U.S. SECURITIES & EXCHANGE COMMISSION
Washington, D.C.

In the Matter of the Application of ROBBI J. JONES Houston, TX and KIPLING JONES & COMPANY, LTD. Houston, TX For Review of Disciplinary Action Taken by FINANCIAL INDUSTRY REGULATORY AUTHORITY	**Admin. Proc. File No.: 3-20209** **Date of Service** **June 15, 2021**

APPELLANTS' REPLY BRIEF IN SUPPORT OF THE APPLICATION FOR REVIEW

Steven M. Felsenstein, Esq.
GREENBERG TRAURIG, LLP
1717 Arch Street
Philadelphia, PA 19103
(215) 988-7837
felsensteins@gtlaw.com

William B. Mack
GREENBERG TRAURIG, LLP
200 Park Avenue
New York, NY 10166
(212) 801-2230
mackw@gtlaw.com

Matthew P. Hoxsie
GREENBERG TRAURIG, LLP
2375 East Camelback Road
Phoenix, AZ 85016
(602) 445-8471
hoxsiem@gtlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

Appellants Robbi J. Jones ("Ms. Jones") and Kipling Jones & Company, LTD[1] ("KJC") (collectively, the "Appellants"), respectfully submit this Reply Brief in Support of the Application for Review of the December 17, 2020 decision by the National Adjudicatory Council ("NAC") of the Financial Industry Regulatory Authority ("FINRA") (the "NAC Decision").

Appellee FINRA's Brief in Opposition to the Application for Review ("Opposition") over-represents the evidence supporting the FINRA Hearing Panel and NAC's Decision, ignores comparable caselaw supporting the conclusion that Appellants' bar is unjustified and disproportionate, and only summarily responds to the constitutional issues raised by Appellants. FINRA's failure to address far shorter sanctions imposed in similar cases demonstrates that a lifetime bar in this case is both excessive and oppressive. Much of Appellants' argument has already been stated in full in Appellants' Brief in Support of the Application for Review, and so only a few replies are required here.

II. FACTUAL RECORD AND CHALLENGE TO THE SANCTIONS IMPOSED

A. The City of Houston's Investigation

In its Opposition, FINRA finally recognizes that the City of Houston's investigation related to five flights, not just two. *See* Opposition at 6 n.2. FINRA's characterization of this distinguishing fact as "irrelevant," however, is at odds with FINRA's mischaracterization of the record for two years. *See* FINRA 4487–88 ("In or around May 2013, the City of Houston Controller's Office began investigating what appeared to be an unauthorized use of a city credit account to purchase two airline tickets for travel by Jones."); FINRA's Brief in Opposition to Motion for Stay at 5–6 (stating the investigation was limited to round trip flights to Birmingham and Chicago, and that, when asked for documentation, "Jones provided copies of confirmations for unrelated flights, none of which pertained to the credit card charges that had precipitated the Houston Investigation"). The problem with FINRA's mischaracterizations of the record is that the

[1] KJC notified FINRA on March 29, 2021 of its intent to file Form BD-W. That form was filed on April 1, 2021. And FINRA processed the form on June 10, 2021.

errors were repeated by the NAC. *See* NAC Decision at 4 ("In May 2013, Houston's Office of the Controller ('Controller's Office') began investigating the use of a city credit card to pay for two Southwest Airlines ('Southwest') tickets in Jones's name ('Houston Investigation').").

In truth, the City of Houston's investigation concerned five flights, three of which Ms. Jones actually took in connection with City of Houston work and which she was immediately able to prove were proper. [FINRA 003158, 003263–64, 0041641, 004166, 004169 (Tr. 1126, 1231–32, CX-113 at 124–25, 132, 142–43)] The two Birmingham and Chicago flights were purchased by Ms. Jones herself. And she never sought reimbursement for them. Their inclusion on City of Houston records is suspect at best, if not fraudulently purchased by a City of Houston employee. [FINRA 004107–32, 004151, 004154, 004157, 004163–64 (CX-112, CX-113 at 70, 84, 95–97, 120–22)] And, perhaps most importantly, FINRA never charged Ms. Jones with a Rule 2010 violation related to her interactions with the City of Houston. Rather, the violation stems solely from FINRA's belief that Ms. Jones' responses were untimely and that she lied about her mother passing away (which the NAC acknowledged FINRA already knew and which did not impede its investigation).

