REPORT AND DETERMINATION OF LEICESTER BRYCE STOVELL

I am an attorney engaged by Mr. Manuel P. Asensio to conduct an independent review of the facts and issues of law in his case before the Financial Industry Regulatory Authority, Inc. ("FINRA"), a self-regulatory organization overseen by the U.S. Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934.

I am a graduate of the University of Chicago Law School and Princeton University, I am admitted to the bar in the District of Columbia and I was employed for approximately twenty years by the SEC, with an expertise in enforcement and regulatory policy matters. For the past ten years, I have maintained a private practice consulting on securities law and regulatory matters.

I have reviewed the voluminous record in Mr. Asensio's litigation with FINRA and his attempts to remedy the bar sanction imposed by FINRA in January 2005. I set forth below my account of the facts and circumstances in Mr. Asensio's case and my conclusions from my review of the record.

I. Statement of Proceedings Record Review

The record includes the 2004 disciplinary proceeding before a FINRA Hearing Panel, the review of the Hearing Panel decision by FINRA's National Adjudicatory Council ("NAC") in 2006, the 2007 Membership Continuance Application ("MC-400") staff decision and NAC review, Mr. Asensio's discovery efforts investigating standards in FINRA membership proceedings assisted by U.S. Senator Kirsten Gillibrand and U.S. Congressman Steve Rothman in 2009 that resulted in decision letters issued by the SEC's Division of Trading and Markets, Mr. Asensio's petition for an SEC review of the letters pursuant to Rule 430 of the SEC's Rules

of Practice, the dismissed proceeding at the SEC to review the FINRA determinations pursuant to Rule 420 of the SEC's Rules of Practice based upon Mr. Asensio's request for a Rule 430 review resulting in the SEC's Orders dated June 17, 2010 and August 4, 2010, the review by the U.S. Court of Appeals of the SEC's Orders, and the joint New Membership Application ("NMA") and MC-400 filed with FINRA in 2010, resulting in decisions issued by FINRA staff and the NAC. This record also includes a petition for rulemaking filed with the SEC by the Alliance for Economic Stability, a non-profit organization founded by Mr. Asensio, as well as the record of a rulemaking proceeding initiated by FINRA, seeking SEC approval of new FINRA rules to restrict individuals from making joint NMA and MC-400 filings.

II. Stovell's Legal Submissions to FINRA:

From my review of the entire record in this case, I concluded that Mr. Asensio's sanction is unwarranted and unjustified. I also concluded that FINRA[1] had retaliatory motives in investigating Mr. Asensio and in pursuing its most severe disciplinary sanction, an unqualified bar from associating with any FINRA-member firm in any capacity. The bar sanction was imposed on a finding that Mr. Asensio violated FINRA Rule 8210, which requires FINRA members to respond to requests for information from FINRA staff. My findings from my review of the case were set forth in a series of letters to FINRA (**Exhibits 1 – 4**); these letters are summarized below.

[1] This includes FINRA's individual executive and legal leaders, including Richard Ketchum, Mary Schapiro, and T. Grant Callery, whose financial interests were harmed by Mr. Asensio' work to expose stock fraud; it includes the bias of FINRA as an institution, since the financial interests of FINRA itself were also harmed by Mr. Asensio's pro-investor work. It also includes FINRA staff, who reported to FINRA's leaders.

My core finding is that the purported Rule 8210 violation was unsubstantiated, and that FINRA relied upon inappropriate inferences adverse to Mr. Asensio, rather than substantial evidence, to justify a bar sanction.

As an initial matter, I am aware that Mr. Asensio's FINRA bar sanction has had collateral effects on all of his business activities, including those outside of the broker-dealer business regulated by FINRA and even those outside of the financial sector. I am also aware that Mr. Asensio's attempts to seek remedy of the FINRA bar have shown that the government oversight of FINRA is too limited to offer any prospect of relief.

