisory or principal capacity, and fined her $35,000. Because KJC's violation of the Exchange Act was willful, the Hearing Panel



**OS Received 05/17/2021**

found that the firm is subject to statutory disqualification. For the second, third, and fourth causes of action, the Hearing Panel imposed a unitary sanction and suspended Jones from associating with any FINRA member firm in any capacity for two years and fined her $35,000. The Hearing Panel ordered that Jones's suspension under cause one run consecutively with the suspension imposed under causes two, three, and four.

Notably, in its written decision, the Hearing Panel made very specific and extensive determinations that Jones's testimony was not credible. RP 4639-41. The Hearing Panel concluded that "Jones's demeanor at the hearing and the record as a whole caused the Panel to view Jones as not being a credible witness." RP 4639. The Hearing Panel stated that Jones "understood from December 2011 onward that [CD No. 0331] was pledged as collateral for the 2011 Loan." *Id.* The Hearing Panel further determined that Jones attempted to mislead FINRA when (a) she filed FOCUS Reports reflecting CD No. 0331 as an allowable asset, (b) failed to disclose in connection with the 2013 Audit Report that CD No. 0331 had been pledged as collateral for a personal loan, (c) repeatedly failed to disclose during the 2014 cycle examination that CD No. 0331 had been pledged as collateral for a personal loan, and (4) testified at her OTR that CD No. 0331 had not been pledged as collateral for anything. RP 4639-40. The Hearing Panel also found that Jones's attempted to mislead FINRA and failed to respond truthfully to FINRA's inquiries about CD No. 0331 during her OTR and at the hearing. RP 4640. In addition, when Jones submitted April 2013 letter to FINRA in response to the audit report she falsely represented that "CDs will no longer be used as capital," when in fact, Jones was using the CD No. 0331 in calculating KJC's capital. *Id.* Therefore, the Hearing Panel concluded that, when Jones made this representation, she knew that it was improper to use it in calculating KJC's net capital. RP 4641. Finally the Hearing Panel concluded that "despite knowing that



**OS Received 05/17/2021**

FINRA had been seeking information about the 2011 CD since November 2014, Jones failed to promptly inform FINRA staff when the bank president informed her in March 2015 that the 2011 CD had been cancelled." *Id.*

### C. The NAC's Decision

Applicants appealed to the NAC. RP 4657-59. In their appellate brief, Applicants conceded liability as found in the Hearing Panel's decision, and thus their appeal focused on sanctions only. RP 4759-77. Applicants argued that the sanctions the Hearing Panel imposed were too severe, punitive, and should be reduced. After an independent review of the record, the NAC affirmed the Hearing Panel's findings of liability and modified the sanctions imposed. RP 4986-5005. In affirming the Hearing Panel's decision, the NAC accepted and relied on the Hearing Panel's findings, which were based on observing Jones's testimony and cross-examination, that Jones's testimony was not credible.

Regarding sanctions, the NAC affirmed the fine imposed on KJC, but it concluded that more stringent sanctions were warranted considering the egregiousness of Jones's violations. RP 4973. The NAC determined that separate bars were appropriate sanctions for Jones's recordkeeping violations and her failures to respond truthfully to FINRA's requests for information. RP 4973-78. Applicants appealed the NAC's decision to the Commission. RP 5008-10.

## IV. DISCUSSION

The Commission should dismiss this application for review if it finds that Applicants engaged in conduct that violated federal securities laws and FINRA rules, FINRA applied its rules in a manner consistent with the purposes of the Exchange Act, and FINRA imposed



**OS Received 05/17/2021**

sanctions that are neither excessive nor oppressive and that do not impose an unnecessary or inappropriate burden on competition. 15 U.S.C. § 78s(e).

The NAC's findings of liability in this case are sound, and the sanctions the NAC imposed are appropriately remedial. Applicants provide no basis upon which the Commission should modify the sanctions, which are abundantly supported by record evidence. The Commission should therefore dismiss the application for review.

### A. Jones Caused KJC to File Materially Inaccurate FOCUS Reports and Inaccurate Books and Records

KJC willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3 by failing to record the cancellation of CD No. 0331 in its books and records. In addition, KJC willfully violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rules 4511 and 2010, and Jones violated FINRA Rules 4511 and 2010, because, between April 2014 and February 2016, they filed FOCUS reports that reflected CD NO. 0331 as an allowable asset—despite the fact that Jones had pledged CD No. 0331 as collateral for a personal loan and CNB had cancelled CD No. 0331 in March 2014.

FINRA member firms must prepare general ledgers and trial balances. Exchange Act Section 17(a)(1) requires that broker-dealers make and keep such records and make and disseminate such reports as the SEC, by rule, prescribes. Exchange Act Rule 17a-3(a)(2) requires the preparation of general ledgers, specifically, "ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts." 17 CFR § 240.17a-3(a)(2). Exchange Act Rule 17a-3(11) requires broker-dealers to make and keep current, on a monthly basis, a "record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date[.]" 17 CFR § 240.17a-3(a)(11). The failure to maintain accurate ledgers and trial

balances violates Exchange Act Rule 17a-3 as well as FINRA Rule 2010. *See Dep't of Enf't v. Block*, Complaint No. C059990026, 2001 NASD Discip. LEXIS 35, at * 18-19 (NASD NAC Aug. 16, 2001).

Exchange Act Rule 17a-5(a)(2)(iii) requires broker dealers that neither clear customer transactions nor carry customer accounts to file FOCUS reports on a quarterly basis. Implicit in that requirement is that the FOCUS reports be materially accurate. *John M. Repine*, Exchange Act Release No. 54937, 2006 SEC LEXIS 2916, at *26 (Dec. 14, 2006). The filing of an inaccurate FOCUS report is a violation of Exchange Act Rule 17a-5(a)(2) and FINRA Rule 2010.

