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August 13, 2015

**Via FedEx (Response and Supporting Documents)**

**Email and Facsimile (Response Only):**

Mr. Dexter McKay  
Principal Examiner  
FINRA  
Atlanta District Office  
One Securities Centre, Suite 500  
3490 Piedmont Road, NE  
Atlanta, GA 30305-4808

Re: O'Hara U-5 Exam  
20140436964

Dear Mr. McKay:

As you know, my law firm represents Ryan O'Hara in the above-referenced matter.

**I. Overview**

This letter responds to FINRA's inquiry of July 23, 2015 (itemized responses begin on page 6). I also write on behalf of Mr. O'Hara to show FINRA why it should bring enforcement actions against RBC Capital Markets, LLC ("RBC"), Rathmann & Associates ("Rathmann"), and their principals for their numerous violations of the federal securities laws and regulations central to FINRA's charter. RBC's and Rathmann's violations include almost a decade of fraud, collusion, and illegal price-fixing pursuant to an explicit written agreement. FINRA has a roadmap for such an action based on the evidence that Mr. O'Hara himself assembled, much of which became the basis of RBC's and Rathmann's settlement with the Texas Attorney General last year. To date, FINRA appears yet to have taken action against RBC and Rathmann. Respectfully, that should change.

Mr. O'Hara requests that FINRA issue him a no-action letter as to the above-referenced investigation. Without Mr. O'Hara's own investigation of RBC's/Rathmann's fraud, it is doubtful that the Texas Attorney General would have acted. Moreover, Mr. O'Hara's communications with participants in the municipal bond community regarding RBC's and Rathmann's fraud fall outside of the reasonable application of industry rules. These communications are, in fact, protected from any enforcement action under the First Amendment of the United States Constitution.

## II. Factual background

### A. *O'Hara investigates RBC's premium compensation*

While at BOSC Securities, Mr. O'Hara had begun to investigate the potential impact of a new rule in the municipal-bond industry, MSRB Rule G-23. Rule G-23 put an end to the practice of "hat flipping," in which a financial advisor to a municipal entity changes roles and becomes an underwriter of the municipality's bonds. This practice is questionable in part because a financial advisor owes fiduciary duties to the issuer, but the underwriter owes none. The fiduciary duties of the financial advisor are important in this matter, as discussed in detail below.

With Rule G-23 imminent, Mr. O'Hara and his superiors at BOSC knew that more underwriting business would become available. Mr. O'Hara thus undertook a study of underwriting fees in the Houston area to help BOSC build a business plan in anticipation of that rule change.

Mr. O'Hara's investigation led him to discover that in many bond issuances, RBC received premium underwriter's discounts that were almost always 1.25%. His research showed that the typical competitive underwriter's discount tends to be, on average, in the range of 0.90%; so in the 1.25% deals, RBC enjoyed close to 50% more compensation than in the ordinary competitive deals. *See generally* Ex. 2(A)-(G).<sup>1</sup>