Rendering matters worse, Mr. Asensio's attempts to seek redress for the bar and to have deficiencies at FINRA examined have resulted in manipulative conduct by officials at the SEC, working to disadvantage Mr. Asensio while ignoring his claims. The SEC has provided only an affectation of proper regulatory oversight, and the Court of Appeals is deferential to the SEC. Where Mr. Asensio has sought relief before FINRA, the efforts have resulted in abuse of regulatory power far worse than at the SEC. I have examined evidence from the record supporting these views.

The immediate circumstances giving rise to the bar began in 2003. However, FINRA's retaliatory motives were borne out of Mr. Asensio's advocacy years earlier for improvement of regulatory deficiencies, in particular at the American Stock Exchange ("Amex"), where stock fraud had been rampant. FINRA had only recently acquired the Amex with the intent of selling it at a profit, and regulatory standards at the Amex declined sharply after FINRA took control. Mr. Asensio first reported his findings concerning regulatory deficiencies at the Amex to the SEC. After the SEC did not act, Mr. Asensio brought to Congress his complaints about the regulatory apparatus at the Amex allowing stock fraud. Mr. Asensio's complaints to Congress

resulted in a Congressional investigation of the Amex, which was owned by FINRA, and later an SEC proceeding against the former CEO of the Amex and Vice Chairman of FINRA.

In 2003, FINRA conducted what appeared to be a routine, relatively insignificant investigation – termed *ex post* a "general review of industry compliance" – that in Mr. Asensio's view gave rise to a significant jurisdictional question. This situation, on its face, shows the odd nature of FINRA's actions in first initiating a disciplinary proceeding, then in imposing an unqualified bar, which the courts have recognized as the securities industry equivalent of "capital punishment."

Examining the disciplinary decisions shows that FINRA relied upon improper adverse inferences rather than substantial evidence to find that Mr. Asensio violated FINRA's rules. I wrote a letter to FINRA dated August 11, 2010, discussing FINRA's use of adverse inferences. *See* **Exhibit 1**. I found that FINRA's root adverse inference was that Mr. Asensio did not provide information that was within his control. This, however, is flatly contradicted by the record. The record indicates that Mr. Asensio did not possess the information sought by FINRA, and that FINRA even admitted it did not need the information sought. This information was under the control of a non-FINRA-member entity and its attorney. FINRA, however, attempted to construe Mr. Asensio's conduct as deserving FINRA's most severe sanction, the unqualified bar. While FINRA could have concluded that the jurisdictional issue simply merited further investigation, FINRA instead decided that Mr. Asensio's conduct was indistinguishable from attempting to cover up a fraud on investors. The record shows that this was not the case. Indeed, the record shows that Mr. Asensio's firm had never been the subject of a customer complaint, and that Mr. Asensio had a good record of compliance with FINRA information requests and investigations.

My letter to FINRA dated October 17, 2010 sets forth the basis for concluding that the FINRA procedures used to bar Mr. Asensio were manifestly unfair and represented an abuse of regulatory discretion. *See* **Exhibit 2**. FINRA's head of Enforcement at the time of the investigation knew at a minimum that it was illogical to include Mr. Asensio's firm in an industry sweep investigation for conflict-of-interest disclosures in research reports. Mr. Asensio's single-manager firm had no relevant conflicts of interest, since the firm conducted no investment banking business. In fact, Mr. Asensio had exposed fraudulent recommendations in the most severe case of research analyst conflicts of interest – the case of Jack Grubman at Citigroup. The exposure of Grubman's conflicts and dishonest recommendations led to the institution of new rules to address research analyst conflicts of interest – the same rules that were the subject of a purported sweep investigation that included Mr. Asensio's firm.

