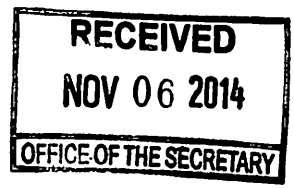
Maria M. Ermolova
Bering Strait Securities, Inc.
1601 Broadway, 12th Floor
New York, NY 10019

3-16262

November 3, 2014



By FedEx 2Day first-class mail:

The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Colleen Durbin, Esq.
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006

Request to Review Decision Regarding New Member Application of Bering Strait Securities, Inc. (CRD No: 167664; Application No.: 20130379350)

Dear U.S. Securities and Exchange Commission:

I would like to appeal and request a review of the decision of the Financial Industry Regulatory Authority ("FINRA") to deny New Member Application of Bering Strait Securities, Inc. ("Firm") made by the National Adjudicatory Council ("NAC").

I believe that FINRA's decision is inconsistent with standards for membership set forth in NASD Rule 1014 ("Rule 1014"). The application was not read completely, was not given enough consideration, and was purposefully denied by FINRA by making up nonexistent laws, avoiding some laws, and using false accusations to reduce its responsibility and amount of regulatory oversight work despite the fact that it meets all 14 standards for membership articulated in Rule 1014, does not pose any investor threat, and serves public interest. In this letter I will show why arguments presented by NAC are inconsistent with standards for membership set forth in Rule 1014. Full presentation of reasons why the application meets all 14 standards for membership and a list of FINRA's violations and false accusations can be found in the Firm's New Member Application, NAC Appeal Letter, and NAC Appeal Closing Arguments.

On January 25, 2014, the Firm had $7,580 cash in bank and $1,360 in credit card debt (Net capital was higher than $6,000 early warning requirement.) and I showed that I will pay Firm's expenses and maintain a level of net capital in excess of early warning requirement by working part-time, using credit cards, and, if needed, accepting money from family members. Most of cash obtained from credit cards is my personal debt and does not jeopardize financial condition of the Firm. I will be working part-time to pay Firm's expenses and will be gradually paying back the credit I took from credit cards, so even if banks reduce the amount of credit available to me, it will not affect the financial condition of the Firm. Working in non-Firm hours does not reduce the amount of time and effort I will put into fulfilling my responsibilities at the Firm. NASD Rules do not require me to have established industry client relationships to support projected revenues. I am also considering to charge registered representatives and registered principals of the Firm monthly or annual fees which will cover all expenses of the Firm. NASD Rules do not say that I need to have enough capital (cash in bank account) to be able to fund operations of the Firm for the first 12 months of operations, and any other funding method will have a degree of risk involved. Rule 1014(a)(7) does not say anything about acceptable funding sources, acceptable ways of maintaining net capital in excess of minimum requirement, or the degree of risk which can be allowed – it only mentions minimum requirements which are already a risk buffer and must be met for an application to be approved. It is unfair to say that an application should be denied because it is risky or creates regulatory burden or reputation risk for the industry if it meets all minimum requirements stated in NASD Rules. If FINRA became concerned about risk and reputation in the industry, it should change NASD Rules for future applicants.

The application and all supporting documents are complete and accurate. Financial controls of the Firm are described in Standard 8 and Standard 9 (Firm Written Supervisory Procedures (WSP)) in Form NMA. FINRA claimed to have read these WSP completely and did not have any objections to anything written in them. Office lease was a month-to-month one after the first 3 months, and there was no additional liability not mentioned on balance sheet. Projected lease expenses after the interview were hypothetical and not contractually-mandated. Notification to FINRA was not required because application remained accurate. As of the date of Membership Interview, I already paid office rent for January 2014. And immediately after Membership Interview, when I saw how prejudiced FINRA continued to be against me, I inquired with office management about reducing rent or putting the lease on hold until final decision was made on the application because I was not using the office – I was in discussions with office management for several months and until today I have not paid rent since January 2014 as the lease is still on hold/in negotiations/in waiting. Misstated liabilities is a false accusation by FINRA and not an attempt by me to reduce the appearance of Firm's liabilities and is not an indication of poor financial controls.

Exchange Act Rule 15c3-1 states that "Every broker or dealer must at all times have and maintain net capital no less than the greater of ..." and that net worth is to be computed using GAAP, but this is a requirement for existing FINRA member firms. Form NMA and FINRA website do not prescribe any specific form to use for net capital computation in the application. With Form NMA I submitted blank sample FOCUS reports and I was aware of computations, structure, and format required for these forms. FINRA website mentions that "various federal and state securities rules pertaining to the recordkeeping systems of a broker/dealer rarely specify a particular format to maintain such information" and that "the rules specify only that certain information must be created and maintained within the broker/dealer's records." I stored and presented in Form NMA all required complete and accurate raw information. When filling out FOCUS reports, I will follow standard structure prescribed by these forms. Macy's store card balance was included in available balance because the card can be used to purchase items for the Firm. It can also be used to purchase items for other people who can give me cash for these items. Office lease rent amount change is described in the Firm's office lease agreement. Financial projections asked for in Standard 7 are projections of income and expenses and are not an income statement. FINRA did not ask for an income statement and did not provide a template or list of categories required for projections. Credit card (cash back) revenue was not characterized as contra-expense and was included in income section because there are different ways to receive it including cash deposit into a bank account - there is no requirement to apply it as statement credit. Tax expense was not included in projections of revenue and expenses because net income was not calculated (I was not asked to prepare a net income statement.) and tax is calculated on net income. Monthly projections of income and expenses were prepared for FINRA to easily see how cash flows in the Firm. The Firm's assets and liabilities are presented

in the Firm's balance sheet. In Standard 9 of Form NMA I submitted a blank Form X-17A-5 (FOCUS Report, Part 2A) which includes samples of standard for industry reports - I will use it to prepare standard Firm reports. FINRA did not mention that I have to use this or any other specific form in the application. In Standard 11 of Form NMA I described the Firm's proposed recordkeeping system and submitted sample books and records – FINRA did not have any objections to them.