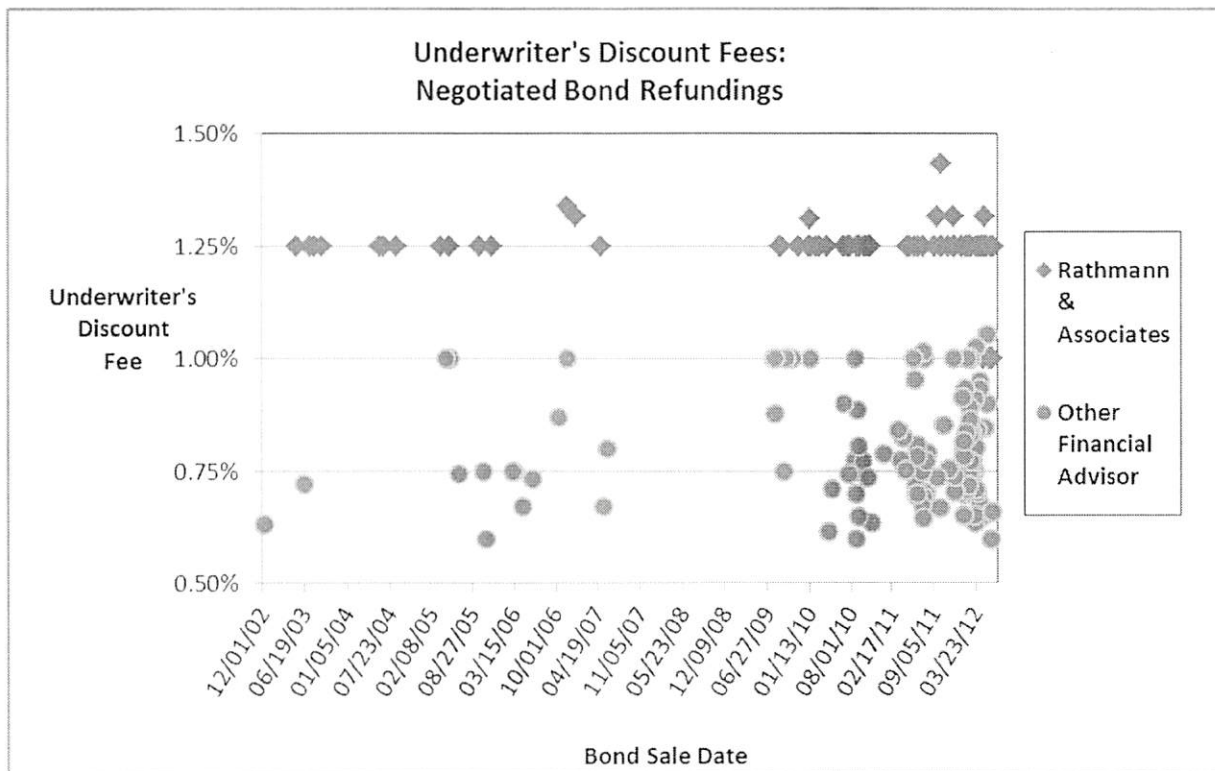
Mr. O'Hara discovered that whenever RBC earned the 1.25% underwriter's discount, the municipality had the same financial advisor: Craig Rathmann of Rathmann & Associates. Financial advisors such as Rathmann act as fiduciaries to municipalities when the municipality issues bonds. The financial advisor's fiduciary duties to the municipality include guiding the municipality as to the timing, structure, pricing, credit rating, and other terms of a bond issuance. As a fiduciary, Rathmann had the solemn legal obligation to put the interests of the municipality above his interests and the interests of anyone else. Yet here, Mr. O'Hara had discovered evidence that Rathmann systematically put the interests of RBC above those of the taxpayers of the municipality Rathmann was supposed to be protecting.

Mr. O'Hara has known Rathmann since the 1990s, first as an outside vendor to RBC when Rathmann worked at RBC, and then as a subordinate to Rathmann at RBC when they worked together in the early 2000s. He first believed that Rathmann would want to know that RBC's compensation could create problems for Rathmann. Mr. O'Hara suggested to Rathmann that Rathmann should probably try to keep it lower and that everyone could still do well.

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<sup>1</sup> Attached to this response are Exhibits 1-19. Mr. O'Hara submitted Exhibits 1-17 to the state court in Houston, Texas hearing a defamation case that Rathmann has filed against him. Exhibits 18 and 19 contain the pending pleadings in the case. Mr. O'Hara has moved to dismiss the case in Exhibit 19 because, as he shows in this letter, his criticisms of Rathmann are truthful comments on matters of public concern.

Unfortunately, Rathmann reacted to Mr. O'Hara's suggestions with hostility. Whatever cordiality existed between the two deteriorated. In fact, Mr. O'Hara's discovery of the favorable pricing in Rathmann/RBC deals rattled the public-finance establishment in Houston. Prominent municipal bond lawyer Joe B. Allen told him in a spring 2012 meeting that "you pulled the pin on a hand grenade and put it in my lap." Later in 2012, Rathmann called Mr. O'Hara a "liar" or words to that effect in public meetings with officials of various municipalities. But Mr. O'Hara had assembled comprehensive data that left little question that Rathmann/RBC bond "refundings" (refinancings of prior bond issuances) paid far more to RBC than comparable refundings in which someone other than Rathmann acted as financial advisor. Toward the end of 2012, Mr. O'Hara had summarized his findings as shown in the graph below:



