

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

In the Matter of Application of

Keith D. Geary

For Review of Disciplinary Action Taken by FINRA
In Case No. 2009020465801

)
)
) **S.E.C. Administrative**
) **Proceeding**
) **File No. 3-17406**
)

KEITH D. GEARY'S OPENING BRIEF IN SUPPORT OF
APPLICATION FOR REVIEW

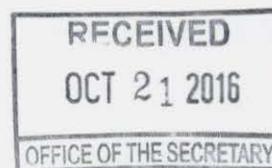


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Pursuant to 15 U.S.C. §78s(d)(2), 17 C.F.R. § 201.450 and Secretary Brent J. Field's Order dated September 21, 2016, Applicant Keith D. Geary ("Geary") respectfully submits this Opening Brief in Support of his Application for Review and requests that the Commission review the decision of FINRA's National Adjudicatory Council dated July 20, 2016 (the "NAC Decision"). For the reasons stated herein, Geary respectfully requests that the Commission: (1) modify the Decision by finding Geary did not violate the Net Capital Rule in May 2009, and (2) cancel or reduce the sanctions imposed by the NAC Decision.

I. STATEMENT OF THE CASE

Geary previously acquired and operated a small broker-dealer firm in Oklahoma City, Oklahoma ("the Firm") that was a FINRA member. Geary borrowed a substantial amount of money for the acquisition (\$5,000,000.00), and secured the debt with all of his business and personal assets and personal guarantees from his spouse and himself. The Firm voluntarily ceased doing business in the spring of 2012. Geary still has substantial debt obligations from his acquisition of the Firm. Since closure of his Firm, Geary has worked as an independent contractor Series 7 broker for another broker-dealer. No customer complaints were made in connection with the closure of Geary's Firm. Geary has not been the subject of any customer complaints while he has worked as an independent broker for more than four years.

FINRA's Department of Enforcement ("FINRA DOE") filed a disciplinary action in September 2012, charging Geary and his former FinOp¹ with two violations of the Net Capital Rule – one in May 2009 and the other in February 2010. FINRA DOE was fully aware at the time it filed the action that Geary's state regulator (Oklahoma Department of Securities) had

¹ Norman Frager was also named as a Respondent. Frager entered into a settlement with FINRA DOE prior to the hearing on the merits.

previously filed (2 years earlier in September 2010) its own enforcement action based on the exact same net capital violations. FINRA DOE waited until Geary and his state regulator resolved their enforcement action by voluntary agreement, then it filed the FINRA DOE disciplinary case.

A FINRA Hearing Panel was appointed and heard the case over three days. Six months later, the FINRA Hearing Panel issued its decision adverse to Geary (the “HP Decision”). The FINRA HP Decision was flawed in two respects. First, the FINRA HP Decision ignored evidence in the record that indicates there was no net capital violation in May 2009. Second, the sanctions imposed were directly contrary to the evidence, FINRA DOE’s suggested sanctions, FINRA’s own *Sanctions Guidelines* and common sense.

The FINRA Hearing Panel’s imposition of sanctions – compared to FINRA DOE’s suggestions – was particularly troubling. Geary exercised his right to seek review of the FINRA HP Decision by FINRA’s National Adjudicatory Council (the “FINRA NAC”). On July 20, 2016, the FINRA NAC issued its decision (“NAC Decision”), affirming the FINRA HP Decision finding two violations of the Net Capital Rule, but modifying the sanctions imposed by the FINRA HP Decision.

The sanctions suggested by FINRA DOE, imposed by the FINRA HP Decision, and modified by the FINRA NAC Decision are as follows:

SANCTION	SUGGESTED BY FINRA DOE	IMPOSED BY FINRA HP	MODIFIED BY FINRA NAC
Suspension or bar in principal capacity	30 day suspension	Bar	Bar
Suspension in all capacities	15 days	90 calendar days	30 business days
Concurrent or consecutive suspensions	Concurrent	Consecutive	Unitary
Fine	\$10,000	\$30,000	\$20,000

II. ISSUES FOR REVIEW

Geary respectfully requests that the Commission review the FINRA NAC Decision and address the following issues:

(1) Whether FINRA NAC erred in affirming the FINRA HP Decision that Geary violated FINRA Rule 2010 (net capital) in May 2009 by allowing Geary Securities, Inc. to operate a securities business while it lacked the required net capital;

(2) Whether FINRA NAC erred in stating it agreed with the FINRA Hearing Panel's "implicit finding" that Geary's alleged misconduct was "egregious," despite its admission the FINRA Hearing Panel did not make an explicit finding of "egregious" misconduct;

(3) Whether FINRA NAC erred in imposing modified sanctions on Geary that, while modified, remain excessive and oppressive, because Geary's suspension in all capacities is punitive, rather than deterrent;

(4) Whether FINRA NAC erred in imposing modified sanctions on Geary that, while modified, remain excessive and oppressive, because they ignore the financial hardship that accompanies the all capacities suspension and fine imposed; and

(5) Whether FINRA NAC erred in imposing modified sanctions that were not supported by the evidence, inconsistent with the FINRA Sanctions Guidelines, and significantly in excess of the sanctions suggested by FINRA Enforcement.

III. RELIEF REQUESTED ON REVIEW

Geary respectfully requests the Commission take the following action in connection with the FINRA NAC Decision:

- (A) Reverse and vacate the FINRA NAC's Decision and determine FINRA DOE did not meet its burden of establishing, by competent and persuasive evidence, that the Firm violated the Net Capital Rule in May 2009;
- (B) Reverse and vacate the FINRA NAC's Decision and determine FINRA DOE did not meet its burden of establishing, by competent and persuasive evidence, that Geary permitted the Firm to conduct customer business while in violation of the Net Capital Rule in May 2009;
- (C) Reverse and vacate the FINRA NAC's Decision and determine FINRA DOE did not meet its burden of establishing, by competent and persuasive evidence, that Geary "knowingly" caused the Firm's net capital violations;
- (D) Reverse and vacate the FINRA HP decision that Geary's conduct was unethical and violated Rule 2010; and
- (E) Reverse and vacate the FINRA NAC's Decision and determine the sanctions imposed on Geary were not supported by the evidence, inconsistent with the Sanctions Guidelines, and significantly in excess of the sanctions suggested by FINRA DOE.

IV. — ARGUMENT AND AUTHORITIES

- A. FINRA DOE DID NOT MEET ITS BURDEN OF ESTABLISHING, BY COMPETENT AND PERSUASIVE EVIDENCE, A NET CAPITAL VIOLATION IN MAY 2009.**

FINRA NAC upheld the FINRA HP's finding that the Firm experienced a net capital deficiency for two days in May 2009 – the 28th and 29th. This finding ignored the evidence that was presented to the FINRA HP.