NAC agrees that I was able to effectively manage business development, finance, operations, funding capital, compliance (including anti-money laundering compliance), employees, accounting, taxes, books and records, marketing, and other aspects of my own independent contractor investment banking business at Mid-Market Securities, LLC (MMS) for almost two years – combined with several years of my other finance industry and international leadership experience in the benefit of U.S. economy and its global leadership position in the world (as evidenced through my U.S. permanent residency obtained through the National Interest Waiver category of U.S. government (See documents submitted to NAC and FINRA.)), this is enough to show that I have at least one year of direct or two years of related experience in subject areas to be supervised in running an almost same type of investment banking business to work as the Firm's CEO, General Securities Principal, FinOp, COO, CCO, and AMLCO. Titles at MMS did not mean a certain level of responsibility as everyone worked independently on things that they chose which they were best at and which could bring profit. FINRA states on its website that supervisory experience is not required for future principals of an applicant. It is not possible to have experience filing FOCUS reports of a broker-dealer for someone without Series 27 or 28 license, anyone who has a Series 27 or 28 license is a principal and a supervisor, and any assistant to a Series 27 or 28 licensed principal will not have had actual responsibility. A requirement for experience doing compliance, finance, and operations work at a firm level for firm-wide functions (as a principal or assistant to one) would mean a requirement to have supervisory experience because these are functions supervising general securities business of a firm on an executive level. This means that because prior supervisory experience is not required for future principals of the Firm, its proposed officers responsible for compliance, finance, and operations functions do not need to have had experience working in these functions at the firm level for firm-wide activities – it is enough to have done this work at non-supervisory level for my own independent contractor business which is direct non-supervisory experience. Also, my employment agreement with MMS says that "The Independent Contractor's duties ... shall include duties ... including ... as the IC sees fit ..." My status of independent contractor gave me additional level if responsibility, in the sense that, among other things, I was not paid a salary and my earnings were a percentage of revenue that I generated and directly depended on the integrity, prosperity, reputation, and financial condition of the firm as a whole – so, even though I was not in an official capacity to supervise others, it was in my best interests and I saw fit to supervise (under the supervision of the CEO) all work happening in the firm. My responsibilities were more than just watching for violations (See list of responsibilities in submitted documents.). No actual outside reports of violations happened because all employees of the firm understood that the success of a business with independent contractor model depends on reputation, clean record, and integrity of its employees – to my knowledge everything that seemed wrong or suspicious did not require an outside report to regulatory authorities and was addressed/solved within the firm. A contingency plan for a situation if the Firm falls below net capital requirement is described in Firm's WSP (including Business Continuity Plan (BCP)) as well as in question 4 in Standard 8 of Form NMA – I did not say that I will call FINRA to ask what to do in this situation. I did not say that FinOp's responsibilities are limited in the way NAC presented them. My understanding of Firm's financial controls and responsibilities of FinOp is described in Firm's WSP - FINRA claimed to have read these WSP completely did not have any objections to anything written in them. My understanding of what compliance work entails is described in Form NMA, WSP (including BCP and Anti-Money Laundering Compliance Program), Continuing Education Training Needs Analysis and Written Training Plan, etc. and I provided FINRA with sample blank compliance forms and reports – FINRA claimed to have read all these documents and did not have any objections to anything written in them. The CEO of MMS and I reviewed the resume of and interviewed the intern together. After the interview, the CEO asked me if I want to hire the intern. I expressed my opinion of the intern and said that I want him to work for the firm because there are certain ways how he can help develop firm's business. The question of exact formal procedures of hiring the intern is irrelevant to the decision on the application because prior supervisory experience is not required for principals of an applicant. My earnings at MMS are so low compared to the amount of effort, time, and work that I was putting in because the environment at the firm was not favorable for closing deals (See list of specific reasons in submitted documents.) and are not an indication that I misrepresented my experience. FINRA does not have any prohibition against broker-dealers being run by sole proprietors. FINRA has minimum standards which serve as a risk buffer and which if met mean that "Department shall grant the application for membership" as written in Rule 1014(b)(2). By the end of my almost two years of employment at MMS I developed so much though the work that I was doing (strategic, business development, due diligence, investor search, investor material preparation, finance and operations, compliance, etc.) that I was ready to assume full supervisory responsibility for my own work and the work of other bankers at the firm as well as have my own OSJ branch office - I took Series 24 license exam while working at MMS on May 9, 2013 and Form U4 was filed for it on April 30, 2013 (See Exhibit 8a, F000446-F000447.).