O'Hara Summary Graph, Ex. 2-A

**B. Rathmann reveals his secret agreement**

Mr. O'Hara had shared his findings with members of various municipal issuers (who rely on financial advisors like Rathmann as fiduciaries), and scrutiny on Rathmann increased. Mr. O'Hara himself was and remains a taxpayer in the Greatwood subdivision in Sugar Land, Texas, a suburb about 20 miles southeast of downtown Houston. As a Greatwood resident, he (and many of his friends and neighbors) pay taxes to Fort Bend County Municipal Utility District #106 – one of the municipal issuers for which Rathmann had served as financial advisor and for which RBC acted as underwriter. As with the many other Rathmann/RBC deals Mr. O'Hara had studied, this municipal utility district ("MUD") had paid the premium underwriter's discount to RBC of 1.25%. As with almost all the other Rathmann/RBC deals Mr. O'Hara had studied, this

premium meant that the municipality had incurred significantly more debt than municipalities that had avoided the Rathmann/RBC duo. *See generally* Ex. 2 (Declaration of Ryan O'Hara detailing findings).

Mr. O'Hara also shared his findings with his friends and neighbors, explaining that these deals forced them to pay more in taxes than they should have. Pressure on Rathmann thus continued to mount. On October 18, 2012, at a meeting of the same Greatwood MUD (Fort Bend County MUD #106), the MUD's law firm – Allen Boone Humphries Robinson LLP – distributed a letter. That letter reported:

Recently, questions were brought to ABHR's attention regarding Craig Rathmann's relationship with RBC. As a result, in mid-August 2012, at our request, Mr. Rathmann reviewed for a number of ABHR partners a separation agreement ("Separation Agreement") that he entered into in 2003 with RBC, when he left that firm.

ABHR had not previously been provided the Separation Agreement or been made aware of all of the various provisions in the agreement, including the 1.25% underwriting fee . . .

In almost all of the refunding bond transactions we reviewed where the financial advisor on the transaction was a firm *other than* Rathmann & Associates, the fee paid to the underwriter was lower than the 1.25% underwriter fee.

Ex. 3, at 1-2 (emphasis added).

The Allen Humphries law firm served as counsel for many of the MUDs for which Rathmann acted as financial advisor. It was founded by Joe B. Allen, the same lawyer who told Mr. O'Hara earlier in 2012 that he had "pulled the pin on a hand grenade." In short, a pillar of the public-finance establishment had confirmed Mr. O'Hara's analysis.

Mr. O'Hara asked for a copy of the Separation Agreement from the Allen Boone law firm at the meeting, but did not get a copy right away; when he did, around Halloween 2012, it came from Rathmann's office. *See* Ex. 1 (2003 Rathmann/RBC Separation Agreement). Upon Mr. O'Hara's review of the Separation Agreement, he learned, as did Allen Boone, that Rathmann promised to secure for RBC a 1.25% underwriter's discount for negotiated bond refundings. Ex. 1, at 1-3.

The revelation of the secret terms of the 2003 Separation Agreement thus not only confirmed Mr. O'Hara's analysis, it memorialized the premium pricing in explicit terms – a smoking gun of fraud and collusion.

Here is how the secret Rathmann/RBC deal worked: RBC assigned to Rathmann RBC's contracts with 98 municipal districts in which RBC had the right to act as financial advisor, including lucrative financial-advisor compensation. *See id.* at 1-2. In exchange for these contracts, Rathmann agreed that when he acted as financial advisor to the municipalities,

Rathmann would cause RBC to be named as the senior managing underwriter and to use his influence – as a fiduciary to the municipal entities – to get RBC the lucrative underwriter’s discount of 1.25%. *Id.* at 3.

These terms, combined with Mr. O’Hara’s analysis, provide compelling evidence of fraud and collusion between Rathmann and RBC, not to mention a betrayal by Rathmann to the municipalities to whom he owed sacred fiduciary duties.

Not surprisingly, Rathmann announced that he had terminated the Separation Agreement in mid-2012. Also, not surprisingly, RBC stopped commanding its rich 1.25% underwriter’s fee. RBC had to go back to charging the same competitive rates that applied outside the Rathmann/RBC deal.

***C. RBC and Rathmann settle to avoid civil charges by the Texas Attorney General and O’Hara shares the news***

A few months after Rathmann had disclosed the Separation Agreement, Mr. O’Hara received an unsolicited phone call from the Texas Attorney General’s office regarding the Rathmann/RBC arrangement. The Texas Attorney General’s lawyers assured Mr. O’Hara in writing that he was a witness, and not a subject or target. Ex. 2-H. O’Hara met and spoke with representatives of the Texas Attorney General several times and shared his analysis with them.