In the course of the hearing conducted by the FINRA HP, it became clear that FINRA's examiner made and relied on an inaccurate assumption that was highly significant in the context of the alleged net capital violation, and should have changed the conclusion from "violation" to "no violation." The mistaken assumption and its impact were confirmed by FINRA's expert witness (Susan Demando Scott), as discussed below.

The May 2009 transactions that led to the alleged net capital violation were anything but simple and straightforward. The first suggestion or mention of a net capital violation was more than five months later in November 2009. No evidence was presented to suggest that Geary had any knowledge, awareness or suspicion on May 28 or 29, 2009 that the Firm was in violation of the Net Capital Rule.

The Firm's long-time, highly experienced FinOp (who Geary relied on), Norman Frager, filed the May FOCUS report reflecting net capital on May 28 and 29 as \$1,023,000. *See* 11/18/2013 Transcript of Hearing, Day 1 of 3, Bates No. 001993)(Steven Decker Testimony (principal FINRA examiner) at pp. 2040, lns. 2 – p. 2041, lns. 23)². FINRA Examiners later concluded the May 2009 FOCUS report was inaccurate (according to the FINRA examiner). No evidence was presented to suggest Geary had any awareness or involvement in making the decisions and adjustments that caused the FOCUS report to be inaccurate. In fact, undisputed evidence was presented that Geary was not involved or aware of such decisions or adjustments

² All references to the Administrative Record in submitted in this this matter will refer to the bates' number from the Record contained in the upper right corner of the Transcript. Example: Record at p. 4421. If Transcript Testimony is referred to, the name of the witness will be included, along with the line numbering on the left hand side of the page will also be referenced.

that purportedly caused the FOCUS Report to be inaccurate. *Id.* at Decker Testimony, pp. 2048, lns. 1-17; p. 2099 lns. 4- p. 2100, lns. 14; Denise Hintze Testimony (Firm employee) at p. 2298, lns. 4-13. No evidence was presented to suggest Geary knew or was involved in the FinOp's decision to decline FINRA's request that the Firm file a net capital deficiency notice in connection with the May 2009 issue. In fact, undisputed evidence to the contrary was presented (that Geary did not know and was not involved). Decker Testimony, Record at pp. 1936, lns 8 - p. 1940, lns. 21; Hintze Testimony at pp. 2299, lns. 1-7.

Notwithstanding Geary's undisputed lack of knowledge or awareness, the FINRA HP and FINRA NAC harshly criticized and punished Geary for "causing" a net capital violation in May 2009 and "allowing" the Firm to operate on the two days where the alleged deficiency occurred (but was undetected and unknown by everyone – including Geary – for more than five months). Geary recognizes and accepts the responsibility that accompanied his position as chief executive officer of the Firm. However, Geary disagrees with the quantum leap made by the FINRA HP and FINRA NAC from his position of ultimate responsibility – albeit without personal involvement – to conclusions of "unethical" and "egregious" conduct.

The evidence presented by FINRA DOE that a net capital deficiency occurred on May 28 and 29, 2009 can be summarized as follows. The Firm's balance sheet for those two days reflected a CMO inventory balance of zero. FINRA examiners believed the CMO inventory should have reflected a balance of \$76,727,000, and the Firm's balance sheet should have also reflected a corresponding liability – on May 28 and 29 – of \$76,727,000. *See* Decker Testimony Record, at pp. 2037, lns. 18 - p. 2040, lns. 24. The Firm's FinOp (Norman Frager) disagreed. His position was the subject CMOs should not have been on the Firm's books as of May 29. *Id.* Decker Testimony at p. 2049, lns. 1-17. So, the critically important question was whether the

Firm had a liability associated with the CMO purchases as of May 29. If yes, a net capital deficiency occurred. If no, a net capital deficiency did not occur. Evidence was presented - but apparently ignored or misunderstood by the FINRA HP - that compels the conclusion of no liability and, therefore, no net capital deficiency.

FINRA Examiner Decker had a discussion with Frager in November 2009 concerning the alleged May 2009 deficiency. Frager disagreed, explained his reasons for disagreement, and told Decker he would take action to correct the situation and make clear there was no deficiency. *See* Decker Testimony, Record at pp. 2090, lns. 4 -2096, lns. 17. A review of Decker's testimony reveals that he was [REDACTED] and mistaken concerning the corrective action taken by Frager. *Id.* at pp. 2095, 2104, lns. 11-p. 2015, lns. 23; p. 2210, lns. 21 – p. 2215, lns. 25.

The trade date of the Firm's purchase of the subject CMOs from the Bank was always May 28. Frager had the trades cancelled and rebilled for the Firm's sale of the subject CMOs to two customers. Frager instructed these trades (sales) to be rebilled to reflect trade dates and settlement dates of May 28. Until his testimony at the hearing, Decker assumed Pershing (the Firm's clearing agent) rejected both of Frager's changes when, in fact, Pershing accepted the change in trade date to May 28. *See* Decker Testimony, Record at pp. 2211, lns. 2- p. 2212, lns. 21).

Does this matter? According to FINRA NAC, the answer is "no," because Frager's decision – and his alone – to repaper the transactions, and the clearing firm's (Pershing's) acquiescence, alone does not change the substance or timing of the transaction. *See* FINRA NAC Decision at 7. Geary reflect disagrees – it does matter for the following reasons.

FINRA's own net capital expert (Susan Demando Scott) testified that the Firm's liability for purchasing the CMOs arises on trade date (May 28) and its liability ceases on trade date of

the sale side of the transaction. *See* Scott Testimony, Record at p. 2355, Ins. 19 – p. 2356, Ins. 5. Since the trade dates were the same day – May 28 – the Firm’s liability ceased and disappeared on May 28. *Id.* at pp. 2357, Ins. 2- p. 2358, Ins. 11. Since zero liability existed, Frager’s depiction of the Firm’s net capital position on May 28 and 29 was correct. No deficiency occurred; no violation occurred. The finding of a net capital violation in May 2009 should be reversed and vacated.

Since there was no net capital violation, the Firm and Geary did not commit any violation by allowing normal business to be conducted by the Firm on May 28 and 29, 2009. Likewise, since (a) there was no net capital violation, and (b) the first suggestion and awareness of a potential violation was five months later, Geary did not “knowingly” commit any violations in connection with the May 2009 issues.³

B. THE PUNITIVE AND EXCESSIVE SANCTIONS IMPOSED ARE CONTRARY TO THE EVIDENCE, FINRA DOE’S REQUESTED SANCTIONS AND THE FINRA GUIDELINES.