Mr. Asensio had engaged in precisely the opposite conduct as Grubman. Mr. Asensio exposed conflicts of interest and in the absence of action by regulators to combat stock fraud, brought complaints of regulatory incompetence to Capitol Hill. By doing so, Mr. Asensio ran afoul of FINRA's controlling interests. FINRA benefited financially from lax regulatory standards in listings, since FINRA owned the Amex. Mr. Asensio's action to involve Congress in investigating regulatory deficiencies at the Amex resulted in the Congressional and SEC investigations of the exchange, as well as an SEC administrative proceeding against Salvatore Sodano, former Vice Chairman of FINRA and CEO of the Amex during the time that FINRA owned the Amex. In the proceeding against Sodano, the SEC found that Sodano had exploited regulatory deficiencies at the Amex for his own financial benefit.[2] According to FINRA's public

[2] *See Salvatore F. Sodano*, Order Instituting Administrative Proceedings Pursuant to Section 19(h) of the Securities Exchange Act of 1934 and Notice of Hearing, Administrative Proceeding File No. 3-12596 (Mar. 22, 2007).

records, FINRA continued to pay Sodano multi-million dollar sums in compensation, even as he was subject to the SEC proceeding. The SEC proceeding against Sodano, which had been on-going for nearly three years, was only settled after Mary Schapiro, former CEO of FINRA, was appointed as Chairman of the SEC.[3]

Mr. Asensio came into direct conflict with the personal financial interests of FINRA executives as a result of his efforts - while operating a FINRA member firm - to advocate for improved regulatory oversight. This was only part of the cause of what appears to be a deep-rooted institutional bias at FINRA towards Mr. Asensio. The nature of Mr. Asensio's work – exposing stock fraud as a short-seller – brought him into direct conflict with major investment banks, the most powerful FINRA member firms, that underwrote stock offerings and issued buy recommendations on many of the same companies that Mr. Asensio exposed. Mr. Asensio's sell recommendation on a company promoted by Grubman at Citigroup (a company that later declared bankruptcy) was but one example. Additionally, it is clear that politically connected advocates with ties to companies targeted by Mr. Asensio played a role in advocating against him at FINRA. This was the case with Lanny Davis, a former special counsel in the Clinton presidential administration, who is quoted advocating against Mr. Asensio and defending PolyMedica in a USA Today article published at the time FINRA started its investigation of Mr. Asensio. PolyMedica Corporation was the company that was the subject of the reports

[3] Schapiro was sworn in as Chairman of the SEC on Jan. 27, 2009. Sodano settled SEC charges in February 2010. *See Salvatore F. Sodano*, Order Making Findings Pursuant to Section 19(h) of the Securities Exchange Act of 1934, Exchange Act Release No. 61562, SEC Administrative Proceeding File No. 3-12596 (Feb. 22, 2010).

investigated by FINRA. PolyMedica paid $35 million to settle charges of Medicare fraud with the U.S. Department of Justice in 2004.[4]

FINRA's regulatory bias against Mr. Asensio manifested in its use of false adverse inferences in investigating and barring him. It has since manifested in FINRA's manipulative treatment of Mr. Asensio's attempts to remedy his status with FINRA through the MC-400 process, with Mr. Asensio's MC-400 filings in 2007 and 2010.

It is key to understand that FINRA's head of Enforcement during the relevant period was Barry Goldsmith, an individual who now has a reputation among some securities regulators of contriving purported sweep investigations that actually served a retaliatory purpose to protect senior regulatory officials. Comments from former senior SEC officials indicated that Goldsmith was part of the "old boy network," and indicated that Goldsmith's retaliatory methods were part of how they protect and advance each other. This is conveyed in my letter to FINRA dated November 26, 2010. *See* **Exhibit 3.** In another indication of the personal, retaliatory nature of FINRA's investigation, Goldsmith had made public statements criticizing Asensio's short-selling.

A regulator invariably uses discretion in deciding whether to pursue an investigation, a disciplinary proceeding, or a sanction. It is clear that Goldsmith used his discretion to prosecute on the basis of false adverse inferences in the absence of evidence of wrong-doing. At its core, Goldsmith's adverse inferences rested upon an unsubstantiated claim of a willful refusal to respond. *See* **Exhibit 4**.

III. Other Expert Opinions:

[4] *See* Department of Justice press release available at http://www.justice.gov/opa/pr/2004/December/04_civ_776.htm.

