UNITED STATES OF AMERICA
BEFORE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of SCOTTSDALE CAPITAL ADVISORS CORPORATION, JOHN J. HURRY, TIMOTHY B. DIBLASI, AND D. MICHAEL CRUZ For Review of Disciplinary Action Taken by FINRA

REPLY BRIEF FOR APPEAL OF TIMOTHY B. DIBLASI AND SCOTTSDALE CAPITAL ADVISORS CORPORATION

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I. INTRODUCTION

When faced with inconvenient facts and unfavorable law, FINRA has buried its head in the sand, ignoring reality and resorting to equivocation and subterfuge in an effort to ruin a good man's career. FINRA must overcome a significant burden in order to justify sanctioning Scottsdale Capital Advisors ("SCA") and its Chief Compliance Officer ("CCO"), Timothy DiBlasi, for allegedly failing to maintain adequate supervisory systems in violation of NASD Rule 3010, and for allegedly failing to maintain high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

As a threshold matter, with respect to Mr. DiBlasi, FINRA must first prove that he had actual responsibility over the relevant subject matter—establishing the supervisory system for reviewing microcap stock deposits for compliance with Section 5 of the Securities Act of 1933 and Rule 144.[1] *Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 WL 4258143, at *8 (Aug. 12, 2016). Absent such actual responsibility, there is no legal basis for imposing liability on Mr. DiBlasi. *Thomas R. Delaney II*, SEC Release No. 755, 2015 WL 1223971, at *57 (Mar. 18, 2015). As the Commission recently explained, there is a high burden for imposing liability on CCOs:

> In making determinations about CCO liability, the protection of investors and the public interest are at the forefront of our minds. The principles of fairness and equity, applied in context, also shine brightly in our decisions. For example, we have held that "[e]mployees of brokerage firms who have legal or compliance responsibilities do not become 'supervisors' ... solely because they occupy those positions." We have also dismissed proceedings alleging supervisory failures where the respondent conducted his own independent investigation in response to indications of wrongdoing and recommended responsive action. We have further dismissed proceedings against an individual with compliance responsibilities that alleged liability for causing his firm's violations of the securities laws where another

[1] Complaint at ¶ 175 (FINRA 000038) ("During the Relevant Period, Scottsdale, through DiBlasi, failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Section 5 for sales of microcap stocks.")

> official at the firm had responsibility for overseeing the relevant activities and the respondent was never asked to evaluate the relevant regulatory issues. . . . .
>
> These decisions reflect the principle that, in general, good faith judgments of CCOs made after reasonable inquiry and analysis should not be second guessed. In addition, indicia of good faith or lack of good faith are important factors in assessing reasonableness, fairness and equity in the application of CCO liability.

Thaddeus J. North, Exchange Act Release No. 84500, 2018 WL 5433114, at *9 (Oct. 29, 2018) (emphasis added).

This burden has not been met here, as the evidence uniformly shows that Mr. DiBlasi did *not* have responsibility for crafting the applicable procedures for the Rule 144 stock deposit review process. No witnesses expressed any ambiguity whatsoever on that point. FINRA's arguments to the contrary are based entirely upon the NAC's misreading of the wrong document—SCA's generalized written supervisory procedures ("WSPs"), which touched on the various aspects of the firm's overall business. Moreover, FINRA and the NAC have largely ignored the substance of the operative document here—SCA's Rule 144 Manual. SCA created and utilized this document as a standalone 24-page manual dedicated to assisting the review team in determining whether stock deposits could be sold in conformity with Rule 144 or other exemptions from registration.

FINRA and the NAC cannot be permitted to premise liability on a misunderstanding of SCA's WSPs, while simultaneously glossing over the substance the Rule 144 Manual. FINRA's and the NAC's errors demand reversal.