“It is familiar law that the purpose of [significant sanctions] is to protect investors, not to penalize brokers.” *McCarthy v. SEC*, 406 F.3d 179, 188 (2nd Cir. 2005). However, the FINRA HP and NAC ignored the clear direction of the FINRA *Guidelines*, (the “*Guidelines*”)⁴ and instead issued sanctions apparently intended to penalize Geary.

The *Guidelines* state that in sanctioning individuals for net capital violations, the FINRA HP should consider suspension of the financial principal or responsible party for up to 30

³ In this regard, the FINRA NAC acknowledges (a) Frager did not consult Geary prior to declining FINRA’s request to file a net capital deficiency notice, and (b) FINRA staff never discussed or followed up with Geary on the issue. *See* FINRA NAC Decision at 6.

⁴ The *Guidelines* (March 2015) are found at <https://www.finra.org/file/sanction-guidelines>.

business days.⁵ See Guidelines, Net Capital Violations, p. 28. Only in “egregious cases” is the FINRA HP allowed to consider a lengthier suspension. *Id.*

Here, FINRA DOE’s pre-Hearing recommendation was (a) suspension of Geary in a principal capacity for 30 days, (b) suspension in all capacities for 15 days, and (c) a fine of \$10,000, with the proposed suspensions running concurrently. See Decision, fn. 112, p. 29, Record at 4445. However, the FINRA HP ignored DOE’s recommendation and instead issued an order that went far beyond what DOE suggested or the record supports. FINRA NAC modified the sanctions as set forth below; however, the modified sanctions are still punitive in the context of Geary’s situation and should be vacated.

The sanctions issued by FINRA HP consist of the following:

- for the 2009 events, Respondent Geary was fined \$10,000 and suspended with a member Firm in any capacity for 30 days, and barred from acting in a principal or supervisory capacity with any FINRA member Firm; and
- for the May 2009 events, Respondent Geary was fined \$20,000, suspended from being associated with a member Firm in any capacity for 60 calendar days, and barred from acting in a principal or supervisory capacity with any FINRA member Firm. See HP Decision, pp. 29-30. The suspensions were also imposed *consecutively*, rather than concurrently, as recommended by Enforcement. The designation of consecutive suspensions served to impose additional, severe penalties on Geary, contrary to the purpose and proper application of sanctions (to protect investors).

The modified sanctions imposed by FINRA NAC consist of the following:

⁵ As discussed above, Frager was the Firm’s financial principal/FinOp, not Geary. Likewise, the facts clearly indicate Frager – without consulting Geary – made all decisions that are the bases for the violations found and, therefore, can be classified as the “responsible party” in the context of the violations found.

- a monetary fine of \$20,000;
- a suspension in all capacities for 30 business days; and
- a bar from acting in any principal or supervisory capacity with any FINRA member firm.

In his appeal to the FINRA NAC, Geary pointed out that the FINRA HP must have determined that Geary's actions were "egregious;" however, the only reference to the word "egregious" appears at page 26 of the FINRA HP's Decision, where the HP recognized that "in egregious cases, a lengthier suspension" may be entered. *See* Geary's Opening Brief, Record at p. 4542. Geary pointed out that notably absent from the FINRA HP's Decision is any specific finding that Geary's conduct amounted to "egregious conduct." *Id.* FINRA NAC attempted to excuse the FINRA HP's omission by stating: "The fact that the Hearing Panel imposed sanctions without an explicit finding that Geary's conduct was "egregious" is not problematic. The Hearing Panel is not required to make an express finding that a respondent's conduct is egregious in order to impose sanctions for egregious misconduct. The Hearing Panel's finding was implicit [in] its decision, as evidenced by the sanctions the Hearing Panel imposed. In any event, our de novo review of sanctions alleviates any perceived deficiency in the Hearing Panel's decision." *See* FINRA NAC Decision, Record at p. 4743 (footnote 32).

Federal courts hold that a defendant's actions rise to the level of egregious conduct when they engaged in fraudulent conduct, breach a fiduciary duty, commit fraud, knowingly make material misrepresentations, or exhibit a "high level of scienter." *See e.g., S.E.C. v. First Pac Bancorp.*, 142 F.3d 1186, 1193-94 (9th Cir. 1998); *S.E.C. v. Becker*, 2010 WL 2710613 (S.D.N.Y. July 8, 2010)(conduct was egregious when defendants "fraud involved a high degree of scienter" and "knowingly misused their investor proceeds for their personal benefit." The Ninth Circuit in *S.E.C. v. First Pac. Bancorp.*, found that a defendant's conduct rose to the level

of egregiousness when he “caused the collapse of a federally insured bank,” “attempted to stymie regulators from doing their jobs” was a repeated offender, breached his fiduciary duty, exhibited a “high level of scienter” and “failed to assume any responsibility for violations of law” and that there was a strong likelihood of future violations. *Id.* at 1193-94. Other cases likewise have found egregious conduct only when the respondent commits fraud, breaches his fiduciary duty, or acts with a high level of scienter. *See In the Matter of James C. Dawson*, S.E.C. Release No. 3057, 2010 WL 2886183, **4-7 (July 23, 2010)(respondent’s conduct was egregious where it was recurrent, and characterized by the highest degree of scienter ... “As our cases cited above make clear, however, we have consistently viewed misconduct involving breach of fiduciary duty or dishonest conduct on the part of the fiduciary, such as the fraud committed by Dawson on his clients, as egregious.”); *In the Matter of Byron S. Rainner*, S.E.C. Release No. 377, 2009 WL 1684739, * 5 (May 6, 2009)(respondent acted egregiously when he exhibited a “high degree of scienter” and “intentionally and deliberately made material misrepresentations).

Even where a party acts with some degree of scienter, the Courts have refused to enter lifetime bans where there was no “high degree” of scienter. *See e.g. S.E.C. v. Dibella*, 2008 WL 6965807, at *11 (D.Conn.2008); *S.E.C. v. Bengner*, 2014 WL 3954235 (N.D. Ill., 2014).

Here, there was no finding by the FINRA HP or FINRA NAC that Geary engaged in fraudulent conduct, breached any fiduciary duty, committed fraud, knowingly made material misrepresentations, or exhibited a “high level of scienter.” Indeed, the FINRA HP Decision repeatedly states that Geary displayed a “reckless” if not knowing disregard for the net capital requirements, but made no finding of any of the conduct required for “egregious” actions. Accordingly – where the FINRA HP did not find any of the actions necessary for “egregious”

conduct – the FINRA HP and FINRA NAC erred in assessing penalties against Geary that could only be ordered in “egregious” cases, under the *Guidelines*, p. 28.

