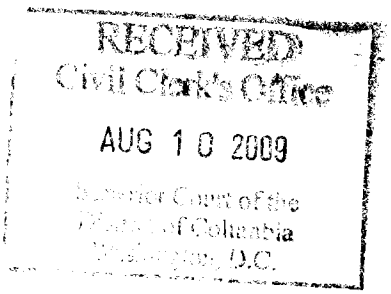
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERIVET SECURITIES, INC., P.O. Box 1074 Inglewood, C.A. 90308. Plaintiff v. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., 1735 K Street, NW, Washington, D.C. 20006. Defendant	Civil Action No. 09 0005767-09



COMPLAINT

Plaintiff Amerivet Securities, Inc. ("Plaintiff"), by its attorneys, for its complaint against defendant Financial Industry Regulatory Authority ("FINRA" or the "Company") seeking to obtain certain books and records from the Company and/or its subsidiaries pursuant to 8 Del. C. § 220 and the common law, alleges as follows.

PARTIES

1. Plaintiff, a corporation duly incorporated in the State of California, has, at all relevant times and for the last 10+ years, been a member of FINRA, formerly National Association of Securities Dealers ("NASD").

2. Defendant FINRA is a Delaware non-stock, not for profit corporation with its headquarters and principal place of business in Washington D.C. On or about July 27, 2008, NASD acquired certain assets of the regulatory arm of the New York Stock Exchange and was renamed FINRA. Before the regulatory merger, FINRA had approximately 5,100 members, of which about 200 were also members of the NYSE, and identified on its publicly disclosed balance sheets, "Members' Equity" in excess of $1.6 billion.

SUBSTANTIVE ALLEGATIONS

FINRA's Conflicts of Interest and Indicia of Wrongdoing by Its Officers and Directors Discernible from Publicly Available Information

3. FINRA is a private "self-regulatory organization" that regulates the securities industry with authority delegated by the federal government. The Securities and Exchange Commission ("SEC") relies on FINRA to police Wall Street. FINRA describes itself as being "dedicated to investor protection and market integrity." FINRA states that it "touches every aspect of the securities business...from examining securities firms; writing rules; enforcing those rules and the federal securities laws [and] informing and educating the investing public." FINRA further states that "individual investors deserve consistent, basic protections no matter which financial products and services they choose."

4. FINRA, which "is empowered by the federal government to protect American investors from fraud and bad practices," states that its "main responsibility is to develop rules that govern the conduct of the securities industry, examine securities firms for compliance and discipline any who fail to comply." FINRA further represents that "[t]his layer of non-governmental regulation combines [its] tough, resource-intensive, front-line rulemaking and enforcement with close oversight by the [SEC]." It goes on to say that "Enforcement is a fundamental part of FINRA's mission," which "not only encourages compliance and punishes wrongdoing, but helps the vast majority of securities firms who obey the rules and have a strong interest in maintaining the industry's reputation."

5. Plaintiff is among the many members who have an ongoing and financial interest in FINRA and its maintaining a good reputation.

6. However, in contrast to these brave words, FINRA has failed in what it represents in its advertising to be its core function; *i.e.* the protection of investors, which it proclaimed in a

CNN advertisement (July 6, 2009 11:05 a.m. EDST) and in subsequent iterations of this commercial.

7. From 2005 – if not earlier – through 2008, FINRA failed to regulate and oversee the operations of certain large member firms that are at the heart of the financial meltdown that has plagued this country. Among FINRA's noteworthy regulatory failures were Bear Stearns & Co., Inc. ("Bear Stearns"), Lehman Brothers, Inc. ("Lehman"), Merrill Lynch & Co., Inc. ("Merrill"), Bernard L. Madoff Investment Securities, Inc. ("Madoff"), Ross Mandell's Sky Capital Holdings, LLC (and related entities) ("Sky Capital") and Stanford Financial Group ("Stanford").

8. In each of these cases and others, FINRA ignored the egregious practices and operations of these influential member firms, despite having direct access to the inner workings of these firms. Many of these firms are and have been under SEC and state investigations for criminal wrongdoing or have already pled guilty to securities fraud.

9. FINRA did nothing to stop the egregious wrongdoings of these and other miscreants nor to inform the investing public that improper and illegal conduct (including massive securities frauds) was occurring on a grand scale, particularly at the six firms referred to above.

10. FINRA knew or should have known about the fraud being perpetrated by several of its most influential members, but there is nothing in the public record to indicate that FINRA conducted *any* oversight of these now-failed malefactors or their senior executives.

11. At the same time the enormous frauds referred to above were being perpetrated, many of these firms' representatives enjoyed positions of trust and authority within FINRA, including powerful directorships. These positions of influence and trust presented obvious conflicts rife with opportunity for personal and corporate financial gain at the expense of the

securities markets and investors they were obligated to protect. Yet, FINRA evidently did nothing.

12. In its 2008 Annual Report, FINRA Chairman and CEO Richard G. Ketchum acknowledged that "policymakers, regulators and investors recognized that the U.S. regulatory infrastructure was plagued with gaps and in need of modernization." He went on to say that: "Throughout the financial crisis, FINRA has worked closely with other regulators, particularly the Securities and Exchange Commission and the Federal Reserve, to examine firm activities for compliance with FINRA rules and federal securities laws, investigate wrongdoing and, when rules were broken, enforcing those rules." There is nothing in the public record to support these statements, nor anything that begins to resemble any strenuous examinations, investigations or enforcement addressed to Bear Stearns, Lehman, Merrill, Madoff, Sky Capital, Stanford or their senior officers prior to the collapse of these firms.

