UNITED STATES OF AMERICA

Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of MEYERS ASSOCIATES, L.P. (n/k/a WINDSOR STREET CAPITAL L.P.) and BRUCE MEYERS For Review of Disciplinary Action Taken by FINRA	**Admin. Proc. File No. 3-18359**

REPLY BRIEF IN FURTHER SUPPORT OF APPLICATION FOR REVIEW ON BEHALF OF MEYERS ASSOCIATES, L.P., (n/k/a WINDSOR STREET CAPITAL L.P.) and BRUCE MEYERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES **Page**

STATUTES & RULES

OTHER AUTHORITIES

I. INTRODUCTION

Applicants MEYERS ASSOCIATES, L.P., (n/k/a WINDSOR STREET CAPITAL L.P.) (the "Firm") and BRUCE MEYERS ("BMeyers") (collectively "Applicants") have asked the Commission to review a January 4, 2018 (the "NAC Decision"). For the reasons set forth in their opening brief, and as further stated in this Reply, the request should be granted.

FINRA's opposition largely consists of its insistence that the NAC Decision was correct, when it was not, relying on exaggerated and lurid descriptions[1] of emails, tortured exaggerations of alleged supervisory failures, and bald conclusory statements about the supposed inadequacy of Applicants' arguments.

The entire opposition brief is littered with non-substantive insistence, near *ad hominem* levels of argument, prejudice inducing verbiage (all acts, even clear inadvertencies, or acts taken on the advice of outside professionals like accountants, are "egregious"), and other defects of reasoning and mischaracterizations of the record, all to secure a "win".

FINRA should be held to a higher standard.

II. BACKGROUND

The Parties appear to agree on the general background facts.

Not one customer lost a dime. Not one. Not a dime.

FINRA's Department of Enforcement ("DOE") alleged nine causes of action in a disciplinary proceeding commenced October 6, 2014, but the two most serious ones alleged marketing unregistered securities in violation of Section 5 of the Securities Act of 1933 (The "1933 Act") and falsifying tax returns. FINRA's opposition brief details each cause of action as alleged.

[1] For example, FINRA now punches up the content of non-misleading emails (nobody was misled) as painting an "*extremely* positive picture" of an investment, as if tossing around adverbs somehow changes the underlying facts.

A six day hearing ended October 27, 2015. The Extended Hearing Panel (the "EH Panel") rendered its Decision on April 27, 2016. FINRA failed to prove its primary allegations and so the EH Panel dismissed the two most serious causes of action and instead found liability on six lesser "ancillary" causes of action. It assessed $700,000.00 against the Firm and $75,000.00 against BMeyers.

The assessment made no sense because (i) the DOE only had requested a total of $750,000.00 on *nine* causes of action (ii) it had withdrawn one of those prior to hearing and (iii) the two primary causes of action were dismissed. The opposition brief fails to address that the ruling effectively assigned a negative value to the three (fully one-third) of the causes of actions alleged – the withdrawn cause of action and the two unproven causes of action.

The Firm timely appealed the EH Panel's decision, on May 23, 2016, to the NAC.

In the NAC's January 4, 2018 Decision, it discounted or ignored (a) exculpatory evidence and (b) explanatory testimony which plausibly demonstrated no violations of any kind. It also, decided that the Firm had (i) email violations (augmented by a separate finding that it failed to reasonably supervise its email), (ii) faulty books and records (augmented by a finding that it did not reasonably supervise preparation of its books and records and (iii) failed to timely report customer complaints. It compounded the finding of inadequate supervision of email and books and records maintenance by a separate duplicate finding that Applicants failed to "maintain" an "adequate" system of supervisory controls, all of which violated various rules.

In other words, FINRA concocted five separate causes of action from two alleged violations – (1) emails and (2) books and records. Missing from all of this were any sales practice violations and or customer harm. There was none.

Against that undisputed reality, the fines assessed were *prima facie* excessive.

III. ARGUMENT

Applicants argue that the NAC was incorrect in finding as it did.

