BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application for Review of

WD Clearing, LLC, et al.

File No. 3-16209

PETITIONERS' OPPOSITION TO FINRA'S MOTION TO DISMISS WD CLEARING'S APPLICATION FOR REVIEW AND TO STAY ISSUANCE OF BRIEFING SCHEDULE

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COMES NOW, Petitioners WD Clearing, LLC, WDMC Trust d/t/d September 18, 2013, WDJJ Trust d/t/d September 18, 2013, WDCHUM Trust d/t/d September 18, 2013, and WDPOP Trust d/t/d September 18, 2013 (collectively, "**Petitioners**"), by and through their counsel of record, and hereby submit the following Opposition to FINRA's Motion to Dismiss WD Clearing's Application for Review and To Stay Issuance of Briefing Schedule (hereinafter "**FINRA's Motion**" or "**the Motion to Dismiss**").

INTRODUCTION

Petitioners seek review by the Commission of action taken by FINRA that was not only contrary to its own rules, but also prohibited Petitioners from having access to services offered by FINRA and denied them ownership in, and participation with, a FINRA-member firm. As illustrated below, this is a case about five persons (Petitioners) that have been harmed by FINRA's secret agendas, strategic manipulation of applicable laws, and half-truths. This matter is ripe for review as damage from FINRA's action has been realized by Petitioners and jurisdiction over this review is explicitly vested in the Commission by Section 19(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**").

FACTS

PETITIONERS ACQUIRE THE RIGHT TO PURCHASE WILSON-DAVIS

Wilson-Davis & Co., Inc., a Utah corporation ("**Wilson-Davis**"), is a FINRA-member securities broker-dealer.[1] In April 2013, Wilson-Davis and its principals approached John Hurry ("**Hurry**") and requested to borrow Four Million Dollars ($4,000,000) in order to meet a short-term cash requirement.[2] Hurry agreed to loan Wilson-Davis the money, but in return, bargained for an option to purchase the outstanding ownership interests of Wilson-Davis (the "**Option**").[3]

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[1] *See* FINRA's Motion to Dismiss at pg. 2.
[2] *Id.* at pg. 3.
[3] *Id.*

The Option was exercised and on December 2, 2013, Petitioners (to whom Hurry assigned the Option) entered into a Securities Purchase Agreement with Wilson-Davis and its owners to effectuate the change in ownership contemplated by the Option.[4] Among other things, the Securities Purchase Agreement required Wilson-Davis to seek approval from FINRA of the anticipated change in ownership by submitting a continuing membership application ("**CMA**") in accordance with FINRA Rule 1017.[5] The purpose of filing a CMA was merely to ensure that Wilson-Davis continued as a FINRA-member firm following the change in ownership. This was merely a provision that was negotiated into the Securities Purchase Agreement to help maximize the benefit of the bargain Mr. Hurry negotiated.

FINRA BEGINS MANIPULATING ITS RULES

Wilson-Davis filed its CMA on January 22, 2014.[6] Over a month later, on February 24, 2014, FINRA deemed the CMA to be "substantially complete," and thereby approved the firm's anticipated change in ownership.[7] But before the ink could even dry on FINRA's February 24th acceptance, FINRA issued a letter dated February 25, 2014, purporting to impose "interim restrictions" that prohibited Wilson-Davis from "[e]ffecting any portion of the [anticipated] ownership change."[8]

FINRA contends that its interim restrictions were justified for three reasons: (i) it "needed additional information regarding individuals and entities that would indirectly control Wilson-Davis" following the change in ownership,[9] (ii) it "required additional information related to the proposed new owners,"[10] and (iii) it needed "additional information to assess the funding and financial wherewithal of the proposed new

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[4] *Id.*
[5] *Id.*
[6] *See* FINRA's certified record dated December 18, 2014 (the "**Certified Record**").
[7] FINRA's Motion to Dismiss at pg. 3.
[8] *Id.* at pg. 4.
[9] *Id.* at pg. 5.
[10] *Id.*

owners."[11] As illustrated below, the "justification" for the interim restrictions, however, has always been pretextual and the "interim restrictions" were themselves a violation of FINRA's own rules.