The NAC Decision cites to several rulings to support its determination that Geary should be held liable for any net capital violation. *See* Record at p. 4736. However, each cited decision is easily distinguishable. In *Rani T. Jarkas*, Exchange Act Release No. 77503 (April 1, 2016), Jarkas was the CEO of Global Crown. Global Crown was not approved at any time to conduct proprietary trading, which requires a minimum net capital of \$100,000 under the Exchange Act of 1934. *See* pg. 3. Jarkas did not deny he was responsible for filing an application for approval for Global Crown to engage in certain trading activities, which would have increased the firm’s net capital requirements. Without filing the appropriate application, Jarkas engaged in proprietary trading from August through September 2008, by opening and holding 30 securities positions in the firm’s average price account for multiple days, without allocating them to customer accounts. While conducting its routine audit of the Firm, FINRA received a Notice of Levy from the IRS, stating the firm owed nearly \$250,000 in back payroll taxes, and that the firm had not recorded the payroll taxes as a liability for purposes of net capital computations. Once FINRA began to investigate the net capital violation, Global Crown provided some but not all documents requested, going so far as to refuse to produce certain requested documents, and blocking FINRA staff from continuing their onsite examinations. *Id.* at pp 4-5.

Geary’s conduct is nothing like that alleged in Jarkas. There are no allegations that Geary or the Firm failed to cooperate with FINRA. In addition, the time period of the misconduct in *Jarkas* was much more extended and the purported violations far exceed those alleged against Geary.

In *Fox & Co. Invs., Inc.*, 58 S.E.C 873 (2005), Moldermaker was the principal owner, president, general securities principal and the FINOP who was directly responsible for computing the firm's net capital. *Id.* at p. 2. Five former customers of the firm filed an arbitration claim against Moldermaker, the firm, the firm's clearing broker and a registered representative. On December 27, 2001, the panel issued an award against Moldermaker and firm for \$983,992 and Moldermaker received a copy on January 2, 2002. Despite receipt of the award, Moldermaker filed a FOCUS report on January 25, 2002 that did not book the award as a liability or include it in the firm's net capital. Instead, he reported a positive net capital \$200,000 in excess of the requirement. Moldermaker subsequently had phone conversations with NASD employees wherein they advised him to book the arbitration award as a liability, but Moldermaker disagreed on booking the award, as he believed insurance would pay the award. The NASD even faxed a letter confirming Moldermaker's obligation to book the award. Several weeks later, Moldermaker filed a FOCUS report in which he again did not report the arbitration award as a liability, but instead reported a positive net capital of \$643,110. Had he booked the award as directed, a negative net capital deficiency would have been shown. The opinion stated "applicant's conduct was intentional because they failed repeatedly to book the arbitration award as a liability and insisted on recognizing the insurance claim as an allowable asset, despite the contrary advice of the NASD staff." In the instant matter, there were no prior warnings or advice and Geary did not ignore any direction from FINRA.

In *Paul Joseph Benz*, 58 S.E.C. 34 (2005), Benz was both the president and the FINOP of Beacon Trading. Beacon cleared its securities through CCS, and pursuant to their written agreement, Beach agreed to indemnify and hold CCS harmless in the event any customer failed to make payment for securities. Beacon established a margin account with CCS on behalf of

customer, Dan Rubin. Rubin reported he had a liquid net worth [REDACTED]. Rubin made a purchase of [REDACTED] shares at the end of the trading day on October 31, 2001 (approximate \$5 million liability), but which was not booked by CCS until November 1. On November 2, CCS employees contacted Benz about Rubin's ability to pay for the trade. Benz personally vouched for Ruben and based upon those statements, CCS did not cancel the trade. Rubin failed to pay for the entire purchase leaving a [REDACTED] in his account. On December 19, 2000, NASD contacted Benz to inform of a violation of the net capital requirement because of the unsecured [REDACTED] in the Rubin account. Benz did not dispute that he did not include the Rubin account deficit in calculating Beacon's requisite net capital. Again, Geary made no personal representations and did not knowingly fail to report any net capital violations.

In *Dept. of Enfor. v. Block*, Complaint No. C05990026, Block was the firm's chairman, CEO and sole director. The firm operated as a day trading firm that held no customer funds or securities. The firm began to experience financial difficulties, and during a firm meeting, the FINOP told Block she expected the firm to have a net capital problem by the end of the month. Block's response was simply that he would challenge the net capital rule. At Block's direction, the FINOP then concealed the firm's deteriorating financial situation by netting certain accounts receivable against non-related payables and by booking firm expenses to an affiliated entity. *Id.* at p. 4. Testimony indicated that the firm maintained one set of financials that complied with regulations and another set that showed the true picture of firm financials. After notifying NASD of net capital deficiencies, Block's lack of cooperation delayed completion of an audit. In proceedings before the hearing panel, Block maintained he was not responsible for the Firm's financial operations because he had delegated responsibility to FINOP. However, the testimony was that he personally directed the FINOP to make "netting" entries and to transfer expenses,

thus Block was held responsible for net capital violations because he personally directed the activity that concealed the deficiencies from regulators. *Id.* at p. 10. There has been absolutely no evidence that Geary engaged in any cover up or attempts to hide any net capital violations.

Where no “egregious” conduct was found, the sanctions imposed on Geary should be vacated. Moreover, the sanctions imposed by the FINRA HP, and modified by FINRA NAC, are disproportionate and much more severe than those issued in other cases, providing further support for reversal of the sanctions imposed on Geary.

C. THE FINRA HP AND FINRA NAC DECISIONS IMPROPERLY DISREGARDED MITIGATING FACTORS IN IMPOSING PUNITIVE AND EXCESSIVE SANCTIONS.

The FINRA Sanction Guidelines provide that “[a]djudicators must always ... consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case.” *See* Guidelines, p. 4. The Guidelines enumerate a list of factors adjudicators must weigh and consider in every case. *Id.* at 6. *See Saad v. S.E.C.*, 718 F.3d 904, 906 (D.C.Cir. 2012)(“As part of [its review of disciplinary sanctions], the SEC must carefully consider whether there are any aggravating or mitigating factors that are relevant to the agency’s determination of the appropriate sanction.”). Because the FINRA HP failed to carefully address each potentially mitigating factor, the FINRA HP Decision and FINRA NAC Decision are flawed and should be reversed. *See PAZ Sec., Inc. v. S.E.C.*, 494 F.3d 1059, 1064 (D.C.Cir. 2007)(the Commission “must be particularly careful to address potentially mitigating factors before affirming an order.”) As set forth below, the FINRA HP and FINRA NAC erred by failing to consider all relevant factors and/or by assigning no mitigation weight to other factors.