Mr. Asensio engaged other attorneys to provide expert opinions related to his case, and I have reviewed their findings, which are summarized below.

In an MC-400 adjudication, FINRA has dismissed Mr. Asensio's attempts to challenge the validity of the sanction by classifying such a challenge as an impermissible "collateral attack" upon the sanction. Attorney Amy Waller Apostol wrote a letter to FINRA dated August 13, 2010, discussing the improper basis for FINRA's use of collateral estoppel doctrine. *See* **Exhibit 5**. To apply the notion of a collateral attack to FINRA proceedings assumes that there is a direct avenue for appeal and that a valid judgment, such as that by a court, was previously reached in the matter. These conditions do not exist with the FINRA sanction.

Apostol's challenge to FINRA's use of the notion of collateral attack did not prevent FINRA from again dismissing Mr. Asensio's arguments as collateral attacks in the decisions reached on Mr. Asensio's 2010 NMA filing. Prior to this, in the adjudication of Mr. Asensio's 2007 MC-400 filing, FINRA had dismissed the investor protection focus of Mr. Asensio's work as a collateral attack upon the sanction.

In a letter to FINRA dated August 24, 2010, Ms. Apostol found that FINRA lacked jurisdiction over the entity that published the reports which were the subject of the PolyMedica investigation. *See* **Exhibit 6**. Apostol also found that FINRA lacked procedures to fairly adjudicate the Asensio disciplinary proceeding.

IV. Regulatory Manipulation and Foreclosure of All Procedures for Relief

Throughout my letters to FINRA, I emphasized that because of the questionable circumstances of FINRA's decisions to investigate and sanction Mr. Asensio, and because of the unsubstantiated, disproportionate, and excessive nature of the bar, FINRA should minimize the

weight attached to the bar in evaluating Mr. Asensio's NMA and MC-400 applications that were filed in 2010 as a means of seeking relief from the bar sanction. Neither FINRA staff nor the NAC heeded these well-founded recommendations, however. Both refused to conduct a detailed consideration of the applications, as well as the circumstances surrounding the sanction, strictly on the basis of Mr. Asensio's bar.

The NMA and MC-400 applications were filed after Mr. Asensio attempted to seek relief and review through the SEC. The SEC, through an abuse of administrative procedures, had created an unasked-for appeal proceeding on Mr. Asensio's behalf. The SEC would then dismiss the proceeding it had itself created, and cite the lateness of the appeal as the reason for the dismissal, even though it was apparent to all parties that the appeal deadline had passed at the time that the SEC created the proceeding.

A. The SEC's Creation of a Rule 420 Review Proceeding.

Mr. Asensio made an extensive effort to conduct discovery concerning the standards employed at FINRA to evaluate applications for readmission, pursuant to which Mr. Asensio wrote several letters to the SEC. After Mr. Asensio gained the assistance of a U.S. Senator to obtain a response from the SEC, an official from the SEC, James Eastman, wrote two letters, addressing, *inter alia*, FINRA's standards for readmission. *See* **Exhibits 7 and 8**. Mr. Eastman stated that FINRA is afforded "considerable discretion" in making determinations for readmission. Mr. Eastman also referred to FINRA's MC-400 application process as the only procedure for Mr. Asensio to seek relief from the bar sanction. Mr. Eastman in other words confirmed that FINRA has no definite standards for the evaluation of MC-400s.

Mr. Asensio wrote letters to Mr. Eastman in response, complaining of the biased nature of FINRA's actions against him and taking issue with views expressed by Mr. Eastman. This

included Mr. Eastman's statements concerning the purported views of the Commission – that individuals subject to a bar sanction should be permanently excluded from the securities industry, whether the bar was imposed by the SEC or FINRA. In responses to the SEC, Mr. Asensio requested a review of Mr. Eastman's statements pursuant to Rule 430 of the SEC's Rules of Practice; Rule 430 provides for Commission review of an action taken by SEC staff pursuant to delegated authority.