In the Motion to Dismiss, FINRA admits that the "additional information" it purportedly needed in order to evaluate Petitioners' fitness as the future owners of Wilson-Davis were already in its possession, saying: "FINRA therefore needed to review all of the information and documents **provided in the initial (CMA) filing** . . . ."[12] In fact, FINRA did little to nothing to investigate issues cited as justification for imposing the interim restrictions. Between February 25, 2014, and September 17, 2014 (when the CMA was effectively denied), FINRA only requested additional information in connection with the CMA on three (3) occasions,[13] the last of which was in July 21, 2014.[14] Notably, this last request did not seek any information related to the initial justification given for imposing the interim restrictions.

FINRA DENIES THE CMA

On September 5, 2014, counsel for Wilson-Davis wrote to FINRA: "From my telephone conversations with Jennifer [Danby] (of FINRA), I understand that FINRA intends to deliver a decision on the CMA on Monday, September 8, 2014."[15] On September 9, 2014, counsel for Wilson-Davis followed up on his prior correspondence, writing to Domingo Diaz (also of FINRA): "Please advise when you expect to transmit FINRA's decision."[16] Then, on September 17, 2014, counsel for Wilson-Davis wrote to FINRA:

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[11] *Id.* at pg. 6.
[12] *Id.* (emphasis added).
[13] FINRA requested additional information on March 26, 2014, May 21, 2014, and July 21, 2014. *See* Certified Record.
[14] A response was provided to FINRA's July 21, 2014, requests on August 22, 2014.
[15] *See* Certified Record Bates No. 2709.
[16] Certified Record Bates No. 2711.

> In our September 15, 2014, conversation, which included Mr. Diaz, Ms. Danby and Ms. Robinson, I was informed that Mr. Hurry had received a Wells Call and a Wells Notice. I understand that the issues associated with the Wells notice would ultimately cause FINRA to deny the CMA application. Because of that, FINRA requested that Wilson-Davis withdraw the CMA application.
>
> Please consider this email notice that Wilson-Davis hereby withdraws the pending CMA.[17]

FINRA then replied: "Thank you for your email. This is to confirm receipt of your request; the CMA is hereby withdrawn."[18]

This is an artfully crafted email, with two particularly noteworthy statements. First, counsel for Wilson-Davis acknowledges that the Wells Notice served on Mr. Hurry is not itself enough to deny the CMA. Rather, he cites that according to FINRA, the "Wells notice ***would ultimately cause*** FINRA to deny the CMA application."[19]

The second particularly noteworthy phrase from this email reads: "***FINRA requested*** that Wilson-Davis withdraw the CMA application."[20] In other words, the CMA was effectively denied when FINRA instructed Wilson-Davis to withdraw it.

FINRA'S SECRET AGENDA

As further explained in Subsection A(2) below, forcing Wilson-Davis to withdraw the CMA, as opposed to having FINRA deny it, allowed FINRA to skirt the reporting requirements of Section 19(d)(1) of the Exchange Act, which would have required FINRA to report the denial to the Commission.[21] It also eliminated Wilson-Davis' standing to commence an administrative appeal.[22]

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[17] Certified Record Bates No. 2713.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] Section 19(d)(1) of the Exchange Act provides that "[i]f any self-regulatory organization (i.e. FINRA) . . . denies membership or participation to any applicant (i.e. Wilson-Davis) . . . the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization (i.e. the Commission) . . . ."
[22] FINRA Rule 1017(j) provides only the applicant of a CMA (i.e. Wilson-Davis) with standing to request review of FINRA's decision to the National Adjudicatory Council.

FINRA's *de facto* denial of the CMA was the pinnacle of its secret agenda to prevent Petitioners from obtaining ownership of Wilson-Davis—at least as long as it remained a FINRA-member firm. FINRA's Motion to Dismiss makes clear that FINRA has always viewed and treated Petitioners as being synonymous with John Hurry.[23] The truth, however, is that Petitioners are legal persons, separate and distinct from Mr. Hurry. Mr. Hurry is a member / manager of WD Clearing, LLC, one of the five (5) Petitioners, but the other four (4) Petitioners are irrevocable trusts and Mr. Hurry is not the trustee over any of them.