II. MR. DIBLASI WAS NOT RESPONSIBLE FOR DRAFTING THE SPECIFIC POLICIES AND PROCEDURES FOR STOCK DEPOSIT REVIEWS

FINRA alleges that Mr. DiBlasi "failed to establish and maintain a supervisory system . . . reasonably designed to achieve compliance with Section 5 for sales of microcap stocks."[23] FINRA's theory is premised upon an incorrect interpretation of portions of SCA's general, non-Rule 144 specific WSPs to argue that, although others had clearly assumed responsibility for creating and updating the Rule 144 Manual,[4] Mr. DiBlasi nevertheless should have ignored that reality and instead included all that same information in the general WSPs. That is neither an accurate reading of the WSPs nor a logical result.

A. SCA's General WSPs Did Not Delegate Rule 144 Compliance to Mr. DiBlasi

FINRA does nothing more than parrot the NAC's flawed reasoning by honing in on a harmless technical error from SCA's 2013 WSPs in finding that Mr. DiBlasi was responsible here.[5] As explained in prior briefing, SCA's 2013 WSPs incorrectly identified SCA's CCO as responsible for Rule 144 compliance.[6] This was an error that predated Mr. DiBlasi's tenure as CCO, that was in the process of being corrected at the time Mr. DiBlasi became CCO, and that was, indeed, corrected during the next regularly scheduled update to the firm's general WSPs in 2014.[7] Supervisory responsibility cannot attach based on a single documentary error that predates Mr.

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[2] Complaint at ¶ 175 (FINRA 000038).

[3] As detailed in Mr. Hurry's briefs, FINRA identifies no statutory grounding for its claim to authority over the Securities Act of 1933, including Section 5. To the contrary, FINRA's position cannot be reconciled with the unambiguous text of the Exchange Act, which designates the Commission as the sole entity with such authority. *See* Hurry Reply Br. 15–20. Thus, as FINRA lacks authority over the Securities Act, FINRA necessarily lacks authority to bring the current charges against Mr. DiBlasi, which are premised expressly on Section 5.

[4] Sec infra Section II.C.

[5] FINRA Opp. Br. at 70-72.

[6] DiBlasi Opening Br. at 12-15.

[7] *Compare* CX-179 at 64 (FINRA 006552) *with* CX-180 at 64 (FINRA 006712).

DiBlasi becoming CCO. *Thomas R. Delaney II,* SEC Release No. 755, 2015 WL 1223971, at *52-53 (March 18, 2015) (finding that, where significant testimonial evidence shows otherwise, a single documentary error does not delegate supervisory responsibilities to the erroneously identified individual).

Determined to force its desired result, though, FINRA then misreads the language from Appendix B of SCA's 2014 WSPs to claim that the updated WSPs specifically designated Mr. DiBlasi with responsibility over the "WSPs for Rule 144 transactions."[8] Putting aside the fact that the language FINRA points to was taken from SCA's May 2013 WSPs, which preceded Mr. DiBlasi's tenure as CCO,[9] FINRA's tortured interpretation of this language is wrong.[10]

Appendix B reads, under the subject entitled "Written Supervisory Procedures," that the CCO is to "[e]stablish, maintain and update, as required, the firm rules and procedures, includ[ing] [a]ppendices A and B."[11] Given both the subject heading—which relates to the general WSPs—and the fact that SCA's WSPs are titled "Firm Rules and Procedures", there can be no doubt that this passage relates to the firm's general WSPs, and not the Rule 144 Manual. This conclusion is reinforced when considering Section VIII of Appendix B, which is titled "144 Restricted Deposits," and which assigns Rule 144 compliance responsibilities to a variety of individuals, none of whom are Mr. DiBlasi or the CCO.[12] Regrettably, the NAC was unwilling to consider the full context of Appendix B of the WSPs and the differences between the WSPs and the Rule 144 Manual in its decision, and FINRA's current approach is to do nothing more than try to confuse

[8] FINRA Opp. Br. at 72.
[9] Tr. at 1921:14-16 (FINRA 004263).
[10] CX-182 at 2 (FINRA 006812).
[11] *Id.*
[12] *Id.* at 8 (FINRA 006818).

the Commission so that it will gloss over the definitions as well. The Commission should not do so.