FINRA rules also require that members comply with these recordkeeping and reporting requirements. FINRA Rule 4511(a) requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." A violation of FINRA Rule 4511 also constitutes a violation of FINRA Rule 2010.[4] The Commission has repeatedly held that the duties to maintain records and file reports require that such records and reports be true and correct. *Dept of Enf't v. Inv. Mgmt. Corp*., Complaint No. C3A010045, 2003 NASD Discip. LEXIS 47, at *20 (NASD NAC Dec. 15, 2003). Thus, entering inaccurate information in a member firm's general ledgers and FOCUS reports violates both Rule 4511's requirement to keep accurate books and records and Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of

[4] FINRA Rule 0140 provides that FINRA rules apply with equal force to member firms and associated persons. Thus, an associated person violates FINRA Rules 4511 and 2010 when she causes a member firm to maintain inaccurate books and records. *See Dep't of Enf't v. Trevisan*, Complaint No. E9B2003026301, 2008 FINRA Discip. LEXIS 12, at *28 (FINRA NAC Apr. 30, 2008) (finding that an associated person who entered inaccurate information into Firm's records violated NASD Rule 3110 (the predecessor to FINRA Rule 4511) and NASD Rule 2110 (the predecessor to FINRA Rule 2010)).



**OS Received 05/17/2021**

trade. *Trevisan*, 2008 FINRA Discip. LEXIS 12, at *27-29 (finding that an associated person who entered inaccurate information into firm's records violated NASD Rule 3110) (the predecessor to FINRA Rule 4511) and NASD Rule 2110 (the predecessor to FINRA Rule 2010).[5]

Jones caused CD No. 0331 to be reflected on KJC's general ledger as an asset long after it was cancelled and while it was pledged as collateral for a loan. While the Hearing Panel concluded that there was no evidence that Jones or KJC received *contemporary notice* of the cancellation of the CD, it did find that Jones knew that her loan was past due, knew she had not satisfied or renewed the loan, and that she had received a letter stating that CNB would use CD No. 0331 to satisfy the unpaid loan if she did not renew the loan. RP 4621. Indeed, Applicants' argument that Jones did not receive notice of CNB cancelling the CD and that she believed that it was not cancelled would completely overturn the Hearing Panel's credibility determination. Consequently, by filing materially inaccurate FOCUS reports and allowing KJC's general ledger to reflect inaccurate information, Jones violated FINRA Rule 4511 and 2010.

Jones's misconduct also caused KJC to willfully violate Section 17(a) of the Exchange Act, Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010. In this context, willfulness is established because Jones "'subjectively intended to omit material information' from [her] required disclosures." *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC

[5] There is no requirement of proof of scienter to establish a violation of Rule 4511. *See Joseph G. Chiulli*, 54 S.E.C. 515, 522 (2000) ("Rule 3110 has no scienter requirement.") Conduct that violates Rule 4511 violates Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. *Dep't of Enf't v. Mielke*, Complaint No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *35 n.33 (FINRA NAC July 18, 2014) (holding that an associated person's failure to comply with NASD Rule 3110 violates FINRA Rule 2010), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

LEXIS 1903, at * 38 (Jul. 31, 2019) (citing *Robare Grp., Ltd. v. SEC*, 922 F. 3d. 468 (D.C. Cir. 2019)). Jones, as the firm's president and FINOP, knew that the CD was not an allowable asset but still caused it to be reflected as such on KJC's books and records and FOCUS reports, even after the CD was cancelled. The NAC properly attributed Jones's willfulness to KJC and concluded that KJC acted willfully. *Dep't of Enf't v. The Dratel Grp., Inc.*, Complaint No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *78 (FINRA NAC May 2, 2014) ("Based on [registered person's] conduct, sole ownership of [the firm], control over the firm, and position as the only registered person conducting a securities business at [the firm], we attribute [the registered person's] willfulness to [the firm] and find that the firm also acted willfully."), *aff'd*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2016).

### B. Jones Provided Inaccurate and Misleading Information, Documents, and Testimony and Refusing to Answer Questions

On numerous occasions, Jones provided inaccurate and misleading information and documents in response to requests made by FINRA staff, in violation of FINRA Rules 8210 and 2010.

FINRA Rule 8210 requires associated persons to provide information in writing or orally with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. "The rule is at the heart of the self-regulatory system for the securities industry" and '"provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.'" *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) (*quoting Richard J. Rouse*, 51 S.E.C. 581, 588 (1993)), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). "Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest." *Rouse*, 51 S.E.C. at 588. Consequently, a

violation of FINRA Rule 8210 is serious and subverts FINRA's ability to carry out its responsibilities as a regulator, threatening both investors and the markets. *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *33 (June 14, 2013).

In addition, FINRA Rule 2010 is a general ethics rule that requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." An associated person violates FINRA Rule 2010 when he or she violates any other FINRA rule, including FINRA Rule 8210. *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008). Moreover, providing false information to FINRA (that is not subject to a FINRA Rule 8210 request) is an independent violation of FINRA Rule 2010. *Id.* at *23-24.

The NAC was correct in finding that Jones violated FINRA Rule 2010 by making misleading statements during the 2014 cycle examination regarding efforts to obtain information and documents from CNB concerning CD No. 0331 and by misrepresenting to FINRA staff that her mother had died. Jones also violated FINRA Rules 8210 and 2010 by omitting the Birmingham and Chicago airline tickets from her signed statements describing the Houston investigation and by falsely testifying at her OTR that CD No. 0331 was never pledged as security for a loan.

Finally, Jones violated FINRA Rules 8210 and 2010 by refusing to answer questions during her OTR regarding whether her mother was still alive and whether Jones had previously represented to FINRA staff that she had died.