FINRA's disregard for the individual identities of Petitioners and treatment of them as Mr. Hurry's alter egos is made apparent in the email correspondence memorializing FINRA's denial of the CMA. As quoted above, FINRA advised Wilson-Davis on September 15, 2014, that Mr. Hurry—not Petitioners—had received a Wells Call and Wells Notice.[24] This letter makes no mention of Petitioners, but speaks only of Mr. Hurry.[25] FINRA's fixation on Mr. Hurry is significant because his history with FINRA has not been without moments of contention.

On the morning of November 12, 2012, staff members representing FINRA's Departments of Member Regulation and Enforcement commenced FINRA Matter No. 20120327319 with a surprise onsite examination of Scottsdale Capital Partners ("**Scottsdale Capital**"), a FINRA-member firm indirectly controlled by Mr. Hurry. The "examination" bore hallmarks of a governmental raid. FINRA arrived unannounced, first thing in the morning, and deliberately intimidated the receptionist before fanning out throughout the offices. During this raid, FINRA ceased computers from Investment

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[23] *See* FINRA's Motion at n. 4. It is worth pointing out that Mr. Hurry indirectly controls two FINRA-member firms: Scottsdale Capital and Alpine Securities Corporation. The fact that Mr. Hurry was *already* an indirect owner of two FINRA-member firms really belies FINRA's claim that it needed additional time to evaluate his fitness as another indirect controller of Wilson-Davis.

[24] Certified Record Bates No. 2713.

[25] *Id.*

Services Corporation ("ISC"), an entity controlled by Mr. Hurry but which was not engaged in the securities industry or even located in the same office space as Scottsdale Capital. Nevertheless, Scott M. Andersen, FINRA's Deputy Regional Chief Counsel, told Scottsdale Capital personnel that if they did not provide him with access to ISC's office and computers he would issue "Wells Notices" to them "within the next 15 minutes." The information taken from ISC contained gigabytes of personal data, unrelated in any way to Scottsdale Capital. Mr. Hurry has sought, on numerous occasions, to recover the personal information stolen from ISC. But, to this day, FINRA has yet to return the unlawfully obtained information stolen from ISC.

PETITIONERS FILE FOR COMMISSION REVIEW OF FINRA'S CONDUCT

As a result of FINRA's improper conduct surrounding the CMA, including the imposition of improper "interim restrictions" and a strategically planned denial of the CMA, Petitioners filed an application for review with the Commission on October 14, 2014. Now, on the eve of issuing a briefing schedule, FINRA has filed the instant Motion to Dismiss in an attempt to ensure that its actions stay shrouded in secrecy.[26] FINRA's Motion, however, is completely unsupported by the applicable law and facts of this case, and for the reasons set forth below, should be denied.

ARGUMENT

A. THE COMMISSION HAS JURISDICTION TO CONSIDER PETITIONER'S REQUEST FOR REVIEW, AND THUS, FINRA'S MOTION SHOULD BE DENIED.

Section 19(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**") explicitly provides the Commission with jurisdiction to consider Petitioner's application

[26] Even in its own Motion to Dismiss, FINRA highlights the secrecy created by its demand that Wilson-Davis withdraw the CMA: "Because Wilson-Davis withdrew its CMA, there are no FINRA written decisions from the membership staff or the NAC to analyze and explain the reasons supporting FINRA's actions." FINRA's Motion to Dismiss at pg. 11. This very statement highlights why FINRA should not be allowed to coerce an applicant to withdraw a CMA—it leaves the whole decision making process shrouded in secrecy and incapable of effective review.

for review (the "**Petition**"). In its Motion, FINRA argues that the Petition should be dismissed for three (3) reasons, but FINRA's arguments are fatally flawed because they are unsupported by both the applicable law and relevant facts. Contrary to FINRA's assertions, the Commission has jurisdiction to consider the Petition pursuant to Section 19(d) of the Exchange Act because: (1) Petitioners have been denied the right to associate with a FINRA-member firm and denied access to services offered by FINRA; (2) this matter is ripe for review because FINRA's denial of the CMA is final and Petitioners have been damaged by its secret agenda; and (3) Petitioners have exhausted the available administrative remedies and complied with the Commission's Rules of Practice.