FINRA's actions, to the contrary, are not supported by the evidence in the record and caused the NAC's Decision to be erroneous. The NAC states that Ms. "Jones had access to a city credit card because Houston was a municipal securities client of KJC." NAC Decision at 4. That conclusion is not supported by the record, however. Ms. Jones never had access to a city credit. Her practice was to incur expenses herself, and then submit reimbursement requests to the City of Houston. [FINRA 004097, 004149, 004150 (CX-109; CX-113 at 65, 69)] And she never sought reimbursement for non-City of Houston flights or expenses. [FINRA 004156 (CX-113 at 91)] FINRA's examiners did not dispute this. Rather, FINRA Examiner Hartman testified that it was his speculative belief that Ms. Jones must have stolen the card or its number. [FINRA 002969–72 (Tr. 937–40)]

FINRA's mischaracterizations and misrepresentations of the record are not trivial (or irrelevant). Neither are they insignificant, as they were adopted by the NAC. They go to the heart

of Ms. Jones' culpability and credibility. Indeed, FINRA chastises Ms. Jones, in her February 2015 responses to FINRA's request for documents related to the City of Houston's investigation, for not providing documents related to the "two charges [that the City of Houston] had determined were unauthorized." Opposition at 10. Ms. Jones responded regarding the flights she actually took on behalf of the City of Houston. FINRA ignores that Ms. Jones did not receive the City of Houston's letter to her attorney wherein the City of Houston sustained the two payments against her. She had no reason to believe that the Birmingham and Chicago tickets were still an issue. Ms. Jones' understanding was accordingly that the City of Houston's investigation regarding the two flights was closed and no charges were filed. Nevertheless, she submitted the records in question just one month later, following a phone call with FINRA. [FINRA 003793–96, (CX-66; CX-67)] And she testified at length during her on-the-record ("OTR") interview regarding the City of Houston's investigation – testimony which was entirely consistent with her other explanations. Indeed, FINRA admitted that they had exhibits CX-66 and CX-67 at her OTR and were able to ask questions about them. [FINRA 002213]

At worst, Ms. Jones provided untimely responses because the scope of the request was inaccurate and misleading. She did not provide incomplete responses and when the requests were clarified, she complied.

B. The 2012 Audit

FINRA highlights the 2012 audit in another attempt to heighten Ms. Jones' culpability. Opposition at 5, 16. The 2012 Audit was unrelated to CD-0331 however. Instead, the 2012 audit was related to CDs with the Bank of Texas. FINRA 004371–74. Thus, any statements Ms. Jones made in her response to FINRA to that audit were related only to those CDs. Further, the 2012 audit and any purported knowledge of <u>secured</u> loans does not change the fact no evidence contradicts Ms. Jones testimony that she did not know CD-0331 was secured. Her belief was that it was never pledged. Thus, even if she knew she could not use a secured CD as net capital, she did not know she was using a <u>secured</u> CD for net capital.

C. The NAC's Imposition of a Lifetime Bar and Statutory Disqualification are Excessive, Not Supported by the Record, and Punitive

The NAC's finding of "knowing and willful" violations is unsupported by the record. While there is no scienter requirement for record-keeping violations, Opposition at 20, there must be scienter to establish a "knowing and willful" violation sufficient to support a lifetime bar. As FINRA recognizes, willfulness requires proof that the member "subjectively intended to omit material information." *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *38 (July 31, 2019) (citing *Robare Grp., Ltd. v. SEC*, 922 F.3d 468 (D.C. Cir. 2019)). Ms. Jones did not know that CD 0331 was pledged, and thus her violations were not willful.

D. The Sanction Guidelines

As to the Sanction Guidelines, FINRA does not respond to Appellants' challenge to the NAC Decision's reliance on the sanction for forgery. *See* Opposition at 23 ("To determine the appropriate sanctions for Applicants' book and records violations, the NAC considered the guideline for forgery, unauthorized use of signatures or falsification of records, together with recordkeeping violations and the guidelines for filing false or misleading FOCUS reports."). There were no forgeries, unauthorized uses, or falsification of signatures or records. Rather, there were only incorrect FOCUS reports filed unknowingly as a result of inclusion of a secured CD.