The Texas Attorney General’s investigation culminated in a settlement by Mr. Rathmann and RBC that the Texas Attorney General publicly announced in October 2014. Exs. 4-10 (settlement agreements and related press regarding same). For example, in its settlement agreement with Rathmann, the Texas Attorney General stated:

WHEREAS, the Attorney General is prepared to allege that Rathmann & Assoc., Mr. Rathmann, and RBC Capital Markets, LLC (“RBCCM”) unreasonably restrained competition by entering into an agreement on March 28, 2003, allocating certain financial advisory customers, agreeing not to solicit one another’s existing financial advisory customers, and affecting the provision of Underwriting Services for MUD Refundings, thereby depriving certain MUDs of the benefits of competition.

Ex. 7, at 1.

As FINRA is aware, Mr. O’Hara notified members of the affected municipal-finance community about the publicly disclosed settlements: members of issuers of municipal entities; other participants in the underwriting and advisory business; and taxpayers affected by Rathmann and RBC’s collusion.

These communications were consistent in tone with the communications that Mr. O’Hara had initiated in the early stages of his investigation in late 2011 and early 2012. Mr. O’Hara’s superiors at BOSC (particularly, Bill Gumbert) knew and encouraged him to develop BOSC’s

business case as the anti-“hat flipping” rule (MSRB Rule G-23) took effect. BOSC also knew Mr. O’Hara had an interest in the issue as a taxpayer in several municipal utility districts and was speaking out on this issue.

Outside of BOSC, Mr. O’Hara sent anonymous emails to various MUD directors regarding the Texas Attorney General settlement. He sent anonymous emails to focus on the facts, not the personalities, involved. As early as August 2012, Rathmann and others had convinced many MUD directors that neither Rathmann nor RBC had done anything wrong and that Mr. O’Hara had invented his accusations to take their business away. Rathmann’s assurances at first concealed his 2003 “Separation Agreement” with RBC; even after Rathmann disclosed the agreement, he continued to misrepresent its terms and the impact it had on MUD taxpayers.

In the anonymous emails, Mr. O’Hara chose the pseudonym “Nathan Thurm” from the 1980s *Saturday Night Live* character played by comedian Martin Short. *See, e.g.*, Ex. 18, at 1 (snapshot of anonymous Nathan Thurm email). In various sketches, Short portrayed Thurm as a shady lawyer who would nervously deny his clients’ misconduct. Mr. O’Hara chose this pseudonym in light of Rathmann’s and RBC’s equivocal portrayal of their potentially criminal conduct (e.g., “Neither Rathmann & Associates nor myself were assessed any penalties or fines,” not mentioning in the letter that Rathmann had “agree[d] to pay the total sum of \$450,000 as a payment *in lieu of civil penalties and fines* and in partial reimbursement of the costs and fees associated, with the Attorney General’s investigation related to this matter.” Ex. 20 at 2 (emphasis added)). This statement, and many more like them that Rathmann made regarding the settlement, were Thurm-like denials. *See, e.g., id.*<sup>2</sup>

### III. Itemized Responses

#### A. O’Hara’s Emails and Hard Copy Mailings

1. *Copies of all emails you sent, while you were registered with BOSC, Inc., to members of the public with regard to a settlement agreement entered into between RBC Capital Markets, LLC (“RBC”) and the Texas Attorney General’s Office concerning an eleven year old separation agreement between RBC and Rathmann & Associates (“Rathmann”).*

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<sup>2</sup> Examples of Nathan Thurm videos appear at <http://www.nbc.com/saturday-night-live/video/saturday-night-news-segment---nathan-thurm/n9292>; <https://screen.yahoo.com/nathan-thurm-tobacco-growers-america-000000071.html>.

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**Response:**

Mr. O'Hara does not have copies of every email he sent that would be responsive to this request, but a large number of emails that are representative of the ones he sent are produced with this response, Bates numbered O'Hara 000001-000137.

Mr. O'Hara is aware of three emails accounts that contained responsive emails: (a) the BOSC emails; (b) his account at [ryan.ohara@live.com](mailto:ryan.ohara@live.com); and (c) the pseudonym account at [freemarketdefender@mail.com](mailto:freemarketdefender@mail.com).