(1) THE COMMISSION HAS JURISDICTION TO CONSIDER THE PETITION BECAUSE FINRA DENIED PETITIONERS ACCESS TO THE SERVICES IT OFFERS AND BARRED THEM FROM BECOMING ASSOCIATED WITH WILSON-DAVIS, A FINRA MEMBER.

Section 19(d) of the Exchange Act identifies when the Commission has jurisdiction to review certain FINRA actions. The Commission may review: (1) "any final disciplinary sanction on any member thereof or participant therein;" (2) "deni[al of] membership or participation to any applicant; (3) any FINRA decision that "prohibits or limits any person in respect to access to services offered by such organization or member thereof;" and (4) any FINRA action that "bars any person from becoming associated with a member."[27] As explained immediately below, three of these four statutory bases provide the Commission with jurisdiction over this Petition.

[27] 15 U.S.C. § 78s(d)(1)–(2).

(a) FINRA limited Petitioners' access to its services by imposing improper "interim restrictions."

Petitioners were treated unfairly and denied access to services offered by FINRA when FINRA unilaterally and unjustifiably expanded the use of its authority to issue "interim restrictions." In December 2013 Petitioners entered into a Securities Purchase Agreement[28] with Wilson-Davis and its owners. Pursuant to that agreement, Petitioners were to become the sole owners of Wilson-Davis. In contemplation of the change in ownership, and as a material covenant under the Securities Purchase Agreement, Wilson-Davis agreed to file a "continuing membership application, or "CMA," pursuant to FINRA Rule 1017. Rule 1017(c)(1) reads:

> A member shall file an application for approval of a change in ownership or control at least 30 days prior to such change. **A member may effect a change in ownership or control prior to the conclusion of the proceeding**, but [FINRA] may place new interim restrictions on the member based on the standards set forth in Rule 1014, pending final Department action.[29]

On February 25, 2014, FINRA advised Wilson-Davis that the CMA was "substantially complete."[30] Although the plain language of Rule 1017(c)(1) allows a party to change ownership of a FINRA-member firm thirty (30) days following the submission of a substantially complete CMA, FINRA imposed an "interim restriction" that forbade the parties from transferring ownership of Wilson-Davis to Petitioners.[31]

The "interim" contemplated by Rule 1017(c)(1) is the time between the change in ownership of a FINRA-member firm and "final Department action." There can be no other "interim" period of time contemplated by the rule. This is made evident by FINRA

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[28] A copy of the Securities Purchase Agreement was attached to the Petition.
[29] FINRA Rule 1017(c)(1) (emphasis added).
[30] FINRA Motion pg. 3 ("On February 24, 2014, FINRA accepted Wilson-Davis' CMA requesting approval of the firms' change in ownership.").
[31] *Id.* at pg. 4 ("FINRA prohibited the firm from: Effecting any portion of the aforementioned ownership change transaction . . . .").

Rule 1017(l), which explains what happens if a CMA is ultimately denied *following* a change in ownership.[32]

Rule 1017(l) explains that the new or "interim" owners of a FINRA-member firm, following a final denial of a CMA, may do one of three things: (i) submit a new membership application, (ii) unwind the transaction, or (iii) file a Form BDW to withdraw as a FINRA-member firm.[33] If FINRA were able to use an "interim restriction" to prohibit a change in ownership—as it did in this case—the original owners would remain in power and there would be no need to submit a new membership application, unwind a transaction, or withdraw as a FINRA member if a CMA was denied. Nevertheless, the "interim restriction" FINRA imposed came *before* any change in Wilson-Davis' ownership, and therefore, was improper. Stated another way, FINRA used the exception, which allows it to impose *interim* restrictions, to swallow the rule, which permits parties to transfer ownership within thirty (30) days following receipt of a substantially complete CMA.