To the extent the error in the FOCUS reports was unknown, FINRA claims the fact the error was repeated constitutes persistent and aggravating conduct. Opposition at 24. Ms. Jones did not know the CD was pledged, nor did she know the CD was not an allowable asset. And she did not conceal anything. Rather, Ms. Jones attempted to get documents from CNB, but was unable to (mostly because she continued to believe CD-0331 was active and thus was seeking records that did not exist).

FINRA argues three factors justify a lifetime bar for Ms. Jones' "partial but incomplete response[s]." Opposition at 28. The guidelines provide the following considerations:

1. Importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request.
2. Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.
3. Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.

Sanctions Guidelines at 33. The factors weigh in favor of a suspension far shorter than a lifetime bar. It should be noted that the first factor is both arbitrary and a denial of due process as its weight depends entirely on the importance "from FINRA's perspective." As a result, there is no way for any respondent to anticipate what conduct is covered. Absent any objective or measurable objectivity, it is hard to imagine when the first factor would not weigh in favor a lifetime bar, as FINRA presumably always considers the information it seeks to be important.

As to the City of Houston investigation, Ms. Jones provided records related to the three City of Houston flights that she took. One month later, after FINRA clarified its request via oral communication to Ms. Jones, she provided records she had that related to the two flights, for which she understood the City of Houston had dropped its investigation. Half of her OTR testimony reflects her consistent explanation that she never had a City of Houston credit card, and never took the flights in question. These were not "partial but incomplete" responses. Ms. Jones fully responded to, and testified regarding, FINRA's requests for information related to the City of Houston investigation. Importantly, because she provided all records and fully responded before the OTR, FINRA was able to examine her fully regarding the City of Houston's investigation.

As to CD-0331, Ms. Jones provided records as she herself obtained them. And to the extent she provided initially incomplete responses, her responses were incomplete only because she thought CD-0331 was still active. Again, her complete response was at worst untimely.

E. Mitigation

As to mitigation, FINRA claims that Ms. Jones' assistance with FINRA's examination is not mitigating, because it is expected. Opposition at 30. FINRA ignores that her cooperation with FINRA's investigation negates (i.e., mitigates) FINRA's claims that she was deceitful and obstructionist in providing responses to FINRA's investigation and therefore a lifetime bar is inappropriate. All of Ms. Jones' responses to FINRA's investigation, in totality, should be considered when determining whether she should be barred for purported partial, but incomplete or untimely, responses, which were engendered in part by a confusing FINRA request. This is especially true where the reasoning behind any sanction must be remedial – not punitive. *Saad v. SEC* (*Saad II*), 980 F.3d 103, 104 (D.C. Cir. 2020). A lifetime bar is not remedial where the member cooperated and provided responsive documents as she obtained them. (Ms. Jones does not attempt to minimize the importance of information concerning her Mother's death, rather, she simply pointed out what the NAC itself recognized – that it did not hinder FINRA's investigation and FINRA had already obtained the information it sought.)

F. The Lifetime Bar is not Appropriate or Necessary to Protect the Public

Next, FINRA justifies the lifetime bar by arguing it protects the investing public in the future. Opposition at 33. Appellants service only municipalities, and in that regard there was no customer harm here. Indeed, FINRA has not alleged, or provided any evidence supporting an allegation, that Ms. Jones' incorrect FOCUS reports have harmed the public in any way. *See* 15 U.S.C. § 78s(e)(2) (stating that sanctions must not be "excessive or oppressive" or "not necessary" to achieve the goals of the Exchange Act). Appellants do not seek to diminish the alleged violations, but seek only to challenge the appropriateness of a lifetime bar and FINRA's claims that it is necessary to protect the public.

G. This Lifetime Bar is Not Comparable to Like Cases

Finally, FINRA ignores the comparable cases Ms. Jones provided in her Brief in Support of the Application for Review, arguing simply that each case is different and an appropriate sanction cannot be precisely determined by comparison with the action taken in other proceedings.