Without providing notice or guidance to Mr. Asensio on SEC procedures, the SEC determined to accept Mr. Asensio's letters as an application for review of FINRA's bar sanction pursuant to Rule 420 of the SEC's Rules of Practice. *See* **Exhibit 9**, Letter from the Deputy Secretary of the SEC to Mr. Asensio, dated January 6, 2010, stating "I have determined at this time to accept your letter as an application for review by the Commission," attaching three of Mr. Asensio's letters. Making the SEC's action all the more irregular is the fact that Mr. Asensio complained in the letters accepted as an application for a Rule 420 review that an SEC appeal would be futile.[5]

B. Evidence of Manipulative Conduct and Abuse of Discretion

This was clearly a manipulation of regulatory discretion. Instead of initiating the requested review proceeding, the SEC without notice or explanation created an entirely different proceeding. Rule 420 governs appeals of FINRA actions, and provides that requests for appeals must be filed within 30 days of FINRA's providing notice of a disciplinary decision or denial of membership. At the time that the SEC created the unasked-for Rule 420 proceeding, it had been nearly three and a half years since the appeal deadline. It was obvious, especially to the SEC,

[5] "FINRA has no codified standards whatsoever – its 'considerable discretion'… These clear and sizeable deficiencies negate the purpose of any appeal in my case." Letter from Mr. Asensio to James Eastman, Chief Counsel, Division of Trading and Markets, SEC, dated December 9, 2009.

that an appeal would be time-barred. The SEC effectively backed Mr. Asensio into a corner in order to reiterate FINRA's adverse inferences in the public record.

The only apparent motive for the SEC's conduct was to disadvantage and discourage Mr. Asensio, while providing the appearance of a forum for relief. Upon the SEC deciding to create a Rule 420 proceeding, FINRA filed a motion to dismiss on the basis of lateness. When the SEC issued an order granting FINRA's motion to dismiss, the SEC reiterated FINRA's factual findings, while not adjudicating the same facts. This created a public record further vilifying Mr. Asensio, even as the SEC misapprehended and even mocked Mr. Asensio's attempts to explain why his case deserved review by the SEC. This vilification would serve to distract from Mr. Asensio's complaints to lawmakers about deficiencies at FINRA that are allowed by the SEC.[6]

Rendering matters worse, Mr. Asensio made clear to the SEC that he did not seek a review pursuant to Rule 420, after the acceptance of the application. *See* **Exhibit 11**, Letter from Mr. Asensio to the SEC's Deputy Secretary, dated January 11, 2010 ("[A] simple review of FINRA decisions under Rule 420 is not appropriate at this stage… I have not sought, and have even expressly explained my reasoning for not pursuing, a Rule 420 review… I do not believe you should have converted my application from a request for a Rule 430 review to a Rule 420 review without at least verbal consultation with me"). Mr. Asensio later wrote to the David Becker, General Counsel of the SEC, requesting a means to address deficiencies in the SEC's oversight of FINRA, given the limited chance that the SEC would conduct an actual review under the Rule 420 proceeding the SEC had created.[7]

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[6] *See, e.g.*, **Exhibit 10**,Letter from Mr. Asensio to Senator Kirsten Gillibrand, dated April 30, 2009 ("I think that my case with FINRA goes to the crux of a regulatory opacity in the securities industry which deserves examination from the U.S. Congress as it considers changes to the regulatory system").

[7] David Becker resigned from the SEC in the midst of a scandal over Mr. Becker's involvement in the Madoff Ponzi scheme. Becker had received profits from investing with Madoff, and had not recused

There was apparent collusion between the SEC and FINRA in the creation of the Rule 420 proceeding. Prior to Mr. Asensio receipt of the SEC Deputy Secretary's letter regarding the creation of the Rule 420 proceeding, Mr. Asensio received another letter from T. Grant Callery, the General Counsel of FINRA, stating that Mr. Asensio "filed an appeal with the SEC" and downplaying Mr. Asensio's politically oriented critiques of FINRA policy. Chairman Schapiro at that time had only recently come to the SEC from FINRA, where as CEO she worked closely with Mr. Callery. It is not unlikely that Schapiro herself could have been involved in communications with FINRA over Mr. Asensio's complaints and in the SEC's manipulation to create a Rule 420 proceeding.