13. Only after these firms and others precipitated a global financial crisis, and in order to promote itself and attempt to overcome the supervisory failures of its senior executives, FINRA proclaimed falsely that: "The instability in the markets, and at a number of financial institutions, heightened investor fears" and that "FINRA helped allay those fears, and foster confidence, by working to ensure the protection of customer assets at troubled institutions." In fact, FINRA had done virtually nothing to protect the public from investing in Bear Stearns, Lehman, Merrill, Madoff, Sky Capital or Stanford, despite the fact that it knew or should have known that each was precarious financially and/or operating under fraudulent pretenses.

14. Mr. Ketchum further stated that FINRA: "committed considerable resources to educating investors and arming them with information they needed to make sound decisions in the difficult environment...." In fact, whether or not such resources were "committed" generally by FINRA, they were not committed in any way to educating the investing public of the illegal and improper conduct that was causing many billions of dollars of harm to investors within

FINRA's sphere of protection. Indeed, Mr. Ketchum admitted that: "Vigorous enforcement of rules and regulations is a cornerstone of FINRA's work to protect investors." In fact, with respect to the six firms identified above and others, FINRA specifically made no effort to enforce applicable rules and regulations.

15. Despite having done nothing of substance to protect investors prior to 2008 when its involvement and public warnings would have been helpful, Mr. Ketchum bragged that: "In 2008, FINRA focused its efforts in several areas of investor harm – including ... auction rate securities [ARS] recommendations and sales." As of today, according to one source, $165 billion in ARS remain frozen and out of reach of investors. There is no indication in the public record or on FINRA's own website that, until the collapse of the ARS market in 2008, FINRA provided any material warning or even information to the public with respect to ARS or the risks of investing therein.

16. FINRA knew ARS were not cash or cash-like even though they were marketed in that fashion as then-NASD owned ARS and did not formally account for them as cash given the long maturities of the underlying loans.[1] Indeed, FINRA's executives unloaded the Company's own funds that had been previously invested in ARS, but did nothing to warn or protect the investing public.

Executive Compensation

17. Notwithstanding the foregoing conduct, including the failures of FINRA to fulfill its obligations to its multiple constituencies, the FINRA Board has continued NASD's practice of awarding grossly excessive compensation packages to senior officers wholly inconsistent with

[1] Page 38 of the NASD's 2005 Annual Report describes ARS as: "Available-for-sale investments also include investments in auction rate securities, which are either preferred stock or bonds with interest rates that reset periodically, typically less than every 90 days, based on a Dutch auction process. Given the longer-term maturities of these securities, they are classified as available-for-sale investments, rather than cash and cash equivalents." Pages 30 and 27 of NASD's 2004 and 2003 Annual Reports, respectively, contain substantively identical statements.

compensation paid to SEC and other regulators and to executives of other non-profit corporations. Indeed, even the President of the United States receives a salary of $400,000 per year. Further, upon the re-constitution of NASD into FINRA, without the slightest legal or factual justification, the already unjustifiable compensation paid to NASD's officers was increased across-the-board at its highest levels, most notably to former Chair and CEO Mary Schapiro, whose annual compensation was increased by 57% in 2007 from $1,999,731 to $3,140,826, plus the value of indirect benefits not readily determinable. There is no indication in the public record that her responsibilities or services rendered changed in the slightest once NASD was renamed FINRA.

18. To further exacerbate the waste of FINRA's corporate assets reflected by the foregoing conduct, Ms. Schapiro was awarded unjustified termination benefits valued as high as $25 million, according to various estimates. FINRA has not disclosed to its members the value of her "going away" gift.[2]

FINRA's Own Investments

19. In contrast to these huge compensation packages, for 2008 FINRA reported investment-related losses of $568 million, or 26.5% of its investment portfolio. These losses wiped out the reported investment returns over the previous four years.

20. FINRA states that the "purpose of the portfolio is to support FINRA's operations and fulfill its mission of investor protection and market integrity by providing FINRA with supplemental financial resources to allow it to implement long-range plans." FINRA further states that its "investment policy is set forth to preserve principal over the long-term (in real

[2] Ms. Schapiro first reported that she was receiving a "lump sum" severance package of between $5-25 million. The SEC subsequently informed reporters that her package was worth $7.2 million. The actual value of current and future compensation and other benefits remains undisclosed to FINRA members or the public at large.

terms) while seeking to maximize returns within acceptable levels of risk, and to do so in a manner consistent with portfolio management best practices for producing long-term returns."

21. The losses recognized by FINRA in 2008 (which may be distinct from unrecognized and not yet reported losses and diminution of value of assets remaining in its investment portfolio) are inconsistent with its stated investment policy. Based upon the minimal information which FINRA has disclosed to member firms, FINRA has been reckless in pursuing high-risk strategies inappropriate to preservation of capital. It appears that, despite the fact that FINRA requires investment earnings as a supplement to its other sources of funds (*e.g.*, member payments, fines, *etc.*), its emphasis on short-term investment returns and apparently risky vehicles was unwarranted, quite costly and a waste of its assets.