### C. The Sanctions Imposed are Appropriate to Protect Investors and the Public Interest and to Promote Market Integrity

The Commission should affirm the NAC's sanctions, which are well-supported and are neither excessive not oppressive. Section 19(e)(2) of the Exchange Act provides that the

Commission may eliminate, reduce, or alter a sanction if it finds that the sanction is excessive, oppressive, or imposes a burden on competition not necessary or appropriate to further the purposes of the Exchange Act. *See Jack H. Stein*, 56 S.E.C. 108, 120-21 (2003). In considering whether sanctions are excessive or oppressive, the Commission gives significant weight to whether the sanctions are consistent with the framework provided in FINRA's Sanction Guidelines ("Guidelines"). *See Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *25 n.37 (Mar. 29, 2016). *See Vincent M. Uberti*, Exchange Act Release No. 58917, 2008 SEC LEXIS 3140, at *22 (Nov. 7, 2008) (noting that the Guidelines serve as "benchmark" in Commission's review of sanctions).

The sanctions the NAC imposed on Jones are neither excessive nor oppressive and serve to protect investors, market integrity, and the public interest. To assess the appropriate sanctions, the NAC consulted the Guidelines, applied the principal and specific considerations outlined in the Guidelines, and considered all relevant evidence of aggravating and mitigating circumstances. The Commission should therefore affirm the sanctions imposed in their entirety.

**1. The Sanctions Imposed for Materially Inaccurate FOCUS Reports and Inaccurate Books and Records Are Appropriately Remedial**

To determine the appropriate sanctions for Applicants' books and records violations, the NAC considered the guideline for forgery, unauthorized use of signatures or falsification of records, together with the guideline for recordkeeping violations and the guideline for filing false or misleading FOCUS reports. *FINRA Sanction Guidelines* 29, 37, 70. In the absence of other violations and customer harm, the guideline for falsification of records instructs adjudicators to consider a suspension of 10 business days to six months. *Id.* at 37. When the misconduct is accompanied by significant aggravating factors, or there is customer harm, a bar should be considered standard. *Id.*

The guideline for recordkeeping violations instructs adjudicators to consider, in cases where aggravating factors predominate, a fine of $10,000 to $155,000 and a longer suspension of an individual (of up to two years) or a bar. *Id.* at 29. When significant aggravating factors predominate, the guideline states that consideration should be given to a fine higher than $55,000. *Id.* Adjudicators also should consider suspending a firm for ten business days to two years or expelling the firm in cases where aggravating factors predominate. *Id.* Among the specific principal considerations are the nature and materiality of the inaccurate information, whether the inaccurate information was entered intentionally, and whether the violations occurred over an extended period of time and involved a pattern of misconduct. *Id.*

The guideline for filing false or misleading FOCUS reports instructs adjudicators to consider imposing a fine between $10,000 and $77,000 and suspending the FINOP or other responsible principal in any or all capacities for up to two years. *Id.* at 70

The NAC properly concluded that extensive aggravating factors predominate KJC's and Jones's misconduct. Jones's misconduct persisted for years. *Id.* at 7 (Principal Consideration Nos. 8 and 9); 29 (Recordkeeping Violations, Principal Consideration 1). Beginning in early 2012, Jones filed FOCUS reports on behalf of KJC that reported CD No. 0331 as an allowable asset, even though she knew that she had pledged CD No. 0331 as collateral for a personal loan, which disqualified the CD as an allowable asset. Then, when Jones and KJC acquired the CD No. 0557 in December 2014, Jones improperly caused KJC to report that CD as an allowable asset for a period even though she knew that she had also pledged the CD as collateral for a personal loan. Jones repeatedly falsified the firm's financial records that materially overstated KJC's net capital. She deliberately inflated KJC's reported net capital to enhance her prospects of getting new business. RP 3304-05, 3307. *See FINRA Sanction Guideline* at 8 (Principal



**OS Received 05/17/2021**

Consideration No. 13 (whether misconduct was the result of an intentional act)), 29 (Recordkeeping Violations, Principal Consideration No. 3). She knew that CD No. 0331 was not an allowable asset, but she continued to include it in KJC's net capital computations even after the firm's auditor flagged the issue, and FINRA placed KJC under heightened surveillance for misallocated CDs. *Id.* at 8 (Principal Consideration No. 14 (whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA that the conduct violated FINRA rules or applicable securities laws or regulations)). Jones concealed the firm's recordkeeping and reporting violations from FINRA through her continuous provision of intentionally inaccurate firm records and during FINRA's examination and investigation. *See id.* at 7 (Principal Consideration No. 10 (whether the respondent attempted to conceal her misconduct)). The NAC was correct to rely on these aggravating factors in increasing the sanction imposed on Jones and affirming the sanction for the firm.

Applicants argue that imposing a bar on Jones and the statutory disqualification of the firm are inappropriate because, while they conceded the FOCUS reports were "inaccurate," they did not knowingly or intentionally make these inaccuracies. Br. at 13. To support this argument, Applicants point only to Jones's own testimony, which the Hearing Panel and the NAC found demonstrably incredible.[6]

[6] Applicants also argue that because the Hearing Panel concluded that Enforcement failed to provide sufficient evidence to support several of its allegations in its complaint that it somehow absolves her falsification of FOCUS reports and KJC's books and records. Br. at 14. It does not. As the record amply demonstrates, and both the Hearing Panel and the NAC found, Jones knew that the CD was pledged as collateral for the loan that she used to pay for the same CD and as such the CD was not an allowable asset. Despite this knowledge, Jones caused KJC to reflect the CD as an allowable asset on the firm's FOCUS reports and in its books and records and then attempted to mislead FINRA.