Opposition at 34. "Like" does not require cases to be "identical." Just because cases have particular differences does not mean that substantially similar cases can have such disparate sanctions imposed. That is the definition of arbitrary and capricious decision-making – when "like" cases are treated differently. *See Westar Energy, Inc. v. F.E.R.C.*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) ("A fundamental norm of administrative procedure requires an agency to treat like cases alike."). "[W]here . . . a party makes a significant showing that analogous cases have been decided differently, the agency must do more than simply ignore that argument." *Le-Moyne-Owen College v. NLRB*, 357 F.3d 55, 61 (D.C. Cir. 2004); *see also Ramaprakash v. FAA*, 346 F.3d 1121, 1125 (D.C. Cir. 2003) (stating "[a]n agency's failure to come to grips with conflicting precedent constitutes an inexcusable departure from the essential requirement of reasoned decision making" (quotations omitted)). FINRA does not address Appellants' argument in any way other than to summarily state that the "appropriate sanction depends on the facts and circumstances of each particular case." Opposition at 34. FINRA's failure to do so, however, is obvious.

III. CONSTITUTIONAL AND DUE PROCESS CHALLENGES

A. Appellants' Challenges are Properly Before the Commission

FINRA argues initially that Appellants failed to exhaust their constitutional challenges before FINRA, and that, as a result, they are not properly before this Commission. Opposition at 34 (citing *Newport Coast Sec. Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *39 (2020)). The problems with FINRA's exhaustion argument are numerous. First, the exhaustion argument is applicable only if FINRA accepts that it is an "agency" in the same sense as other government agencies that provide administrative review. *See, e.g.*, *Koch v. White*, 744 F.3d 162, 164 (D.C. Cir. 2014) (citing the failure to exhaust "administrative" remedies before the Commission). If FINRA is only a private entity, it has no authority to rule on issues of constitutional law. Second, even if it is a state actor, FINRA still cannot rule on constitutional issues. *See Carr v. Saul*, 141 S. Ct. 1352, 1360–61 (2021) (stating Appointments Clause violations present "structural defects" of "constitutional" magnitude that do not demand exhaustion before

an agency adjudicator incapable of addressing them); *Meredith Corp. v. FCC*, 809 F.2d 863, 872 (D.C. Cir. 1987) (stating "regulatory agencies are not free to declare an act of Congress unconstitutional"). Third, if FINRA could somehow pass on its own constitutionality, there is no exhaustion requirement. *See Carr*, 141 S. Ct. at 1360–61 (recognizing futility exception to the exhaustion requirement). This conclusion is further supported by FINRA's well-known stance that it is not a state actor – an argument repeated by FINRA here. There is, accordingly, no chance that FINRA would somehow rule itself unconstitutional even if it could. *See Action for Children's Television v. FCC*, 564 F.2d 458, 469 (D.C. Cir. 1977) (stating a litigant need not assert arguments before an agency whose "general views" are already known). These arguments are properly before the Commission (which itself has no power to rule on these questions but which Appellants nevertheless present to the Commission to prevent any claim of waiver).

B. FINRA's Constitutionality

FINRA is either a state actor or it is a private organization whose authority violates the non-delegation doctrine. FINRA argues that it is not a state actor because the government does not select its board members, FINRA does not receive federal funding, and FINRA's creation was not mandated by statute. Opposition at 35. This argument is disingenuous.

First, while the government does not directly appoint board members, the government determines the Rules that govern board member selection. *See Bussing v. COR Clearing, LLC*, 20 F. Supp. 3d 719, 735 (D. Neb. 2014) ("The SEC must approve all of FINRA's rules, and may abrogate, add to, and delete from all FINRA rules as it deems necessary.").