22. According to FINRA's 2008 Annual Report (and in previous ones), the Board's Audit Committee is responsible for overseeing the quality and effectiveness of and the level of adherence to FINRA's risk management systems. There is no indication in the 2008 Annual Report or in any previous one that the members of the Audit Committee paid any attention to the levels of risk undertaken by the members of the Investment Committee, their subordinates or advisors.

23. The Investment Committee has improvidently invested FINRA's corporate assets and caused it substantial damages as a result of, among other questionable practices, purchasing $862 million of so-called ARS through member firms or their affiliates, which FINRA knew or should have known were not a ready source of cash, as can be seen from statements made in NASD's 2003, 2004 and 2005 Annual Reports, but were never disclosed in any warning to the investing public. Indeed, FINRA now says that it had focused its regulatory and investor protection efforts on ARS despite its own lack of pre-2008 regulatory oversight and disclosure as well as its failure to avoid investing its own corporate assets in ARS.[3]

[3] It has been publicly reported that FINRA sold its then $647 million position in ARS in 2007, in advance of the collapse of the ARS "market."

24. Upon information and belief (although it is impossible to verify without an examination of FINRA's books and records), FINRA also directly or indirectly placed substantial funds with Madoff prior to December 2008, and either sustained losses and/or may be subject to substantial "clawback" claims in connection with such "investments." Obviously, if such "investments" occurred, substantial conflicts of interest existed which would have rendered them improvident and inappropriate without regard to Madoff's now-admitted underlying Ponzi scheme which, had FINRA performed its regulatory functions properly, would have been exposed and halted. Further, if such "investments" were made, there had to be an utter failure of due diligence on the part of the Investment Committee in connection therewith.

25. FINRA investments appear to have been made through member firms over which FINRA is charged with regulatory oversight. These investments present serious conflict of interest issues. Given such conflicts then, and given that FINRA is the sole regulatory arm of the securities industry, FINRA should invest its own assets through one or more so-called "blind" trusts. As Pope Benedict, at his recent meeting with President Obama, noted, self-regulation is highly over-rated and certainly, given these conflicts of interest and FINRA's stunning oversight failures, prompt steps must be taken to reform its fundamental regulatory function and to avoid such conflicts by all practical means. Should it fail to do so, this function is likely to be carried out by the SEC or some newly-created governmental entity.

Conflicts of Interest

26. While FINRA has been reasonably vigorous in its oversight of smaller member firms, frequently devoting substantial resources to dealing with insignificant technical infractions, FINRA has, due to conflicts of interest, given a virtual "free pass" to large member firms and their affiliates such as Bear Stearns, Lehman, Merrill, Madoff, Sky Capital and Stanford.

27. In Madoff's case there appears to have been a particularly cozy relationship between Madoff and senior FINRA executives which resulted in virtually no oversight of Madoff and its affiliates or its $65 billion Ponzi scheme.[4] Madoff was a member of FINRA since 1960. During this period, particularly since the early 1980s when prosecutors have alleged the Ponzi scheme began (Mr. Madoff states that it began in the early 1990s), despite numerous "examinations" of the firm and its affiliates and 19 customer complaints received by FINRA since 1999, no serious investigative efforts were ever undertaken of Madoff and its affiliates by FINRA.

28. It appears that due to the personal relationships between Bernard Madoff, members of his family and FINRA executives, there was a "hands off" policy in place to his activities and those of his firm, which allowed their Ponzi scheme to flourish (*e.g.*, there was no verification of the existence of the customer assets for which Madoff was a "qualified custodian"). Not surprisingly, NASD/FINRA regularly verifies the existence of customer assets in routine reviews of most member firms, except not Madoff.

Plaintiff's Demand for Inspection Pursuant to 8 Del. C. § 220

29. By letter dated July 23, 2009, directed to FINRA's general counsel, and received by the Company on July 24, 2009 (as per Federal Express tracking records), Plaintiff sent a letter (the "Inspection Demand") pursuant to 8 Del. C. § 220 and attested to it as provided by applicable law, setting forth the specific books and records requested. The books and records Plaintiff requested, comprising 25 specific requests, are set forth in the Inspection Demand, attached as Exhibit A hereto.

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[4] On information and belief, (1) Bernard Madoff joined NASD's Board of Governors in January 1984 and served as Vice Chairman while his Ponzi scheme was well underway, (2) he had previously held a number of NASD committee assignments since the 1970s and was instrumental in the development of NASDAQ, (3) he also headed NASDAQ, (4) his brother, Peter Madoff, served as Vice Chairman of the NASD, (5) Mary Schapiro, former FINRA CEO, appointed Mark Madoff, one of Bernard Madoff's sons, to the National Adjudicatory Council, a regulatory body that reviews disciplinary decisions made by FINRA, and (6) Bernard Madoff's niece, Shana Madoff, a "Compliance Officer" of Madoff until the firm's collapse, was a member of a compliance advisory committee of FINRA.

30 By letter dated July 31, 2009 from Marcia E. Asquith, FINRA Senior Vice-President and Corporate Secretary, it refused to produce any of the books and records Plaintiff requested. This letter is attached as Exhibit B hereto.