I did not say that, in my view, "FINRA is required to play a consultative role with respect to an application for new membership." In terms of FINRA's original transmission of documents to NAC, it is not timing that was biased, but specific partial selection of documents. Originally FINRA purposefully only transmitted some and in some sections of Form NMA even parts and compilations of attachments asked for in different questions - it is easy to see prejudice against me in this selection. I had to mention several times to FINRA that the selection is partial and biased before FINRA agreed to send the rest of the documents to NAC. There was never anything in the application indicating that there was a need for a clearing and carrying firm. I already paid NY State registration fee. I did not need Series 7 license to supervise Series 7 licensed representatives if I have Series 24 license. Because of everyone's schedule I had no other way except to attend the hearing during suggested time – another expression of unfairness would have delayed the review process. Closing arguments were conducted telephonically more than 2 weeks after the hearing instead of in-person during the second day allotted for in-person hearing. If FINRA applies the logic that, in its opinion, its violations of laws were not intended to and did not harm me, were not done with prejudice against me, and should therefore be forgiven, same logic must apply to me as well.

Please have a more thorough and detailed look at the application. I will eventually need a response to every sentence in the application as it relates to standards for membership set forth in Rule 1014. For the reasons mentioned above, I would like to appeal and apply for a review of FINRA's decision to deny New Membership Application of Bering Strait Securities, Inc.

Regards,

Maria Ermolova

Maria Ermolova

Maria M. Ermolova
Bering Strait Securities, Inc.
1601 Broadway, 12th Floor
New York, NY 10019

In the matter of the New Member Application of Bering Strait Securities, Inc. (CRD No: 167664; Application No.: 20130379350)

Certificate of Service

I hereby certify that on this 3rd day of November, 2014, I caused my application to review decision regarding New Member Application of Bering Strait Securities, Inc. by U.S. Securities and Exchange Commission to be sent via FedEx 2Day first-class mail to The Office of the Secretary, Securities and Exchange Commission 100 F Street, NE, Washington, DC 20549 and to Colleen Durbin, Esq., FINRA – Office of General Counsel, 1735 K Street, NW, Washington, DC 20006.

Respectfully submitted,

Maria Ermolova

Maria Ermolova

FINRA
Financial Industry Regulatory Authority

3-16262

Colleen Durbin
Counsel

Direct: (202) 728-8816
Fax: (202) 728-8264

October 2, 2014

VIA MESSENGER

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Membership Application No. 20130379350 – Bering Strait Securities, Inc.

Dear Mr. Fields:

Enclosed is the decision of the National Adjudicatory Council in the above-referenced matter. This decision constitutes final action by the Financial Industry Regulatory Authority with respect to this matter.

Very truly yours,

Colleen Durbin

Enclosure

cc: Maria M. Ermolova (via Certified and First-Class mail) Bering Strait Securities, Inc., 1601 Broadway, 12th Floor, New York, NY 10019

claimed on appeal were relevant to its decision). In order to eliminate any notice or fairness issues, we have not relied on testimony relating to these issues in our consideration of the appeal or as a basis for our decision. Nevertheless, we find that the firm has failed to satisfy its burden.

V. Conclusion

Bering Strait failed to demonstrate it meets the standards of membership contained in NASD Rule 1014(a)(7), (8), and (10). Accordingly, Member Regulation's decision to deny the firm's application for FINRA membership is affirmed.[27]

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

[27] We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

FINRA
Financial Industry Regulatory Authority

Marcia E. Asquith
Senior Vice President and
Corporate Secretary

Direct: (202) 728-8831
Fax: (202) 728-8300

October 2, 2014

VIA CERTIFIED MAIL:
RETURN RECEIPT REQUESTED/FIRST-CLASS MAIL

Maria M. Ermolova
Bering Strait Securities, Inc.
1601 Broadway, 12th Floor
New York, NY 10019

Re: Membership Application No. 20130379350 – Bering Strait Securities, Inc.

Dear Ms. Ermolova:

Enclosed is the decision of the National Adjudicatory Council ("NAC") in the above-referenced matter. The Board of Governors of the Financial Industry Regulatory Authority ("FINRA") did not call this matter for review, and the attached NAC decision is the final decision of FINRA.

In the enclosed decision, the NAC affirmed the Department of Member Regulation's denial of the membership application.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the SEC within 30 days of your receipt of this decision. A copy of this application must be sent to the FINRA Office of General Counsel, as must copies of all documents filed with the SEC. Any documents provided to the SEC via facsimile or overnight mail should also be provided to FINRA by similar means.

The address of the SEC is:

The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The address of FINRA is:

Colleen Durbin, Esq.
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006

If you file an application for review with the SEC, the application must identify the FINRA case number and state the basis for your appeal. You must include an address where you may be served and a phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and FINRA. Attorneys must file a notice of appearance.

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is (202) 551-5400.

Very truly yours,

Marcia E. Asquith
Senior Vice President and Corporate Secretary

cc: Ann-Marie Mason, Esq.
Bernard Canepa, Esq.

3-16262

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the	DECISION
New Member Application of	Application No. 20130379350
Bering Strait Securities, Inc.	Dated: October 2, 2014
New York, NY	

FINRA's Department of Member Regulation denied a firm's application for membership. Held, denial affirmed.

Appearances

For Bering Strait Securities, Inc.: Maria Ermolova, Chief Executive Officer, Bering Strait Securities, Inc.

For the Department of Member Regulation: Ann-Marie Mason, Esq., Bernard Canepa, Esq.

Decision

Pursuant to NASD Rule 1015(a), Bering Strait Securities, Inc. ("Bering Strait") appeals a February 18, 2014 Department of Member Regulation ("Member Regulation") decision that denied the firm's application for membership. After conducting a hearing, reviewing the record, and considering the parties' arguments, we affirm Member Regulation's decision to deny Bering Strait's FINRA membership.