**(a) O'Hara's BOSC account**

Mr. O'Hara's BOSC account contains responsive emails regarding Rathmann and RBC's collusion settlement agreements. Since Mr. O'Hara is no longer employed at BOSC, Inc., he does not have access to this account. However, he has obtained examples of responsive emails from various recipients, copies of which appear at Bates nos. O'Hara 000072-000074; O'Hara 000085-108; O'Hara 000119-000125.

**(b) O'Hara's [ryan.ohara@live.com](mailto:ryan.ohara@live.com) account**

Mr. O'Hara sent approximately 25 emails from his personal [ryan.ohara@live.com](mailto:ryan.ohara@live.com) account. Mr. O'Hara sent emails with copies of the RBC/Rathmann Separation Agreement as well as copies of the RBC and Rathmann settlements agreements. The emails in his possession, custody, and control appear at Bates nos. O'Hara 000001-000071; O'Hara 000075-118; O'Hara 000126-137. He continues to search for responsive documents.

**(c) The pseudonym account: [freemarketdefender@mail.com](mailto:freemarketdefender@mail.com)**

As discussed above, Mr. O'Hara sent anonymous emails under the "Nathan Thurm" pseudonym. He used a personal email account, [freemarketdefender@mail.com](mailto:freemarketdefender@mail.com).

The free email account was rendered inaccessible by the email provider, 1&1 Mail & Media, Inc., whose full address appears below:

1&1 Mail & Media Inc.  
701 Lee Road, Suite 300  
Chesterbrook, PA 19087  
[press@mail.com](mailto:press@mail.com)

Mr. O'Hara does not have access to those sent emails (or any of the [freemarketdefender@mail.com](mailto:freemarketdefender@mail.com) emails) as a result. However, the email depicted in Ex. 18, at 8, is a representative example of the anonymous emails he sent.

2. *A list of the names and email addresses for all of the people to whom you sent the above emails, the email address(es) from which the emails were sent, and an explanation for how those addressees were selected.*

**Response:**

Mr. O’Hara believes that he sent emails to one or possibly more board members of Fort Bend County MUD #2, Cinco MUD #5, and Chimney Hill MUD regarding the AG’s settlement. Mr. O’Hara selected these addresses because he believed the recipients (all of whom were participants in municipal finance) would want to know about the collusion between RBC and Rathmann.

Based on his recollection, he sent emails to the following people, among others:

<b><u>Recipient</u></b>	<b><u>Title/Role</u></b>	<b><u>Comment</u></b>
Michael T. O’Hara <a href="mailto:m.t.ohara@erinanalytics.com">m.t.ohara@erinanalytics.com</a>	Ryan O’Hara’s father	Worked in the municipal bond business at Underwood, Neuhaus & Co.; Erin Analytics; and Rauscher Pierce Refsnes
Michael Bradbury <a href="mailto:Mjbradbury80@gmail.com">Mjbradbury80@gmail.com</a> CRD# 5034525	Pres. of Board Harris-Montgomery Counties MUD #386	Former municipal finance banker; worked at Wells Fargo; UBS; Goldman Sachs
Mary Solcher <a href="mailto:txaggiegirl87@comcast.net">txaggiegirl87@comcast.net</a>	Taxpayer	Greatwood subdivision community leader
Stuart Rimes, DDS, MS <i>Email address unknown at this time</i> <a href="http://rimesdds.com/site/stuart-rimes-dds/">http://rimesdds.com/site/stuart-rimes-dds/</a>	Board member for Fort Bend County Levee Improvement District #11	Neighbor in Greatwood; Vice President and board member of Greatwood Homeowners Association
Jared Jameson <a href="mailto:jaredj@wjinterests.com">jaredj@wjinterests.com</a> CRD# 4489225	Board Member for Fort Bend Co. LID #11	Registered investment adviser, WJ Interests LLC
Garry Kimball <a href="mailto:garry@spubfin.com">garry@spubfin.com</a> CRD# 23663615	Partner at Specialized Public Finance, Inc., Austin, TX	Financial advisor to special municipal districts
Dan Wegmiller <a href="mailto:dan@spubfin.com">dan@spubfin.com</a> CRD# 2399497	Partner at Specialized Public Finance, Inc., Austin, TX	Financial advisor to special municipal districts
Craig Brast <a href="mailto:craig.a.brast@wellsfargo.com">craig.a.brast@wellsfargo.com</a> CRD# 2280657	Former MUD Board member Harris-Mont. Co MUD #386	Municipal finance banker at Wells Fargo Brokerage Services, LLC



### **Others – “Special Districts 101” Seminar Participants at BOSC**

Mr. O’Hara sent emails regarding the Rathmann and RBC collusion settlement agreements to approximately 50-75 public officials that attended educational seminars that he and others in the BOSC Houston office conducted (often called “Special Districts 101”) for elected public officials (MUD board directors), bond lawyers, and special district consultants.