31. By e-mail dated July 31, 2009, Richard D. Greenfield, Esquire, one of Plaintiff's counsel, requested FINRA provide its reasons and/or objections to the Inspection Demand. Such e-mail is attached as Exhibit C hereto. There was and is no valid reason in fact or in law for FINRA to have rejected Plaintiff's requests.

Plaintiff's Purposes for Inspecting the Books and Records of FINRA

29. Plaintiff's purposes in making the requests (as set forth in the Inspection Demand) were and are to investigate the wrongdoing and corporate mismanagement by present and former officers and directors of FINRA, and to elicit information about the conduct of FINRA management about which membership has been kept in the dark, as it relates to the massive frauds and other conduct identified above.

30. The books and records being sought by Plaintiff are appropriate and necessary to assist in these objectives.

31. The purposes behind the respective demands for access to the specifically identified books and records of FINRA and its subsidiaries by Plaintiff pursuant to 8 Del. C. § 220 are reasonably related to his interests as a member of FINRA and "stockholder" as the term is defined under 8 Del. C. § 220. Plaintiff does not seek to harass, vex or otherwise injure FINRA.

32. Plaintiff has a credible basis for investigating the foregoing acts of waste, fraud, mismanagement and unjust enrichment based upon the facts earlier set forth, and thus has a good faith reason for inquiring into these matters.

36. Depending upon what is borne out by the books and records Plaintiff seeks, Plaintiff contemplates the possible commencement of derivative litigation on behalf of FINRA

against those responsible for the foregoing conduct, to, *inter alia*, recover damages on FINRA's behalf and to seek appropriate corporate therapeutic and injunctive relief to prevent recurrence of the wrongdoing alleged herein, and may initiate other legal measures to recoup damages suffered.

COUNT I

Application to Compel Inspection Pursuant to 8 Del. C. § 220

37. Pursuant to 8 Del. C. § 220, Plaintiff is entitled to inspect and make copies of the books and records set forth in its Inspection Demand, and is entitled to the entry of an order compelling such inspection. Plaintiff does not seek the recovery of damages.

COUNT II

Common Law Application to Compel Inspection

37. Under the common law, Plaintiff is entitled to inspect and make copies of the books and records set forth in its Inspection Demand, and is entitled to the entry of an order compelling such inspection. Plaintiff does not seek the recovery of damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment in its favor, and:

A. entry of an order summarily requiring FINRA to immediately permit the inspection and copying of each and every book and record requested by its demand;

B. entry of an order directing FINRA to pay reasonable attorneys' fees and expenses in connection with plaintiff's demand and litigation; and

C. Such other relief as this Court deems just and appropriate.

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Dated: August 10, 2009

Jonathan W. Cuneo w/p

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Attorneys for Plaintiff

EXHIBIT A

Lt. Col. Elton Johnson
Amerivet Securities, Inc.
PO Box 1074
Inglewood, CA 90308

July 23, 2009

Via Federal Express-Tracking # 797785657040

Financial Industry Regulatory Authority ("FINRA")
1735 K Street N.W.
Washington, DC 20006-1506

Attention: Marcia E. Asquith, Corporate Secretary

Re: Request to Inspect Books and Records Pursuant to 8 *Del. C.* § 220

Dear Ms. Asquith:

I write you on behalf of my firm, Amerivet Securities, Inc., which is a member in good standing of FINRA. I make this written demand for the purpose of conducting an inspection, through my counsel, of books and records of FINRA pursuant to § 220 of the Delaware General Corporation Law, 8 *Del. C.* § 220 ("Section 220").

BACKGROUND

Investor Protection

FINRA describes itself as being "dedicated to investor protection and market integrity." FINRA states that it "touches every aspect of the securities business...from examining securities firms; writing rules; enforcing those rules and the federal securities laws [and] informing and educating the investing public." FINRA further states that "individual investors deserve consistent, basic protections no matter which financial products and services they choose."

FINRA, which "is empowered by the federal government to protect American investors from fraud and bad practices," states that its "main responsibility is to develop rules that govern the conduct of the securities industry, examine securities firms for compliance and discipline any who fail to comply. This layer of non-governmental regulation combines our tough, resource-intensive, front-line rulemaking and enforcement with close oversight by the Securities and Exchange Commission (SEC)." It goes on to say that "Enforcement is a fundamental part of FINRA's mission. It not only encourages compliance and punishes wrongdoing, but helps the vast majority of securities firms who obey the rules and have a strong interest in maintaining the industry's reputation."

In contrast to these brave words, FINRA and its predecessor, National Association of Securities Dealers ("NASD") (referred to herein as "FINRA"), failed in its core function; *i.e.* the protection of investors, which it proclaimed in a CNN advertisement (July 6, 2009 11:05 a.m. EDST) and in subsequent iterations of this commercial.