I. Introduction

Bering Strait filed its application for membership on August 12, 2013. From the beginning, Member Regulation expressed concerns that the firm could not demonstrate that it was capable of maintaining net capital adequate to support its intended business operations on a continuing basis or that the firm's sole employee had at least one year of direct or two years of related experience in the subject areas to be supervised. During the application process, Member Regulation sought, and Bering Strait provided, additional information regarding the firm's finances and the relevant work experience of the firm's sole owner, among other categories of information. Member Regulation issued a decision letter on February 18, 2014, that denied Bering Strait's application based on findings that the firm failed to satisfy seven of the 14 standards for membership articulated in NASD Rule 1014, including the previously stated net capital and supervisory issues. Bering Strait appealed the denial and requested a hearing. After

a review of the record and conducting a hearing, we conclude that Bering Strait has failed to show that its sole employee possesses the relevant experience needed to supervise the firm's activities and lacks the financial resources and controls required of FINRA member firms.

II. Background and Procedural History

The NASD Rule 1010 Series sets out the substantive standards and procedural guidelines for the entire membership application and registration process. NASD Rule 1013 governs the new member application process. Once a firm files a substantially complete application with FINRA, Member Regulation conducts a review to determine whether FINRA requires any additional information from the applicant to conduct a meaningful review of the application. After the receipt of any additional requested information or documentation from the applicant, FINRA may make subsequent requests for information. Prior to making a decision on the application, Member Regulation will schedule a membership interview. Member Regulation must then issue its decision within 180 days from the date the substantially complete application was filed. The decision is governed by the membership standards articulated in NASD Rule 1014 and the applicant bears the burden of demonstrating that it meets each of the rule's standards. If the applicant firm fails to demonstrate that it satisfies each of the 14 standards, the application will be denied.

A. Bering Strait's Initial Application

Bering Strait organized as a C-Corporation on January 24, 2012, in New York. The firm is wholly owned by Maria Ermolova.[1] On August 12, 2013, Member Regulation received the firm's New Member Application and supporting documentation, in which Bering Strait sought FINRA approval to register as a limited size and resource broker-dealer. Specifically, Bering Strait planned to "work as a managing underwriter and/or selling group participant in the underwriting of corporate securities (public and private: common stock, preferred stock, and corporate debt) of client companies only on best efforts basis ... work as a managing underwriter and/or selling group participant in underwriting private placements of corporate securities of client companies only on a best efforts basis [and] engage in providing general consulting and advisory services in connection with buy and sell side mergers and acquisitions (M&A) transactions of public and private companies located in different countries and operating in different industries." Bering Strait represented that all its transactions would be settled and cleared without the involvement of the firm and instead would be handled between the client company and investors; therefore the firm believed it was not required to contract with a clearing firm. Bering Strait proposed that it would be compensated primarily through monthly retainer fees charged to clients, as well as a success fee of 7% of the equity capital raised.

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[1] As of the date of the filing of the application, Ermolova had the following licenses: Series 24 (General Securities Principal), Series 79 (Limited Representative - Investment Banker), Series 63 (Uniform Securities Agent State Law), and Series 28 (Introducing Broker/Dealer Financial and Operations Principal). Subsequent to the Member Regulation's denial, Ermolova obtained her Series 7 (General Securities Representative).

Furthermore, as sole owner, Ermolova proposed to serve as the firm's Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operating Officer ("COO"), Chief Compliance Officer ("CCO"), Financial and Operations Principal ("FINOP"), and Anti-Money Laundering Compliance Officer ("AMLCO"). Bering Strait also potentially planned to hire one to two independent contractors that Ermolova would supervise. To support this proposed supervisory structure, the firm represented that Ermolova had the requisite supervisory experience through her work as an Investment Banking Associate at Mid-Market Securities, LLC, for one year and 10 months, an Investment Banking Analyst at National Securities Corporation for approximately two months, and a part-time Investment Banking Intern at Palladium Capital Advisors, LLC, for eight months.[2]

In addition, with respect to maintaining adequate net capital, the firm represented that it had $7,380 in its bank account.[3] Bering Strait described the source of the net capital as cash advances from the firm's business credit card, cash withdrawals from American Express for Target prepaid credit cards,[4] and cash advances from Ermolova's personal credit cards. Bering Strait represented that, should additional funding become necessary, Ermolova would take out additional cash advances on her credit cards, purchase additional gift cards, secure part-time employment, or receive funds from family members, including her father.

As part of its membership application, Bering Strait provided a Projection of Income and Expenses for March 2013 through December 2013, as well as January 2014 through July 2014. The projections provided by the firm forecast total revenue of $856,043 for the first 12 months. The firm anticipated that the vast majority of the firm's projected revenues would come from underwriting and M&A business activities. The firm also projected "Reimbursement Revenue" and "Credit Card Revenue" (described by the firm as cash back received from credit card purchases). Bering Strait also provided a trial balance sheet, balance sheet, and net capital computation.[5]

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[2] Ermolova's CRD reflects that she was associated with Mid-Market Securities from August 26, 2011, to May 20, 2013, and held Series 63 and 79 licenses for a majority of her employment there. The 1099 form filed for 2012 shows that Ermolova earned $6,011.10 for her work at Mid-Market that year. She stated that her earnings represented her commission on one deal, Blue Chip Energy. Ermolova was not licensed in any capacity with the other firms.

[3] Pursuant to Exchange Act Rule 15c3-1, Bering Strait's statutory minimum net capital requirement is $5,000. 17 CFR 240.15c3-1. In addition, the firm is obligated to comply with Exchange Act Rule 17a-11(c)(3), which requires the firm to notify the Securities and Exchange Commission if the firm's total net capital is less than 120 percent of its required minimum net capital requirement or, in this case $6,000. 17 CFR 240.17a-11(c)(3).