Once DOE failed to meet its burden of proof on its most important allegations – (1) violation of Section 5(c) of the Securities Act of 1933,[2] (the "Act") in connection with an offering of Series A Preferred Shares of SignPath Pharma, Inc. (SignPath) and (2) filing fraudulent tax returns - the remaining six causes of action (really just two purported violations augmented by multiple levels of "failure to supervise") simply did not have the requisite gravitas to warrant an award of 93.34% of the amount sought when FINRA was convinced it "had" Applicants on a Section 5 and fraudulent tax return claim.

Applicants maintain their position that had DOE been able to *properly* prove its ancillary claims, the Section 5 claim would have been sustained, because, in large part, the ancillary claims were functionally the elements necessary to prove the Section 5 claims. FINRA wants the Commission to accept a logical impossibility out of raw animus toward Respondents, not out of an intellectually honest assessment of reality.

1. The emails had no negative effect or impact on anyone.

The finding of the email violation is unwarranted. Nobody who received an actual prospectus for the SignPath offering ever received an email. Nobody who received an email ever received a prospectus. Thus the finding that the emails were "selling" the investment or "misleading" ignores the reality that nobody was misled or defrauded. FINRA has failed to identify even one aggrieved person or entity. There was no nexus tying the Firm's 1,037 emails to SignPath's offering[3].

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[2] 15 U.S.C. § 77e(c).

[3] Transcript of Record at 726, Dep't of Enforcement v. Meyers, FINRA Disciplinary Proceeding No. 2010020954501 (Oct. 6, 2014) [hereinafter Tr.].

Moreover, considering the sophistication of the persons / entities who did receive emails, not one was misled or suffered any economic harm or even could be deemed to have been "defrauded".

Here, the emails at issue, including those stating that SignPath was "seeking investors" or "seeking capital," were generic. Not one referenced the private offering of SignPath's Preferred Shares.[4] Not one referenced any other security or class of security.[5] Not one suggested any particular type or category of investment that might interest the recipient.

The compliant procedures taken by the Applicants are detailed in the opening brief.

The NAC Decision notes that the emails "referred to SignPath as a 'development phase' company" and "discussed its various formulations of curcumin".[6] And indeed, SignPath describes itself as a "clinical stage company" - http://signpathpharma.com/portfolio/liposomal-curcumin-for-treatment-of-cancer. The emails echoed the public statements made by SignPath.

DOE failed to show the emails were false, exaggerated, misleading, or omitted necessary information. While a DOE witness agreed that no sentence of the email was problematic on its own,[7] he opined that because of the email's "overall positive tone" and inclusion of a "lot of forward looking future events"[8] that it was problematic as a whole. This amounted to testimony that every statement was true, but by adding true statements together, the communication was converted into a lie. Remarkable.

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[4] CX-42.
[5] *Id.*
[6] NAC Decision at 5.
[7] Tr. 878-889.
[8] Tr. 852.

2. Applicants' recordkeeping did not violate the rules

The DOE failed to prove that Applicants falsified federal income tax returns. The NAC nevertheless found that Applicants failed to maintain accurate books and records, even though the recorded information was accurate, and consequently had no effect on the Firm's financial or tax reporting. This may be the clearest indication of animus driven "reasoning", since the NAC ruled that what was at most an inconsequential accounting error was an intentional violation.

The Firm's contractual obligations to BMeyers and another individual related to its business. Thus, even if an expense entry were made in the wrong place, the accuracy of its information was not affected. Had the Firm NOT made the entry, it would have been in violation; but it made the entry. Providing the required information was compliance. NAC is punishing Applicants for negligently putting a penny in the wrong jar.

BMeyers and another individual were contractually entitled to charge both personal and business expenses to a corporate American Express credit card (the "AmEx"), up to a specified monthly limit.[9] This arrangement did not violate any SEC or FINRA rule.[10]

The Firm's CFO entered those expenses on the general ledger.[11] BMeyers made no entries on the general ledger, nor caused any entries to be made.[12] If there was error on the part of the CFO in classifying the expenses, the error was on the side of inclusion – full disclosure – not exclusion or concealment. It was thus not a material error. And it nowhere created a threat to the "protection of investors" or otherwise violated Section 17(a) of the Exchange Act or its rules.