B. SCA's 2014 General WSPs Were Not Inaccurate

FINRA then pivots to the argument that Mr. DiBlasi is liable for a Rule 3010 violation because his correction to the May 2014 WSPs was inaccurate in that it delegated Rule 144 compliance to the "General Principal," which the WSPs defined as the firm's "Management Committee."[13] FINRA's issue is that the "Management Committee" was disbanded in early 2014, and therefore could not have had any functional responsibility under the May 2014 WSPs.[14] While this argument makes for a nice soundbite, it is divorced from the facts. As explained in the opening brief, the "Management Committee" carried out the duties of the President of SCA.[15] Therefore, the May 2014 WSPs delegation of Rule 144 compliance to the "General Principal" was effectively delegation to the President of SCA. So when the "Management Committee" dissolved, Mr. Cruz, as President of SCA, assumed the role of the firm's "Management Committee," and by extension the duties of the General Principal.[16] Thus, the revised WSPs were accurate. The purpose of the correction in the May 2014 WSPs was to correct the WSPs that Mr. DiBlasi inherited and specify the reality of the situation that it was the President, not the CCO, who was responsible for creating the written procedures regarding the stock deposit review process. While it may have been more straightforward to use the term "President" instead of "General Principal," both the substance and the end result are the same. Once again, FINRA's arguments fail in face of the facts.

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[13] FINRA Opp. Br. at 71-72.
[14] *Id.*
[15] CX-180 at 7 (FINRA 006655).
[16] Tr. 76:4–77:12, 79:14–24 (Day 1) (Cruz) (FINRA 002414–15, 002417); Tr. 1249:22–1250:18 (Day 5) (Noiman) (FINRA 003589–90).

C. Uncontroverted Evidence Shows That Mr. DiBlasi Was Not Responsible for Rule 144 Compliance

With all of FINRA's supposed documentary evidence debunked, it is important to note that there was never any confusion at SCA over who was responsible for the firm's Rule 144 compliance. Jay Noiman, SCA's former CCO during the implementation of the firm's 2013 WSPs and against whom FINRA did not bring any charges, explained that the creation and maintenance of written procedures regarding Rule 144 was handled by Mr. Cruz, not the CCO.[17] And Mr. DiBlasi's uncontroverted testimony demonstrated that, "[It was] very clear with everybody at SCA who [was] responsible for broker/dealer compliance and who [was] responsible for [Rule] 144."[18] Even more, Mr. Cruz and Mr. Diekmann fully corroborated these facts.[19] There was no contrary testimony. There were no regulatory gaps at SCA.

FINRA's desperation on this point, along with the infirmity of its arguments, is exemplified by how it has continued to parrot the patently false statements the Hearing Panel and the NAC made to support their decisions. Specifically, FINRA cites the supposed "testimony" of Mr. Cruz for the proposition that "DiBlasi had responsibility for updating [the Rule 144 manual]."[20] This testimony does not exist. The Hearing Panel adopted this falsehood in its decision and the NAC perpetuated it.[21] And despite the fact that Petitioners have pointed out this significant error and cited indisputable evidence to the contrary no fewer than *three* times in prior briefing,[22] FINRA knowingly copied and pasted the erroneous language from the NAC's decision in its submission

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[17] Tr. 1253:11-1254:1 (FINRA 003593-94).
[18] Tr. 1947:10-14 (FINRA 004289).
[19] Tr. 127:11-22 (Day 1) (Cruz) (FINRA 002465); Tr. 563:17-564:2, 584:8-13 (Day 3) (Cruz) (FINRA 002902-03, 002923); Tr. 1813:10-13 (Day 8) (Diekmann) (FINRA 004155).
[20] FINRA Opp. Br. at 75, n.65.
[21] Hearing Panel Decision at 96 (FINRA 010402); NAC Decision at 86 (FINRA 010916)
[22] *See* Petitioners' NAC Opening Br. at 48 (FINRA 010187); Petitioners' NAC Reply Br. at 16 (FINRA 010538); DiBlasi Opening Br. at 16.

to the Commission.[23] The official transcript, which FINRA cited to and that has been available to it for over two years, reads:

> Q: Who was responsible for updating [the Rule 144 Manual] during the relevant period?
>
> A: I believe that would be Henry Diekmann.[24]

Unfortunately this type of behavior has become a recurring theme. While FINRA may not want the truth to get in the way of its desired outcome, the Commission should maintain an open mind and be guided by truth and facts. The uncontroverted testimony that Mr. DiBlasi had no involvement in the stock deposit review and approval process or the drafting of the Rule 144 Manual carries the day. The Commission should reject FINRA's arguments to hold Mr. DiBlasi liable by virtue of his job title.

