**BEFORE THE**
**U.S. SECURITIES & EXCHANGE COMMISSION**
**WASHINGTON, DC**

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| In the Matter of the Application of<br><br>Christopher P. Tranchina<br><br>For Review of Disciplinary Action Taken by<br><br>FINRA<br><br>File No. 3-21390 |

**APPLICANT'S BRIEF IN SUPPORT OF**
**THE APPLICATION FOR REVIEW**

Applicant Christopher P. Tranchina ("Tranchina" or "Applicant"), by and through undersigned counsel, hereby submits this reply brief in further support of the application for review of the National Adjudicatory Council's ("NAC") decision (the "Decision") regarding FINRA Complaint No. 2018058588501.

## I. Introduction

FINRA Department of Enforcement's ("Enforcement") brief in opposition to the application for review is nothing more than a regurgitation of the same materials that fail to support the sanction of a lifetime bar against Applicant. As to the violation of FINRA Rule 2010, Enforcement and the NAC assert that Tranchina deserves to be barred because of the way he obtained unauthorized access to certain files in his former office. They characterize his conduct as the criminal offense of breaking and entering and conclude that for his unethical behavior only a bar can serve as an appropriate sanction. However, Enforcement and the NAC's conclusion is divorced from the reality of the circumstances, and they ignore clear legal precedent showing that a significantly reduced and remedial sanction is warranted. Barring Tranchina is unjust,

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excessive, and oppressive, especially when considering other registered representatives who accessed files from their former member firm.

As to Enforcement's conclusion that Tranchina failed to timely update the Form U4, like the NAC, it failed to demonstrate that Tranchina was, as a matter of law, required to disclose the New Jersey complaint-summons. Enforcement's brief does, however, detail the complex nature of integrating state law statutory definitions and FINRA rules and guidelines. Further, Enforcement woefully failed to support that Tranchina's conduct was willful. If anything, the NAC's exhaustive analysis of the whether the event was disclosable in first place, cuts against the notion that Tranchina acted with extreme recklessness.

For the reasons set forth herein and in Applicant's opening brief, Tranchina respectfully requests that the Commission vacate the bar and the statutory disqualification, and reform the sanctions to be reasonable and appropriate.

## II. Argument

### A. The Bar Should be Vacated

Tranchina's conduct, while inappropriate and ill-conceived, has been so blown out of proportion and so exaggerated to the point where it has taken on a life of its own. To be clear, a remedial sanction is certainly warranted, but a bar is unjust and unreasonable and should be vacated by the Commission.

By way of context, shortly after he returned to his office and retrieved files, Tranchina hired counsel who worked directly with Hornor, Townsend & Kent, Inc. ("HTK"), the broker-dealer arm of Penn Mutual Life Insurance Company ("Penn Mutual") (collectively "HTK/Penn Mutual") to return files according to the agreements he had with HTK/Penn Mutual. There is extensive record evidence of communications between Tranchina's counsel and Penn



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Mutual/HTK's counsel.[1] While this process was taking place, in the background, Penn Mutual/HTK were leveraging the New Jersey summons-complaint to force Tranchina to comply with their wishes. To illustrate this point, the communications between counsel occurred in May 2018, while the New Jersey summons-complaint was not issued until July 23, 2018.[2] The import of this background demonstrates that this situation was more a contractual dispute between Tranchina and Penn Mutual/HTK and not the criminal activity that Enforcement and the NAC asserts justifies a bar.

The New Jersey summons-complaint blinded the NAC and caused it to dispense with the substantive underlying conduct, which is unauthorized access to firm information, in favor of a cops and robbers' narrative. Tranchina was not convicted of any crime and the New Jersey summons-complaint was dismissed.[3] Had the NAC's judgment not been so obfuscated and unduly influenced by the New Jersey summons-complaint, it would have seen that Tranchina's conduct was not materially different than other similarly situated registered representatives. Moreover, Enforcement's position that Tranchina's conduct is so egregious and distinguishable from other similar cases is simply false.

The Commission need not look further than *In the Matter of Dante J. Difranceso*, where the respondent surreptitiously downloaded 36,000 client files after agreeing to terminate his registration with his member firm.[4] It bears repeating that he received a mere 10-day suspension and $10,000 fine for his conduct.[5] The primary difference between the two matters is that Penn Mutual pursued the New Jersey summons-complaint whereas *Difrancesco's* former member

[1] *See* CX-13, CX-14, CX-15, and CX-16 (Bates Nos. 001299-001311).
[2] CX-22 (Bates No. 001465).
[3] Decision at 6.
[4] *Dante J. DiFrancesco,* Exchange Act Release No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012).
[5] *Id*.

