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**Comments Regarding Expungement of Customer Dispute Reg. Notice 17-42  
and Other Issues Related to Arbitration**

February 1, 2018

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington DC, 20006-1506

Dear Ms. Asquith,

This is an informal comment letter on proposals to the Expungement Rule. In two recent FINRA arbitration cases (attached), Wellington Shields & Co., LLC has been exonerated. In both cases claimant's claims have all been denied and in both cases expungement had been "recommended".

Expungement Process

In the first case, Omega (case #14-02852), expungement proceedings cost the firm \$4,000 in costs and attorney's fees. In the second case, Morello (case #16-02878), expungement is not yet completed but has been accrued at \$5,000. There should be a procedure for FINRA to keep expungement "in house" and streamlined. At the same time FINRA should have a review process in place to confirm the appropriateness of the recommendation. There should be little or no cost to the parties that receive a unanimous "recommendation" of expungement. The cost of going into court and keeping FINRA up to date as well as getting permission from the plaintiff is onerous and when you have been vindicated it is extremely unfair.

Grant

If an expungement is endorsed unanimously, the term "grant" should be retained and honored by FINRA except in rare circumstances cited by FINRA. This would eliminate the need to go to court.

Attorney's Fees

In both the cited cases, Wellington Shields & Co. attorney's fees were denied. It is my understanding that while there is no rule regarding the award of fees by FINRA, it is customary that arbitration panels do not award fees. Panelists have told me they do not do award fees because they will not be chosen to serve again. This is a serious and unfair practice in the FINRA Arbitration system and should be addressed.

Reducing Frivolous Arbitrations

The risk of charging fees against a plaintiff will surely diminish unfounded claims. For example, the two cases previously cited, probably would never have come to arbitration if there had been a risk that the plaintiff would have to pay fees.

Respectfully submitted,



David V. Shields  
Chief Executive Officer

Enclosures:   Omega – case #14-02852  
                  Morello – case #16-02878

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants  
Anthony Morello  
Donna Morello

Case Number: 16-02878

vs.

Respondent  
Wellington Shields & Co., LLC

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Anthony Morello, and Donna Morello: Ross B. Intelisano, Esq. and Jessica Murzyn, Esq., Rich, Intelisano & Katz, LLP, New York, New York.

For Respondent Wellington Shields & Co., LLC: Neil A. Sussman, Esq., Sussman & Frankel, LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 29, 2016.

Donna Morello signed the Submission Agreement: August 31, 2016.

Anthony Morello signed the Submission Agreement: August 31, 2016.

Statement of Answer filed by Respondent on or about: January 13, 2017.

Wellington Shields & Co., LLC signed the Submission Agreement: January 9, 2017.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of applicable securities laws, statutes, rules, regulations, and standards of conduct; common law fraud; misrepresentations and material omissions; breach of fiduciary duty; breach of contract; breach of implied covenant of good faith and fair dealing; negligence; negligent misrepresentation; failure to supervise; and respondeat superior.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages in excess of \$113,000.01, attorneys' fees and costs.

In the Statement of Answer, Respondent requested that the Panel render an award:

- a) dismissing the Statement of Claim with prejudice;
- b) recommending expungement from both Respondent and unnamed party Pamela Taylor's CRD records;
- c) imposing forum fees on Claimants; and
- d) granting such other and further relief as appears just and appropriate.

At the close of the hearing, Claimants withdrew their claim for unsuitability and requested compensatory damages in the amount of \$92,392.16.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The Claimants participated in the expungement hearing and contested Respondent's request for expungement.

In recommending expungement the Panel relied upon the following documentary or other evidence: Claimants' Statement of Claim, Respondent's Statement of Answer, Respondent and unnamed party Pamela Taylor's BrokerCheck® Reports, and the testimony and evidence presented at the hearing.

The Panel made no determination in connection with Respondent's request for expungement since the above-captioned arbitration is not reflected on Respondent's registration records maintained by the Central Registration Depository ("CRD").

The Panel noted that unnamed party Pamela Taylor did not previously file a claim requesting expungement of the same disclosure in the CRD.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the recorded hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.

2. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the Central Registration Depository ("CRD"), for unnamed party Pamela Taylor (CRD# 2255299), with the understanding that, pursuant to Notice to Members 04-16, unnamed party Pamela Taylor must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The Panel has made the above Rule 2080 finding based on the following reasons:

No documentary or testimonial evidence was presented by Claimants to prove their claims. Moreover, Claimants' withdrawal of their suitability claim shows that Claimants have insufficient grounds to prove their claim.