During the period of 2005 through 2008, FINRA failed to regulate and oversee the operations of large member firms that were at the heart of the financial meltdown that has plagued this country. Among FINRA's noteworthy regulatory failures were Bear Stearns ("BS"), Lehman Brothers ("Lehman"), Merrill Lynch ("Merrill"), Bernard L. Madoff Investment Securities, Inc. ("Madoff"), Ross Mandel ("Mandel") and Stanford Financial Group ("Stanford"). In each of these cases and others, FINRA ignored the egregious practices and operations of these influential member firms, despite having direct access to the inner workings of these firms. FINRA did nothing to stop their egregious wrongdoing or to inform the investing public that improper and illegal conduct was taking place on a massive scale, particularly at the six firms referred to above. There is nothing in the public record to indicate that FINRA conducted ANY oversight of these now-failed malefactors or their senior executives. At the same time, many of these firms' representatives enjoyed positions of trust and authority within FINRA, including powerful directorships.

In its 2008 Annual Report, FINRA Chairman and CEO Richard G. Ketchum acknowledged that "policymakers, regulators and investors recognized that the U.S. regulatory infrastructure was plagued with gaps and in need of modernization." He went on to say that: "Throughout the financial crisis, FINRA has worked closely with other regulators, particularly the Securities and Exchange

Commission and the Federal Reserve, to examine firm activities for compliance with FINRA rules and federal securities laws, investigate wrongdoing and, when rules were broken, enforcing those rules." There is nothing in the public record to support such statements, or which demonstrate any strenuous examinations, investigations or enforcement addressed to BS, Lehman, Merrill, Madoff, Mandel, Stanford or their senior officers prior to the collapse of these firms. After these firms and others had precipitated a global financial crisis, in order to promote itself and attempt to overcome its supervisory failures, FINRA proclaimed that: "The instability in the markets, and at a number of financial institutions, heightened investor fears. FINRA helped allay those fears, and foster confidence, by working to ensure the protection of customer assets at troubled institutions." In fact, FINRA had done virtually nothing to protect the public from investing in BS, Lehman, Merrill, Madoff, Mandel or Stanford, despite the fact that it knew or should have known that each was precarious financially and/or operating under fraudulent pretenses.

Mr. Ketchum further stated that FINRA: "committed considerable resources to educating investors and arming them with information they needed to make sound decisions in the difficult environment....Vigorous enforcement of rules and regulations is a cornerstone of FINRA's work to protect investors. In 2008, FINRA focused its efforts in several areas of investor harm – including ... auction rate securities [ARS] recommendations and sales." As of today, according to one source, $165 billion in ARS remain frozen and out of reach of investors. There is no indication in the public record or on FINRA's own website that, until the collapse of the ARS market in 2008, FINRA provided any material warning or even information to the public with respect to ARS or the risks of investing therein.[1]

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[1] Furthermore, FINRA knew ARS were not cash or cash-like even though they were marketed in that fashion. How did FINRA know this? NASD, owned ARS and did not formally account for them as cash given the long maturities of the underlying loans. (Page 38 of the NASD's 2005 Annual Report describes ARS as: **"Available-for-sale investments also include investments in auction rate securities, which are either preferred stock or bonds with interest rates that reset periodically, typically less than every 90 days, based on a Dutch auction process. Given the longer-term maturities of these securities, they are classified as available-for-sale investments, rather than cash and cash equivalents."** Pages 30 and 27 of NASD's 2004 and 2003 Annual Reports, respectively, contain substantively identical statements.

Executive Compensation

Notwithstanding the foregoing conduct, including the failures of FINRA to fulfill its obligations to its multiple constituencies, the FINRA Board has continued NASD's practice of awarding grossly excessive compensation packages to senior officers wholly inconsistent with compensation paid to SEC and other regulators and to executives of non-profit corporations. Indeed, even the President of the United States receives a salary of $400,000 per year. Further, upon the re-constitution of NASD into FINRA, without the slightest legal or factual justification, the already unjustifiable compensation paid to NASD's officers was increased across-the-board at its highest levels, most notably to former Chair and CEO Mary Schapiro, whose annual compensation was increased by 57% in 2007 from $1,999,731 to $3,140,826, plus the value of indirect benefits not readily determinable. To further exacerbate the waste of FINRA's corporate assets reflected by the foregoing conduct, Ms. Schapiro was awarded unjustified termination benefits valued as high as $25 million, according to various estimates. FINRA has not disclosed to the members the value of her "going away" gift.[2]

FINRA's Own Investments

In contrast to these huge compensation packages, for 2008 FINRA reported investment-related losses of $568 million, or 26.5% of its investment portfolio. These losses wiped out the reported returns over the previous four years. FINRA states that the "purpose of the portfolio is to support FINRA's operations and fulfill its mission of investor protection and market integrity by providing FINRA with supplemental financial resources to allow it to implement long-range plans." FINRA further states that its "investment policy is set forth to preserve principal over the long-term (in real terms) while seeking to maximize returns within acceptable levels of risk, and to do so in a manner consistent with portfolio management best practices for producing long-term returns."

[2] Ms. Schapiro first reported that she was receiving a "lump sum" severance package of between $5-25 million. The SEC subsequently informed reporters that her package was worth $7.2 million. The actual value of current and future compensation and other benefits remains undisclosed to FINRA members or the public at large.