**OS Received 05/17/2021**

The NAC's sanction of a bar for Jones is warranted because keeping accurate records is crucial to maintain a properly functioning regulatory system. "Indeed, the [SEC] has stressed the importance of the records that broker-dealers are required to maintain pursuant to the Exchange Act, describing them as the 'keystone of the surveillance of brokers and dealers by our staff and by the securities industry's self-regulatory bodies.'" *Trevisan*, 2008 FINRA Discip. LEXIS 12, at *36 (quoting *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977), *aff'd*, 591 F.2d 588 (10th Cir. 1979)). Notwithstanding the importance of accurate recordkeeping, the firm, through Jones, intentionally and repeatedly reported CD No. 0331 as an allowable asset, even though Jones knew from the outset that she had pledged the CD as collateral a loan, and therefore knew CD No. 0331 was not an allowable asset. Jones knowingly overstated her firm's net capital for years, and repeatedly misled FINRA staff during its examination and investigation. Applicants irresponsibly disregarded their obligations with respect to their recordkeeping requirements. Applicants have persistently refused to acknowledge the severity of their misconduct, ignoring the voluminous evidence against them. Both remedial and deterrent purposes are served by the imposition of meaningful sanctions that will remediate the misconduct, deter the firm from future misconduct, deter other firms and representatives from filing intentionally falsified documents with their regulators, and protect market integrity and the public interest. KJC's monetary fine and Jones's bar are warranted and should be affirmed by the Commission.

**2. The Sanction Imposed for Providing Inaccurate and Misleading Information, Documents, and Testimony and Refusing to Answer Questions is Appropriately Remedial**

The NAC determined that it was appropriate to impose a unitary sanction for Jones's inaccurate and misleading responses, in violation of FINRA Rule 2010, as well as her misrepresentations and refusal to answer questions in violation of FINRA Rule 8210. S*ee Dep't*

*of Enf't v. Evansen*, Complaint No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *56 n.43 (FINRA NAC Jun. 3, 2014) (applying unified sanction when respondent both responded late to FINRA Rule 8210 requests for information and documents and failed to appear in response to a FINRA Rule 8210 request for his testimony), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *55 (July 27, 2015). After its review of the record, the NAC correctly concluded that the three causes of action together constituted a continuous course of conduct by which Jones persistently attempted to thwart FINRA's examination and investigation, and imposed a bar, which the Commission should affirm.

The NAC's sanction of a bar is consistent with the *Guidelines* and supported by numerous aggravating factors. For providing inaccurate or misleading information to FINRA in response to FINRA's information, document, and testimony requests, the Guidelines provide that a bar should be standard. *Guidelines*, at 33. The Guidelines further provide that a bar is standard for a partial but incomplete response, unless the person can demonstrate that the information provided substantially complied with all aspects of the request.

In cases involving a complete failure to respond to a particular request in a matter that involved multiple separate requests for information or testimony, where the individual complied with at least some of the requests, the failure to respond is treated as a "partial but incomplete failure to respond." *See Plunkett*, 2013 SEC LEXIS 1699, at *55-56 (holding that the determination of sanctions for a failure to respond violation must take into account the extent to which the respondent complied with other requests made in the same investigation); *Dep't of Enf't v. N. Woodward Fin. Corp*., Complaint No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *37 (FINRA NAC Jul. 21, 2014) (same), *aff'd*, 2015 SEC LEXIS 1867 (May 8, 2015), *aff'd*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

Three principal considerations apply when, as here, the FINRA Rule 8210 violations involve a partial but incomplete response. *Guidelines*, at 33. First, adjudicators should consider the importance of the information that was requested but not provided as viewed from FINRA's perspective, and whether the information that was provided was relevant and responsive to the request. Second, adjudicators should consider the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response. Third, adjudicators should consider whether the respondent thoroughly explained one or more valid reasons for the deficiencies in the response. *Id.*

The NAC found that each of the three factors weighed in favor of a bar. The NAC concluded that, from FINRA's perspective, the information that Jones did not provide was important. The information FINRA sought was central to two investigations—one concerning Applicants' use of CD No. 0331 as an allowable asset and the other concerning Jones's unauthorized billing of personal travel expenses to the City of Houston. *See Dep't of Enf't v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *35 (FINRA NAC May 14, 2014) ("FINRA staff sought documentation to determine whether Eplboim committed serious infractions of FINRA rules, and they were unable to do so because they did not have the requested documents.").

Second, Jones's subterfuge exhibited a pattern of misconduct over many months during which time FINRA had to exert a tremendous amount of regulatory pressure. From at least November 2014, Jones misled FINRA by not disclosing that she had pledged the CD No. 0331 as collateral for a personal loan and repeatedly made excuses for why she could not get information regarding the CD from the bank. She also repeatedly failed to timely respond to FINRA's requests for information and documents. In March 2015, Jones falsely represented to a

FINRA examiner that her mother had died, and in May 2015, at her OTR, Jones refused to retract or confirm that falsehood. Jones also knew that her Birmingham and Chicago trips were important to FINRA's investigation yet omitted these trips from her written statements, thereby impeding FINRA's ability to learn key information about the Houston Investigation. Nor did Jones provide any valid reason for her failures to comply—timely, completely, or truthfully—with FINRA's requests.

The NAC's conclusion is consistent with the Commission's recognition of the importance of FINRA Rule 8210, and that a failure to comply with FINRA Rule 8210 "is a serious violation justifying stringent sanctions because it subverts [FINRA]'s ability to execute its regulatory functions." *Elliot M. Hershberg*, 58 S.E.C. 1184, 1190 (2006), *aff'd*, 210 F. App'x 125 (2d Cir. 2006). The Commission has "repeatedly stressed the importance of cooperation in [FINRA] investigations . . . . Failures to comply [with Rule 8210 requests] are serious violations because they subvert [FINRA's] ability to carry out its regulatory responsibilities." *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998). Jones knew that her testimony that she did not use CD No. 0331 as collateral was false, and prior to her OTR tried to stall and hinder FINRA's examination and subsequent investigation. She knew that FINRA was investigating her Birmingham and Chicago trips, but tried to hide her misconduct. She also knew that she was not truthful when she informed FINRA staff that her mother had died—and did not confess this lie until three months later. Based on the foregoing, the NAC properly concluded that Jones's provision of false and misleading information to FINRA was egregious and has rendered her unfit to remain in the securities industry. The Commission should therefore affirm the bar.