Moreover, the data entry by the Firm's CFO was subject to review by the Firm's

[9] JX-4; JX-9.
[10] Tr. 163:2-15.
[11] Tr. 645:18-21; 1372:13 – 1373:4; 1425:3-7; 533:4-9.
[12] Tr. 645:22 – 646:6; 1372:13 – 1373:4; 1579:2 – 1580:4; 533:10-14.

PCAOB-accredited accounting firm, WeiserMazars LLP ("WeiserMazars").[13] WeiserMazars issued two clean opinion letters for fiscal years 2011[14] and 2012[15]—which, according to the testimony of Lorenzo Prestigiacomo still stand[16]—in addition to a letter to the Firm in 2014 specifically confirming that WeiserMazars:

> "had reviewed the Firm's general ledger and particularly the Firm's accounting for the payment of expenses on behalf of its executive officers, Bruce Meyers and Imtiaz Khan. Additionally, the auditing staff had been provided with copies of the employment agreements for both Bruce Meyers and Imtiaz Khan, and was familiar with the provision in each agreement regarding the payment of employee-related business and personal expense allowance."[17]

The amounts paid for personal expenses in 2011 and 2012 were *de minimis*. In 2011, the Firm paid $37,635.00 or 0.56% of the Firm's gross revenue for the year.[18] In 2012, the Firm paid $25,107.00 or 0.21% of the Firm's gross revenue for the year.[19] The so-called "inaccuracy" was a misclassification of an expense category - the totals were unaffected; they remained accurately calculated. The "bottom line" amounts were unaffected.[20] There was no effect on the Firm's net capital computation.[21]

The misclassification resulted in no change to BMeyers' tax liability[22] and the other individual was shy $700 (seven hundred dollars) for 2011 and $1,100.00 for 2012.[23]

The NAC Decision is divorced from the evidence. Importantly, the NAC Decision says only the expenses were "incorrectly reported", not that they were *inaccurately* reported. It misses the standard entirely, and so must be reversed.

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[13] Tr. 1389:9-19.
[14] JX-19.
[15] JX-20.
[16] Tr. 1129:15-20.
[17] RX-19.
[18] RX-21.
[19] RX-22.
[20] Tr. 181:23 – 182:2; 1136:6-25; 1138:2 – 1139:6.
[21] Tr. 183:3-12.
[22] Tr. 557:22 – 558:2; 558:17-21.
[23] Tr. 1578:16-21.

3. Fundamental fairness requires reversal of the remaining findings

The Applicants did not fail to supervise the Firm's business. The NAC Decision's conclusion to the contrary is a bootstrapped conclusion, reached to justify the unjustifiable penalties assessed, as discussed below.

The Firm's books and records were maintained by a CFO. The CFO's entries were reviewed regularly by a firm of certified public accountants. The NAC Decision's conclusion is not only a bootstrap but is dead wrong because it ignores salient facts and relies on circular reasoning to reach a pre-ordained result.

The NAC Decision specifically cites to *Wedbush Sec.*[24], in which that firm *knowingly* made inaccurate regulatory filings. Here there was intentional act. Here there was no inaccuracy. Accurate numbers were recorded in places deemed wrong by FINRA by a CFO and approved by an outside cpa firm. The NAC Decision fails to discuss how Applicants were not justified in relying on personnel hired to assure correct accounting practices were followed.

With regard to the alleged unreported complaints, Applicants, in the consistent effort to upgrade and tighten an existing supervisory system, were able to uncover the 49 alleged unreported customer complaints as listed in CX-139, and report each one on the 4530 system as of December 24, 2015, some two years before the NAC Decision. This is the converse of failing to supervise; it reflects diligent supervision.