Ms. Schapiro had personal involvement in Mr. Asensio's case while she was at FINRA. Mr. Asensio spoke to Schapiro personally, as then head of NASD Regulation, about a leak of information from FINRA to the Wall Street Journal in 2000 concerning a FINRA investigation of Mr. Asensio. This occurred at the time that Mr. Asensio began his initial complaints to Congress regarding the Amex. When FINRA's investigation resulted in a settlement in which Mr. Asensio did not admit wrongdoing, the Wall Street Journal ran a front-page story about Mr. Asensio as "Flamboyant Short Seller."[8] The Wall Street Journal story was published about two months after Congressman Dingell's letter to the Chairman of the SEC and the CEO of the Amex citing Mr. Asensio's complaints. *See* **Exhibit 12**.

C. Absence of Procedure for Relief before the Court of Appeals or FINRA.

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himself in the SEC's decisions over how Madoff victims should be compensated. Mary Schapiro, the SEC's Chairman, was reportedly the only Commissioner apprised of Becker's Madoff investment, and Schapiro reportedly approved Becker's involvement in the SEC's handling of the Madoff matter.

[8] Gasparino, Charles. "Flamboyant Short Seller Settles NASD Allegations," *Wall Street Journal*. Nov. 30, 2000.

When Mr. Asensio complained of the SEC's actions to the U.S. Court of Appeals, which has authority by law to modify or reverse any SEC order, the Court ignored the complaint and also refused to order a review. The Court reiterated the SEC's finding that extraordinary circumstances did not exist to conduct a review past the deadline. The Court found that Mr. Asensio's bias accusations were not sufficiently substantiated to justify review, though the SEC had indicated that bias by FINRA would never justify a late review.[9] However, the Court did not show that it had weighed the evidence of bias presented by Mr. Asensio, nor did the Court give consideration to the fact that FINRA can preclude all discovery of any direct evidence of bias or other misconduct.[10]

On the basis of these facts, I have concluded that there is no legitimate procedure for Mr. Asensio to seek relief from the FINRA sanction. Mr. Asensio discovered that FINRA has no standards for MC-400s. FINRA can deny any MC-400 filed by Mr. Asensio, regardless of its merits. The lack of standards precludes meaningful review on appeal. The SEC monitors whether FINRA's decisions are consistent with FINRA's rules, approved by the SEC; these rules allow FINRA considerable discretion without standards. The Courts in turn are deferential to the SEC.

The SEC and the Court of Appeals for the Eleventh Circuit ignored the evidence of bias presented by Mr. Asensio. There can be no further review of the sanction by the SEC or the

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[9] *See Manuel P. Asensio*, Order Granting Motion to Dismiss Application for Review, Exchange Act Release No. 62315, SEC Administrative Proceeding File No. 3-13733 (June 17, 2010) at 10 (noting that allegations of misconduct by FINRA "fail to present the kind of circumstances required to justify an extension of the appeal filing deadline" citing *Edward J. Jakubik, Jr.*, Exchange Act Release No. 61541 (Feb. 18, 2010), 97 SEC Docket at 25444.

[10] As a private party, FINRA is not subject to Freedom of Information Act requests. As a regulator with absolute immunity from private suits, FINRA is not subject to standard discovery procedures in any civil action.

Courts. FINRA has ignored this evidence and arguments related to it in Mr. Asensio's joint NMA and MC-400 filings.