At those seminars, BOSC had sign-in sheets for the attendees to provide their names, email addresses, and name of the special district they were associated with. Mr. O’Hara does not have access to those seminar attendees lists since he is no longer with BOSC, Inc.

Mr. O’Hara is continuing to search for responsive information and will supplement this response as necessary.

### **3. *The reason the above emails were sent.***

#### **Response:**

As described above, Mr. O’Hara sent the emails and other communications to share the highly relevant news of the 2014 Rathmann and RBC collusion settlement agreements that confirmed what Mr. O’Hara had discovered in 2012, first through Mr. O’Hara’s assembly of the circumstantial evidence and later through Mr. Rathmann’s revelation of the 2003 Separation Agreement, with its explicit *quid pro quo* that RBC would assign Rathmann lucrative financial advisor contacts in exchange for Rathmann naming RBC as lead underwriter at a fixed underwriting fee of 1.25%, which was substantially above market.

This was a matter of substantial public concern – so much so that it triggered an investigation and settlement by the Texas Attorney General. What was worse, even after Rathmann and RBC’s agreement had become public, and even after Rathmann and RBC entered into settlement agreements with the Texas Attorney General, they continued to obfuscate and minimize the gravity of their misconduct.

As Mr. O’Hara’s February 11, 2015, response to FINRA’s inquiry of January 29, 2015 stated:

I sent emails from private email accounts and mailed packets (not under BOSC logo’s or letterhead) to 50-75 Houston area MUD/special district and water authority board members, consultants and neighbors which included the two recent Texas AG settlements and Separation Agreement with Rathmann & Associates and RBC Capital Markets. (EXHIBIT#8). These correspondence went to clients of RBC and Rathmann & Associates.

I was thoroughly outraged by the special district communities (lawyers and other consultants) attempt to sweep these settlements and illegal activity under the proverbial rug.

Craig Rathmann repeatedly told his FA clients that I was the rogue banker responsible for investigation and that this was a political shake-down by Greg Abbott, then Attorney General, now Governor of Texas.

I believe (and I don't know how a reasonable person can't see) that tax payers of more than 60 municipal utility districts over a ten + year period paid above market fees. I believe there was definite anticompetitive practices and price fixing efforts in place. And, if my insistence in telling decision makers, stakeholders and tax payers in the Houston-area this information was ultimately the reason for my termination, THEN SO BE IT...

At no time in his personal emails did Mr. O'Hara solicit products or services. He has never sold securities or investment products of any kind to investors of any kind. Mr. O'Hara wrote and sent these emails to reveal the details of the AG's settlement to elected public officials and affected taxpayers of the municipal bond issuers.

As for his BOSC letters regarding the Attorney General's settlement, Mr. O'Hara's supervisor, Bill Gumbert, had encouraged his initial investigation and had condoned Mr. O'Hara's communications as his work bore fruit. Mr. O'Hara's BOSC letters were a team effort, with John Robuck and Phil Martin also participating. BOSC's Houston office did not routinely review correspondence such as this, particularly given that it was not directed at either retail or institutional customers as contemplated in FINRA Rule 2210.

Not only does Mr. O'Hara's conduct fall outside the scope of the spirit, if not the letter, of any applicable law or regulation, any enforcement action against him would raise serious First Amendment concerns. When speech touches on matters of public political life, such as Mr. O'Hara challenging the cronyism of Rathmann and RBC engaging in a scheme to defraud the issuers of municipal securities (and the taxpayers who ultimately pay through fraudulently inflated taxes), such speech falls under the "core" or "essence" of the First Amendment. *See McIntyre v. Ohio Elections Comm.*, 514 U.S. 334, 346-47 (1995).

To the extent the government – including FINRA, acting with the authority of the Securities and Exchange Commission – seeks to restrict or penalize this kind of speech, those restrictions are entitled to "exacting scrutiny," and are upheld only where they are "narrowly tailored to serve an overriding state interest." *Id.* at 347. Moreover, any violation of an individual speaker's First Amendment rights constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-374 (1976).