It is worth pointing out that the FINRA Rules were specifically amended several years ago to allow parties to consummate changes in ownership *without* FINRA's approval. Prior to the enactment of the current Rule 1017, FINRA Rule 1018 governed changes in ownership and read as follows:

> The Department shall review a change in ownership, control, or operations described in paragraph (a) **prior to the change taking place**. The Department may maintain existing restrictions on the member's business activities and place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action.[34]

Comparing the prior version of Rule 1017 to its current counterpart makes clear that Rule 1017 was specifically revised to allow parties contemplating a change in ownership to consummate the transition *without* FINRA's permission or interference. In

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[32] FINRA Rule 1017(l).
[33] *Id.*
[34] 65 CFR 36760 at 36870 (emphasis added).

fact, when Rule 1017 was amended, the commentary explaining the purpose of the amendments made clear that FINRA approval was not required prior to effecting a change in ownership, saying: "Proposed **Rule 1017** . . . . **clarifies** when the application should be filed and **what changes can be effected prior to obtaining [FINRA's] approval**."[35]

Even though Rule 1017 was specifically amended to eliminate the need for FINRA approval *before* effecting a change in ownership, FINRA found a way to skirt this reduction in power by expanding the use of interim restrictions. As illustrated by this case, FINRA has completely ignored the fact that its ability to impose "interim restrictions" only arises in the *interim* between the time that a member firm undergoes a change in ownership and the time when FINRA renders its *final* decision with respect to a CMA. Here—before ownership of Wilson-Davis could change hands (i.e. before the "interim")—FINRA imposed an "interim restriction" that forbade Wilson-Davis and its owners from transferring ownership to Petitioners.

As a result of its *ultra vires* conduct, FINRA prohibited and limited Petitioners from having access to services offered by FINRA. As explained above, FINRA Rule 1017(c)(1) allows ownership of a FINRA-member firm to change hands thirty (30) days after submitting a substantially complete CMA. But for FINRA's unlawful "interim restriction," ownership of Wilson-Davis would have been transferred to Petitioners on or about April 9, 2014.[36] Petitioners, as the owners of Wilson-Davis, would then have been entitled to access services offered by FINRA, at the very least, until FINRA denied the CMA. If the CMA was denied, Petitioners would also have then been in a position to appeal FINRA's decision to the National Adjudicatory Council in accordance with FINRA Rule 1017(j).

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[35] *Id.* at 36875 (emphasis added).

[36] April 9, 2014, was the agreed upon closing set forth in the Securities Purchase Agreement. This date was specifically chosen because it was more than thirty (30) days after Wilson-Davis had submitted a substantially complete CMA to FINRA.

Based on the foregoing, it is evident that FINRA prohibited Petitioners from, at the very least, having access to its services during the interim between the time when ownership of Wilson-Davis could have changed hands and FINRA's final decision concerning the CMA.[37] Section 19(d)(1) of the Exchange Act explicitly provides the Commission with jurisdiction to review FINRA actions that prohibit or limit "any person in respect to access to services offered by [FINRA] or a member thereof," and thus, the Commission has jurisdiction to consider this Petition. Accordingly, FINRA's Motion is without merit and should be denied.

(b) FINRA denied Petitioners participation in FINRA, and barred them from becoming associated with, Wilson-Davis, a FINRA-member firm.

As noted above, Section 19(d)(1) of the Exchange Act provides four (4) jurisdictional grounds upon which the Commission can base a review of FINRA's actions. Among other things, Section 19(d) provides the Commission with jurisdiction to review a denial of membership or participation to any applicant and/or any FINRA action that bars a person from becoming associated with a member.[38]

In this case, Petitioners sought to become the owners of Wilson-Davis, a FINRA-member firm. To transfer ownership of Wilson-Davis to Petitioners, Wilson-Davis submitted a CMA to FINRA on January 22, 2014. On September 5, 2014, counsel for Wilson-Davis wrote to FINRA, memorializing a prior telephone conference wherein FINRA indicated that a final decision concerning the CMA would be delivered on September 8, 2014. Wilson-Davis wrote: "From my telephone conversations with Jenifer [Danby] (i.e. FINRA), I understand that FINRA intends to deliver a decision on the CMA

[37] In its Motion, FINRA argues that the denial of services must relate to a "fundamentally important service" offered by an SRO and cites to a number of cases where a petitioner's grievance failed to reach this level. FINRA's Motion at pg. 14. Those cases are easily distinguishable here because Petitioners were denied the right to participate in the ownership of a FINRA-member firm, and nothing can be more "fundamentally important" than that.