Further, FINRA receives its funding from member fees, where membership is mandated by the government. *See* FINRA 2019 Annual budget Summary at 7, *available at* https://www.finra.org/sites/default/files/2019_annual_budget_summary.pdf (listing regulatory fees, use fees (primarily including registration fees, transparency services fees, dispute resolution fees, etc.), and contract service fees). Its members are broker-dealers. Federal law requires broker-dealers to become members of a self-regulatory organization ("SRO"), and FINRA is the only non-exchange SRO. *See Milliner v. Mut. Sec. Inc.*, 207 F. Supp. 3d 1060, 1064 (N.D. Cal. 2016)

("[T]he Exchange Act requires broker-dealers to maintain membership with an SRO." (citing 15 U.S.C. § 78o(b)(8)); FINRA, Register a New Broker-Dealer Firm, available at https://www.finra.org/registration-exams-ce/broker-dealers/new-firms#:~:text=To%20conduct%20securities%20transactions%20andFINRA%2Dregistered%20broker%2Ddealer ("To conduct securities transactions and business with the investing public in the United States, both firms and individuals must be registered with FINRA.")).

FINRA's funding, as well as its existence, are in reality mandated by federal law. In fact, FINRA's funding and membership would not exist but for the requirements of federal law. *Cf. Dep't of Transp. v. Assoc. of Am. R.R.* (*American Railroads II*), 575 U.S. 43, 44 (2015) (stating Amtrak was a government entity, rather than private, because, among other reasons, "Amtrak has been dependent on federal financial support during every year of its existence'). This is exactly the type of government overlap the Court found indicative of state action in *Terry v. Adams*, 345 U.S. 461, 463 (1953) (where membership in the private organization was automatic for every white registered voter in the county).

As noted in Appellants' Brief in Support of the Application for Review, FINRA offers no real response to Appellants' challenge that, if it is a private entity, its delegation of authority is unconstitutional. Indeed, FINRA cites the D.C. Circuit Court of Appeals version of *Association of American Railroads v. United States Department of Transportation* (*American Railroads I*), 721 F.3d 666, 671 (D.C. Cir. 2013). Opposition at 40. First, FINRA's response ignores its own claim that "FINRA is authorized by Congress to protect America's investors." About FINRA, *available at* https://www.finra.org/about. Second, the D.C. Circuit's decision was reversed by the United States Supreme Court. *See United States Dep't of Transportation v. Assoc. of Am. R.R.*, 575 U.S. 43 (2015) (concluding that AMTRAK is a state actor in order to save its authority from being unconstitutional). Third, the relevant citation to the D.C. Circuit's decision reflects that the determination whether a private entity merely "advises" an agency rather than exercises authority is simply a question to be answered by the court. *See* 721 F.3d at 671 (stating the constitution allows Congress to formalize the role of private parties to "aid" government agencies). FINRA

does not simply "aid" the SEC. It exercises significant authority over broker-dealers and the financial industry, it investigates its members, promulgates and enforces its own rules and regulations, and its decisions become final unless appealed to the SEC. Just like Amtrak's authority was unconstitutionally delegated, to the extent it was a private entity, so too is FINRA's.

FINRA's reliance on *United States v. NASD* is misplaced. *See* Opposition at 40 (citing 422 U.S. 694, 700 n.6 (1975)). First, the single footnote describing the NASD is dictum and no state-actor challenge was made in that case. Second, the footnote describes "voluntary associations," while there is nothing voluntary about federally required membership in FINRA (the only SRO). Further, the NASD's authorization to protect investors and the public interest mirrors the Court's finding that Amtrak was a state actor because of its pursuit of broad public objectives. *See American Railroads II*, 575 U.S. at 44.

Justice Alito perhaps said it best when discussing why private entities or individuals cannot exercise such expansive authority:

> The principle that Congress cannot delegate away its vested powers exists to protect liberty. Our Constitution, by careful design, prescribes a process for making law, and within that process there are many accountability checkpoints. It would dash the whole scheme if Congress could give its power away to an entity that is not constrained by those checkpoints. The Constitution's deliberative process was viewed by the Framers as a valuable feature . . . not something to be lamented and evaded.
>
> * * *
>
> When it comes to private entities . . . there is not even a fig leaf of constitutional justification. Private entities are not vested with "legislative Powers." Nor are they vested with the "executive Power," which belongs to the President. Indeed, it raises "[d]ifficult and fundamental questions" about "the delegation of Executive power" when Congress authorizes citizen suits. A citizen suit to enforce existing law, however, is nothing compared to delegated power to create new law. By any measure, handing off regulatory power to a private entity is "legislative delegation in its most obnoxious form."