- 4. Copies of all hard copy mailings you sent, while you were registered with BOSC, Inc., to members of the public with regard to a settlement agreement entered into between RBC and the Texas Attorney General's Office concerning an eleven year old separation agreement between RBC and Rathmann.***

**Response:**

Mr. O'Hara does not have copies of any of the hard copy mailings. These mailings simply contained copies of 2013 Separation Agreement and the 2014 Settlement Agreements and/or press releases in which the Texas Attorney General announced them.

5. *A list of the names and addresses for all of the people to whom you sent the above hard copy mailings and an explanation for how those addressees were selected.*

**Response:**

Mr. O'Hara sent hard copy mailings containing details of the Separation Agreement and Settlement Agreements to elected and appointed board members of the following municipalities:

**San Jacinto River Authority  
1577 Dam Site Road  
Conroe, Texas 77304**

Current Board Members are:

Lloyd B. Tisdale  
Fred Koetting  
Mary L. Rummell  
Joseph Stunja  
John Eckstrum  
Michael Bleier  
Jim Alexander

Mr. O'Hara does not recall who the board members were at the time of the mailings, but will locate their identities and supplement if necessary.

**West Harris County Regional Water Authority  
c/o Allen Boone Humphries Robinson, LLP  
James A. Boone & Alex E. Garcia  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027**

Current Board Members are:

Bruce G. Parker  
Larry A Wepler  
Douglas C. Postle  
Eric Hansen  
Gary Struzick

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Mark G. Janneck  
Karla Cannon  
John Nelson  
Michael Thornhill

Mr. O'Hara does not recall who the board members were at the time of the mailings, but will locate their identities and supplement if necessary.

**North Harris County Regional Water Authority  
3648 Cypress Creek Parkway, Suite 110  
Houston, Texas 77068**

Current Board Members are:

Al Rendl  
James D. Pulliam  
Lenox A. (Len) Sigler  
Kelly P. Fessler  
Ron Graham

Mr. O'Hara does not recall who the board members were at the time of the mailings, but will locate their identities and supplement if necessary.

Mr. O'Hara selected these authorities because these water authorities represent many of the affected special utility districts. Many of these board members are appointed by state officials and are more knowledgeable than typical MUD board members. Mr. O'Hara wanted details of the collusion and conspiracy between Rathmann and RBC as detailed in the Separation Agreement and Settlement Agreements to be fully understood by public officials and taxpayers throughout the region.

Mr. O'Hara will continue to work to supplement this response.

**6. *The reason the above hard copy mailings were sent.***

**Response:**

These major water authorities represent many of the affected special utility districts. Many of these board members are appointed by state officials and are more knowledgeable than many MUD board members.

As explained above, Mr. O'Hara wanted to expose the details of the collusion and conspiracy between Rathmann and RBC as detailed in the Separation Agreement and Settlement Agreements.

7. *If any of the above described emails were sent from an email address other than your own, please explain why you did not use your own email address.*

**Response:**

Again, as explained above, Rathmann had already engaged in a campaign to smear O'Hara as part of his effort to hide his own misconduct. Mr. O'Hara wanted to communicate the facts without distracting them with his own identity, which Rathmann had unjustly, but in some instances successfully, smeared. In many instances in front of elected board members, Mr. Rathmann had called Mr. O'Hara a liar or made similar disparaging comments and insisted that Mr. O'Hara's market study data was inaccurate and misleading.

Mr. O'Hara's use of anonymous communications on these matters of public concern rests at the heart of the freedom of speech. The Supreme Court has repeatedly upheld the First Amendment right to speak anonymously. *Buckley v. American Const. Law Found.*, 525 U.S. 182, 197-200 (1999); *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334, 341-44 (1995); *Talley v. California*, 362 U.S. 60, 64 (1960).

These cases exalt the important role played by anonymous or pseudonymous writings through history as protected by the First Amendment, and this protection extends to anonymous speech sent via the internet. "Anonymity is a shield from the tyranny of the majority. . . . It thus exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation . . . at the hand of an intolerant society." *McIntyre*, 514 U.S. at 357.