[4] Ermolova purchased American Express for Target cards and used her personal credit cards to load funds on these prepaid cards. She would then use an ATM to withdraw cash from the prepaid cards and deposit that cash into Bering Strait's checking account.

[5] Final updated balance sheets and a net capital computation were prepared on January 25, 2014.

B. Member Regulation's Review of Bering Strait's New Member Application

1. Preliminary Interview and Bering Strait's Response

On August 27, 2013, Bering Strait, represented by Ermolova, attended a meeting at FINRA offices in New York to discuss the recently filed membership application and Member Regulation's concerns regarding Bering Strait's filing. In particular, Member Regulation expressed concerns, memorialized in an August 29, 2013 letter to the firm, that Bering Strait could not demonstrate that it could meet the standards for FINRA membership outlined in NASD Rule 1014(a)(7) (addressing the firm's ability to provide the amount of capital necessary to meet expenses net of revenues for at least 12 months) and NASD Rule 1014(a)(10) (concerning the firm's ability to maintain adequate supervisory systems, including identifying individuals who would discharge the supervisory functions that have at least one year of direct or two years of related experience in the subject area to be supervised). Member Regulation noted that, when asked to describe her industry experience related to acting as a general securities principal, Ermolova cited to her participation in one deal involving Blue Chip Energy, a deal which was never completed, and confirmed that she had not participated in any deal fully from origination to completion. Furthermore, Member Regulation's letter stated that, based on Ermolova's description of her work experience at the meeting, Ermolova had no direct supervisory experience of registered representatives (other than self-supervision) and had not been employed, or had any direct experience acting, as a general securities principal, AMLCO, FINOP, or CCO.

In a letter dated August 30, 2013, Bering Strait responded to Member Regulation's apprehensions. The firm countered that NASD Rule 1014(a)(7) does not require that the firm have enough money in its bank account to fund operations for 12 months. Regardless, the firm noted that it had available credit on Ermolova's personal credit cards that could be used to purchase additional prepaid Target cards for Bering Strait's operations, that Ermolova could secure outside employment to supplement Bering Strait's bank account, and that the firm's only fixed expense was rent, which was $350 per month.[6] The firm also argued that none of FINRA's forms or regulations speak to what funding sources are or are not allowed for establishing net capital, and that there was nothing inappropriate about the use of Ermolova's personal credit cards to fund the firm's business account.

With respect to the adequacy of its supervisory systems, Bering Strait noted that NASD Rule 1014(a)(10) does not require Ermolova to have prior supervisory experience, only that such experience is helpful. At the outset, Ermolova would be the only employee and thus supervising only herself, which she had been doing as an independent contractor at Mid-Market Securities. If the firm did hire one or two additional persons as independent contractors to work with Bering Strait, those individuals would be properly qualified and have enough industry experience in the firm's proposed business activities. Furthermore, Bering Strait stated that Ermolova's combined two years of employment at Mid-Market Securities, National Securities Corporation, and Palladium Capital Advisors is in excess of the two-year of related experience necessary under NASD Rule 1014(a)(10)(D).

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[6] Bering Strait's office lease reflects monthly rent of $350 plus taxes. Other parts of the record reflect the monthly rent as $361 or $368. We find that these differing amounts have no bearing on this decision.

Bering Strait also opined that Ermolova had the necessary experience to be the firm's FINOP because serving as the FINOP only required that she "make sure that there is continuously at least $6,000 in cash (to avoid early warning) in Bering Strait's bank account, file an immediate report if net capital drops below $6,000, and file FOCUS reports." Although she has never filed an actual FOCUS report, Bering Strait believed that Ermolova's education (M.B.A. and M.S. Finance) coupled with her work experience, would make it simple for her to complete these reports. Moreover, the firm argued that while working at Mid-Market Securities and National Securities Corporation, Ermolova was responsible for discharging her duties consistent with all applicable laws, rules, and regulations and that she would do the same at Bering Strait, thereby qualifying her to serve as its CCO and AMLCO.

2. Member Regulation's Requests for Additional Information

On September 11, 2013, Member Regulation sent Bering Strait a 19-page letter requesting that the firm supplement its application with respect to 30 categories of information. These requests included (but were not limited to) a detailed business plan, an explanation of Ermolova's underwriting experience, information regarding proposed PIPE transactions and M&A services and Ermolova's relevant work experience, an explanation of the types of institutional investors the firm planned to serve, additional information regarding the adequacy of office space, and additional financial information regarding net capital, flow of capital into the firm, and an explanation of Ermolova's contingency plan should she be unable to use her personal credit cards to fund Bering Strait.

Bering Strait responded to each of Member Regulation's requests in a letter dated October 23, 2013, and amended its application. The firm also provided a chart documenting Ermolova's deal experience, indicating that Ermolova participated in 32 underwriting deals and 11 M&A deals.[7]

On November 29, 2013, Member Regulation sent Bering Strait another letter requesting the firm update its application to respond to additional questions asked and information sought by Member Regulation. In this request, the Member Regulation sought information including but not limited to explanations concerning certain transactions in Ermolova's personal bank accounts, the status of Ermolova's search to secure part-time employment, and information identifying the selling group members that the firm plans to working with. The firm updated its application and responded to Member Regulation's additional requests in a letter dated December 11, 2013.