### 3. The NAC Properly Considered Applicants' Arguments for Mitigation

Applicants argue that the NAC ignored mitigating factors present in this case. They argue that the Jones's health problems, the lack of customer harm, and Jones's attempts to assist FINRA with its examination should all serve to mitigate her misconduct. Br. at 19. On the contrary, the NAC carefully considered Applicants' arguments for mitigation and nevertheless determined that they did not provide mitigation sufficient to warrant a sanction less than a bar.

Applicants argue that Jones's assistance with FINRA's examination should be mitigating. It is not. As a FINRA member, Jones agreed to comply with all FINRA rules. Her cooperation with FINRA's examination is expected rather than mitigating. *See Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006) (rejecting respondent's argument for a lesser sanction because he cooperated with NASD's investigation and testified truthfully). Jones should not be rewarded for merely acting in accordance with her duties as a FINRA member. Similarly, Applicants attempt to minimize the importance of the information that Jones refused to provide—regarding the death of her mother—but ignore her multiple misrepresentations over the course of many months that were material to FINRA's twin investigations.

Applicants also argue that the lack of customer harm should result in a lower sanction and point to the guideline for falsification of records and recordkeeping violations. Applicants correctly note that the guideline instructs adjudicators to consider a lower sanction if there is no customer harm, however, they view that discreet instruction in a vacuum. Applicants do not acknowledge that the guideline goes on to state that if the misconduct is accompanied by

significant aggravating factors, a bar is standard. Here, although there was no customer harm there were substantial aggravating factors, which fully support the imposition of a bar.[7]

Finally, even crediting Jones's testimony regarding her family and personal problems, this mitigation argument fails. In general, personal problems such as stress and health issues do not mitigate violations of FINRA rules. *See John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *20-21 (Oct. 8, 2015) (rejecting argument that outside stress caused respondent's misconduct or served to mitigate such misconduct and stating that respondent's "course of conduct was not the type that one might associate with stress, such as an unthinking reaction during a stressful moment that is later redressed; instead, his deceptive conduct demonstrated a high degree of intentionality over a long period of time"), *petition for review denied in part and remanded in part*, 873 F.3d 297 (D.C. Cir. 2017). Such problems may be treated as mitigating only "if there is evidence that such problems "interfered with an ability to comply with FINRA rules or that violations resulted from, or were exacerbated by, such problems." *Id*. at *23. Making such a showing "is a difficult burden to meet and, in fact, one that has rarely been met." *Id*. at *24.

Jones falls far short of meeting this burden. Her course of misconduct spanned a period of years prior to the 2013 onset of the personal difficulties Jones contends should be mitigating. The conduct involving Applicants use of the CD reveal a firm that needed more capital and chose to falsely claim that CD an allowable asset that was, in fact, collateral for a person loan. When FINRA investigated the CD, Jones gave misleading answers, submitted screenshots that for an earlier time period, and denied that she remembered the terms of a loan that she signed.

[7] In general, it is well settled that the absence of customer harm is not mitigating. *See, e.g.*, *KCD Fin. Inc*., Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017).

The source of Jones's problems was her decision to improperly inflate her firm's net capital; not that stress caused her to undertake a course of deception. The NAC clearly considered all potential mitigation and correctly concluded there were not mitigation factors to warrant a sanction lower than a bar.

**4. The NAC Acted Appropriately When It Increased the Sanctions**

Applicants also argue that the NAC improperly increased Jones's sanctions "even though [Enforcement] did not appeal the original sanctions and despite the fact the sanctions imposed by the Extended Hearing Panel were already excessive." Br. at 19. Applicants' citation to criminal law cases (Br. at 20) has no application to interpreting FINRA's rules regarding an appeal to the NAC.

FINRA rules expressly permit the NAC, "after considering all matters presented in the appeal or review and the written recommended decision of the Subcommittee," to "affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction." FINRA Rule 9349. As the Commission has observed previously, "the exercise of the NAC's power to impose additional sanctions in appropriate circumstances does not infringe on the right of appeal. The mere fact that the NAC increased the sanctions here does not render [the sanction] invalid on fairness grounds." *Joseph Abbondante*, 58 S.E.C. 1082, 1111 (2006) (sustaining increased sanctions imposed by the NAC), *aff'd*, 209 F. App'x 6 (2d Cir. 2006). Indeed, after filing its notice of appeal, Applicants were expressly informed that the "NAC also may increase, decrease, or sustain sanctions that were imposed by the Hearing Panel and impose additional sanctions and hearing costs." RP 4686.



**OS Received 05/17/2021**

### 5. The Bars and Statutory Disqualification are Not Punitive

Applicants contend that the NAC did not properly explain why the bars and the statutory disqualification were appropriate, that lifetime bars are purely punitive in nature, and that Jones's misconduct is akin to other litigated matters where respondents received sanctions less than a bar. Each of these arguments fail.[8]

First, as detailed above, the NAC carefully explained why the sanctions it imposed on Jones were appropriate. The decision discusses the relevant guidelines and principal considerations, addresses the aggravating factors, and explains why Applicants' proposed mitigating factors fail.

