

## AMY WALLER APOSTOL

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Ms. Allison Reid  
Associate District Director  
Financial Regulatory Authority  
New York District Office  
One Liberty Plaza  
New York, NY 10006

Ms. Lorraine Lee  
FINRA Statutory Disqualification Administrator  
9509 Key West Avenue  
Rockville, MD 20850

RE: Definition of FINRA's Legal and Regulatory Deficiencies to be used in the Asensio & Company, Inc. New Member Application ("NMA") submitted to FINRA on June 17, 2010, and the related Membership Continuance Application ("MC-400") for Manuel P. Asensio ("Applicant"), this NMA and MC-400 being referred to herein as the "Present Proceeding."

Dear Ms. Lee and Ms. Ried:

In review of the record, described below, we have established a definition to encompass our use of the term "FINRA's Legal and Regulatory Deficiencies" and wish to provide you with that information at this time. The following is a description in its entirety of FINRA's legal and regulatory deficiencies applicable to the NMA and MC-400 as the "FINRA's Legal and Regulatory Deficiencies."

The record established by Applicant prior to the Present Proceeding shows evidence of, and potential for, FINRA taking wrongful retaliatory action against a person, such as Applicant, who exposes misconduct by FINRA or by prominent FINRA member firms (such person being a "Whistleblower"), or who otherwise counters the private interests of FINRA and FINRA's executives. Applicant's status as a Whistleblower is especially pronounced given his unique short-selling-focused activities as a FINRA member and his work exposing FINRA's Vice Chairman's exploitation of the AMEX's regulatory deficiencies, which led to his being charged by the SEC.

Such retaliatory action is in contravention of FINRA's rules and by-laws and the Securities Exchange Act of 1934 ("Act"). Moreover, such conduct by FINRA violates the U.S. Constitution to the extent that FINRA can deprive and has deprived individuals of property and livelihood without due process of law and without being subject to direct and substantive oversight by government.

The record established by Applicant includes correspondence surrounding and giving rise to SEC Administrative Proceeding File No. 3-13733 (the "SEC Proceeding"), which correspondence includes letters from members of Congress, FINRA and SEC responses to these, and written expert opinions.

The record established by Applicant also includes the official record of the SEC Proceeding and the record of Applicant's submissions to the SEC following the Order dated June 17, 2010, which submissions, in part, gave rise to the Order dated August 4, 2010.

FINRA's ability to take wrongful retaliatory action is allowed by:

- conflicts-of-interest among FINRA executives, prompted by, without limitation, such executives being paid multi-million-dollar salaries, having a direct sizeable financial interest to adhere to the interests of the largest FINRA member firms over the public interest, and by FINRA executives being allowed to be employed by a FINRA member firm while it is under investigation and directly after leaving FINRA and then being allowed to immediately return to FINRA;
- a lack of procedural safeguards on the conflicted FINRA executives exercising improper influence on FINRA staff, allowing for biased and prejudicial action by FINRA staff;
- a lack of procedural standards for the protection of Whistleblowers;
- a lack of codified standards for the imposition of unqualified bar sanctions and for adjudications of MC-400s, allowing FINRA to perpetrate what the Supreme Court has called "unreasoned decisionmaking";
- FINRA's failure to follow standards of due process, despite FINRA having a statutory mandate to enforce securities laws and despite FINRA's ability to deprive individuals of property and livelihood;
- FINRA's salaries and budget superiority over the SEC, as evidence in the SEC's OIG report on Madoff, and the resulting deference and "considerable discretion" afforded to FINRA by the SEC, particularly in matters of enforcement, disciplinary action, and MC-400 adjudication, and in turn, the discretion afforded to SEC review of FINRA actions by the US Court of Appeals;
- the "absolute immunity" from civil action advocated by the SEC and thereafter granted to FINRA and FINRA executives by federal courts, even in cases entailing obvious wrong-doing by FINRA executives;
- the lack of effective government oversight of FINRA, including the government's inability to appoint or remove FINRA executives and lack of government oversight of FINRA's investment activities and expenditures on lobbying and advertising.

Together, this record is referred to in the Applicant's Present Proceeding as "FINRA's Legal and Regulatory Deficiencies."

Sincerely,



Amy Waller Apostol, Esq.  
Legal Counsel for Manuel P. Asensio

Cc: William Jannace, Managing Member, Member Regulation  
Cindy Foster, Office of the Ombudsman