The losses recognized by FINRA in 2008 (which may be distinct from unrecognized and not yet reported losses and diminution of value) are inconsistent with its stated investment policy. Based upon the minimal information which FINRA has disclosed to member firms, FINRA has been reckless in pursuing high-risk strategies inappropriate to preservation of capital. It appears that, despite the fact that FINRA requires investment earnings as a supplement to its other sources of funds (*e.g.*, member payments, fines, *etc.*), its emphasis on short-term investment returns and apparently risky vehicles was unwarranted, quite costly and a waste of its assets. According to FINRA's 2008 Annual Report (and in previous ones), the Board's Audit Committee is responsible for overseeing the quality and effectiveness of and the level of adherence to FINRA's risk management systems. There is no indication in the 2008 Annual Report or in any previous one that the members of the Audit Committee paid any attention to the levels of risk undertaken by the members of the Investment Committee, their subordinates or advisors.

The Investment Committee has improvidently invested FINRA's corporate assets and caused it damages as a result of, among other questionable practices, purchasing $862 million of so-called ARS through member firms or their affiliates which FINRA knew or should have known were not a ready source of cash, as can be seen from statements made in NASD's 2003, 2004 and 2005 Annual Reports. Indeed, FINRA now says that it had focused its regulatory and investor protection efforts on ARS despite its own lack of pre-2008 regulatory oversight and disclosure as well as its failure to avoid investing its own corporate assets in ARS.[3]

I further understand, but have been unable to verify, that FINRA also directly or indirectly placed substantial funds with Madoff prior to December 2008 and either sustained losses and/or may be subject to substantial "clawback" claims. Obviously, if such "investments" occurred, substantial conflicts of interest existed which would have rendered them improvident and inappropriate without regard to Madoff's now-admitted underlying Ponzi scheme. Further, if such "investments" were made, there had to be an utter failure of due diligence on the part of the Investment Committee in connection therewith.

[3] It has been publicly reported that FINRA sold its then $647 million position in ARS in early 2007.

FINRA investments appear to have been made through member firms over which FINRA is charged with regulatory oversight. These investments present serious conflict of interest issues, discussed further below. Is there any reason why, given such conflicts, FINRA cannot invest its own assets through one or more so-called "blind" trusts? As Pope Benedict, at his recent meeting with President Obama, noted, self-regulation is highly over-rated and certainly, given these conflicts of interest and FINRA's massive oversight failures, prompt steps must be taken to reform its fundamental regulatory function and to avoid such conflicts by all practical means. Should it fail to do so, this function is likely to be carried out by the SEC or some newly-created governmental entity.

Conflicts of Interest

While FINRA has been reasonably vigorous in its oversight of smaller member firms, frequently devoting substantial resources to dealing with insignificant technical infractions, due to conflicts of interest, FINRA has given a virtual "free pass" to large member firms and their affiliates such as BS, Lehman, Merrill, Madoff, Mandel and Stanford.

Indeed, in Madoff's case, there appears to have been a particularly cozy relationship between Madoff and senior FINRA executives which resulted in virtually no effective oversight of Madoff and its affiliates as well as its $65 billion Ponzi scheme carried out over three decades.[4] Madoff was a member of FINRA since 1960. During this period, particularly since the early 1980s when prosecutors have alleged the Ponzi scheme began (Mr. Madoff states that it began in the early 1990s), despite numerous "examinations" of the firm and its affiliates and 19 customer complaints received by FINRA since 1999, no serious investigative efforts were ever undertaken of Madoff and its affiliates by FINRA. Indeed, it

[4] Bernard Madoff joined NASD's Board of Governors in January 1984 and served as Vice Chairman while his Ponzi scheme was well underway. He had previously held a number of NASD committee assignments since the 1970s and was instrumental in the development of NASDAQ. He also headed NASDAQ. His brother, Peter Madoff, served as Vice Chairman of the NASD as well. Mary Schapiro, former FINRA CEO, appointed Mark Madoff, one of Bernard Madoff's sons, to the National Adjudicatory Council, a regulatory body that reviews disciplinary decisions made by FINRA. Bernard Madoff's niece, Shana Madoff, a supposed "Compliance Officer" of Madoff until the firm's collapse, was a member of a compliance advisory committee of FINRA.

appears that due to the personal relationships between Bernard Madoff, members of his family and FINRA officers, there was a "hands off" policy in place to his activities and those of his firm which allowed their Ponzi scheme to flourish (*e.g.*, there was no verification of the existence of the customer assets for which Madoff was a "qualified custodian"). Not surprisingly, NASD/FINRA regularly verify the existence of customer assets in routine reviews of most member firms.

DOCUMENTS DEMANDED

In light of the above background, I demand, pursuant to Section 220 and the common law of the State of Delaware, the right to inspect and make copies of the following books and records:

EFFECTIVE REGULATION:

1. Any internal NASD/FINRA study, analysis or review, created from January 2007 to the present with respect to:
    a. Bear Sterns
    b. Lehman Brothers
    c. Merrill Lynch
    d. Madoff Securities
    e. Ross Mandel
    f. Stanford Securities

2. All documents which refer to, reflect or are communications between Bernard Madoff and any member of Mr. Madoff's family, on the one hand, and any officer or director of NASD/FINRA, on the other, from 1984 to the present.

3. All studies, reviews or analyses presented to NASD/FINRA's Board of Governors or any member thereof during the period January 1, 2005 to the present with regard to the effectiveness of NASD/FINRA self-regulation, or conflicts of interest.