The FINRA HP’s Decision – consisting of 31 pages - only contains two brief references to “mitigating factors.” *See* HP Decision, Record at p. 4445. The remainder of the mitigating

factors were either ignored or addressed only with a “blanket assertion” that they did not apply. Likewise, the FINRA NAC ignored or summarily dismissed the mitigating factors applied to Geary.

The FINRA HP Decision referred to Geary’s testimony regarding his [REDACTED] [REDACTED] and summarily dismissed such evidence. *See* HP Decision, Record at p. 4472. The record is clear that Geary provided evidence concerning [REDACTED] that was not disputed in any way by FINRA DOE. The FINRA HP Decision and FINRA NAC Decision both leave the reader with the inaccurate impression Geary must have offered vague, general, unsupported, and disputed testimony that he has “[REDACTED]” To the contrary, Geary’s testimony provided details of [REDACTED] which includes, but is not limited to, a [REDACTED] [REDACTED] obligation that he continues to bear notwithstanding the closure of his broker dealer in 2012. Geary’s testimony also included [REDACTED]

[REDACTED] The FINRA HP’s dismissive attitude toward this undisputed evidence is demonstrated by its comment – “None of this excuses his misconduct. Nor does it constitute evidence [REDACTED]” *See* HP Decision, Record at p. 4472. In short, the FINRA HP chose to ignore undisputed, mitigating evidence in order to penalize and punish Geary. The FINRA NAC’s decision did modify the sanctions; however, the effect of the modified sanctions, applied to Geary, is still punitive.

The FINRA HP Decision and FINRA NAC Decision acknowledge the *Guidelines* allow them to recognize sanctions by another regulator as a mitigating factor. *See* HP Decision, Record at p. 4473; FINRA NAC Decision, Record at p. 4545. In this regard, the FINRA HP found that,

pursuant to a settlement, Geary was subjected to sanctions imposed by the State of Oklahoma securities regulator for misconduct that includes “some” of the misconduct alleged by FINRA DOE. *Id.* at p. 4473. In actual fact, the two net capital violations alleged by FINRA DOE were included in the scope of the Oklahoma state enforcement action against Geary. The FINRA HP recognized that Geary operated under heightened supervision while working as a registered representative at another Firm. *Id.* at p. 4473. However, the FINRA HP found that because the sanctions were the result of a settlement, the HP did not find the sanctions were “sufficient” to diminish the need for stringent sanctions in this matter, apparently viewing punishment as a valid objective. *Id.* The FINRA HP ignored the fact no evidence of any kind was presented by FINRA DOE to demonstrate the purported insufficiency of the state regulator’s sanctions. In other words, the FINRA HP again chose to ignore undisputed, mitigating evidence because it opted to penalize and punish Geary.

The FINRA HP ignored the remainder of the mitigating factors, stating only that Geary’s arguments “did not amount of full-fledged arguments” and then noting in a footnote that it was denying all arguments inconsistent with the FINRA HP Decision. Record at p. 4470; p. 4474, fn. 113. This is clearly incorrect as a matter of law and supports setting aside the sanctions.

In *Saad v. S.E.C.*, 718 F.3d 904 (D.C. 2013), the SEC was reversed where it refused to consider mitigating circumstances and merely cited to a statement in its decision that it was denying “all arguments that were inconstant with its views expressed in the decision.” *Id.* at 914. In addition to rejecting the same conclusory language employed by the FINRA HP, the *Saad* Court held that an SRO cannot use a blanket statement to disregard potentially mitigating factors, especially those set forth in the SRO’s own guidelines. The *Saad* Court stated:

The SEC must be particularly careful to address potentially mitigating factors...
the Commission should carefully and thoughtfully address each potentially

mitigating factor supported by the record. The Commission cannot use a blanket statement to disregard potentially mitigating factors ... that are specifically enumerated in FINRA's own Sanction Guidelines. Because the SEC failed to address potentially mitigating factors with support in the record, it abused its discretion by "fail[ing] to consider an important aspect of the problem." We must remand on that basis.

Id. at 914.

The FINRA HP and FINRA NAC failed to carefully and thoughtfully address potentially mitigating factors. As set forth below, there was substantial evidence in the record regarding the following mitigating factors, all of which were ignored by the FINRA HP and FINRA NAC or were summarily dismissed with little to no analysis – just as the *Saad* Court held was improper.

1. Geary's Relevant Disciplinary History.

The respondent's relevant disciplinary history is the first principal consideration for determining sanctions. *See* Guidelines, p. 6. General Principle No. 2, p. 2, of the *Sanction Guidelines* provides that disciplinary sanctions should be more severe for "recidivists" because an important objective of the disciplinary process is to deter and prevent future misconduct by imposing "progressively escalating sanctions" on recidivists.

Geary has been involved in the securities industry for over 16 years and has no disciplinary history that includes: (a) past misconduct similar to that at issue; or (2) past misconduct that evidences a disregard for regulatory requirements. *See* General Principle No. 2. Indeed, prior to the subject CEMP transactions (which consisted of, and were limited to, a limited number of transactions that occurred over a period of a few months' time), Geary had never had *any* disciplinary action asserted against or imposed against him and had *no customer complaints* against him. The FINRA HP and FINRA NAC failed to consider this relevant mitigating factor and consequently did not assign any mitigative weight to this fact and instead opted to penalize and punish Geary.

2. Geary Acknowledged the Alleged Misconduct to FINRA and Voluntarily Employed Subsequent Corrective Measures to Avoid Recurrence of the Alleged Misconduct.

The *Guidelines* provide that the FINRA HP must consider factors regarding: whether an individual or Firm accepted responsibility for the alleged misconduct to a regulator prior to detection; whether an individual or Firm voluntarily employed subsequent corrective measures prior to detection by a regulator; and whether the respondent voluntarily attempted, prior to detection to remedy the misconduct. *See Guidelines, Factor Nos. 2, 3 and 4, p. 6.* The FINRA HP ignored detailed testimony by Geary that the Firm self-reported the net capital issues and that Geary immediately took steps to remedy the situation.