[38] 15 U.S.C. § 78s(d)(1)–(2).

on Monday, September 8, 2014."[39] On September 9, 2014, Wilson-Davis followed up on its prior correspondence, writing: "Please advise when you expect to transmit FINRA's decision."[40]

Then, on September 17, 2014, Wilson-Davis memorialized yet another telephone conversation with FINRA:

> In our September 15, 2014, conversation, which included Mr. Diaz, Ms. Danby and Ms. Robinson (all from FINRA), I was informed that Mr. Hurry had received a Wells Call and a Wells Notice. I understand that the issues associated with the Wells notice would ultimately cause FINRA to deny the CMA application. Because of that, **FINRA requested that Wilson-Davis withdraw the CMA application**.[41]

At FINRA's instance, Wilson-Davis withdrew the pending CMA.[42]

In its Motion, FINRA tries to mislead the Commission into believing that the decision to withdraw the CMA was an idea conceived of and executed by Wilson-Davis. In fact, FINRA mischaracterizes its involvement by citing that it merely "acknowledged the withdrawal."[43] As Wilson-Davis' September 17th correspondence makes clear, however, FINRA instructed Wilson-Davis to withdraw the CMA and advised them that failing to do so would still result in FINRA denying the CMA.[44] In other words, regardless of what Wilson-Davis did, FINRA had made a final decision to deny the CMA.[45]

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[39] Certified Record Bates No. 2709.
[40] Certified Record Bates No. 2711.
[41] Certified Record Bates No. 2713 (emphasis added).
[42] *Id.*
[43] FINRA's Motion at pg. 7.
[44] *Id.*
[45] In its Motion to Dismiss, FINRA cites to *Beatrice J. Feins*, 51 S.E.C. 918 (1993) as "persuasive authority" for the fact that the Commission lacks jurisdiction in this case. FINRA's Motion at pg. 13. FINRA's reliance on *Feins*, however, is entirely misplaced. In that case, a grandson attempted to transfer his membership in the American Stock Exchange, Inc. ("Amex"), to his elderly grandmother. The transfer was denied. The Commission declined to consider the grandson's petition for review under Section 19(d) because he "retained his membership." In contrast, the Commission held that it had jurisdiction to consider the grandmother's Section 19(d) petition based on the denial of

FINRA's final determination with respect to the CMA (i.e. that it would be denied) assured that Petitioners would not become the owners of Wilson-Davis, at least as a FINRA-member firm. The denial of the CMA, in conjunction with the imposition of improper "interim restrictions" (discussed in the previous subsection), effectively barred Petitioners from becoming associated with a FINRA-member firm (i.e., Wilson-Davis). As previously mentioned, Section 19(d)(1) of the Exchange Act provides the Commission with authority to review a denial of membership or participation to any applicant and/or any FINRA action that bars a person from "becoming associated with a member."[46] Thus, it is evident the Commission has jurisdiction to consider this Petition, and for that reason, FINRA's Motion to Dismiss should be denied.

(2) THE PETITION IS RIPE FOR REVIEW BECAUSE PLAINTIFFS HAVE SUFFERED ACTUAL HARM CAUSED BY FINRA'S MANIPULATION OF ITS RULES.

Petitioners filed their Petition on October 14, 2014. On October 22, 2014, the Commission rejected the Petition, citing that the "matter [was] not ripe for Commission review" and inviting Petitioners to "pursue a final decision on a continuing membership application with FINRA."[47] Petitioners submitted a reply on November 10, 2014, and explained that FINRA had actually commanded Wilson-Davis to withdraw the CMA because, if the CMA was not withdrawn, FINRA would unequivocally deny it.[48] Although Wilson-Davis withdrew the CMA, FINRA forced its hand, and accordingly, the "withdrawal" was in fact FINRA's final decision. The Commission refused to exalt form over substance and recognized that FINRA was playing the role of Wilson-Davis' puppet master and agreed to consider the Petition.

