**Application of Manuel P. Asensio ("Applicant") before the Securities and Exchange Commission for Review of FINRA Determinations Pursuant to Rule 420 of the Commission's Rules of Practice – Administrative Proceeding File No. 3-13733**

**Summary of Issues Presented in Applicant's Pleadings:**

I. Applicant's securities work while a member of FINRA and following his FINRA sanction has aided investors and the markets, while being troublesome to other FINRA members and FINRA itself.

1. Applicant exposed 53 cases of stock fraud through his securities research which he made public. In all cases, fraudulent issuers were supported by other FINRA members recommending their stock.
2. Applicant exposed wrongdoing by AMEX officials and directly helped to spur a congressional investigation into AMEX listings oversight deficiencies at the time that FINRA owned the AMEX.
3. Applicant exposed the conflicts of interest of a prominent Citigroup research analyst who maintained a buy rating on a company that Applicant advised to short just weeks before the company's bankruptcy. The episode aided in the "global settlement" of major investment banks and in the creation of new disclosure rules for research analyst conflicts of interest.
4. Applicant exposed conflicts of interest surrounding prominent mutual fund managers, resulting in changes in oversight of mutual funds.
5. Applicant exposed a NASDAQ-listed stock fraud and urged NASDAQ to de-list. While NASDAQ refused, the company was later de-listed and its executives were charged with securities fraud by the Commission. FINRA performs market regulation under contract for NASDAQ.

II. FINRA's own statements show the investigation to be biased and the bar sanction disproportionate.

6. The investigation was not based on a customer claimant or suspicion of improper conduct but alleged to have been a "part of a general review of industry compliance with NASD Conduct Rule 2711" [FINRA 2886]. FINRA stated at the hearing, "Rule 2711 [that was] a relatively new rule. There are no [sanction] guidelines for it" [FINRA 1271]. The new rule was suspiciously applied to the publication of a non-FINRA member. (See section III below.)
7. FINRA stated the investigation and "really isn't that big a deal" [FINRA 991] and that the alleged violation was the result of "inadvertent conduct" [FINRA 2732] and that "it's not huge" [FINRA 1271].
8. FINRA also admitted that it had "enough evidence without documents requested" and that the "8210 case really is not at this point [at the time of the hearing] directly related to the underlying case" [FINRA 728].
9. FINRA did not take issue with the substance of the research reports [FINRA 1226].
10. FINRA admits that the Applicant "has no relevant disciplinary history" [FINRA 3402].

III. The circumstances of the investigation also support the idea of bias:

11. NASD Conduct Rule 2711 was a new rule, and was spurred in part by Applicant's exposure of a prominent Citigroup research analyst's conflicts of interest.
12. Applicant ran a very small firm, which conducted no investment banking business, had a small number of institutional clients, and primarily derived income from proprietary trading. Applicant's firm thus did not have the conflict of interest addressed by 2711.
13. The disciplinary proceeding was the first involving 2711. A FINRA report refers to other firms being given an opportunity to be educated on 2711 before any enforcement action, and others with no investment banking business being given waivers from the rule.

IV. Bias, bad-faith, prejudgment, and abuse of regulatory discretion were shown from the beginning of FINRA's investigation related to Applicant's research reports – evidenced by an unanswerable request for information that was included in the initial FINRA Rule 8210 request and was repeated in two later requests. Any instance of bias and bad-faith shown by FINRA is a violation of securities laws.

14. The unanswerable questions made pursuant to FINRA Rule 8210, under threat of disciplinary sanction, include a mocking and sarcastic reference to Applicant's research reports.
15. The idea of bias, prejudgment, and bad-faith is reinforced by requests for information in the Polymedica report investigation concerning Applicant's personal life.
16. Bias, prejudgment, and bad-faith are also reinforced by circumstances surrounding the FINRA investigation of Applicant in 2000, the leak of information to the Wall Street Journal about investigation of Applicant, the later AWC resulting from the investigation, and the front-page Wall Street Journal story about the AWC. Applicant discussed the leak of information directly with Mary Schapiro via telephone in 2000.
17. Applicant's firm was unique in advocating short-selling and in critiquing the analyses of other FINRA members.
18. Applicant has moved that the Commission compel FINRA to produce additional documents related to investigation of Applicant to ascertain the full extent of FINRA's bias.
19. FINRA's evidenced bias constitutes an extraordinary circumstance justifying a Commission review.
20. The USA Today article on Applicant's research into PolyMedica, published at the time of the initiation of FINRA's investigation cites the anti-short-selling opinion of Lanny Davis, who is also cited in a SEC Office of Inspector General Report, concerning an instance where the SEC wrongfully targeted a short-seller for investigation. In that case, the SEC did not investigate a fraudulent company despite evidence of fraud presented to the SEC by a short-seller, but the SEC instead investigated the short-seller at the urging of the fraudulent company, despite no evidence of wrongdoing by the short-seller being presented to the Commission. The SEC employee leading the investigation of the short-seller went to work as a lobbyist for the company one year later. The corporation that was the subject of reports that FINRA investigated was thus connected politically to persons who manipulated the regulatory system to target short-sellers who expose fraudulent companies.