The evidence at the hearing established that, with respect to the alleged net capital deficiency on or about February 9, 2010, Geary first became aware that the Firm had dipped below its net capital threshold when he received a call from Firm employee, Denise Hintze. *See Geary Testimony, Record at p. 2396, lines 3-25.* Hintze informed Geary that the deficiency would be in the range of \$20,000. *Id.* at lns. 7-20. Geary immediately informed Hintze to contact Norm Frager, the FinOP for the Firm. *Id.* Geary then began to immediately take corrective measures to remedy the net capital deficiency by calling his banker and seeking a loan. *Id.* at Geary Testimony, Record at p. 2397, lns. 1-18. Geary testified “So, in my mind, I was going to address and I did address the immediate need the next day.” *Id.* at Geary Testimony, Record p. 2398, lns. 13-17. Geary then transferred \$75,000 in personal funds in yet another attempt to take correct measures to avoid a recurrence. *Id.* at Geary Testimony, Record, p. 2399, lns. 13-24. Additional capital came into the Firm on February 26, 2010. *Id.* at Geary Testimony, Record at p. 2401, lns. 13-19. Between the days of February 10 to February 26, Geary testified that all he

worked on were efforts to obtain the additional capital and it was his “number one priority.” *Id.* at lns. 13-25; p. 2402, lns. 7-9.

The Firm immediately filed a net capital deficiency report with FINRA on February 10, 2010. *See* CX-37, Net Capital Notification, Bates No. 002875; Geary Testimony, Record at pp. 2405, lns. 11-p. 2406, lns. 23. An additional net capital deficiency report was again filed on February 12. *Id.* at p. 2407. Geary testified that no one from FINRA ever contacted him to advise him of any issues with the timing and frequency of the notices. *Id.* at Geary Testimony, Record at p. 2408, lns. 7-18.

The FINRA HP and FINRA NAC ignored the testimony from Geary that the Firm voluntarily started performing daily net capital contributions in February, 2010 and did so until the Firm’s closing in April 2012. *See* Geary Testimony, Record at pp. 2414, lns. 13-p. 2415-lns. 6.

Finally, the FINRA HP accused Geary of attempting to shift blame to the Firm’s FinOP, but this is a complete misstatement of the testimony. Geary testified that he left issues regarding the net capital up to the FinOP and that, with the benefit of hindsight, he wished he would have stepped in. He further testified that, although he wished he would have stepped in, he was the “guy at the top” and he had to “suck it up and take it.” Geary Testimony, Record at pp. 2413, lns. 23-p. 2414-lns. 12). *See Dept. of Enfor. v. Brian J. Kelley*, Complaint No. E9A2004048801, 2008 WL 5273298, n. 3 (we find mitigative value in broker’s frank admission to hearing panel). Here, the FINRA HP and FINRA NAC ignored this mitigating evidence and instead opted to penalize and punish Geary.

3. **Geary did not engage in any “pattern of conduct” over an “extended period of time.”**

The Guidelines provide that the FINRA HP must consider factors regarding: whether the respondent engaged in numerous acts and/or a pattern of conduct and whether the respondent engaged in misconduct over an extended period of time. *See* Guidelines, Factor Nos. 8-9, p. 6. The FINRA HP and FINRA NAC failed to consider this relevant mitigating factor. There is no evidence in the record that Geary engaged in any “pattern of conduct” over an “extended period of time.” *See* Principal Considerations, Nos. 8, 9.⁶ The record shows that the alleged violations did not cover an extended period of time, but rather occurred during a few short days in May 2009 and over a thirteen day period in February 2010.

FINRA NAC attempts to be overcome the fact that the net capital deficiency only lasted two days by instead focusing on the size of the deficiency (“extremely large”), which it found to be “aggravating.” *See* FINRA NAC Decision, Record at 4742. In this regard, FINRA NAC ignored the language of the *Guidelines* concerning “pattern of conduct” over an “extended period of time,” which clearly favors Geary, if viewed objectively.

Furthermore, the undisputed evidence is that, since 2009, Geary has continued to work as a broker with no additional customer complaints asserted against him. *See e.g. McCarthy v. Securities and Exchange Comm’n*, 406 F.3d 179 (2nd Cir. 2005)(SEC’s decision affirming sanction was deficient because there was no reasoned basis and noting that SEC did not consider that “violations were of relatively short duration ... and by all accounts [broker] has been lawfully trading ever since.”)

4. Geary Did Not Attempt to Delay FINRA’s Investigation, Conceal Information From FINRA or Engage in Misleading Testimony or Documentary Evidence.

⁶ An “extended” period of time has been found in other FINRA decisions that exceeded one year. *See e.g. Dept. of Enfor. v. Success Trade Sec, Inc*, Disc. Proc No. 2012034211301 (over a period of 4 years, broker offered and sold notes for to 65 investors using multiple false and misleading statements).

The Guidelines provide that the FINRA HP must consider factors regarding: whether the respondent provided substantial assistance to FINRA in its investigation of the underlying misconduct, or whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or provided inaccurate or misleading testimony or documentary evidence. *See* Guidelines, Factor No. 12, p. 7. The FINRA HP and FINRA NAC ignored the undisputed, clear and unequivocal testimony of FINRA representatives, as well as Geary, establishing that at all times Geary provided substantial assistance, fully cooperated with FINRA and did not attempted to delay any investigation or conceal any information from FINRA and there are no contentions he has engaged in any misleading testimony or documentary evidence.⁷

Steven Decker ("Mr. Decker"), the Principal Examiner in the New Orleans FINRA District Office, testified: that Geary was cooperative, responsive and not hostile during the FINRA cycle exams. *See* 11/18/2013 Transcript of Hearing, Day 1 of 3, Bates No. 001993 *See* Decker Testimony, Record at pp. 2086, lns. 20 – p. 2087, lns. 7. During a November 2009 on-site visit to investigate the alleged May 2009 net capital violation, Geary was responsive and cooperative, and provided substantial assistance. *Id.* at Decker Testimony, pp. 2089, lns. 13 - p. 2090, lns. 12. Mr. Decker testified that during Geary's on the record testimony in November 2010, Geary was cooperative, responsive, professional, demonstrated no resentment or hostility, answered every question, and provided substantial assistance in the investigation. *Id.* at Decker at pp. 2096, lns. 18- p.2097, lns. 18.

⁷ FINRA NAC concedes, albeit reluctantly, that "there is no evidence in the record that Geary tried to conceal GSI's net capital deficiency." *See* FINRA NAC Decision, Record at p. 4740

Mr. Decker further testified that overall Geary never attempted to delay or impede any investigation, or conceal or provide inaccurate or misleading info. Decker Testimony, Record at p. 2097, lns. 19-p. 2098, lns 5.

The FINRA HP and FINRA NAC do not mention any of Mr. Decker's testimony in their Decisions, and never considered this undisputed testimony as mitigative because they opted to penalize and punish Geary.

Yet another witness, Susan Wallace ("Ms. Wallace"), the FINRA principal regulatory coordinator, likewise testified that Geary was responsive, cooperative, and provided substantial assistance in the course of the investigation *See* Wallace Testimony, Record at p. 2151, lns. 3-21. She also testified that during Geary's record testimony, he answered every question, was professional, and did not display hostility or resentment. *Id.* at p. 2151, lns. 22 – p. 2152, lns. 10.