3. Bering Strait's Interview and Subsequent Response

On January 28, 2014, Member Regulation conducted its membership interview of Bering Strait. At the interview, Member Regulation again expressed its concerns that Ermolova lacked

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[7] At the hearing, Jennifer Danby, a membership application examination manager, testified that the number of deals represented on the chart appeared incongruous when compared to Ermolova's compensation at Mid-Market (approximately $6,000 in 2012) and the amount of time she was employed, in an unregistered capacity, at National Securities. Member Regulation thus concluded that Ermolova overstated her functions.

the requisite experience as it relates to her roles as chief compliance officer, AMLCO, FINOP, and general securities principal. Ermolova restated her belief that she possessed adequate related experience based on the fact that she had supervised herself or observed others acting in supervisory capacities.

Following the interview, Ermolova sent a letter to Member Regulation expressing her concerns about the opinions that Member Regulation had formed about Bering Strait's application. She reiterated the arguments she made throughout the application process concerning the source of her net capital and the adequacy of her experience.

C. Member Regulation's Denial of Bering Strait's New Membership Application

Member Regulation issued a decision letter on February 18, 2014, that denied Bering Strait's application based on findings that the firm failed to satisfy the standards in NASD Rules 1014(a)(1), (2), (4), (7), (8), (10), and (13).

1. Member Regulation's Findings Under NASD Rule 1014(a)(7)

Member Regulation concluded that Bering Strait failed to demonstrate that it has the financial wherewithal and net capital sufficient to support its intended business operations on a continuing basis, as required by NASD Rule 1014(a)(7). Member Regulation expressed concern with Bering Strait's present method of funding and representations that the firm would rely on credit cards for support in the future.[8] Member Regulation found that Bering Strait's projected revenues were not reliable and concluded that Ermolova's proposed part-time employment would have the effect of reducing the amount of time available for Ermolova to conduct and supervise Bering Strait, thereby further undermining the reliability of revenue projections.

2. Member Regulation's Findings Under NASD Rule 1014(a)(2)

Member Regulation determined that Bering Strait did not have all licenses and registrations required by NASD Rule 1014(a)(2). Because the firm proposed to offer corporate, debt and equity securities in both public and private securities, Member Regulation concluded that Ermolova was required to hold the Series 7, and at the time of the denial of the membership application, she did not.[9]

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[8] The parties do not agree on the exact amount of Ermolova's available credit. Member Regulation calculated approximately $8,111 in available personal credit, while Ermolova argues that she has more than $10,000 in personal and business credit available. We note that one of the lines of credit upon which Ermolova relies (and which Member Regulation excluded from consideration of available credit) is a Macy's store charge card, and appears to only extend a line of credit to the purchase of goods at that retailer. Ultimately however, these differing amounts and calculations have no bearing on this decision.

[9] At the hearing, Joseph Sheirer, Director and Counsel for the Membership Application Group, testified that even if Ermolova had the Series 7 at the time of the filing of Bering Strait's membership application, Member Regulation would have still denied the application given its other deficiencies.

3. Member Regulation's Findings Under NASD Rule 1014(a)(4)

Member Regulation determined that Bering Strait failed to establish all contractual or other arrangements necessary to initiate the operations described in its business plan as required by NASD Rule 1014(a)(4). It noted that Bering Strait's business model did not articulate how sales of publicly traded securities would be effected without the involvement of a clearing and carrying firm and that the firm's application contains conflicting information as to whether or not it will introduce clients to a clearing firm. Because Bering Strait did not amend its application to remove the aspects of its business that would require a clearing and carrying firm, Member Regulation concluded that the establishment of a clearing arrangement is necessary for the firm to conduct the proposed business, which it has not done.

4. Member Regulation's Findings Under NASD Rule 1014(a)(1)

Member Regulation determined that Bering Strait did not meet the standard in NASD Rule 1014(a)(1), which requires that its application and all supporting documents be complete and accurate. Member Regulation determined that Bering Strait's financial statements were both incomplete and inaccurate, and Ermolova's representations concerning her professional experience, including assertions of engaging in activities when she did not possess the necessary licenses to do so, rendered Bering Strait's application inaccurate.

5. Member Regulation's Findings Under NASD Rule 1014(a)(8)

Member Regulation determined that Bering Strait lacked the financial controls to ensure compliance with the federal securities laws and NASD Rules, as required by NASD Rule 1014(a)(8). Member Regulation found that Bering Strait's balance sheet was inaccurate, that its net capital computation did not follow standard net capital calculation methodology and contained a number of errors, and that the firm provided incomplete financial projections. Member Regulation also expressed concern over Ermolova's representations that she planned to pay a portion of Bering Strait's fixed expenses using the firm's credit cards, concluding that this plan affected the financial and operational soundness of the firm.

6. Member Regulation's Findings Under NASD Rule 1014(a)(10)

Member Regulation found that the experience of the proposed lone supervisor was insufficient to comply with the standard articulated in NASD Rule 1014(a)(10). Member Regulation concluded that Ermolova did not have the requisite one year of direct or two years of related experience in the subject areas to be supervised. Specifically, Member Regulation found that Ermolova lacked the experience to carry out her roles as CCO, AMLCO, or FINOP.[10]

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[10] Member Regulation's denial letter discussed Ermolova's lack of FINOP-related experience as contributing to Bering Strait's deficient financial controls under NASD Rule 1014(a)(8).