III. SCA'S RULE 144 MANUAL WAS ROBUST

FINRA's charges also fail for the simple fact that SCA's Rule 144 Manual was a robust and thoughtfully crafted document that was designed to ensure Section 5 compliance. As explained in the opening brief, SCA's Rule 144 Manual provided detailed guidance on how to review proposed stock deposits for Section 5 and Rule 144 compliance.[25] Instead of addressing

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[23] *Compare* NAC Decision at 86 (FINRA 010916) ("Cruz testified that he created the procedures for the Rule 144 transactions that were in effect during the relevant period, the 'OTC Restricted Stock Deposit Procedures,' that DiBlasi had responsibility for updating those procedures, and that DiBlasi never had any role in the Rule 144 review process. DiBlasi, for his part, disagreed on this point, testifying that Cruz was responsible for Rule 144 compliance and the establishment of policies and procedures relating to that business.") *with* FINRA Opp. Br. at 75, n.65 ("Cruz testified that he created the Rule 144 Manual, that DiBlasi had responsibility for updating those procedures, and that DiBlasi never had any role in the Rule 144 review process. DiBlasi, for his part, disagreed on this point, testifying that he (DiBlasi) was not responsible for Rule 144 compliance or establishing policies and procedures relating to that business.").

[24] Tr. 666:15-17 (Day 3) (Cruz) (FINRA 003005).

[25] DiBlasi Opening Br. at 5-11.

these points, FINRA merely copied and pasted portions of the NAC's decision that have been shown to be inaccurate.[26]

For example, FINRA's assertion that SCA's Rule 144 Manual did not address nominees or beneficial owners is demonstrably false.[27] The Rule 144 Manual does, indeed, address the need to identify the beneficial owners of the deposited securities. The whole point of ascertaining the beneficial owner is to address the nominee risk – a nominee, by definition, cannot be a beneficial owner. Thus, if a customer was using nominee officers or directors, obtaining the identity of the beneficial owner serves to "pierce" those nominees and know who is behind them. Specifically, Sections 1.2.2 and 1.2.3 of the Rule 144 Manual address the concept of nominees by supplying detailed guidance on ascertaining the beneficial ownership of securities, which includes reviewing publically available information to make sure that nothing conflicted with the information obtained from the client, and cross-checking the total amount of a security owned or controlled by a client with their other known accounts at the firm.[28]

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[26] *Compare, e.g.,* FINRA Opp. Br. at 74 ("Scottsdale's inadequate WSPs contributed to the Firm's failure to consider if nominees were being used to conceal the identities of the beneficial owners its deposits. This failure is nothing short of spectacular in light of the four regulatory actions that involved Scottsdale's registered representatives and customers and included allegations that nominees had been used to facilitate fraud.") *with* NAC Decision at 86 (FINRA 010916) ("As we reviewed the record, we determined that Scottsdale Capital Advisors' inadequate WSPs contributed to the Firm's failure to consider if nominees were being used to conceal the identities of the beneficial owners its deposits. This failure is nothing short of spectacular in light of the four regulatory actions that involved Scottsdale Capital Advisors' registered representatives and customers and included allegations that nominees had been used to facilitate fraud.")

[27] FINRA's feigned shock that SCA's Rule 144 Manual does not use the exact term "nominees" falls flat given the fact that Regulatory Notice 09-05, which is supposedly FINRA's definitive guidance on Section 5 with respect to microcaps, does not use the exact term "nominees" either. *See* CX-197 at 1–11 (FINRA 006921–31).