firm did not. The substance of what the individual respondents did is the same, they gained unauthorized access to firm information. One secretly downloaded a substantial number of files, while Tranchina entered his old member-firm through an unlocked door, broke a ceiling tile, and came crashing down into his former office where he retrieved a handful of miscellaneous files (which were returned). It is unjust and inequitable that the *Difrancesco* respondent was allowed to continue his career, while Tranchina is barred for life. Certainty, there is a middle ground sanction that is remedial and prevents the recurrence of conduct. As the Commission is aware, when a sanction is imposed for punitive purposes as opposed to remedial purposes, the sanction is excessive or oppressive and therefore impermissible, as is the case in this instance.[6]

Lastly, Enforcement argues that a bar is necessary to protect investors, but there is not a scintilla of evidence in record supporting any investor harm or risk whatsoever. Tranchina does not have a single customer complaint on his publicly available securities record and there was no testimony or evidence eliciting any risks to the investing public.[7] The NAC and Enforcement's conclusion that only a bar can shield the public from Tranchina is baseless and wholly unsupported by any record evidence. Rather, there is clear evidence supporting that Tranchina can continue in the securities industry and comply with the rules and regulations as he was registered with Chelsea Financial Services shortly after his departure from HTK/Penn Mutual.[8] There, he was able to serve his clients without incident. A bar would not protect investors and it would only harm Tranchina's clients who entrusted him with their financial affairs.

Accordingly, the Commission should vacate the bar an impose a remedial sanction that is not excessive or oppressive.

[6] *See Paz Secs., Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009).
[7] CX-01, CRD for Christopher P. Tranchina (Bates No. 001105).
[8] Decision at 5.



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### B. The Statutory Disqualification Should be Overturned

Tranchina did willfully fail to disclose the New Jersey summons-complaint on his Form U4. Enforcement's position and legal analysis reaches the conclusion that Tranchina acted at least with "extreme recklessness". However, at most, Tranchina was negligent in not disclosing the New Jersey summons-complaint (if disclosure was required), which was dismissed and expunged from his record.[9]

The analysis here is in two-parts: (1) Whether Tranchina was required to disclose the New Jersey summons-complaint on his Form U4 l and (2) whether Tranchina, by failing to disclose the New Jersey summons-complaint, did so willfully. With respect to the first step, FINRA definitions clearly do not address the circumstances of the New Jersey summons-complaint. Moreover, New Jersey state law does not even define a petty disorderly persons offense as a misdemeanor or crime. An attorney advising Tranchina could reasonably take the position, as Tranchina's counsel did in response to FINRA's 8210 request preceding this Enforcement action, that disclosure of the New Jersey summons-complaint was not required.[10] Before the Commission is now the fundamental question of whether Tranchina has any disclosure obligation at all.

Second, if the Commission determines that he did, it must be decided whether he acted willfully. Given that the New Jersey summons-complaint was conditionally discharged, dismissed, and expunged, it is reasonable that Tranchina did not disclose it on his Form U4. Further, given the unclear state of legal disclosure obligations, the fact that his attorney took the position with FINRA that disclosure was not required, and that the allegations related the New Jersey summons-complaint already appeared on his BrokeCheck Report, at most Tranchina could be found to have

[9] It is a matter of public record that on March 29, 2021 an expungement order was entered in the Superior Court of New Jersey in Middlesex County, Civil Action No. M-530-20, removing the New Jersey summons-complaint from Tranchina's record.

[10] CX-27, FINRA 8210 response from Chris Tranchina, dated February 7, 2019 (Bates No. 001483).

acted negligently. The NAC's conclusion that Tranchina acted with extreme recklessness lacks context of the actual circumstances and baselessly imputes an intent to Tranchina which is not supported by any record evidence. Tranchina should not be statutorily disqualified, subject to a 6-month suspension and a $10,000 fine where reasonable legal minds can disagree on whether disclosure of the New Jersey summons-complaint was required.

## III. Conclusion

For the reasons stated herein, and in Applicant's Opening Brief, the Commission should overturn the NAC's decision, vacate the bar and the statutory disqualification, and reform the sanctions to be reasonable and appropriate.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I, Jon-Jorge Aras, certify that:

(1) Applicant's Brief in Opposition in Support of the Application for Review complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information; and

(2) Applicant's Brief in Support of the Application for Review complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 1,467 words.

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Dated: August 16, 2023



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## CERTIFICATE OF SERVICE

On August 16, 2023, I, Jon-Jorge Aras, certify that I caused a copy of Applicant's Reply Brief in Support of the Application for Review, in the matter of Christopher P. Tranchina, Administrative Proceeding File No. 3-21390 , to be filed through the SEC's eFAP system and sent via email to:

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