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her membership with Amex. The grandmother in *Feins*, like Petitioners, was denied the right to accept ownership of a membership interest. Accordingly, *Feins* actually supports Petitioners' argument that the Commission has jurisdiction to consider this Petition.

[46] 15 U.S.C. § 78s(d)(1)–(2).

[47] October 22, 2014 Correspondence from the Commission.

[48] Exhibit C, Correspondence dated September 17, 2014.

As explained in Petitioners' November 10th reply, the email memorializing FINRA's instruction to withdraw the CMA explains that FINRA's "ultimate" decision would be to deny the CMA.[49] The only reason for having Wilson-Davis withdraw the CMA (as opposed to having FINRA denying it) was to allow FINRA to skirt the reporting requirements of Section 19(d)(1) of the Exchange Act, which would have required FINRA to report the denial to the Commission[50] and to eliminate Wilson-Davis' standing to commence an administrative appeal.[51] As a result of FINRA's manipulative conduct, Petitioners have not obtained ownership of Wilson-Davis and have thereby been deprived of the financial benefits that would otherwise be due to them as the would-be owners of Wilson-Davis.

As further explained above, Petitioners were entitled under FINRA Rule 1017 to obtain ownership of Wilson-Davis thirty (30) days following the submission of a "substantially complete" CMA. FINRA deemed the CMA substantially complete on February 24, 2014, and accordingly, Petitioners were entitled to obtain ownership of Wilson-Davis as early as the end of March 2014. It is now January 2015 and more than nine (9) months have passed since Petitioners were permitted—under FINRA's rules—to obtain ownership of Wilson-Davis. It is clear FINRA's *de facto* denial of the CMA was a final decision and, that as a result of FINRA's manipulative conduct, Petitioners have been harmed. Accordingly, this matter is ripe for decision and FINRA's Motion should be denied.

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[49] Exhibit C, Correspondence dated September 17, 2014.

[50] Section 19(d)(1) of the Exchange Act provides that "[i]f any self-regulatory organization (i.e. FINRA) . . . denies membership or participation to any applicant (i.e. Wilson-Davis) . . . the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization (i.e. the Commission) . . . ."

[51] FINRA Rule 1017(j) provides the applicant of a CMA (i.e. Wilson-Davis) with standing to request review of FINRA's decision to the National Adjudicatory Council.

(3) PETITIONERS HAVE EXHAUSTED ALL ADMINISTRATIVE REMEDIES AND COMPLIED WITH THE APPLICABLE RULES OF PRACTICE.

(a) There are no administrative remedies available to Petitioners.

Petitioners are not (yet) FINRA-members, and accordingly, have no administrative remedies available through which they can seek reconsideration of FINRA's "interim restrictions" and subsequent denial of the CMA.[52] Under FINRA rules, only the CMA "applicant" (i.e. Wilson-Davis) can appeal an adverse decision from FINRA[53], and only a FINRA member can file a continuing membership application.[54] In other words, Wilson-Davis—as the FINRA member firm and applicant—is the only party entitled to seek administrative relief from FINRA's decision to deny the CMA, *even though* Petitioners have been harmed by FINRA's conduct. That is why Section 19(d) of the Exchange Act provides a means through which non-FINRA members (like Petitioners) can petition the Commission to review certain FINRA acts.

FINRA concedes that Petitioners have no available administrative remedies through which they may seek relief,[55] and thus, it is undisputed that Petitioners exhausted all available administrative remedies *prior* to filing their Petition with the Commission. Because Petitioners have exhausted all available administrative remedies, FINRA's Motion should be denied.