[28] CX-185 at 6–7 (FINRA 006896–97).

Further undercutting FINRA's argument, SCA's Anti-Money Laundering ("AML") policies also directly address the potential misuse of nominees.[29] FINRA's hypocrisy is on full display here, as the Hearing Panel specifically prohibited SCA from introducing evidence about its AML policies,[30] even though those policies were an important part of SCA's integrated approach to Rule 144 compliance.[31] FINRA cannot complain about deficient policies with respect to nominees when it never bothered to consider all of the appropriate documents and excluded as irrelevant the very information it now claims is important.

FINRA then argues that the Rule 144 Manual was inadequate with regards to investigating the background of customers and key parties because "it did not tell them what to search for or how."[32] This is astonishing because *earlier in that same sentence*, FINRA acknowledges that the Rule 144 Manual requires the identification of key parties and the performance of searches across the Commission's website and the internet (the "how") for regulatory hits (the "what").[33] FINRA's argument, then, is that an adequate Rule 144 Manual should provide detailed instructions on how to perform a Google search. And because compliance issues are determined by the specific facts and circumstances of a case, *North*, 2018 WL 5433114, at *9, FINRA would like for that Manual

[29] CX-184 at 25 (FINRA 006881) (§ 10.3.2 lists as a red flag evidence that "[t]he customer appears to be acting as an agent for an undisclosed principal, but declines or is reluctant, without legitimate commercial reasons, to provide information or is otherwise evasive regarding that person or entity").
[30] *See* Tr. of Final Pre-Hearing Conference at 32:6–13, 35:21–36:18 (FINRA 002322, 002325–26); Tr. 1834:9–18 (Day 8) (FINRA 004176).
[31] *See* Tr. 126:17–127:22, 224:8–18 (Day 1) (Cruz) (FINRA 002464–65, 002562); Tr. 563:13–20, 565:15–21, 614:10–14 (Day 3) (Cruz) (FINRA 002902, 002904, 002953); Tr. 1823:15–18 (Day 8) (Diekmann) (FINRA 004165); Tr. 1920:21–1921:13, 1944:10–14, 1972:17–22 (Day 8) (DiBlasi) (FINRA 004262–63, 004286, 004314).
[32] FINRA Opp. Br. at 74.
[33] FINRA Opp. Br. at 74.

to provide an appropriate list of search terms to be used for every possible combination of facts and circumstances. That is neither realistic nor prudent.

FINRA also insists that the Rule 144 Manual 1) "provided no direction as to what to look for other than the issuer's own statements" and 2) "provided no guidance regarding customer addresses" when determining shell or affiliate status.[34] Again, these claims are false. To the first point, Section 1.2.5.1 of the Rule 144 Manual provides the due diligence steps involved in determining a company's shell status, which include indicating "any fact suggesting that the company is a shell, *including multiple name changes and reverse mergers.*"[35] Employees were clearly instructed to look at *any* information available, and provided specific examples.[36] As for the second point, FINRA's criticism stems from the fact that certain customers used the same registered agents, and thus had the same address. However, this criticism ignores the fact, supported by the testimony of FINRA's own witness, that the use of the same registered agents in developing countries, like those in this case, is commonplace.[37] More to the point, though, Section 1.2.3, which addresses Affiliates and Control Persons, specifically notes that "[a]ffiliates include relatives and family members who reside in the same household of an affiliate," a direct reference to a customer's address.[38] The due diligence steps go on to require a registered representative to review publically available information about a company to confirm that none of it conflicts with information provided by the client—information that presumably includes the customer's address.[39] Even more, the evidence shows that SCA took affirmative steps to track customer

[34] FINRA Opp. Br. at 75.
[35] CX-185 at 10 (FINRA 006900) (emphasis added).
[36] *Id.*
[37] Tr. 2324:3-2325: 14 (Day 10) (FINRA 004667-68).
[38] *Id.* at 7 (FINRA 006897).
[39] *Id.*

addresses and follow-up when necessary. For instance, SCA investigated the use of multiple accounts by Patrick Gentle, the beneficial owner of one of the relevant entities, and Andrew Godfrey, an authorized person of a different relevant entity.[40] Similarly, when SCA staff noticed promotional activity on the part of an entity that shared the same name as one of the relevant entities here, it demanded a physical address for the beneficial owner of the relevant entity that was seeking to make a deposit.[41] All of this goes to show that FINRA's and the NAC's gripe that there is no verbatim reference to a "customer address" in the document is just another example of how they have elevated form over substance.