3. Any and all claims for relief not specifically addressed herein, including attorneys' fees and costs, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 1,425.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Wellington Shields & Co. LLC is assessed the following:

Member Surcharge	= \$ 1,700.00
Member Process Fee	= \$ 3,250.00

**Discovery-Related Motion Fee**

Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers  
with one (1) arbitrator @ \$200.00/decision = \$ 400.00

Claimants submitted one (1) discovery-related motion  
Respondent submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 400.00

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$200.00 of the discovery-related motion fees to Respondent.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: August 9, 2017 1 session

One (1) pre-hearing session with the panel @ \$1,125.00/session = \$ 1,125.00  
Pre-hearing conference: March 14, 2017 1 session

Six (6) hearing sessions @ \$1,125.00/session = \$ 6,750.00  
Hearing Dates: November 1, 2017 2 sessions  
November 2, 2017 2 sessions  
November 3, 2017 2 sessions

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Total Hearing Session Fees = \$ 8,325.00

The Panel has assessed \$4,162.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$4,162.50 of the hearing session fees to Respondent.

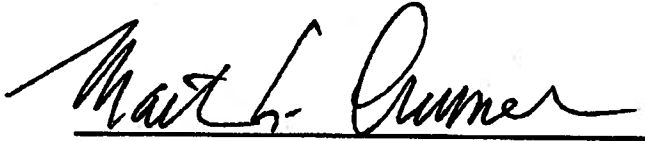
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Martin R. Cramer	-	Public Arbitrator, Presiding Chairperson
Catherine Stewart	-	Public Arbitrator
Peter L. Michaelson	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Martin R. Cramer  
Public Arbitrator, Presiding Chairperson

12/14/2017  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Catherine Stewart  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Peter L. Michaelson  
Public Arbitrator

\_\_\_\_\_  
Signature Date

December 14, 2017  
\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)

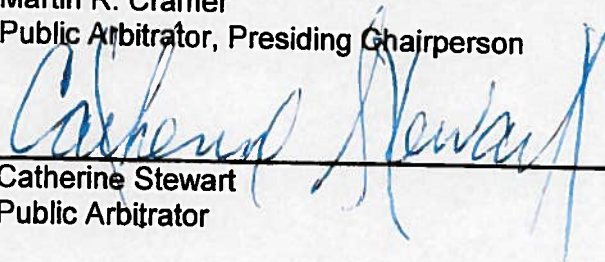
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Public Arbitrator

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Signature Date

12/14/2017  
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Signature Date

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December 14, 2017  
Peter L. Michaelson  
Public Arbitrator

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Signature Date

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Peter L. Michaelson  
Public Arbitrator

  
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Signature Date

December 14, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Omega Facility Services, Solutions & Surety, LLC

Case Number: 14-02852

vs.

Respondents  
John M. Jacobs,  
Jacobs & Company,  
Wellington Shields & Co., LLC, and  
Edward Ian Herbst d/b/a The Herbst Group, LLC

Hearing Site: Charleston, West Virginia

and

Counter-Claimants  
Wellington Shields & Co., LLC and  
Edward Ian Herbst d/b/a The Herbst Group, LLC

vs.

Counter-Respondent  
Omega Facility Services, Solutions & Surety, LLC

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Nature of the Dispute: Customer vs. Member, Associated Person, and Non-Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Omega Facility Services, Solutions & Surety, LLC ("Claimant"): Stephen P. Meyer, Esq., Meyer, Ford & Glasser, PLLC, Charleston, West Virginia and Brandon S. Steele, Esq., Beckley, West Virginia. On or about June 1, 2016, Stephen P. Meyer, Esq. and Brandon S. Steele, Esq., filed a Notice of Withdrawal. Thereafter, Claimant appeared pro se. On or about June 30, 2016, Brandon S. Steele, Esq. filed a Notice of Appearance.

For Respondents John M. Jacobs ("Jacobs") and Jacobs & Company: Herschel H. Rose, III, Esq., Rose Law Office, Charleston, West Virginia.

For Respondents Wellington Shields & Co., LLC ("Wellington Shields") and Edward Ian Herbst d/b/a The Herbst Group, LLC ("Herbst"): Neil A. Sussman, Esq., Sussman & Frankel, LLP, New York, New York.

### **CASE INFORMATION**

Statement of Claim filed on or about: September 11, 2014.  
Claimant signed the Submission Agreement: September 10, 2014.  
Claimant filed an Answer to the Counterclaim on or about: December 29, 2014.

Statement of Answer and Counterclaim filed jointly by Wellington Shields and Herbst on or about: December 10, 2014.  
Wellington Shields signed the Submission Agreement: December 29, 2014.  
Herbst signed the Submission Agreement: December 30, 2014.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, respondeat superior, misrepresentations, omissions, negligence, negligent supervision, fraud, violation of FINRA Conduct Rules 2020, 2111, and 3130, violation of the New York Stock Exchange Rules, violation of the Securities Exchange Act of 1933 and 1934, violation of the West Virginia Common Law, violation of the West Virginia Consumer Protection Act, violation of the West Virginia Securities Act, and violation of the Uniform Securities Act. Claimant alleged that Jacobs, Wellington Shields, and Herbst were negligent in the handling of Claimant's account, that Jacobs disregarded Claimant's stop-trade order, and, as a result, Claimant suffered losses in its account.