Id. at 61–62 (Alito, J., concurring). Indeed, even the Eastern District of Michigan recently described FINRA's examiners recently as "state investigators." *See Dicken v. Brewer*, No. 2:19-CV-11676, 2019 WL 6701434 (E.D. Mich. Dec. 9, 2019). And again, FINRA (and its predecessor

NASD) gladly claim government immunity from suit when it is in FINRA's interest. *See Dexter Depository Trust & Clearing Corp.*, 406 F. Supp. 2d 260, 263 (S.D.N.Y. 2005).

> Congress and the SEC have delegated significant responsibility for regulation of the securities markets to SROs, operating under the supervision of the SEC. Accordingly, SROs such as the NASD "perform[ ] a variety of regulatory functions that would, in other circumstances, be performed by [the SEC]." The NASD thus "stands in the shoes of the SEC" in carrying out these functions. Because the SEC would enjoy absolute immunity from suit if it carried out these responsibilities itself, SROs have similar immunity when exercising functions delegated to them by the SEC.

Id. at 263. In reciprocal fashion, when FINRA stands in the shoes of the SEC in investigating, prosecuting, and adjudicating broker-dealer members, it must afford due process just as the SEC would be required to. FINRA may not receive government benefits like immunity but then flout the reciprocal government requirements that come with it. As a state actor, FINRA must provide due process. It failed to do so here, and as demonstrated in Appellant's Brief, the failures were material to the incorrect result and the penalty imposed.

C. Appointments Clause

As to the Appointment Clause challenge, FINRA does not dispute the merits of the challenge. Instead, FINRA argues only that it is not a state actor. Opposition at 41–42. Because it has not contested the Appointments Clause challenge on the merits, if FINRA is held to be a state actor, Appellants must prevail.

D. Due Process Errors

i. The NAC Panelists were not Impartial

FINRA responds that it is permissible for a competitor to serve as a panelist unless the member demonstrates "particularized bias or a showing of bias beyond merely being a competitor." Opposition at 36. The burden is on the competitor panelist however, to recuse. *See* FINRA Rule 9332 (requiring the NAC panelist to recuse if the fairness of the proceeding might reasonably be questioned). The injustice of FINRA's attempt to shift the burden to the broker-dealer to demonstrate particularized bias constitutes particularized prejudice because any evidence of particularized bias is likely to be kept within the head of the competitor panelist. Absent an

actual statement by the competitor panelist, on the record or otherwise recorded, a broker-dealer would never be able to demonstrate said bias.

ii. Double Jeopardy

FINRA doubles down on its imposition of duplicative or redundant charges in its Opposition. FINRA states that the "filing of an inaccurate FOCUS report is a violation of Exchange Act Rule 17a-5(a)(2) and FINRA Rule 2010." Opposition at 19. As noted in Appellants' Brief, FINRA Rule 2010 is a catchall when other violations don't apply. Appellants' Brief in Support of its Application for Review at 26. FINRA states that the filing of an incorrect FOCUS report pursuant to Exchange Act Rule 17a-5(a)(2) also constitutes a record-keeping violation under FINRA Rule 4511(a). Opposition at 19. And "[a] violation of FINRA Rule 4511 also constitutes a violation of FINRA Rule 2010." *Id.* According to FINRA's view, it is perfectly appropriate, for filing even one incorrect FOCUS report, to be charged with violations of Exchange Act Rule 17a-5(a)(2), which constitutes a Rule 2010 violation, and with FINRA Rule 4511 for incorrect records, which also constitutes a Rule 2010 violation.

iii. The NAC improperly aggravated Appellants' violations.

FINRA responds that the basis for Ms. Jones' Rule 8210 violation was separate from her recordkeeping violations, Opposition at 38, and in some ways FINRA is correct: filing incorrect FOCUS reports (Rule 4511) could be separate from later failing to respond to documentary requests (Rule 8210). But that is not what FINRA and the NAC did here. FINRA stated that "[t]he Hearing Panel and the NAC found Jones liable under FINRA Rule 8210 and 2010 for making misleading statements [during the examination and investigation]," which the Hearing Panel said was "separate from her concealment—during the examination and investigation—of the fact that CD No. 0331 was improperly classified as an allowable asset." Opposition at 38. But FINRA argues that Ms. Jones' punishment was aggravated by the fact that she intentionally provided misleading statements to conceal the fact that CD No. 0331 was improperly classified as an allowable asset. *See* Opposition at 39 ("Jones made numerous misleading statements and acted to

hinder FINRA's 2014 cycle examination and subsequent investigation."). FINRA used the purported "misleading" conduct both as the underlying violation and as aggravation.