The unmistakable reality is that SCA's Rule 144 Manual addresses the issues relevant to Section 5 compliance. FINRA's own expert testified that written procedures should address the issues that determine the availability of an exemption from registration, including the who, what, when, and how at each step,[42] and Petitioners have explained how Sections 1.1.3 ("RR Responsibilities"), 1.2 ("Due Diligence Steps – The Checklist"), and 1.3 ("Convertible Debt Securities") of SCA's Rule 144 Manual, and their numerous subsections, do exactly that.[43] Petitioners further explained how the approach to determining beneficial ownership, by using a beneficial ownership declaration in connection with deposits, has been used with approval by FinCEN in its mission to combat money laundering and terrorist financing.[44] And Petitioners'

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[40] RX-2 at 225 (FINRA 008863) (Gentle); CX-247 at 1 (FINRA 007489) (Godfrey); CX-248 at 2 (FINRA 007492) (Godfrey); see Tr. 912:8-9 (Day 4) (Dickmann) (FINRA 003251); Tr. 1821:19-25 (Day 8) (Diekmann) (FINRA 004163).

[41] Tr. 1769:20-1770:25, 1776:14, 1780:19-21 (Day 7) (Diekmann) (FINRA 004110-11, 004117, 004121); Tr. 1821:19-25 (Day 8) (Diekmann) (FINRA 004163).

[42] CX-324 at 8 (FINRA 008392).

[43] CX-185 at 4–11 (FINRA 006894–6901).

[44] *Customer Due Diligence Requirements for Financial Institutions*, 81 Fed. Reg. 29,398 (May 11, 2016) (codified at 31 C.F.R. pts. 1010, 1020, 1023, 1024, and 1026). The standard certification form appended to the FinCEN rule obligates the natural person opening a new account on behalf of a legal entity to provide certain identification information in a form that concludes with a written

expert, the former General Counsel and Executive Vice President at FINRA, testified that SCA's Rule 144 Manual met or surpassed industry norms.[45]

FINRA's half-baked criticisms that are premised on the wrong document (i.e., the general WSPs, not the Rule 144 Manual) do nothing more than belie the fact that they have no specific, legitimate complaints about Mr. DiBlasi or SCA's Rule 144 Manual. The reality is that FINRA strongly dislikes the microcap industry and is determined to punish SCA and its people by any means possible. There is no legitimate basis for findings against SCA and Mr. DiBlasi, and the Commission should reverse the NAC's decision.

IV. THE NAC'S SANCTIONS ARE EXCESSIVE

FINRA's justifications for the sanctions against Mr. DiBlasi and SCA are nothing more than another copy and paste of the NAC's decision, with absolutely no attempt to address the arguments raised in this appeal.[46]

Mr. DiBlasi's sanctions can only be described as punitive, and the Commission must remedy them. *McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005) (sanctions cannot be punitive); *Perpetual Sec., Inc.*, Exchange Act Release No. 56613, 2007 WL 2892696, at *12 (Oct. 4, 2007) (providing the Commission authority to vacate or reduce punitive sanctions). Though the sanction guidelines only call for a maximum fine of $37,000 for deficient WSPs, with up to a one-year

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and signed affirmation—not under penalty of perjury—that the person completing the application "hereby certif[ies], to the best of [his] knowledge, that the information provided above is complete and correct." *Id.* at 29,454–57.

[45] Tr. 2414:6–2415:15, Tr. 2419:4–13, 2423:18–25 (Day 11) (Menchel) (FINRA 004811–12, 004816, 004820); *see also* RX-38 at 7–11, 13–14 (FINRA 009239–43, 009245–46).