Unless specifically admitted in their Statement of Answer, Wellington Shields and Herbst denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Wellington Shields and Herbst asserted the following cause of action: indemnification. Wellington Shields and Herbst alleged that at all times, control over Claimant's account at-issue was vested exclusively in Jacobs & Company, Claimant's investment advisor, agent, and attorney-in-fact. Wellington Shields and Herbst alleged that they exercised due care to fulfill their obligations to Claimant and did not engage in misconduct of any kind.

Unless specifically admitted in its Statement of Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages (in excess of)	\$1,000,000.00
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Costs	Unspecified
Other Monetary Relief	Unspecified

In the Statement of Answer, Wellington Shields and Herbst requested that the claims asserted against them be denied in their entirety that they be awarded their costs and expenses, and other and further relief as appears just.

In the Counterclaim, Wellington Shields and Herbst requested:

Compensatory Damages (in excess of)	\$1,000,000.00
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Costs	Unspecified
Other Monetary Relief	Unspecified

In the Statement of Answer to the Counterclaim, Claimant requested the dismissal of the Counterclaim and that its claims be granted in their entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about December 9, 2014, Respondents John M. Jacobs and Jacobs & Company notified FINRA that they are neither members nor associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to Claimant's claims against Respondents John M. Jacobs and Jacobs & Company.

At the final hearing, which was recorded, Wellington Shields and Herbst made oral requests for expungement of all references to this matter from their registration records maintained by the Central Registration Depository ("CRD"). Claimant contested the requests for expungement.

The Panel reviewed the BrokerCheck® Reports for Wellington Shields and Herbst. In recommending expungement, the Panel relied upon the following documentary or other evidence: Investment Management Agreement, Collateral Control Agreement, account information, and the testimony of Claimant and Herbst.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are denied.

2. The Counterclaim of Wellington Shields and Herbst is denied.
3. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD for Respondents Wellington Shields & Co., LLC (CRD #149021) and Edward Ian Herbst (CRD #243580), with the understanding that, pursuant to Notice to Members 04-16, Respondents Wellington Shields & Co., LLC and Edward Ian Herbst must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous;
- The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and
- The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

The parties remaining in this matter, Wellington Shields and Herbst, entered into specific contractual agreements whereby they would follow specific instructions, which were made in writing. It was clear from both Claimant's and Respondents' evidence that they did this. Any misrepresentations were not made by Wellington Shields or Herbst, but by Mr. Jacobs, who did not submit to this arbitration, but was named in a separate state court lawsuit. Wellington Shields and Herbst played no role in those representations alleged.

4. Other than forum fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
5. Any and all claims for relief not specifically addressed herein, including punitive damages and attorneys' fees, are denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 1,800.00
Counterclaim Filing Fee	= \$ 3,200.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Wellington Shields & Co., LLC is assessed the following:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

December 8-10, 2015, adjournment requested by Claimant	= \$ 1,200.00
July 6-8, 2016, adjournment requested by Claimant	= \$ 1,200.00
<u>September 13-15, 2016, adjournment requested by Claimant</u>	<u>Waived</u>
Total Adjournment Fees	= \$ 2,400.00

The Panel has assessed \$2,400.00 of the adjournment fees to Claimant Omega Facility Services, Solutions & Surety, LLC.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences: March 20, 2015	1 session
November 23, 2015	1 session
April 5, 2016	1 session
Seven (7) hearing sessions @ \$1,200.00/session	= \$ 8,400.00
Hearing Dates: November 15, 2016	3 sessions
November 16, 2016	2 sessions
November 17, 2016	2 sessions
<hr/> Total Hearing Session Fees	<hr/> = \$12,000.00

The Panel has assessed \$12,000.00 of the hearing session fees to Claimant Omega Facility Services, Solutions & Surety, LLC.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Thomas H. Barnard, Jr.	-	Public Arbitrator, Presiding Chairperson
Christopher M. McMurray	-	Public Arbitrator
John C. Aten	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

/s/ Thomas H. Barnard, Jr.  
Thomas H. Barnard, Jr.  
Public Arbitrator, Presiding Chairperson

November 30, 2016  
Signature Date

/s/ Christopher M. McMurray  
Christopher M. McMurray  
Public Arbitrator

December 1, 2016  
Signature Date

/s/ John C. Aten  
John C. Aten  
Public Arbitrator

December 1, 2016  
Signature Date

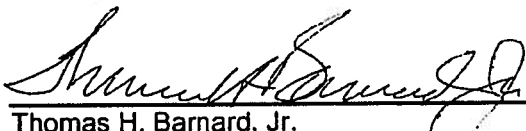
December 1, 2016  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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11/30/16  
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Signature Date

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Christopher M. McMurray  
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Signature Date

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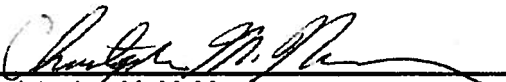
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Public Arbitrator

\_\_\_\_\_  
Signature Date

*John C. Aten*  
\_\_\_\_\_  
John C. Aten  
Public Arbitrator

*12/1/16*  
\_\_\_\_\_  
Signature Date

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