Mill Rock
INVESTMENT ADVISORS

December 20, 2010

Robert W. Cook
Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: File No. SR-FINRA-2010-056 (the "Proposed Rule Change"), Comment Letter, Request for Immediate Notification of Any Order Approving the Proposed Rule Change, and Request for Meeting.

Dear Mr. Cook:

I have previously written to you regarding FINRA's legal and regulatory deficiencies.[1] Additionally, I have corresponded with senior members of your staff regarding FINRA's deficiencies[2] and the petition for FINRA rulemaking submitted by the Alliance for Economic Stability, Inc. ("AES"), dated January 4, 2010. See File No. 4-591. Your staff has made clear that the Division of Trading and Markets ("DTM") is responsible for evaluating the AES petition. To date, AES has received no correspondence or notice from DTM concerning action taken related to the AES petition for rulemaking.

Please find attached a comment letter dated December 20, 2010 that I submitted on File No. SR-FINRA-2010-056 and Exchange Act Release No. 34-63316, which concern FINRA's proposed rule change to adopt FINRA Rule 1113 and to amend the FINRA Rule 9520 series.

As the comment letter makes clear, FINRA's stated motivation for the Proposed Rule Change is disingenuous. The Proposed Rule Change arose in direct response to applications submitted to FINRA by Asensio & Company, Inc. ("ACO"): a new member application ("NMA") and concurrent membership continuance application ("MC-400"). FINRA's Board of Governors voted for the Proposed Rule Change prior to ACO's NMA and MC-400 having been adjudicated. As such, FINRA's actual motivation for the Proposed Rule Change is improper. This motivation consists of seeking to foreclose all meaningful review of grievances of disqualified individuals,

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[1] See letter dated January 4, 2010. This letter, along with two others, was accepted as an application for review pursuant to Commission Rule of Practice 420, resulting in Administrative Proceeding File No. 3-13733 and Exchange Act Release Nos. 62315 and 62645.

[2] See letters to James Eastman, Chief Counsel, Division of Trading and Markets, dated June 16, July 21, September 1, October 28, November 18, and December 9, 2009; and letters from Mr. Eastman to Mr. Asensio dated July 23 and November 17, 2009. See also letter from Joseph Furey, Assistant Chief Counsel, Division of Trading and Markets, to Mr. Asensio dated September 9, 2010.

even where, as in my case, a person is subject to a FINRA bar sanction that is unwarranted in law and unjustified in fact.

FINRA has failed to establish a basis for the necessity of the Proposed Rule Change, and has not taken into account obvious due process concerns, as set forth in the comment letter.

DTM, pursuant to its delegated authority, should deny the Proposed Rule Change, especially in view of FINRA's evident improper and unstated motive for the Proposed Rule Change.

I request that DTM provide me with immediate notification of any order approving the Proposed Rule Change pursuant to delegated authority. If such an order is issued, I intend to seek Commission review as a party aggrieved and an unacknowledged party in such action.

I believe that you or a member of your staff should meet with me to discuss the Proposed Rule Change, the AES rulemaking petition, and remedies at the Commission for FINRA's deficiencies and my statutory disqualification.

The AES petition for rulemaking has gone unaddressed by DTM for approximately one year. The AES petition sought to ameliorate FINRA's deficiencies. The Proposed Rule Change, by contrast, is seeking to eliminate avenues for individuals to have FINRA's deficiencies corrected. I believe that it was wrongful for you to issue the Notice of Proposed Rulemaking without acknowledging and giving consideration of my case.

To date, I have sought relief from the Commission and its staff in numerous ways, and none has resulted in meaningful review or potential relief from FINRA's deficiencies and misconduct in my case. Aside from the administrative proceeding, which was dismissed on procedural grounds, and the AES petition for rulemaking, which has gone unaddressed for one year, I have separately sought action by DTM, the Office of Compliance Inspections and Examinations, the Division of Enforcement, and the Office of General Counsel. These actions are aside from current proceedings before FINRA and the U.S. Court of Appeals, neither of which are likely to result in effective relief.

Please advise me as soon as possible of whether you or a member of your staff will meet with me to discuss these concerns, and please provide me with immediate notice of any order by DTM pursuant to delegated authority approving the Proposed Rule Change.