7. Member Regulation's Findings Under NASD Rule 1014(a)(13)

Member Regulation determined that it possessed information indicating that Bering Strait may circumvent, evade or otherwise avoid compliance with applicable securities laws, rules and regulations, as discussed in NASD Rule 1014(a)(13). Member Regulation based this conclusion on, among other things, the determination that the firm's sole supervising principal was not adequately qualified and experienced, the firm's supervisory system did not appear adequate to support its ability to effectively comply with FINRA's supervision rule, and the firm submitted financial information and documentation that was clearly inaccurate. Additionally, Member Regulation cited to Ermolova's lack of a Series 7 license as a basis for finding the firm deficient under this standard.

D. Bering Strait's Appeal of Member Regulation's Denial

Pursuant to NASD Rule 1015(a), Bering Strait appealed Member Regulation's decision on February 24, 2014. The firm maintains that Member Regulation's decision is inconsistent with the membership standards set forth in NASD Rule 1014. As stated in greater detail below, Bering Strait's appeal letter lays out in specific detail why each of the reasons presented by Member Regulation should be rejected.

On April 29, 2014, a Subcommittee of the NAC presided over an evidentiary hearing at which the parties presented opening and closing statements,[11] witness testimony, and documentary evidence.[12] Bering Strait was represented at the hearing by Ermolova, who testified on behalf of the firm. Member Regulation called two witnesses, Jennifer Danby, an examination manager in the Membership Application Program Group, and Joseph Sheirer, Director and Counsel for the Membership Application Group.

III. Discussion

NASD Rule 1014(a) delineates 14 standards that an applicant firm must meet before Member Regulation may approve a request for membership admission. In general, the standards in NASD Rule 1014(a) are intended to ensure that members are capable of satisfying all relevant regulatory requirements for the protection of the investing public, the securities markets, the firm, and other member firms. *Membership Continuance Application of Member Firm*, Application No. 20060058633, 2007 FINRA Discip. LEXIS 31, at *44-45 (FINRA NAC July 2007). When assessing whether an applicant for membership meets these standards, NASD Rule 1014(a) requires Member Regulation to consider, among other things, "the public interest and the protection of investors." The firm bears the burden of demonstrating that it meets each of

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[11] Closing arguments were conducted telephonically on May 16, 2014.

[12] The Subcommittee hearing this case admitted all of Bering Strait's and Member Regulation's proposed exhibits and decided to accord them whatever weight it later determined to be appropriate. The Subcommittee also accepted into the record documents produced by Bering Strait at the beginning of the hearing on April 29, 2014, and to FINRA's Office of General Counsel on May 5, 2014. We adopt the Subcommittee's ruling as our own.

the rule's standards for membership approval. *New Membership Application of Firm A*, Application No. 20090182345, 2010 FINRA Discip. LEXIS 24, at *22 (FINRA NAC Sept. 28, 2010); *see also* NASD Rules 1014(a), (b).

Member Regulation found that Bering Strait failed to demonstrate that it could meet seven NASD Rule 1014(a) standards. As explained below, upon de novo review, we affirm Member Regulation's findings that Bering Strait failed to demonstrate that it has the net capital sufficient to support its intended business operations on a continuing basis, that it has the financial controls to ensure compliance with the federal securities laws and NASD Rules, and that Ermolova has the requisite related experience to serve as a FINOP and CCO/AMLCO.[13]

A. Bering Strait Did Not Establish That It Is Capable of Maintaining Adequate Net Capital

Member Regulation found that Bering Strait is not capable of maintaining a minimum level of net capital adequate to support the firm's intended business operations on a continuing basis, as set forth in Exchange Act Rule 15c3-1 and required by NASD Rule 1014(a)(7). In its denial letter, Member Regulation identifies three specific rationales for denying Bering Strait's membership application: 1) the source of the firm's net capital, 2) the reliability of Bering Strait's projected revenues to fund the firm's operations, and 3) the sufficiency of the firm's net capital to cover costs of operation. We focus our discussion on the source of the net capital and the sufficiency of the net capital to cover the costs of operations.[14]

Member Regulation found that it could not reasonably rely upon Bering Strait's planned funding approach as an effective method to capitalize the firm and fund its operations. According to the application, Bering Strait was funded initially with $7,380, and an additional $200 subsequent to the initial filing, which was derived from cash advances on credit cards and cash withdrawals from prepaid cards purchased with credit cards belonging to Ermolova, as well as a credit card in the name of Bering Strait. Member Regulation noted that Ermolova initially used cash advances from her personal credit cards to fund the proposed broker-dealer and, when she reached the dollar limit on the cash advances on her credit cards, she purchased (with her personal credit cards) two prepaid cards and took multiple cash withdrawals from the prepaid

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[13] In light of our findings that Bering Strait has failed to satisfy the standards in NASD Rules 1014(a)(7), (8), and (10), it is unnecessary to further address whether the firm's application was not "complete and accurate," as required by Rule 1014(a)(1), whether it possessed all licenses and registrations required by state and federal authorities and self-regulatory organizations, as required by NASD Rule 1014(a)(2), whether it failed to establish all contractual or other arrangements and business relationships as required by NASD Rule 1014(a)(4), and whether there is information indicating Bering Strait may circumvent, evade or otherwise avoid compliance with applicable securities laws, rules and regulations as required by NASD Rule 1014(a)(13).