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[52] On page 10 of its Motion, FINRA cites a string of cases which it purports represents a "long line of Commission decisions in which it has dismissed application for review because **an applicant** failed to obtain appellate review within FINRA." FINRA Motion pg. 10. FINRA's reliance on these cases is wholly misplaced because as explained below and in FINRA's motion, Petitioners are not the "applicant," and thus, have no standing to seek an appeal of an adverse decision within FINRA. That is exactly why Section 19(d) provides an avenue for relief to persons like Petitioners, who have no administrative appeal rights.

[53] FINRA Rule 1017(j) reads, in pertinent part: "**An Applicant may file** a written request for review of the Department's decision with the National Adjudicatory Council pursuant to Rule 1015." (Emphasis added.)

[54] FINRA Rule 1017(a) reads, in pertinent part: "**A member shall file** an application for approval of any of the following changes to its ownership, control, or business operations . . . ." (Emphasis added.)

[55] FINRA's Motion at pg. 9 ("[O]nly Wilson-Davis as the FINRA member firm and CMA applicant can appeal an adverse decision made by FINRA's membership staff.")

(b) Petitioners have complied with the Commission's Rules of Practice.

FINRA argues that the Petition does not comply with Rule 420 of the Commission's Rules of Practice.[56] Rule 420 articulates when the Commission may consider an application for review—and as FINRA points out—mirrors the same bases for jurisdiction set forth in Section 19(d) of the Exchange Act.[57] As explained in Subsection A(1), *supra*, three of the four bases for jurisdiction set forth in Section 19(d) apply to the facts of this case. Because the Commission clearly has jurisdiction to consider the Petition under the authority set forth in Section 19(d), it also has jurisdiction pursuant to Rule 420. Thus, it is evident Petitioners have complied with the Commission's Rules of Practice, and therefore, FINRA's Motion should be denied.

CONCLUSION

Based on the foregoing, it is clear the Commission has jurisdiction to consider the Petition, and that the applicable rules of practice have been followed. The controversy in question is ripe for review and FINRA's attempt to manipulate its own rules and skirt the reporting requirements of Section 19(d) of the Exchange Act must not be tolerated. Accordingly, FINRA's Motion to Dismiss is completely devoid of any legal or factual basis and should be denied.

DATED: January 2, 2015

CLYDE SNOW & SESSIONS

Brian A. Lebrecht

[56] FINRA's Motion at pgs. 11–12.

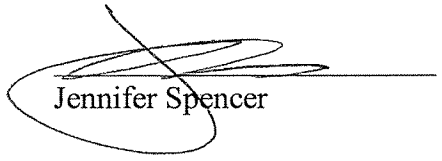
[57] *Id.* at pg. 12 (explaining that "Rule 420(a) repeats the four bases of jurisdiction from § 19(d)").

CERTIFICATE OF SERVICE

I, Jennifer Spencer, certify that on this 2nd day of January 2015, I caused a copy of Petitioner's Opposition to FINRA's Motion to Dismiss and to Stay Issuance of Briefing Schedule, in the matter of Application for Review of WD Clearing, LLC, et al., Administrative Proceeding No. 3-16209, to be served on the following via FedEX:

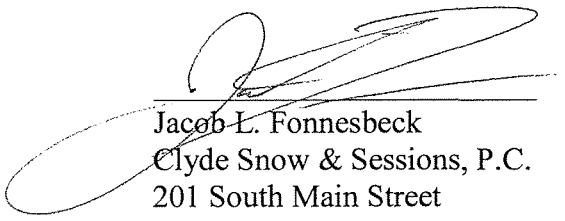
Brent J. Fields, Secretary
Securities & Exchange Commission
100 F. St., NE
Washington, DC 20549-1090

Jennifer C. Brooks
FINRA
1735 K Street, NW
Washington, DC
20006-1506
Fax: (202) 728-8264



CERTIFICATE OF COMPLIANCE

I, Jacob L. Fonnesbeck, certify that the foregoing Opposition to FINRA's Motion to Dismiss and to Stay Issuance of Briefing Schedule complies with the length limitation set forth in the Commission's Rules of Practice. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,965 words.



Jacob L. Fonnesbeck
Clyde Snow & Sessions, P.C.
201 South Main Street
Suite 1300
Salt Lake City, UT 84111
(801) 322-2516