Nevertheless, Applicants are aware there were gaps in timing, largely due to certain unique, non-repeating circumstances affecting the Firm in 2009 and 2010 as detailed in Applicants' opening brief. But, FINRA waited over four years to bring formal charges on the issues at bar, when the SEC Rule requiring the retention of customer complaints, 17a-3(a)(18),

[24] NAC Decision at 9.

only requires that the Firm maintain such records for a period of three years, with the first two years in an easily accessible place.[25] Apparently FINRA intentionally used delay designed to hobble Applicants' ability to fully paper their defenses. And for perspective, the subject emails span March 6, 2007 (more than eleven years ago) through July 13, 2010 (almost eight years ago). FINRA's lengthy delay eliminated two key witnesses, one of whom has died and another retired, of advanced age, with progressive medical conditions that prevented him from testifying.

4. Applicants' disciplinary histories were not factually relevant

Applicants understand that their prior disciplinary histories may be taken into account when considering an appropriate sanction for actual subsequent violative conduct. But it may not be taken into account *as evidence* to assess whether separately charged violative conduct ever occurred, as the NAC Decision improperly did here. NAC considered previously settled violative conduct as newly charged and not only imposed an exaggerated unwarranted sanction, but increased the sanctions imposed by the EH Panel in the NAC Decision.

5. Sanctions

There is no underlying logic to the manner in which NAC redistributed the fines (a) *quadrupling* the fine against the Firm for advertising violations (which were not in fact violations as detailed above) and (b) *doubling* the fine for the advertising "issue" against BMeyers to $50,000.00. Essentially, NAC "rejiggered" the fines against the Firm, maintaining a $700,000.00 aggregate fine, going so far as to lump $500,000.00 together as a "unitary sanction" in order to mask an unjustified upward departure from the guidelines. NAC Decision at 17.

The NAC failed to provide any logical explanation for aggregating the remaining (and duplicative) fines as a "unitary sanction" against the Firm. It's "Torquemada-esque" ruling cannot stand. We use that invented phrase pointedly, because the intent appears to be to torture

[25] *See* SEC Rule 17a-4(b)(1).

the Applicants. The DOE itself, in assessing the appropriate sanction for *nine causes of action* concluded in *its* inflated calculus that $750,000.00 – already an upward departure from the guidelines – was appropriate. That places a value of only $50,000.00 on the aggregate of three causes of action:

- Offering to sell securities in violation of Section 5 of the Act;
- Failure to timely file a private placement memorandum, in violation of FINRA Rules 5122 and 2010; and
- Falsifying federal income tax returns in violation of FINRA Rule 2010.

It defies logic and any sense of equity or fundamental fairness to conclude that serious violations of law (falsifying tax returns is a felony) and industry regulation expressed in one-third of the claims asserted only merits one-fifteenth of the aggregate sanction sought, and that the lesser *remnant* claims, which duplicate each other, is worth 14/15ths (93%) of the total sanctions sought.

It bears repeating that the two most serious allegations – sale of unregistered securities and falsified tax returns – failed. The remaining claims were make-weight assertions to taint Applicants to help sell the failed claims. In this light, the NAC upward departure is easily seen as retaliatory.

Should the Commission determine that any sanctions are appropriate, it ought to abide by FINRA's General Principles Applicable to All Sanction Determinations.[26] General Principle No. 1 provides that: "Disciplinary sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct."[27] In this proceeding, the bulk of the charges related to the internal operations of the Firm's business and record

[26] SANCTION GUIDELINES, 2 (2015), *available at* https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.
[27] *Id.*

keeping. There were no "ill-gotten gains" by the Applicants in connection with any of these allegations, and none of the alleged violations had "widespread impact" on the investing public, on the markets, or on the Firm's ability to comply with its obligations under the federal securities laws or FINRA Rules.[28]

Additionally, "Adjudicators should consider a firm's size with a view toward ensuring that ***the sanctions imposed are remedial*** and designed to deter future misconduct, but ***are not punitive***."[29] The staggering amount of money that NAC has imposed against the Firm– in the aggregate $700,000.00 (seven hundred thousand dollars) is designed to close the Firm; it is excessive and *prima facie* punitive.