Removing FINRA's overcharging leaves only the two claims justified in this case: filing incorrect FOCUS reports (Exchange Act Rule 17a-5(a)(2)) and untimely responses to FINRA's requests (Rule 8210). Because the conduct is covered by appropriate rules, Rule 2010's catchall does not apply, and even if it did it would be entirely redundant.

iv. FINRA punished Ms. Jones for refusing to answer personal questions

Despite FINRA's protestation otherwise, FINRA punished Ms. Jones for refusing to answer personal questions about her mother, when FINRA already knew her mother was alive and the NAC conceded that the information did not impede FINRA's investigation. As stated in Appellants' Brief in Support of the Application for Review, FINRA's conduct deprived Ms. Jones due process.

IV. CONCLUSION

FINRA is a state actor, and as such, must accord Appellants due process. FINRA failed entirely to do so here. FINRA abuses its investigatory powers (which are unchecked and provide no means to dispute or challenge a Rule 8210 request), overcharges, and uses the same conduct to justify both a violation and aggravation of the alleged violation. Here, FINRA and the NAC also ignored sanctions imposed in comparable cases and mitigating evidence in the record. Finally, the NAC increased Ms. Jones' sanction to a lifetime bar, despite having a competitor on the panel and despite FINRA failing to cross-appeal. For all these reasons, Appellants respectfully request that the Commission reverse KJC's statutory disqualification and the lifetime bar imposed against Ms. Jones and impose a more appropriate sanction.

Dated: June 15, 2021 Respectfully submitted,

/s/ Steven M. Felsenstein
Steven M. Felsenstein, Esq.
Greenberg Traurig, LLP
1717 Arch Street
Philadelphia, Pennsylvania 19103
(215) 988-7837
felsensteins@gtlaw.com

/s/ William B. Mack
William B. Mack
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
(212) 801-2230
mackw@gtlaw.com

/s/ Matthew P. Hoxsie
Matthew P. Hoxsie
Greenberg Traurig, LLP
2375 East Camelback Road
Suite 700
Phoenix, AZ 85016
(602) 445-8471
hoxsiem@gtlaw.com

CERTIFICATE OF COMPLIANCE

I, Matthew P. Hoxsie, certify that Applicant's Reply Brief in Support of the Application for Review complies with the length limitation set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,577 words.

/s/ Matthew P. Hoxsie

Matthew P. Hoxsie
Greenberg Traurig, LLP
2375 East Camelback Road
Suite 700
Phoenix, AZ 85016
(602) 445-8471
hoxsiem@gtlaw.com

U.S. SECURITIES & EXCHANGE COMMISSION
Washington, D.C.

In the Matter of the Application of ROBBI J. JONES Houston, TX and KIPLING JONES & COMPANY, LTD. Houston, TX For Review of Disciplinary Action Taken by FINANCIAL INDUSTRY REGULATORY AUTHORITY	**CERTIFICATE OF SERVICE**

I, Matthew P. Hoxsie, being of full age, hereby certify:

1. I am an Associate in the firm of Greenberg Traurig, LLP.

2. On June 15, 2021, I caused electronic copies of APPELLANTS' REPLY BRIEF IN SUPPORT OF THE APPLICATION FOR REVIEW to be filed through the Commission's eFAP system and served via email to the following:

The Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549
apfilings@sec.gov

and

Colleen Durbin
Office of General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
colleen.durbin@finra.org

3. I certify under penalty of perjury that the foregoing is true and correct.

/s/ Matthew P. Hoxsie
Matthew P. Hoxsie
Greenberg Traurig, LLP
2375 East Camelback Road
Suite 700
Phoenix, AZ 85016
(602) 445-8471
hoxsiem@gtlaw.com