V. Bias and prejudgment entail that FINRA staff initiated the investigation and disciplinary proceeding for the purpose of barring the Applicant, based upon FINRA having an inherent and clear interest in discrediting Applicant. This interest is based specifically on Applicant's work to initiate a congressional investigation of the AMEX while FINRA owned the AMEX, and generally on FINRA serving the interests of its most powerful members, all of which are long-biased, by targeting short sellers. The FINRA committees serving as adjudicators in the disciplinary proceeding were biased because they represented FINRA member firms with long-bias against short sellers.

21. This type of bias is distinct from the theoretical, competitive bias of FINRA committee members considered by the Commission in approving FINRA's rules.
22. The idea of bias in this context is supported by the fact that the bar proceeded from an alleged FINRA Rule 8210 violation alone. There was no alleged or discovered instance of investor harm or financial irregularity (before or after the fact) that would have been served by all Rule 8210 requests being answered to FINRA's satisfaction.
23. A FINRA attorney referred to not needing the information requested of Applicant to proceed with a disciplinary sanction.
24. A FINRA investigator referred to the investigation as 'not that big a deal' in the disciplinary hearing.
25. The research report disclosure violations at issue in the investigation are referred to as being "inadvertent conduct" by FINRA.
26. This idea of bias is also supported by evidence of improper ex parte communications between FINRA and the NASDAQ press office around the time of FINRA's NAC issuing its decision to bar. The NASDAQ press office knew about the NAC decision in Applicant's case before Applicant did. It was also at the time that Applicant had publicly criticized NASDAQ about a stock fraud, Pegasus Wireless, that was listed on NASDAQ. The NASDAQ press office used the bar to deflect criticism about Pegasus.

VI. Flawed basis for investigation, refusal to adjudicate jurisdictional issues, and refusal to consider issues of bias:

27. FINRA has maintained that its investigation of Applicant arose from a general industry review of compliance with NASD Conduct Rule 2711. This idea is nonsensical. Applicant's firm was a small single principal broker-dealer that conducted no investment banking business, meaning there was no conflict of interest to be monitored.
28. FINRA's investigation centered on research reports published on asensio.com, which was a website owned by an entity separate from Applicant's FINRA-member broker-dealer. FINRA did not have jurisdiction over the non-broker-dealer entity.
29. Not all the information FINRA requested was in the control of Applicant, which Applicant stated to FINRA.
30. Applicant also submitted to FINRA that FINRA did not have the right to make information requests of a non-member entity. FINRA refused to adjudicate the jurisdictional issue, and proceeded with a disciplinary proceeding.
31. FINRA then refused to consider issues of bias in the disciplinary proceedings below by dismissing Applicant's counter claims and counter complaint, also precluding conducting any discovery related to Applicant's claims of FINRA staff's bias.

VII. FINRA imposed an excessive and oppressive sanction on Applicant.

32. FINRA's sanction on Applicant exceeded FINRA's own sanction guidelines, based on FINRA's argument that Applicant's responses to requests for information were tantamount to a total failure to respond.
33. FINRA's NAC and Hearing Panel failed to consider mitigating circumstances, including FINRA's refusal to adjudicate jurisdictional questions.
34. FINRA had offered to settle for only $15,000.
35. The sanction shows a fundamental unfairness in imposing a permanent bar where no instance of investor harm occurred, was alleged, or even suspected, and where the individual had not been the subject of a single customer complaint in his entire FINRA career.
36. The Commission argued in PAZ Securities that an unqualified bar is justified as a remedial sanction for a FINRA Rule 8210 violation because the bar remedies the threat of future investor harm. In Applicant's case there was no threat of future investor harm.
37. The sanction is therefore excessive and oppressive, even without consideration of issues of bias, prejudgment, and abuse of regulatory discretion.