4. All documents presented to the NASD/FINRA Board of Governors or any member thereof concerning the genesis, need, budget, or message of any FINRA media campaign from January 1, 2005 to the present.

5. All NASD/FINRA documents presented to the NASD/FINRA Board of Governors or any member thereof from January 1, 2005 to the present that discuss or otherwise refer to the possible or actual failure of BS, Lehman, Merrill, Madoff, Mandel, Stanford or any other brokerage firm of 150 employees or more.

6. All NASD/FINRA documents presented to the NASD/FINRA Board or Governors or any member thereof from January 1, 2005 to the present that discuss threats to market conditions created by the popularization of subprime mortgage securitizations.

7. All complaints or customer inquiries received by FINRA or NASD concerning Madoff, Mandel, or Stanford from January 1, 2000 to the present.

8. All documents presented to the NASD/FINRA Board of Governors, Investment Committee or any member thereof from January 1, 2005 to the present with respect to NASD/FINRA's own investments in ARS or the state of the ARS markets in general.

9. All documents disseminated by or on behalf of NASD/FINRA warning or otherwise informing the public of investments in and/or with BS, Lehman, Merrill, Madoff, Mandel, Stanford or in ARS.

10. All documents created since January 1, 2005 which refer or relate to how NASD/FINRA was carrying out or should carry out warnings to the public of investment-related risks.

EXECUTIVE COMPENSATION:

11. Documents sufficient to identify all current and former officers of NASD/FINRA who received in excess of $250,000 in direct or indirect compensation in 2007 and/or 2008 and the amount received by each.

12. All documents created since January 1, 2005 which refer to or are communications to or with any present or former member of NASD/FINRA's Board of Governors with respect to the compensation of

any officer with a salary and other benefits exceeding $250,000 per year, including but not limited to any documents relating to any possible "clawback" of any such compensation.

13. All documents which refer or relate to the termination/severance benefits and/or compensation paid or to be paid by NASD/FINRA to Mary L. Schapiro excluding pay stubs, W-2 Forms and other similar non-narrative documents.

INVESTMENT POLICY AND CONFLICTS OF INTEREST:

14. All documents created since January 1, 2005, including, but not limited to, minutes, notes, presentations, slides, appendices, or other materials provided to or considered by NASD/FINRA's Board of Governors (and/or any member or sub-committee thereof) regarding NASD/FINRA's investment policies and/or procedures or transactions for its own accounts.

15. Documents sufficient to identify each of the NASD/FINRA investments upon which losses were incurred during the period January 1, 2005 to the present, and the amounts of those losses.

16. Documents sufficient to identify each of the NASD/FINRA investments upon which there have been unrealized losses to date, and the amounts of those losses.

17. All drafts of the comprehensive Investment Committee review ("the Review") of NASD/FINRA's investment policy, strategy and risk tolerance (as referred to in FINRA's 2008 Annual Report) and all exhibits thereto.

18. All drafts of documents provided to NASD/FINRA's Board of Governors or to any member thereof from January 1, 2005 to the present which referred or related to the Review and/or NASD/FINRA's investment policies or procedures.

19. Documents sufficient to identify any investment consultant and/or advisor retained by or on behalf of NASD/FINRA in connection with the investments made for its own accounts during the period January 1, 2005 to the present.

20. All documents provided by any such consultants or advisors to NASD/FINRA and/or to any member of its Board of Governors in connection with its actual or potential investments.

21. All documents which refer or relate to the manner in which NASD/FINRA deals with conflicts of interest between itself and the oversight of member firms from January 1, 2005 to the present.

22. All documents which refer to or are drafts of FINRA's 2007 and 2008 Annual Reports.

23. All documents created since January 1, 2005 which refer to or are communications to or with any present or former member of NASD/FINRA's Board of Governors with respect to the job performance of any of NASD/FINRA's officers paid annual compensation of $250,000 or more.

24. Any reports received or created by any member of the NASD/FINRA Compensation Committee from January 1, 2005 to the present.

25. All documents which refer or relate to or which are communications between any representative of FINRA and any representative of Irving Pickard, court-appointed Trustee in the Madoff bankruptcy proceedings.

I further request the right to inspect all information referred to in this letter that is within the legal possession, custody or control FINRA, including, but not limited to, such information that is within the possession, custody or control of FINRA's subsidiaries and outside legal counsel, accountants, financial advisors and consultants.

I make the foregoing demands for the purposes of: (i) investigating possible corporate wrongdoing, mismanagement, waste, breach of fiduciary duty, or violations of laws by senior management and/or the Board of Governors of FINRA in connection with the conduct described above; (ii) determining whether and the extent to which I and my counsel can make appropriate recommendations as to therapeutic steps that should be taken by FINRA to prevent a repetition of the foregoing conduct; (iii) determining whether the members of FINRA's Board of

Governors are independent and/or disinterested with respect to the foregoing conduct and whether they have acted in good faith; and (iv) determining whether potential communications with other FINRA members for their and its mutual benefit are appropriate.