Not one customer lost a dime. Not one. Not a dime.

Despite this, NAC has elevated the ancillary claims into a metaphoric capital offense and summarily imposed the death penalty – barring BMeyers after a thirty year career and fining the Firm out of existence.

With regard to the alleged recordkeeping violations, as stated in the Sanction Guidelines, the NAC should have considered the actual nature and materiality of information.[30] As detailed above, there were no intentional violations (and no inaccuracy). If there were any violations at all, they were immaterial and *de minimis* and not caused by Applicants. They relied on the Firm's CFO and its outside acountants, WeiserMazars. According to the Sanction Guidelines, the penalties imposed by the EH Panel should have been *reduced*, not increased.

In every instance of cited wrongdoing, there were documented mitigating factors, resolutely ignored by NAC. There was no pretense of impartiality. The evidence has shown that Applicants were struggling to right a ship badly damaged by the perfect storm of events in 2010,

[28] *Id.*
[29] *Id.* (emphasis added).
[30] *Id.* at 29.

detailed in the opening brief. A fair application of the governing standards would have led any impartial Panel to reduce the fines not raise them.

CONCLUSION

In light of the foregoing, and in consideration of the documentary evidence and witness testimony that was presented on behalf of the Applicants, the Applicants request that the Commission reverse the NAC, restore BMeyers to registration, and evaluate an appropriate, not a wildly punitive, set of monetary sanctions reflecting the foregoing.

Dated: Brooklyn, New York
May 24, 2018

Respectfully submitted,

BY: _____

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AFFIRMATION AND CERTIFICATE OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF KINGS)

I, Lawrence R. Gelber, an attorney duly admitted to practice in the courts of the State of New York, do hereby certify and affirm, pursuant to 28 U.S.C. §1748, that I served a copy of the foregoing REPLY BRIEF IN FURTHER SUPPORT OF APPLICATION FOR REVIEW ON BEHALF OF MEYERS ASSOCIATES, L.P., (n/k/a WINDSOR STREET CAPITAL L.P.) and BRUCE MEYERS via facsimile on the date below and by overnight courier on the next business day thereafter to:

Facsimile: (202) 772-9324
The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

Facsimile: (202) 728-8264
Gary Darnelle, Esq.
Office of General Counsel
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, D.C. 20006

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

Dated: Brooklyn, New York
May 27, 2018

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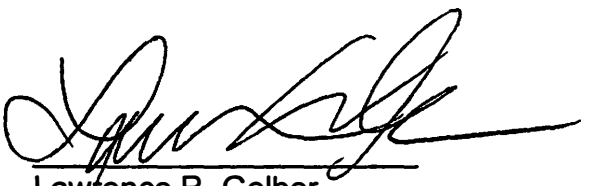
CERTIFICATE OF COMPLIANCE

I, Lawrence R. Gelber, certify that the foregoing REPLY BRIEF IN FURTHER SUPPORT OF APPLICATION FOR REVIEW ON BEHALF OF MEYERS ASSOCIATES, L.P., (n/k/a WINDSOR STREET CAPITAL L.P.) and BRUCE MEYERS, Administrative Proceeding No. 3-18359, 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, which calculated that the foregoing Reply brief brief contains 3,160 words.

Dated: Brooklyn, New York
May 27, 2018



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Sunday, May 27, 2018

Via Facsimile: (202) 772-9324
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Re: Department of Enforcement v. Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P) and Bruce Meyers. Admin. Proc. File No. 3-18359

To the Secretary:

I represent Meyers Associates, LP. (n/k/a Windsor Street Capital, LP.), and Bruce Meyers, the Respondents/Appellants in the above-referenced matter.

I enclose, with the hard copy of this letter, an original and three copies of the Reply Brief in Further Support of Application for Review On Behalf Of Meyers Associates, L.P., (N/K/A Windsor Street Capital L.P.) And Bruce Meyers, with signed Certificate of Service and Certificate of Compliance attached.

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Due to the Memorial Day Holiday, the hard copy is being overnighted on May 29.