VIII. FINRA's conflicts-of-interest allow for bias.

38. FINRA has an overt conflict-of-interest in all regulatory matters. FINRA as an organization is accountable to its shareholders, which are the same broker-dealers that FINRA regulates.
39. FINRA executives are compensated with multi-million-dollar salaries, which increase based on regulatory duties. When FINRA was created through the merger of NASD and NYSE Regulation, the salary of Mary Schapiro, then FINRA's CEO, increased approximately 50% to over $3 million.
40. FINRA has had an overt conflict-of-interest in its ownership of stock exchanges at times relevant to events in this case. FINRA owned both the AMEX and NASDAQ. FINRA would have an incentive to loosen regulatory standards for an exchange it owned, in order to increase the exchange's revenues and make it look more profitable, thereby securing a greater sales price.
41. The Commission instituted proceedings against Salvatore Sodano, former CEO of the AMEX and a former FINRA official, for exploiting regulatory deficiencies for his own personal gain (in the form of incentive compensation upon the successful sale of the AMEX at a desirable price), but the Commission later reached an undisclosed settlement with Sodano. FINRA paid Sodano approximately $3 million in 2008 while the Commission proceeding against Sodano was ongoing.
42. Salvatore Sodano may have directly influenced the investigation of Applicant, due to Applicant's work beginning in 2000 to initiate a congressional investigation into listings oversight deficiencies at the AMEX, resulting in a GAO report finding the AMEX deficient.
43. FINRA CEO Richard Ketchum went to work for Citigroup directly after Citigroup reached a settlement entailing a payment of $400 million for violations related to sell-side research analyst conflicts-of-interest. Applicant exposed the conflicts-of-interest of one Citigroup analyst publicly. The Citigroup analyst, Jack Grubman, was the subject of Commission legal action, and his case was included in the "global settlement." Citigroup would have had an incentive to ask for unduely severe investigation and sanctioning of

Applicant, and Ketchum could have enabled this. Ketchum started employment at Citigroup in mid-2003, when the disciplinary proceeding against Applicant commenced.

44. While the conflicts of interest evident with Ketchum and Sodano are exemplary in relation to the stock frauds exposed by Applicant and the potential for FINRA to take retaliatory action against Applicant on behalf of FINRA-member firms harmed by Applicant, Applicant also exposed more than 50 other frauds, which would create innumerable conflicts for FINRA regulators and motives for FINRA to wrongfully take action against Applicant.
45. FINRA member firms, including the largest and most powerful firms, predominately have a long-bias. This gives FINRA staff an incentive to target short-sellers for investigation. It also gives FINRA committees an incentive to prejudge cases involving short-sellers.
46. Commission staff showing a bias against short-sellers has been well demonstrated, despite empirical evidence that short-sellers reveal a significant percentage of large stock fraud cases that victimize investors.

IX. Commission deference to FINRA leaves FINRA's conflicts of interest unchecked and allows for violations of investor protection.

47. Evidence emerged through a lawsuit filed against FINRA that FINRA executives, including Mary Schapiro, lied to FINRA member firms both verbally and in a proxy statement, surrounding the merger of NASD and NYSE Regulation. The Commission to date has made no announcement concerning an investigation or sanction related to the instances of lying.
48. The Commission allowed FINRA to circulate a self-generated report disclaiming responsibility for the Madoff and Stanford frauds based on misrepresentations of FINRA's jurisdiction, and the Commission made no statement or response to the report.
49. The Commission allowed FINRA to lobby Congress for greater jurisdiction based on the misrepresentations in FINRA's Madoff report.
50. FINRA uses the Commission's lack of action against it to deflect criticism.
51. The Commission's Chairman, a former FINRA CEO, criticized the Commission in congressional testimony concerning responsibility for Lehman Brothers' inadequate capital levels and hiding of liabilities through its Repo 105 program, while the Chairman neglected to mention FINRA's direct role in overseeing capital levels and the fact that Lehman's Repo 105 were conducted through Lehman's U.S. broker-dealer, over which FINRA had direct oversight responsibility.
52. Commission deference to FINRA allows FINRA to make arbitrary and capricious determinations and overtly abuse regulatory discretion. FINRA's Madoff report represented that FINRA staff are "reluctant to pursue investigations where jurisdiction questions arise." In Applicant's case, FINRA staff zealously pursued an investigation in the face of "jurisdiction questions." This uneven application of rules is an abuse of regulatory discretion.
53. Federal courts granting "absolute immunity" to FINRA impose a need for the Commission to exercise greater oversight.
54. Commission staff is predisposed to view unqualified FINRA bars as tantamount to bars imposed by the Commission, and to think that the public interest is served by the permanent exclusion of FINRA-barred individuals from the securities industry.