Internet anonymity allows exactly the free and open debate that Ryan O'Hara sought to create here. The "ability to speak one's mind" on the internet "without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate." *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999), cited in *Doe v. 2TheMart.com, Inc.*, 140 F. Supp. 2d 1088, 1092 (W.D. Wash. 2001). This is part of the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 374 U.S. 254, 270 (1964).

The United States Supreme Court has recognized the internet's potential to support democratic institutions and serve as the ideal town square. It allows ordinary people without access to significant resources to voice their opinions – profound, profane, or proselytizing though they may be – to all who wish to read them. "The decision to favor anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *Watchtower Bible and Tract Society v. Village of Staton*, 122 S. Ct. 2080, 2089 (2002), quoting *McIntyre*, 514 U.S. at 341-42 (1995).

8. *If any of the above hard copy mailings were sent anonymously, or under a name other than your own, please explain why you did not send the mailings under your own name.*

**Response:**

Again, Mr. O'Hara sent these hard copy mailings anonymously because he wanted the debate to focus on the facts, not the personalities. He incorporates his response to Request No. 7, above.

**B. The "Neighbor Lady" Emails**

[FINRA inquiry:] According to information provided by the firm, you texted John Robuck on October 4, 2014, stating that your neighbor lady in Greatwood was sending an email blast about the MUDs which would create pain for Rathmann in five districts. Please provide the following information with regard to that communication:

1. *Please provide the name and contact information for the neighbor lady in question.*

**Response:**

Mary Solcher  
6722 Knoll Park Drive  
Sugar Land, TX 77479-6084  
713-823-3330  
[txaggiegirl87@comcast.net](mailto:txaggiegirl87@comcast.net)

2. *Explain your neighbor lady's motivation for sending out an email blast about MUDs.*

**Response:**

Mr. O'Hara cannot speak for Mr. Solcher, but he understood from Ms. Solcher that she wanted to let taxpayers throughout the Greatwood community know that the MUD districts in the neighborhood had been paying, through their taxes, excessive fees on bond transactions where Rathmann and RBC colluded.

3. *Explain how you came to know that your neighbor lady was in the process of sending out the emails as described.*

**Response:**

Ms. Solcher frequently sends out email blasts regarding important neighborhood matters. Mr. O'Hara understood from Ms. Solcher that she felt this conspiracy was a major news event – and indeed, it was – and taxpayers should know.

4. *Provide the details, to the best of your knowledge, regarding the specific information being communicated by your neighbor lady.*

**Response:**

Ms. Solcher provided taxpayers on her email distribution with facts from the AG's settlements with RBC and Rathmann and Associates. A copy of Ms. Solcher's email is produced at Bates No. O'Hara 000080-000081.

5. *Explain why you believed the contents of your neighbor lady's emails would create pain for Rathmann.*

**Response:**

Based on the fact that Ms. Solcher's email blast reached several taxpayers in Greatwood, Mr. O'Hara believed it would be difficult and painful for Mr. Rathmann to continue to lie to board members regarding his role in the collusion and conspiracy with RBC.

### **III. Conclusion**

To date, the only negative mark in the FINRA record of anyone involved in the Rathmann/RBC controversy appears in Mr. O'Hara's CRD, even though he was the one to speak out *for taxpayers* against Rathmann's fraud and collusion. FINRA should change that and charge Rathmann, RBC, and their principals under the appropriate statutes and rules that apply here, including section 10(b) of the Securities Act of 1933; Rule 10b-5; FINRA Rule 5240 (anti-intimidation/coordination); MSRB Rule G-17 (prohibiting "any deceptive, dishonest, or unfair practice"); and FINRA Rule 2110 (similar, as well as requiring member firms "to observe high standards of commercial honor and just and equitable principles of trade").

Mr. O'Hara respectfully requests that FINRA issue a no-action letter with respect to BOSC's comment on his Form U-5. BOSC encouraged and in many cases participated in Mr. O'Hara's communications and had no meaningful procedures in place that indicated anything Mr. O'Hara did violated firm policy. Regardless, all of Mr. O'Hara's communications were on matters of public concern, protected by the First Amendment.

Mr. Dexter McKay


August 13, 2015

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Mr. O'Hara appreciates FINRA's inquiry into Rathmann and RBC's fraud and collusion and will continue to assist FINRA in that inquiry. Please do not hesitate to contact me or Mr. O'Hara with any further questions.

Respectfully submitted,

SIEGMYER, OSHMAN & BISSINGER LLP

By:   
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David K. Bissinger

Enclosures