FINRA has even overtly attempted to foreclose procedures available to Mr. Asensio. Directly after Mr. Asensio took the extraordinary step of filing joint NMA and MC-400 applications with FINRA in June 2010, the FINRA Board of Governors voted to amend FINRA's rules to prevent anyone from making joint NMA and MC-400 filings in the future. Mr. Asensio's letter to the FINRA Board dated November 6, 2010, communicates the improper nature of the Board's action on the basis that it would influence adjudication of Mr. Asensio's applications and that the timing of the Board's action could only be justified by the motive of using the rulemaking action in subsequent appellate litigation of Mr. Asensio's applications. *See* **Exhibit 13** (with attachments). FINRA announced the Board's decision publicly in a letter to member firms dated September 28, 2010 – just three months after Mr. Asensio's NMA and MC-400 filings. FINRA made a formal filing with the SEC for approval of the rule amendment on November 1, 2010. This was approved by the SEC under delegated authority, yet Mr. Asensio filed a petition for review by the full Commission. The SEC has to date taken no action on Mr. Asensio's petition for review.[11]

Mr. Asensio's November 6 letter attaches a letter from Amy Waller Apostol to FINRA dated September 8, 2010, discussing procedural manipulations by FINRA in its handling of Mr. Asensio's NMA and MC-400 filings. FINRA acted against its own rules to foreclose review of Mr. Asensio's MC-400 filing.

In view of the facts and circumstances, it is clear that there is no procedure before agencies, the courts or FINRA for Mr. Asensio to find relief from the bar sanction, and any effort to seek relief through existing procedures at FINRA will only result in FINRA actively

[11] *See* SEC File No. SR-FINRA-2010-056 and Release No. 34-63933 (Feb. 18, 2011).

obstructing any fair and orderly review, as has been demonstrated in Mr. Asensio's most recent proceedings before FINRA.

V. Conclusion

My central findings in my review of Mr. Asensio's case are that Mr. Asensio's FINRA bar sanction is disproportionate and excessive on its face, and that the sanction appears entirely unjustified upon a closer examination of the facts of the case. FINRA executives and staff had self-evident retaliatory motives in investigating Mr. Asensio. FINRA's imposition of the sanction was based on misleading adverse inferences rather than evidence. FINRA lacked procedures to adjudicate jurisdiction. Given FINRA's legal and regulatory deficiencies,[12] the legal system governing FINRA sanctions operates in such a way that it is impossible at this stage for Mr. Asensio to have the facts of the sanction addressed, regardless of their merits. The only procedure for Mr. Asensio to seek any sort of relief from the sanction is through FINRA, and FINRA has manipulatively obstructed all efforts by Mr. Asensio to seek relief, going so far as to change its rules to prevent him from having his grievances heard.[13]

Respectfully,

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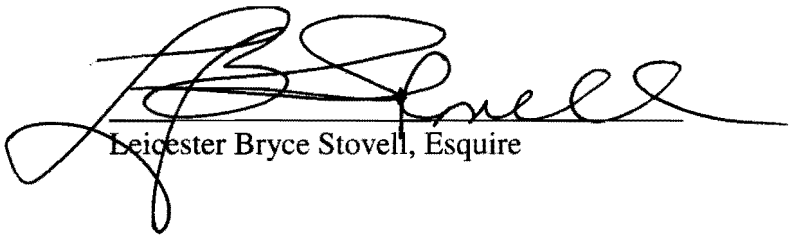
[12] *See* definition of FINRA's Legal and Regulatory Deficiencies in Letter from Amy Waller Apostol to FINRA, submitted on August 13, 2010, **Exhibit 8.**

[13] The SEC has taken no action on a rulemaking petition filed by the Alliance for Economic Stability ("AES"), a non-profit founded by Mr. Asensio. *See* Petition for Rulemaking File No. 4-591. The AES petition would address the clearly problematic nature of having a private party bar an individual from an industry based on a purported failure to respond to information. FINRA can clearly abuse this authority when dealing with whistleblowers, like Mr. Asensio, who have opposed FINRA. Similarly, the SEC has taken no action on Mr. Asensio's petition for review of FINRA's rulemaking. *See* SEC File No. SR-FINRA-2010-056.



Leicester Bryce Stovell, Esquire

Dated: January 6, 2012