Second, Applicants' argument that the bars and disqualification are punitive because they do "nothing to compensate victims or otherwise remedy a harm to them, nor does it protect investors in the future," is based on an incomplete understanding of the purpose of FINRA sanctions. Br. at 21. The bars were not imposed to punish Jones, but to protect the investing public and other market participants from a person who cannot be trusted in the future to comply with legal and regulatory requirements. While a bar generally has an impact that feels punitive, the sanction also has a remedial aspect if it focuses on protecting the public from the risk of future misconduct, improving business conduct in the securities industry, and enhancing public confidence in the people and institutions who participate in the industry. "Ordering the fox out of the henhouse, where 'necessary to protect the investing public and the integrity of the security industry,' 'falls comfortably within the common understanding of the term remedial." *John M.E.*

[8] Statutory disqualification is not a sanction and thus cannot be punitive. S*ee Michael Earl McCune*, Exchange Act Release No. 77375 , 2016 SEC LEXIS 1026, at *37 (Mar. 15, 2016) (explaining that "FINRA does not subject a person to statutory disqualification as a penalty or remedial sanction" and that, "[i]nstead, a person is subject to statutory disqualification by operation of Exchange Act Section 3(a)(39)").

*Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at *23 (Aug. 23, 2019) (quoting *Saad v. SEC*, 873 F.3d 297, 312 (D.C. Cir. 2017) (dubitante opinion of Millett, J)). Such is the case here. For years, Jones was intentionally dishonest in her recordkeeping and then in her responses to FINRA. The NAC concluded that Jones's misconduct has rendered her unfit to remain in the securities industry.

Finally, Applicants present the Commission with several decisions by FINRA Hearing Panels where sanctions less than a bar were imposed and argue that the sanctions imposed on Jones should be comparable. As the Commission has repeatedly noted, "the appropriate sanction depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings." *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *39 (Feb. 7, 2020) (internal citations omitted), *petition for review denied in part and denied in* part, 989 F.3d 4 (D.C. Cir. 2021).

### D. Applicants Other Arguments Fail[9]

Faced with incontrovertible facts, and her own admissions, which establish that Jones caused her firm's books and records to be incorrect, filed false FOCUS reports, and made

[9] Applicants raise new constitutional and procedural arguments that were not litigated below. Therefore—apart from the arguments that specifically address the proceedings before the NAC, and its decision—Applicants failed to exhaust these arguments before FINRA. Therefore, these arguments are not properly before the Commission. *See Newport Coast Sec. Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *39 (2020) (finding that "Newport failed to exhaust its claim that the manner of selection of FINRA's adjudicators violates the Appointments Clause by failing to raise the claim before FINRA"). In raising these new arguments before the Commission, Applicants prevented the NAC from making a ruling and giving its rational, traditional reasons that support the forfeiture of arguments that were not presented below. In any event, as stated more fully in this brief, Applicants' constitutional and procedural arguments lack merit.

misrepresentations to FINRA, Applicants makes a variety of meritless arguments on appeal. The Commission should reject each of them.

### 1. FINRA Is Not a State Actor

As an initial matter, most of Applicants arguments require the foundational assumption that FINRA is a state actor. These arguments collapse under the weight of established precedent.[10]

It is well settled that FINRA is not a state actor subject to Constitutional restrictions. "[FINRA] is not a governmental agency, but rather a private corporation organized under the laws of Delaware." *Jones v. SEC*, 115 F.3d 1173, 1183 (4th Cir. 1997), *aff'd*, 523 U.S. 1072 (1998); *see Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999) ("[FINRA] is a private actor, not a state actor. It is a private corporation that receives no federal or state funding. Its creation was not mandated by statute, nor does the government appoint its members or serve on any NASD board or committee."), *aff'd*, 531 U.S. 1069 (2001). Thus, FINRA's actions do not violate the Constitution. *See Manuel P. Asensio*, Exchange Act Release No. 62645, 2010 SEC LEXIS 2521, at *6-7 (Aug. 4, 2010) (rejecting argument that FINRA exercises federal executive power)*; Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *37 n.52 (Mar. 15, 2016) (holding that FINRA is not a state actor and thus could not violate the applicant's due process rights), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). Because FINRA is not a state actor, Applicants constitutional arguments must fail.

---

[10] *See William J. Gallagher*, 56 S.E.C. 163, 168 n.10 (2003) ("[W]e note that many courts and this Commission have determined that self-regulatory organizations . . . are not subject to . . . constitutional limitations applicable to government agencies."); *cf. San Francisco Arts & Ath., Inc. v. United States Olympic Comm.*, 483 U.S. 522, 544 (1987) ("[E]ven extensive regulation by the government does not transform the actions of the regulated entity into those of the government.").

### 2. FINRA Did Not Deny Applicants Fair Process

Applicants argue that FINRA violated Jones's constitutional due process rights in several ways. Each of their arguments fail. At the outset we note that FINRA cannot violate Jones's constitutional rights because it is well-settled that FINRA is not a state actor. "FINRA in not a state actor and thus, traditional Constitutional due process requirements do not apply to its disciplinary proceedings." *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *34 (Oct. 20, 2011) (citing *Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999)).

#### *a. The NAC Panelists Were Impartial and Fair*

Without any support, Applicants argue that, because one of the panelists is allegedly an owner and associated person of a "competitive broker-dealer," the proceedings before the NAC were not fair and impartial. Br. at 24. As a threshold matter, Applicants have not alleged or submitted any evidence to establish how a member of the NAC subcommittee was a competitor of Jones or KJC. As the Commission has previously stated, "the mere fact that the panel member is employed by a potential competitor []and has a possible general pecuniary interest in the resolution of the matter does not mean that [the firm] did not receive a fair hearing. Self-regulation of the securities industry necessarily entails adjudication by competitors." *Sierra Nev. Sec., Inc*., 54 S.E.C. 112, 120 (1999). Given this necessity, Applicants must demonstrate a "particularized bias or a showing of bias beyond merely being a competitor in order to prove an impermissible conflict of interest." *Id.*

Applicants have not alleged or even demonstrated any such particularized bias. *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *62 (Jan. 30, 2009), *aff'd*, 416 F. App'x 142 (3d Cir. 2010). "[B]ias by a[n adjudicator] is disqualifying only when it

ste[m]s from an extrajudicial source and results in a decision on the merits based on matters other than those gleaned from participation in a case." *See id*. In this case, the evidence demonstrates that the NAC formulated its opinions based on the robust record and imposed liability and sanctions against Applicants based on that overwhelming evidence. In addition, Applicants knew that the panelist would be serving on the Subcommittee as of January 2019—seven months before oral arguments—and never raised any challenges.[11] RP 4749.