I have designated Jonathan W. Cuneo, Esq., and Richard Greenfield, Esq., and their firms and their respective attorneys and employees, or any other person designated by me to conduct, as my agent for the purpose of inspection and copying the documents requested herein. Please direct all responses to this request to me c/o Jonathan W. Cuneo, Esq. at 507 C Street, NE, Washington, DC 20002 jonc@cuneolaw.com and Richard D. Greenfield, Esq. at 250 Hudson Street-8th Floor, New York, NY 10013 whitehatrdg@earthlink.net. If any information requested by the foregoing letter is ambiguous or confusing, or should you have any questions please direct them to Messrs. Cuneo or Greenfield.

Please advise me through my counsel identified above, within five (5) business days of receipt of this letter as required under Section 220, as to when and where the books and records demanded above will be made available for inspection.

Very truly yours,

Elton Johnson, Jr.
President, Amerivet Securities, Inc.
Lieutenant Colonel, US Army Reserve

cc: FINRA Board of Governors c/o Joseph Warin, Esq.
Jonathan W. Cuneo, Esq.
Richard D. Greenfield, Esq.

EXHIBIT A

VERIFICATION

I, the undersigned, hereby depose and state under oath that:

1. I am the President of Amerivet Securities, Inc., a member firm of the Financial Industry Regulatory Authority ("FINRA").

2. The demand for books and records attached hereto made pursuant to 8 *Del. C.* § 220 addressed to FINRA and the statement of purpose and other statements therein contained are true and correct to the best of my knowledge, information and belief.

I hereby verify under penalty of perjury that the foregoing statements made by me are true and correct.

E Elton Johnson Jr

Lt. Col. Elton Johnson

State of California }
}
County of ~~San Bernadino~~ Riverside } Cal

I, the undersigned, a Notary Public in and for the State of California, do hereby certify that Lt. Col. Elton Johnson personally appeared before me, who being by me first duly sworn, does hereby depose and state under oath that he has read the foregoing demand and that the facts and statements therein contained are true and correct and that he acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument he executed the instrument.

GIVEN under my hand and official seal of office this 23rd day of July, 2009.

Carla Jech

Notary Public

CARLA W. JECH
Commission # 1775708
Notary Public - California
Riverside County
My Comm. Expires Jan 21, 2011

EXHIBIT B

FINRA
Financial Industry Regulatory Authority

Marcia E. Asquith
Senior Vice President
and Corporate Secretary

July 31, 2009

Via E-Mail and FedEx

jonc@cuneolaw.com
Amerivet Securities, Inc.
c/o Jonathan W. Cuneo, Esq.
507 C Street, NE
Washington, DC 2002

Via E-Mail and FedEx

whitehatrdg@earthlink.net
Amerivet Securities, Inc.
c/o Richard D. Greenfield, Esq.
250 Hudson Street -- 8th Floor
New York, NY 10013

Re: Request to Inspect Books and Records Pursuant to 8 *Del. C.* § 220

Gentlemen:

By letter dated July 23, 2009 and received by Financial Industry Regulatory Authority ("FINRA") on July 24, 2009, Elton Johnson, Jr., on behalf of Amerivet Securities, Inc. ("Amerivet"), requested certain information from FINRA purportedly pursuant to Section 220 of the Delaware General Corporation Law (the "Demand"). After having reviewed and considered the Demand, FINRA has concluded that the Demand is improper under Section 220 and that Amerivet is not entitled to inspect the materials requested in the Demand. Accordingly, FINRA rejects the Demand and will not produce documents in response thereto.

Sincerely,

FINANCIAL INDUSTRY REGULATORY AUTHORITY

Marcia E. Asquith
Senior Vice President
and Corporate Secretary

cc: F. Joseph Warin, Esq. (via E-Mail)
Srinivas M. Raju, Esq. (via E-Mail)

EXHIBIT C

GREENFIELD & GOODMAN LLC
ATTORNEYS AT LAW
250 Hudson Street
8th Floor
New York, NY 10013
(917) 495-4446
Fax (212) 355-9592
email: whitehatrdg@earthlink.net

Richard D. Greenfield
Also admitted to the Maryland and Pennsylvania Bars

July 31, 2009

Marcia E. Asquith, Esq.
Senior Vice President and
Corporate Secretary
FINRA
1735 K Street
Washington, DC 20006

Via E-Mail: jomarie.Donaldson@finra.org

Re: **Request to Inspect Books and Records Pursuant to 8 Del. C. §220**

Dear Ms. Asquith:

Thank you for responding today to the July 23, 2009 letter sent to FINRA by our client, Lt. Col. Elton Johnson, Jr. on behalf of his firm, Amerivet Securities, Inc. (the "Demand").

You state in your letter "that the Demand is improper under Section 220 and that Amerivet is not entitled to inspect the materials requested in the Demand." You thereafter reject the Demand on behalf of FINRA but provide absolutely nothing in support of your quoted statement or for FINRA's rejection of the Demand.

Inasmuch as the law and facts clearly justify production of the books and records requested pursuant to the Demand, please provide Mr. Cuneo and me with whatever support FINRA and/or its outside counsel you rely upon to justify the rejection of the Demand and Amerivet's entitlement to the materials requested.

We look forward to your prompt response.

Sincerely yours,

/s/

Richard D. Greenfield

CC: Lt. Col. Elton Johnson, Jr.
Jonathan W. Cuneo, Esq.
William Anderson, Esq.
F. Joseph Warin, Esq.
Srinivas M. Raju, Esq.
JoMarie, Donaldson, Esq.

RDG:gw