

Before the
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC



In the Matter of the Application of
POSITRON CORPORATION
For Review of Action Taken by
Financial Industry Regulatory Authority

HARD COPY

Admin. Proc. File No. 3-15837

**POSITRON CORPORATION'S REPLY BRIEF IN SUPPORT OF APPEAL OF
THE DECISION OF FINRA'S UNIFORM PRACTICE CODE COMMITTEE**

Pursuant to 15 U.S.C. §78s, Positron Corporation ("Positron"), hereby submits this Reply Brief to the United States Securities and Exchange Commission (the "Commission"), in further support of its request that the Commission reverse the decision of the Uniform Practice Code Committee (the "Committee") of the Financial Industry Regulatory Authority ("FINRA"), dated March 27, 2014 (the "Decision"), which upheld FINRA's initial decision to deny Positron's application to (i) change its place of domicile from Texas to Delaware; and (ii) provide a 1-100 reverse stock split. The change of domicile and stock split shall hereinafter be referred to, collectively, as the "Company-Related Action."

While FINRA's Brief in Opposition goes on at length about FINRA's broad discretion to make determinations under FINRA Rule 6490, it completely fails to articulate exactly how its decision to deny the Company-Related Action in any way protects the interests of the investing

public. Moreover, on July 14, 2014, the United States District Court for the Northern District of Illinois, Eastern Division, issued its Memorandum Opinion in the case captioned as United States Securities and Exchange Commission v. Rooney, N.D.IL. Docket No. 11 C 8264, and Judge Kocoras specifically ruled that Patrick G. Rooney (“Rooney”) is permitted to serve as an officer and director of Positron, and that to prohibit him from serving in such a capacity “would surely impair the company’s future, as well as negatively affect its shareholders’ interests.” While the Commission sought a permanent bar against Rooney from serving as an officer or director of Positron, Judge Kocoras outright denied that request.

In short, the civil complaint against Rooney has been fully adjudicated and the Court did not bar Rooney from acting as an officer or director of Positron. As such, the basis of FINRA’s determination to deny the Company-Related Action is moot. Rooney must be permitted to perform his duties as an officer and director of Positron free of the overreaching and baseless determination of FINRA which is contrary not only to the interests of Positron’s shareholders, but Judge Kocoras’ order.

FINRA’s Focus on Rooney is Misplaced

Conspicuously absent from FINRA’s Brief in opposition is any argument as to why Positron’s request to change domicile from Texas to Delaware and issue a reverse stock split would be harmful to investors. Instead, FINRA hides behind its purportedly broad authority under Rule 6490 and focuses on Rooney and the allegations that were lodged against him in the aforementioned civil matter which has now been fully adjudicated. Rooney does not deny that he entered into a consent judgment or that there was a pending civil matter against him, but Positron and its shareholders should not be held hostage and punished as a result. Even Judge

Korocas recognized this rudimentary proposition when he ruled that Rooney should be permitted to carry on his duties on behalf of Positron.

FINRA's vague and ambiguous contention that it "considered Positron's business reasons, but determined that the business reasons did not present a compelling basis to allow the Company-Related Action to proceed" (FINRA Opposition at 18, 28), lacks any details as to why the business reasons do not present a compelling reason to allow Positron to do nothing more than to change its place of domicile and issue a reverse stock split – both of which will benefit Positron's shareholders and/or the investing public.

FINRA's assertion that its denial "serves simply to maintain the status quo ante of protecting the investing public and promoting market integrity" (FINRA Opposition at FN 17) has now been defeated by the fact that Judge Kocoras specifically ruled that Rooney should continue in his capacity as an officer and director of Positron so that he can continue to "attempt to stabilize Positron." The *status quo*, therefore, is to permit Positron to be guided by its officers and directors, including Rooney, so that the company may obtain the benefits sought through the Company-Related Action.

Significantly, FINRA acknowledges that Rooney is not the controlling shareholder of Positron and that he controls "nearly 48 percent of [Positron's] stock through his ownership, management, and control of Solaris Management and Solaris Opportunity Fund." (FINRA Opposition at 18)(emphasis added). In other words, Rooney does not own a majority of Positron shares, and the forty-eight percent (48%) FINRA refers to is not owned directly by Rooney, but through his interest primarily in Solaris in which Rooney has no beneficial ownership. In short, this is not a situation where Rooney is "calling the shots" on his own as he does not own a

majority of Positron's shares, and he must answer to a Board of Directors which approved the Company-Related Action after a vote.

FINRA provides no substantive argument to defeat the fact that the Company-Related Action was approved by two-thirds of Positron's shareholders, and is not an action that is being sought at the sole directive of Rooney. FINRA rids itself of any obligation to explain why the fact that Positron's Board of Directors approved the Company-Related Action is of no moment and chooses to again hide behind Rule 6490 to claim that the Rule "permits FINRA to use its judgment and deem the request for a Company-Related Action 'deficient.'" (FINRA Opposition at 30). FINRA provides no basis whatsoever for its "judgment," and completely ignores the fact that the Company-Related Action is not something of Rooney's behest, but is an action that was voted on and approved by Positron's Board and a supermajority of its shareholders.

Indeed, FINRA's continued insistence on denying Positron's Company-Related Action because Rooney is an officer and director of the company would essentially defeat the purpose of Judge Kocoras' ruling which specifically held that Rooney must be able to serve in his official capacity on Positron's behalf so as to avoid any "impair[ment] [of] the company's future, as well as [to avoid] negatively affect[ing] its shareholders' interests."

The Company-Related Action Would Benefit Shareholders

FINRA's papers completely lack any argument that Positron's request for a 1-100 reverse stock split (the "Split") is in the best interest of Positron's shareholders and the investing public. As stated in Positron's opening Brief, the Split, along with a greatly improved capitalization structure, would raise the per-share market price of Positron's Common Stock and would have set Positron's bid price at \$0.63 per share allowing Positron shares to continue to trade on the

more prestigious OTCQB. FINRA's erroneous and baseless determination to deny Positron's application to issue the Split has actually harmed Positron's shareholders.

Furthermore, the requested change of domicile from Texas to Delaware would give Positron the benefit of being incorporated in a State which has statutes and regulations that are favorable to corporations and their shareholders, provide sophisticated and regularly applied rules and structure; Delaware is a forum with an extensive and well-developed corporate jurisprudence that creates predictability and expediency in adjudication.

FINRA neither denies these facts nor provides any evidence whatsoever that the Company-Related Action was for anything other than a legitimate business purpose. FINRA's short-sighted focus on Rooney is misplaced – FINRA should be concerned about what is good for Positron's shareholders and the investing public, and not focus on seeking to punish one officer and director of the company.

While FINRA focused on the fact that there was a pending civil matter, in which nothing but allegations were lodged, it was Judge Kocoras who heard the facts, weighed the evidence, and determined that Rooney should remain in his role at Positron. FINRA's focus, as well as this Commission, should now be on whether the Company-Related Action serves the best interests of Positron's shareholders, as determined by two-thirds of the company's Board of Directors.

Conclusion

Based on the foregoing facts and principles, the Commission should reverse the finding of the Committee and permit Positron to change its domicile from Texas to Delaware; and issue

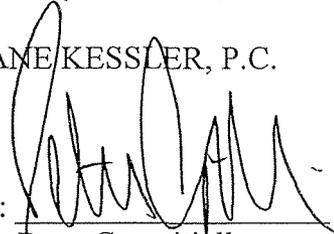
a reverse stock split. Both of these actions are for the direct benefit of Positron's shareholders, and should not be hindered simply because of FINRA's capricious determination.

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Respectfully submitted,

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