*b. FINRA Did Not Engage in Double Jeopardy*

In another due process-related arguments, Applicants argue that FINRA improperly duplicated rule violations by imposing Rule 2010 violations for the commission of the FINRA Rule 4511 and 8210 violations, thereby violating the double jeopardy clause of the Fifth Amendment of the Constitution.[12] As previously stated, not only are Applicants constitutional and due process arguments meritless, the Commission has consistently and repeatedly acknowledged that a violation of a federal securities law or regulation or FINRA rule constitutes a violation of FINRA Rule 2010.[13] *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *26 n. 29 (July 2, 2013) (describing this as a "long-standing and judicially-recognized policy"); *see also, e.g.*, *Katz v. SEC*, 647 F.3d 1156, 1158 n.2 (D.C. Cir. 2011) (recognizing that a violation of an SRO or Commission rule also violates an SRO's prohibition

---

[11] *See Mayer A. Amsel*, 52 S.E.C. 761, 767 (1996) ("we have stated that 'a respondent cannot be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action.'") (citation omitted).

[12] The Commission has squarely rejected the argument that the double jeopardy clause applies to the disciplinary sanction imposed by a securities exchange. *Harold C. Allan*, Exchange Act Release No. 14763, 46 S.E.C. 1218, 1223 (1978).

[13] We note that some of the violations related to Jones's misrepresentations that were not made in response to FINRA Rule 8210 were charged solely as FINRA Rule 2010 violations.

against engaging in conduct inconsistent with just and equitable principles of trade). Applicants' assertion, without any support, that the NAC improperly imposed additional sanctions for their FINRA Rule 2010 violations should be disregarded.

*c. The NAC did Not Improperly Aggravate Jones's Violations*

Applicants maintains FINRA "deprived Ms. Jones due process" by treating Ms. Jones's purported violations as both the underlying FINRA Rule 8210 and 2010 violation and aggravation of her FINRA Rule 4511 and 2010 violations. Br. at 27-28. The NAC did nothing improper. The Hearing Panel and the NAC found Jones liable under FINRA Rule 8210 and 2010 for making misleading statements during the 2014 cycle examination regarding efforts to obtain information and documents from CNB concerning the CD No. 0331. This is separate from her concealment—during the examination and investigation—of the fact that CD No. 0331 was improperly classified as an allowable asset. Thus, the basis for her violation of FINRA Rule 8210—that Jones could not obtain from CNB documents showing the value of the CD—was not used as an aggravating factor for her recordkeeping violations.

Similarly, Applicants argue that FINRA improperly "treated Ms. Jones's failure to answer personal questions" as both the underlying fact and aggravating factor for her FINRA Rule 8210 violations. Applicants cite to the Extended Hearing Panel's decision. However, the NAC decision makes no mention of Jones's failures to answer that particular question as aggravating. Notwithstanding that FINRA cannot violate Applicants' due process, Applicants argument is without merit.

*d. The NAC Did Not Punish Jones for Refusing to Answer Personal Questions*

Applicants maintain that, given the Hearing Panel's conclusion that Jones's dishonesty concerning whether her mother was alive or dead did not necessarily impede Enforcement's investigation, the NAC "punished" Jones for her refusal to answer.[14]

As an initial matter, Applicants' are incorrect in their contention that FINRA promised that it would not ask any "personal questions during the OTR." Br. at 29. Jones asked only that FINRA not ask any questions about her health. FINRA responded: "Your request is noted. We will only be discussing business-related items tomorrow." RP 3851. FINRA did not ask Jones any questions about her health. And questions related to FINRA's ability to access to Jones's mother's credit cards to resolve issues related to the Houston investigation were plainly business related.

In addition, the NAC's decision that a bar was the appropriate sanction for Jones's dishonesty does not stem solely from her refusal to answer that one question at her OTR, but rather her course of conduct over the entire examination and investigation. RP 4977. Jones made numerous misleading statements and acted to hinder FINRA's 2014 cycle examination and subsequent investigation. She made misrepresentations regarding her efforts to obtain information and documents from CNB concerning CD No. 0331 and falsely testified at her OTR that CD No. 0331 was never pledged as security for a loan. Jones also deliberately excluded Birmingham and Chicago airline tickets from her signed statements describing the Houston investigation. All of this deception was in addition to Jones's lying about the death of her mother and her refusal to answer a legitimate and relevant question from FINRA. Regardless of

[14] While it is true that the Hearing Panel found that Jones's refusal to answer did not impede the investigation, it still concluded that her refusal to answer was aggravating. RP 4652.

whether FINRA was capable of securing credit card information from another source, that information was material to FINRA's investigation.

### 3. FINRA's Exercise of Its Authority Is Not in Violation of the Constitution

In addition to their due process arguments, Applicants argue that FINRA's structure and procedures violate the Constitution in other ways. Specifically, they argue that if FINRA is not a state actor, which it clearly is not, FINRA's exercise of its delegated authority is unconstitutional. They maintain that the statutory scheme under the Exchange Act results in "double delegation" to FINRA, a private entity. Applicants cite to *Association of American Railroads v. United States Department of Transportation*, 721 F.3d 666 (D.C. Cir. 2013) to support their assertion that it impermissible for Congress to delegate authority to a private entity.