Again, the FINRA HP and FINRA NAC make no reference to any of Ms. Wallace's testimony on this issue in their Decisions, and never considered this testimony as mitigative. Because the FINRA HP and FINRA NAC ignored this mitigating testimony, the excessive and punitive sanctions should be vacated.

Geary testified that he fully cooperated with FINRA and never attempted to delay any compliance requests or conceal any information from FINRA and he never attempted to provide misleading or inaccurate information. *See* Geary Testimony, Record at p. 2421, lns. 1-24. FINRA DOE presented absolutely no evidence to suggest otherwise. Again, zero consideration was given to this undisputed evidence and these mitigating factors because the FINRA HP and FINRA NAC opted to penalize and punish Geary.

5. Geary's Misconduct Did not Result in Customer Harm.

The Guidelines provide that the FINRA HP must consider whether the respondent's conduct caused direct or indirect injury to another party or the investing public. *See* Guidelines, Factor No. 11, p. 6. The undisputed facts were that no customer suffered any negative financial impact as a result of the net capital violations. Geary testified that there was no risk to customers with respect to any net capital violations because of the way that the Firm handled its funds. The Firm did not commingle any customer funds with Firm funds, so the net capital deficiency had no effect on customers. *See* Geary Testimony, Record at p. 2410, lns. 3-21. The FINRA HP and FINRA NAC summarily dismissed the fact that no customer was harmed, and ignored the fact that there was no commingling of customer funds with Firm funds by finding "the required minimum net capital is a separate issue, however from commingling and the prompt deposit of customer checks in customer accounts." *See* FINRA NAC Decision, Record at p. 4470. The FINRA HP and FINRA NAC again failed to give any consideration to this mitigating factor, instead opting to penalize and punish Geary.

6. Geary Has Already Been Sufficiently Sanctioned by Another Regulator.

The Guidelines provide that the FINRA HP must consider whether the respondent was disciplined for the same misconduct at issue. *See* Guidelines, Factor No. 14, p. 7. The Oklahoma Department of Securities ("ODS") has already provided substantial remediation. Geary testified that ODS disciplined Geary by entering into a settlement with him that he would not register as a principal for twenty-five (25) months. *See* Geary Testimony, Record at p. 2417, lns. 12-p. 2418, lns. 19. Geary was also subjected to heightened supervision with his current employer, Union Capital. *Id.* at p. 2418, lns. 7-15. The FINRA HP found in its Decision that "While the State of Oklahoma has disciplined Geary on overlapping charges, the sanctions in the matter were the result of a compromise. The FINRA HP does not believe the sanctions ... are sufficient for

purposes of this proceeding or that they diminish the need for stringent sanctions in this matter.”

See HP Decision, Record at p. 4473.

FINRA NAC also diminished the sanctions imposed by Oklahoma because the imposition occurred in the context of settlement. *See* FINRA NAC Decision, Record at p. 4743. FINRA NAC also criticize the Oklahoma sanction because it only restricted Geary’s ability to serve in a principal capacity, whereas FINRA NAC felt it necessary to impose sanctions against Geary in his capacity as a general securities representative. *Id.*

Failure to adequately address other discipline in considering sanctions is grounds for reversal. *Saad v. S.E.C.*, 718 F.3d 904 (D.C. 2013).

The fact that the discipline imposed by ODS was the result of a “settlement” is of no relevance. Geary was still sanctioned, and under the Guidelines the FINRA HP and FINRA NAC had to take this into consideration. The Guidelines do not allow for consideration regarding “how” the sanctions were entered, just that they were. The FINRA HP’s and NAC’s focus was on penalizing and punishing Geary, rather than complying with the letter and spirit of the Guidelines.

7. Geary’s Conduct Did Not Result in Gain to Him.

The Guidelines provide that the Panel must consider whether the respondent’s misconduct resulted in the potential for monetary or other gain. *See* Guidelines, Factor No. 17, p. 7. The General Principles define “financial benefit” as any “commissions, concessions, revenues, profits, gains, compensation, fees or other remuneration, or other benefits the respondent received, directly or indirectly, as a result of the misconduct.” *See* General Principle, No. 6, fn. 4. The net capital violation issues resulted in no commissions or other financial gain for Geary. In fact, Geary deposited his personal funds in the Firm account upon learning of the February 2010

problem. Geary also testified that the Firm did not realize any profit on the bond transactions that caused the net capital issues. *See* Geary Testimony, Record at p. 2395, Ins. 19 - p. 2396, Ins.

2. The FINRA HP and FINRA NAC erred in failing to adequately consider these issues and opting to penalize and punish Geary.

8. Geary's Conduct was not egregious.

The Guidelines provide that the FINRA HP must consider whether misconduct was the result of an intentional, reckless or negligent act. *See* Guidelines, Factor No. 14, p. 7. As discussed above, the decisions of the FINRA HP and FINRA NAC are improper because they were upon an "implicit" determination of "egregious conduct," but no such egregious conduct was explicitly found by the FINRA HP. The FINRA HP held the conduct was at a minimum "reckless." However, the FINRA HP failed in refusing to apply any mitigation weight to the absence of an intentional state of mind, because it is clear Geary did not act with intent.

9. The Conduct At Issue was Aberrant and Not Otherwise Reflective of the Firm's Historical Compliance Record.

The Guidelines provide that the Panel must consider whether the conduct was aberrant and not reflect of the Firm's historical compliance. *See* Guidelines, Factor No. 14, p. 7. The record does not contain any indication the Firm (or Geary) had ever had any compliance issues prior to this instance. Accordingly, the FINRA HP failed to consider these mitigating factors and instead opted to penalize and punish Geary.

10. Geary's Inability to Pay the Fines.

In determining monetary sanctions, the Sanction Guidelines require adjudicators "to consider ability to pay in connection with the imposition, reduction or wavier of a fine or restitution." *See* Guidelines, p. 7.

Geary testified that, although the Firm closed in April 2012, he still has considerable outstanding obligations in connection with the Firm. The loan is secured by all of his assets. Geary is financially [REDACTED] [REDACTED] [REDACTED]. See Geary Testimony, Record at p. 2421, lns. 25-p. 2423, lns. 6. [REDACTED] [REDACTED] *Id.* at p. 2424, lns. 1-p. 2425, lns. 11. Respondent [REDACTED] [REDACTED], also. *Id.* p. 2425, lns. 8-p. 2426, lns. 8. Geary testified [REDACTED] [REDACTED] if he is suspended as a broker with his current employer. *Id.* at Geary at p. 2426, lns. 9-14. Geary likewise testified [REDACTED] [REDACTED] *Id.* at Geary at p. 2427, lns. 13-16.