55. Commission staff acknowledge that FINRA is afforded “considerable discretion” in making MC400 determinations without definitive criteria or guidelines.

X. Problems with FINRA’s statutory disqualification application (“MC400”) process and the MC400 decision in the Applicant’s case:

56. FINRA has no codified criteria for evaluating MC400s, allowing for arbitrary and capricious determinations.
57. In Applicant’s case, the lack of codified standards allowed FINRA to dismiss Applicant’s MC400 based on bias and prejudgment.
58. FINRA’s decision on Applicant’s MC400 also follows the Supreme Court’s definition of “unreasoned decisionmaking” by stating that it applies one standard, while then applying another.
59. FINRA is reluctant to make any disclosure about criteria or process involved in evaluating MC400s, even when questioned by members of Congress, as in Applicant’s case.
60. FINRA denied Applicant’s MC400 decision, despite the fact that the main issue in approving an MC400 is whether it is in the public interest. Applicant more than 50 cases of stock fraud, but FINRA’s NAC ruled that it was not in the public interest for Applicant to be readmitted.
61. The decision of FINRA’s NAC on Applicant’s MC400 shows the qualities of what the Supreme Court has called “unreasoned decisionmaking,” where a judgment is made by a rule other than the one announced.
62. On Applicant’s contention that his exposure of stock fraud served to benefit the public and the markets, FINRA responded first by stating that it did not ‘assign a greater or lesser value to securities activity,’ but then went on to dismiss Applicant’s exposure of stock fraud by discounting his “motives.”
63. FINRA’s NAC went so far as to question the judgment of a psychiatrist’s written professional opinion of Applicant, rather than using a rebuttal expert, or simply stating that medical testimony wasn’t relevant to the proceeding.
64. FINRA stated that not enough time had elapsed since the bar to allow reentry, but it did not state in the decision what would be an adequate amount of time. Subsequent discovery efforts revealed that FINRA has no definite criteria on what constitutes enough time.
65. FINRA did not address mitigating circumstances, nor did it address the fundamental unfairness of a permanent bar for an individual who has committed no act of investor harm, while FINRA regularly imposes far less severe sanctions for those who have actively and knowingly harmed investors.
66. The FINRA decision makes repeated reference to three AWCs demonstrating a disciplinary history of repeated non-compliance with FINRA rules. However, the last of the three AWCs states that Applicant “has no relevant disciplinary history,” showing an inconsistent evaluation of disciplinary history.

XI. Issues related to the application accepted by the Commission:

67. The application was created by the Commission’s Secretary out of letters submitted by Applicant to James Eastman, Chief Counsel of the Commission’s Division of Trading and Markets, and other Commission officials. Applicant had sought guidance and

interpretation from Mr. Eastman beginning in June 2009 concerning issues relevant to FINRA's MC400 process and the Commission's oversight of FINRA. Mr. Eastman responded with two letters.