Sincerely,

Manuel P. Asensio

Enclosure

cc: Allison Reid, Associate District Director, FINRA
Lorraine Lee, Statutory Disqualification Analyst, FINRA

This shall serve as comment upon File No. SR-2010-056 in response to Exchange Act Release No. 34-63316: Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 1113 and to Amend the FINRA Rule 9520 Series , dated November 15, 2010 (the "Proposed Rule Change").

As a preliminary matter, the Proposed Rule Change is a direct result of a new member application ("NMA") filed by Asensio & Company, Inc. ("ACO") and concurrent membership continuance application ("MC-400") filed on behalf of Manuel P. Asensio. ACO's applications were filed on June 17 and June 28, 2010, respectively. FINRA announced that its Board of Governors voted to seek the Proposed Rule Change three months later in a letter to member firms dated September 28, 2010. FINRA's Board thus improperly sought to change the rules impacting ACO's applications while adjudication of such applications was ongoing. FINRA moreover may seek to use an approval of the FINRA Proposed Rule Change in subsequent appellate litigation arising from ACO's applications. Therefore, FINRA's motivation for seeking the Proposed Rule Change as stated in FINRA's filing with the Commission is disingenuous and improper.

Examining the substance of the Proposed Rule Change, FINRA has failed to establish the necessity of amending its rules and has failed entirely to address due process concerns, which outweigh any basis for the Proposed Rule Change. FINRA's stated basis for the Proposed Rule Change is comprised of general remarks on the nature of applicants for membership and statutory disqualification. FINRA does not establish that its current rules are inadequate to allow FINRA deny an NMA and concurrent MC-400 where a statutory disqualification presents a significant concern. Thus, FINRA has failed to establish the necessity of the Proposed Rule Change. In fact, FINRA's current rules grant FINRA authority to deny an NMA on the basis of a statutory disqualification and to deny an MC-400 on the basis of the disqualified individual proposing to associate with a new member.

The only apparent motivation for FINRA seeking this rule change is to foreclose all access to the joint NMA and MC-400 process for disqualified individuals and to foreclose all review of any arguments and grievances presented by such individuals. The MC-400 process is the only procedure available for a disqualified individual to seek relief from a FINRA sanction, absent such sanction being overturned on appeal, which can only be made in an extremely narrow timeframe. There are no other procedures at FINRA, at the Commission, or in the courts. When an MC-400 is submitted by an operating member firm, the MC-400 is controlled by the firm rather than the disqualified individual. Therefore, the disqualified individual is restricted from speaking what grievances and arguments he or she may have. For the disqualified individual to start a firm to submit a joint NMA and MC-400 is the only process by which a disqualified individual may seek relief where the individual's speech is not restricted.

An individual subject to a FINRA sanction has incurred a deprivation of property and livelihood by a private party. For the same private party to be able to allowed government-protected authority to foreclose all meaningful review of such individual's grievances and attempts to seek relief runs contrary to the most basic ideas of constitutional due process.

As a practical matter, the Commission should consider the extent to which its scheme of administrative procedures both at FINRA and at the Commission may be challenged by approval of the Proposed Rule Change. The courts do not require exhaustion of administrative remedies where an agency procedures have been rendered futile or would foreclose all meaningful judicial review. See *McCarthy v. Madigan*, 503 U.S. 140 (1992); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994).

For the reasons set forth above, the Commission should deny the Proposed Rule Change.

This filing is being made in pursuit to comments we received from office of the secretary of u.s. securities & exchange commission and in addition to certain past communications pertaining to file no. sr-finra-2010-056 had with the directors of the commission's office of compliance inspections and examinations and division of trading and markets in the year proceeding FINRA's filing. Attached are a copies of selected certain correspondence and court filings pertaining to File No. SR-FINRA-2010-056. The letters include one to Director of Trading and Markets giving the division notice of ACO's intention to file a NMA and MC-400.

This comment letter is being simultaneously filed with FIRNA with ACO's applications.

Please be advised that this comment letter may be used in a current proceeding before the U.S. Court of Appeals.