Again, despite Applicants' assertions otherwise, it is well-settled that FINRA does not violate the non-delegation doctrine. That doctrine does not bar private entities such as FINRA from "help[ing] a government agency make its regulatory decisions, for '[t]he Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality' that such schemes facilitate." *Ass'n of Am. R.R.s*, 721 F.3d at 671 (*quoting Pan. Ref. Co. v. Ryan*, 293 U.S. 388, 421 (1935)), *vacated on other grounds*, 575 U.S. 43 (2015). FINRA is registered under, and operates subject to, Section 15A of the Exchange Act. The Supreme Court noted in *United States v. NASD*, 422 U.S. 694, 700 n.6 (1975), that Section 15A, "supplements the SEC's regulation of the over-the-counter markets by providing a system of cooperative self-regulation through voluntary associations of brokers and dealers." FINRA is a private, independent, nonprofit, self-regulatory organization that participates in the regulation of the securities brokerage industry, subject to Commission oversight. Its rules must be approved by the Commission and FINRA's disciplinary actions are subject to Commission review. If a

government agency has discretion to approve, disapprove, or modify a private organization's proposed regulations, precedent establishes that Congress is entitled to formalize the organization's role in the regulatory process. *See, e.g.*, *R.H. Johnson & Co. v. SEC*, 198 F.2d 690 (2d Cir. 1952) (concluding that Exchange Act Section 15A did not constitute an unconstitutional delegation of power to the NASD because of the Commission's authority to disapprove NASD rules and review NASD disciplinary actions). Thus, Applicants' constitutional and delegation arguments must fail.

**4. The NAC's Construction Does Not Violate the Appointments Clause**

Applicants' final constitutional argument is that FINRA's hearing panelists and NAC members are officers of the United States and, because FINRA's adjudicators were not appointed by the President, a federal court, or government department head, this violates the Appointments Clause. Again, this argument is defeated by existing precedent.

Applicants concede that the potential success of this argument requires that FINRA be a state actor, which—as discussed above— it is not. Regardless, the Appointments Clause applies only when Congress creates an office of the United States with "significant authority pursuant to the laws of the United States." *Buckley v. Valeo*, 424 U.S. 1, 126 (1976) (per curiam); *see Freytag v. Comm'r*, 501 U.S. 868, 881 (1991) (observing that the "office" of the special tax judge was "established by Law" and that its "duties, salary, and means of appointment . . . [were] specified by statute"). As the Commission has recently pointed out in an opinion addressing a challenge to FINRA's disciplinary process under the Appointments Clause, "as we have held previously, the Appointments Clause does not apply to FINRA; accordingly, the manner in which FINRA hires its staff, hearing officers, and NAC members cannot violate the

Appointments Clause." *Newport Coast Sec., Inc.*, 2020 SEC LEXIS 917, at *43; *see also Asensio*, 2010 SEC LEXIS 2521, at *6 ("FINRA is not exercising federal executive power.")

Although Section 15A of the Exchange Act authorizes the Commission to exercise a "significant oversight function" over the rules and activities of FINRA, the Commission's oversight does not convert FINRA's actions into state actions mandating constitutional protections. *See Free Enter. Fund v. PCAOB*, 561 U.S. 477, 484-85 (2010) (contrasting "expansive powers" granted to the PCAOB with the more limited powers granted to SROs).[15] Therefore, the Commission should reject Applicants' unsupported attempt to challenge FINRA's sound adjudicatory process.

## V. CONCLUSION

The record in this case demonstrates that Jones acted dishonestly. She was dishonest when she caused her firm's books and records and FOCUS reports to be inaccurate by intentionally treating an encumbered CD as an allowable asset. Jones was then dishonest with FINRA, by either misrepresenting or failing to respond truthfully to FINRA's questions concerning this CD, as well as a separate investigation concerning Jones's unauthorized use of a credit card.

Jones's fundamental dishonesty has rendered her unfit to participate in the securities industry. The bars imposed are entirely appropriate for Jones's dereliction of her most basic

[15] Applicants are incorrect to characterize the PCAOB as FINRA's twin. On the key point of corporate governance, the two organizations are different. FINRA's Board is selected, pursuant to its By-Laws, by the Board itself or elections in which FINRA members may vote. *See* Restated Certificate of Incorporation of Financial Industry Regulatory Authority, Inc., Section 8; FINRA By-Laws, Art. 7, Sections 10 & 13. The PCAOB's members are appointed by the SEC, pursuant to statute. *See Free Enter. Fund*, 561 U.S. at 485 ("Unlike the self-regulatory organizations, however, the [PCAOB] Board is a Government-created, Government-appointed entity . . .").



**OS Received 05/17/2021**

obligations as a FINRA member. The Commission should sustain FINRA's action in all respects and dismiss the application for review.

Respectfully submitted,

/s/*Colleen E. Durbin*
Colleen Durbin
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8816

May 17, 2021



**OS Received 05/17/2021**

## CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

I, Colleen Durbin, further certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition not to exceed 14,000 words. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 13,148 words.

/s/*Colleen E. Durbin*
Colleen Durbin
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8816

**OS Received 05/17/2021**

## CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on May 17, 2021, I caused a copy of FINRA's Brief in Opposition to the Application for Review – in the matter of Application for Review of Robbi J. Jones and Kipling Jones & Company, Ltd., Administrative Proceeding No. 3-20209, to be filed through the SEC's eFAP system and served by electronic mail on:

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F. St., NE
Room 10915
Washington, D.C. 20549-1090
apfilings@sec.gov

and served by electronic mail on:

Steven M. Felsenstein, Esq.
Greenberg Traurig, LLP
1717 Arch Street
Philadelphia, PA 19103
felsensteins@gtlaw.com

Matthew P. Hoxsie, Esq.
Greenberg Traurig, LLP
2375 East Camelback Road,
Suite 700 Phoenix, AZ 85016
hoxsiem@gtlaw.com

William B. Mack, Esq.
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
mackw@gtlaw.com

/s/*Colleen E. Durbin*
Colleen Durbin
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8816
colleen.durbin@finra.org