[46] *Compare* FINRA Opp. Br. at 88-89 *with* NAC Decision at 102-103 (FINRA 010932-33).

suspension in "egregious cases,"[47] the NAC imposed a draconian two-year ban[48] and $50,000 fine on Mr. DiBlasi based on arguments that have been thoroughly rebutted.

Even more, the NAC and FINRA rely upon a known falsehood for determining sanctions here. One of the principal considerations in determining sanctions for violations of FINRA Rule 3110 is "[w]hether the deficiencies made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance."[49] In arguing that there was such confusion here, both the NAC and FINRA rely upon a demonstrably false statement in the Hearing Panel decision – that Mr. Cruz testified that Mr. DiBlasi was responsible for updating the Rule 144 Manual.[50] As explained above, Mr. Cruz said no such thing. The fundamental unfairness of imposing sanctions that are wildly in excess of published guidance based on a known falsehood cannot be overstated. *See, e.g.*, *North*, 2018 WL 5433114, at *11–13 (CCO who committed violations of his duty to maintain adequate supervisory procedures was only fined $10,000 and given no bar or suspension for that violation).

SCA is similarly situated. Though FINRA's own sanctions guidelines recommend a maximum fine of $37,000 for deficient WSPs, the NAC saw fit to impose a $250,000 fine[51] despite the fact that the allegedly improper conduct only generated $38,000 in revenues for the firm.[52]

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[47] *Id.*

[48] In *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), the Supreme Court ruled that sanctions imposed for deterrence are necessarily punitive because deterrence is not a legitimate non-punitive governmental objective. Now-Justice Kavanaugh noted in *Saad v. SEC*, 873 F.3d 297, 305 (D.C. Cir. 2017) (Kavanaugh, J. concurring), that the logical import of *Kokesh* is that securities industry bars, which serve only a deterrent purpose, are necessarily punitive. "My sole point here is to cast doubt on our pre-*Kokesh* cases' characterization of an expulsion or suspension as remedial rather than punitive." *Id.* at 306.

[49] FINRA, *Sanction Guidelines* at 107 (2018).

[50] *See* supra Section II.

[51] NAC Decision at 101 (FINRA 010931).

[52] RX-40 at 1; Tr. 1871: 13-24 (Day 8) (Diekmann).

This, combined with the $1.25 million in sanctions imposed by the NAC for alleged Section 5 violations, threatens the very existence of SCA. This is necessarily punitive and must be reversed.

Mr. DiBlasi works hard day-in and day-out to support his special needs child, and to afford all of the associated medical costs. He has already suffered severe financial hardship, and he cannot afford to lose his livelihood. And SCA is a company that provides gainful employment to 8 people, all of whom may lose their jobs if SCA were forced to shut down due to the size of the fine. While focusing on racking up judgments and statistics, FINRA and the NAC have ignored the human cost of their actions. The Commission should restore rationality to this process by vacating, or at least substantially reducing the sanctions imposed upon Mr. DiBlasi and SCA.

V. CONCLUSION

Instead of engaging on the merits of the numerous points raised in this appeal, FINRA has merely regurgitated, verbatim, statements from the NAC decision, including statements that are undeniably false. The Commission should reverse the NAC's decision with respect to Mr. DiBlasi and SCA.

Dated: November 30, 2018

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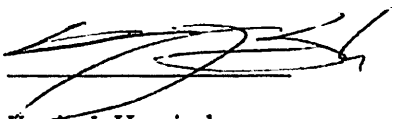
ATTORNEY CERTIFICATION

Pursuant to Rule 154(c) of the Commission's Rules of Practice, I hereby certify that foregoing document contains 4,430 words, exclusive of the tables of contents and authorities.



Kevin J. Harnisch

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2018, I caused the foregoing to be served via courier on the following:

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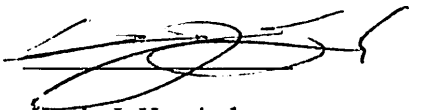

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