68. In a letter dated December 15, 2009, Applicant sought to have an opinion Mr. Eastman expressed reviewed pursuant to Rule 430 of the Commission's Rules of Practice.
69. On January 6, the Commission's Deputy Secretary sent a letter to Applicant acknowledging receipt of three of Applicant's letters (the Dec. 15 letter was excluded), and stating that the three letters were accepted as an application for review pursuant to Rule 420 of the Commission's Rules of Practice, but the acceptance did not "constitute a Commission determination as to the proper statutory basis for [the] application."
70. Applicant had noted in previous letters to Mr. Eastman of the Commission that the issues raised in his case surpass and confound those that could be properly considered through the Commission appeal (Rule 420) process.
71. Applicant received the letter giving notice of acceptance of the application on the same date that he received a letter from T. Grant Callery, FINRA's General Counsel, acknowledging an "appeal" and citing a letter from Applicant to Mr. Eastman that Applicant had not sent to FINRA. The timing of the Callery letter and Callery's citation of the Eastman letter raise issues of improper ex parte communications surrounding the acceptance of the application.
72. Applicant wrote to Mr. David Becker, the Commission's General Counsel, on January 14, expressing that issues raised by Applicant concerning FINRA's deficiencies and Commission oversight of FINRA merited a broader review by the Commission than was possible under a Rule 420 review.
73. Fourteen days after the notice of acceptance of the application, FINRA filed a Motion to Dismiss Application for Review, stating that there were no extraordinary circumstances justifying a Commission review.
74. Applicant responded asking for a definition of the accepted application and information on why it was accepted as such, or in the alternative to be allowed to file a new application intended as such.
75. The Commission has set forth no criteria for what constitutes "extraordinary circumstances" justifying a Commission review beyond the 30-day deadline in Rule 420, but in past decisions the Commission has indirectly deferred to FINRA's narrow, self-serving definition of extraordinary circumstances.
76. Applicant has argued that for the Commission to narrow to Rule 420 a review of his grievances and the issues of law presented by him surrounding FINRA oversight, only to dismiss the review, would be counter to the public interest and investor protection.

XII. Extraordinary circumstances justifying a Commission review:

77. FINRA's evidenced bias and prejudgment towards Applicant based on FINRA's overt conflicts of interest that are unquestioned by the Commission.
78. The lack of whistleblower protections at FINRA.
79. The acknowledged "considerable discretion" afforded to FINRA in making MC400 determinations.
80. The stated predisposition of Commission staff towards unqualified FINRA bars.
81. FINRA's excessive, oppressive, and punitive sanction of Applicant showing an arbitrary and capricious abuse of regulatory discretion.

82. FINRA’s treatment of Applicant violate the provisions of the Securities Exchange Act of 1934, requiring that FINRA act consistent with the public interest and investor protection.
83. The necessity of Applicant conducting discovery following the MC400 decision to learn that FINRA has no codified standards for readmission, allowing FINRA to issue arbitrary and capricious determinations, and rendering the MC400 process futile to address Applicant’s grievances, counter to assertions of FINRA and Commission staff. Applicant was only able to make such discovery through the assistance of members of Congress.
84. The discovery of Salvatore Sodano, former FINRA official and head of the AMEX, being subject to a Commission adjudicatory proceeding for exploiting regulatory deficiencies for his own personal gain, after Applicant helped to spur a congressional investigation into the AMEX, resulting in a GAO report on AMEX deficiencies in 2003.
85. Generally, the conflict of interest represented by FINRA’s former ownership of the AMEX.
86. The discovery of Richard Ketchum, current FINRA CEO, having worked for Citigroup after the Applicant exposed conflicts of interest of one of Citigroup’s most prominent analysts. Citigroup was required to pay $400 million in the research analyst conflicts ‘global settlement.’ Ketchum beginning at Citigroup coincided with FINRA’s initiation of the disciplinary proceeding against Applicant.
87. Applicant not appealing the sanction previously based on FINRA’s representation that an MC400 could be submitted immediately, but Applicant would only later learn that the MC400 process is futile for him personally.
88. Applicant being a unique FINRA member and the circumstances of his sanction being unique.
89. Improper ex parte communications between Commission and FINRA surrounding application.
90. FINRA’s bias against short-sellers generally and documented misconduct by FINRA executives, including Commission’s Chairman.
91. The Commission’s deference to FINRA even in cases where FINRA abuses regulatory discretion.

XIII. The Commission should conduct a review of Applicant’s case using the Commission’s plenary authority over FINRA, if the Commission does not conduct a review pursuant to Rule 420, based on FINRA’s evidenced anti-investor conduct in Applicant’s case.

XIV. The Commission should cause Chairman Mary Schapiro and Commissioner Elisse Walters, both former FINRA executives, to recuse themselves from this proceeding, based upon their conflict of interest in protecting FINRA.

XV. Collateral effects of FINRA sanction should be the subject of review under Rule 420(a)(iii).

92. Applicant is denied the ability open brokerage accounts as a private investor and investment advisor due to the FINRA sanction, constituting collateral punitive effects of the FINRA sanction which should be reviewed by the Commission.