While the FINRA HP made a passing reference – without any details – to the fact Geary provided testimony on the issue [REDACTED] it simply stated that “None of this excuses his misconduct” and to the extent [REDACTED] [REDACTED] “that is always the result of a suspension.” See HP Decision, Record at p. 4555. The FINRA HP clearly failed to adequately assess and consider these mitigation factors, such that the Decision is in error. The FINRA NAC stated that Geary failed to prove [REDACTED] despite the uncontroverted fact that Geary’s evidence was completely undisputed in every respect and received without reservation or objection by the FINRA HP. See FINRA NAC Decision, Record at p. 4744-75.

D. FAILURE TO TAILOR THE SANCTIONS TO THE VIOLATIONS AND FAILURE TO IDENTIFY A REMEDIAL PURPOSE.

The FINRA HP issued an “all capacities” suspension, a bar on supervisory capacity, and entered entirely disproportionate monetary sanctions. The FINRA NAC modified the sanctions as noted above.

An abuse of discretion occurs where a sanction is palpably disproportionate to the violation. *McCarthy*, 406 F.3d at 188. Even where the finding of a violation is supported by substantial evidence, a flagrant departure from the adjudicating agency’s policy and practice cannot withstand being overturned as an abuse of discretion. *See Morall v. Drug Enforcement Admin*, 412 F.3d 165, 183-84 (D.C. Cir. 2004).

The sanctions imposed by the FINRA HP and FINRA NAC appear intended to penalize Geary. Other cases involving net capital violations have issued penalties that were much less severe. *See e.g., Whiteside and Co, Inc. v. S.E.C.*, 883 F.2d 7 (5th Cir. 1989)(the Firm was alleged to have violated net capital regulations on four separate dates and violating reporting and record keeping requirements and only penalty was a \$10,000 fine with no reference to suspensions); *Stuart-James Co., Inc. v. S.E.C.*, 857 F.2d 796 (D.C. Cir. 1988)(censure and \$500 fine imposed for violating Net Capital Rule, but again no reference to suspension). Conversely, cases upholding more severe sanctions, like the ones at issue, typically involve situations where the party had previously been warned by the SEC regarding the net capital issues, and ignored the warning, or where the broker had already been disciplined for similar actions. *See e.g. Blaise D’Antoni & Associates Inc. v. SEC*, 289 F.2d 276 (5th Cir. 1961)(SEC examiners issued numerous warnings that were ignored thus sanctions regarding revocation of registration where appropriate); *Listrom v. S.E.C.*, 975 F.2d 866 (8th Cir. 1992)(sanctions upheld where broker had previously been sanctioned for similar conduct – from SEC News Digest 92-59 sanctions imposed against Listrom were \$25,000 joint and several fine with the Firm and a bar from

association with any member as a general securities principal); *Dep't of Enforcement v. Benz*, Discip. Proc. No. C01020014 (OHO March 4, 2003)(Based solely on the net capital violations, DOE requested Paul Benz be suspended for nine months in his capacity as a principal and fined \$15,000. The Panel disagreed with DOE, and found that the sanctions should be "much lower." The Panel determined the appropriate sanction instead was a \$5,000 fine and a suspension of 30 days only in Paul Benz's principal capacity.)(affirmed by NAC May 11, 2004).⁸

The FINRA HP failed to tailor its sanctions to the capacity in which Geary was acting with respect to the net capital issues. The FINRA HP suspended Geary being associated with a member Firm in *any capacity* for 60 calendar days and then another 30 calendar days, with the suspensions to run consecutively, rather than concurrently. *See* HP Decision, Record at pp. 4473-4474. There has not been a shred of evidence or testimony that Geary acted inappropriately in his capacity as a broker (or even could have in light of the fact that net capital is at issue), as opposed to a principal, yet the FINRA HP stripped Geary of his ability to earn a living as a broker for a period of three (3) months and FINRA NAC modified such suspension to 30 business days, notwithstanding the fact Geary's net capital responsibility was in the context of

⁸ FINRA posts on its website a publication titled "*Disciplinary and Other FINRA Actions.*" Additional cases with less severe sanctions include:

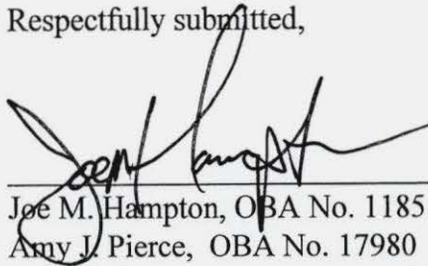
Name Case No.	Net Cap. Violations	Sanctions	Previous Disciplinary History
Janco Partners and Jan Helen #2011025505901	Nov. 2010 to Feb 2011 Deficient every month for 4 straight months	Firm censured and fined; Helen suspended in all capacities for 2 weeks	None, but FINRA found "willful failure to maintain minimum net capital"
Alan Bruce Levin #2010021107702 & #2010021256002	Dec. 2009 to May 2010	Suspended in principal capacity for 10 days and fined \$10k	Had corresponding cases for two separate Firms, both with net capital violations and was FinOp for Firm with numerous prior actions.

his principal capacity, rather than as a general securities representative. The decisions of the FINRA HP and FINRA NAC – to the extent *any* sanctions should have been levied – should only have been directed at Geary in his principal/supervisory capacity as that is the only capacity in which he acted with respect to the net capital issues. FINRA has recognized that when violations relate to poor supervision, sanctions should relate to the supervisory position, and not the broker position. *See e.g. In the Matter of Ronald Pelligrino*, SEC Release No. 34-59125, 2008 WL 5328765, * 17 (Dec. 19, 2008).

V. CONCLUSION

WHEREFORE Geary respectfully requests the Commission take the following action in connection with the FINRA NAC Decision.

Respectfully submitted,



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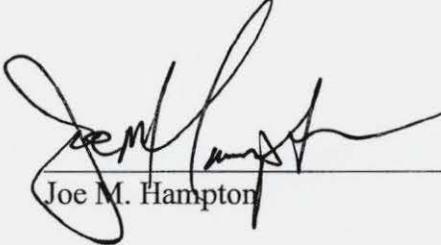
**ATTORNEYS FOR RESPONDENT
KEITH D. GEARY**

CERTIFICATE OF SERVICE

I, Joe M. Hampton, hereby certify that on 20th day of October, 2016 an original and three copies of the foregoing Opening Brief in Support of Review were served on the following persons, via regular U.S. Mail, first class, postage prepaid and also via overnight delivery through Federal Express:

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