[14] We credit Bering Strait's assertion that it was not considering projected revenues as a source of future funding during the first 12 months of the firm's operations, but ultimately agree with Member Regulation that the firm's projected revenues are unreliable.

cards to further fund Bering Strait. Ermolova also utilized the firm's credit card to take two cash advances from that card for additional funding. In total, Ermolova, personally and on behalf of Bering Strait, took cash advances, either directly through the use of credit cards or by using credit cards to purchase other cards from which cash could be obtained, totaling $7,580, just to meet the minimum net capital requirement. Member Regulation found Bering Strait's funding sources to be "inherently problematic, and the [its] current capitalization is insufficient to meet the Standards for approval."

As further validation for the denial, Sheirer testified at the hearing that Member Regulation was concerned about Bering Strait's source of funding because it was completely reliant on unsecured credit lines that could be reduced or limited by the lender. Sheirer also testified that he viewed Bering Strait's funding structure as risky. He noted that "a firm that is so poorly capitalized is more likely to make judgment calls that may be impacted by its own financial condition and may take on additional risk that leads to investor loss or integrity issues in the marketplace." Furthermore, he testified that the fact that the firm is so thinly capitalized creates a regulatory burden, as well as a reputational risk, for the industry as a whole.

Bering Strait makes several arguments related to this basis for denial. It argues that NASD Rule 1014(a)(7) does not state that at the point of submitting the application the firm must have "capital necessary to meet expenses net of revenues for at least twelve months" or "net capital sufficient to avoid early warning level reporting requirements." Bering Strait also contends that FINRA does not state in any of its resources or materials that some sources are allowed or not allowed for obtaining net capital or paying for expenses of the firm – the only requirement for these sources is that they are legal. Ermolova also proffers that she will take on a part-time job or borrow funds from her father to support the firm.

We find these arguments unconvincing. We acknowledge that the rule does not specifically state what could be considered appropriate sources of capital, but agree with Member Regulation that, in this particular case, Bering Strait's use of cash advances on credit cards and the purchase of prepaid cards to make ATM withdrawals to reach the minimum net capital requirement and to fund the firm in the future demonstrates a lack of the financial wherewithal necessary for FINRA membership.

The net capital rule is a fundamental rule governing the operations of broker-dealers. It serves as "the principal regulatory tool by which the Commission and [FINRA] monitor the financial health of brokerage firms." *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at * 17 (Sept. 10, 2010), *aff'd*, 436 Fed.App'x 31 (2d Cir. 2011) (internal quotations omitted). The Commission has noted that "[e]nsuring compliance with the net capital rule is important to protect investors from the possible financial collapse of a firm." *Id.* The primary purpose of the net capital requirement is to ensure that registered broker dealers maintain at all times sufficient liquid assets to promptly satisfy their liabilities (claims of customers, creditors and other brokers), as well as to provide a cushion of liquid assets to cover potential market, credit, and other risks should the broker be forced to liquidate.

Using personal, unsecured credit to capitalize her business and fund it for the first 12 months, Ermolova exposes herself and the firm to serious financial complications. Ermolova may have to rely on personal and business credit for longer than or to a greater extent than

anticipated. Should Ermolova not have the funds to make payments on those cards, or if those lines of credits disappear or decrease, this could result in the firm falling below its net capital requirement.[15] Moreover, even if Ermolova were to monetize the entire amount of her available credit and direct all the funds to Bering Strait, such amount would be insufficient, or just barely cover the firm's projected expenses to operate its intended business.[16]

The record also reflects that Ermolova has not established the requisite industry relationships to support Bering Strait's projected revenues. Ermolova acknowledged that while she has developed "general working relationships with several potential issuers and M&A clients at Mid-Market Securities," she has not identified any specific prospective issuers or investors. If Bering Strait is unsuccessful in bringing in the business it postulates after 12 months, it may be beholden to these unsecured credit cards to pay its expenses far out into the future, cards whose credit lines would likely be significantly reduced since Bering Strait plans to rely on that credit during its first 12 months.

Furthermore, Ermolova's representations that she will secure part-time employment to fund the firm are concerning. We cannot reconcile the amount of time Ermolova has dedicated, and will dedicate to Bering Strait with working at a part-time job enough hours a week to support her business and living expenses.

Thus, the questionable nature of the funding method (including potential part-time employment or loans from family), Ermolova's stated continued reliance on personal credit lines to fund Bering Strait, and the lack of requisite industry relationships to maintain the nascent business bolster our conclusion that the firm would be incapable of remaining above minimum net capital requirements adequate to support its business operations on a continuing basis.

B. Bering Strait Has Not Established Financial Controls to Ensure Compliance with Federal Securities Laws, the Rules and Regulations Thereunder, and NASD Rules

NASD Rule 1014(a)(8) requires that Bering Strait have the financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and NASD Rules. As stated above, Member Regulation determined that there were a number of financial control deficiencies in Bering Strait's membership application, including an inaccurate balance

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[15] Ermolova testified that she would not let the firm fall below net capital nor would she default on any of her credit cards. While we take Ermolova at her word, we cannot ignore the financial realities surrounding the precarious nature of her capitalization.

[16] The firm projects fixed expenses for the first 12 months of operation between $9,468 and $10,468. Using Member Regulation's calculation, the available credit would be insufficient to fund the business; using Bering Strait's calculation, the available credit would be just sufficient to fund the firm.

sheet, inaccurate net capital computation, incomplete financial projections, and financial management issues.[17]

1. Inaccurate Balance Sheets

Member Regulation found that Bering Strait's balance sheet was inaccurate in that it reflected total liabilities of $1,360 comprised of the firm's credit card debt, while Member Regulation's computation revealed current total liabilities of $1,788.[18]

On appeal, Bering Strait counters that rent was not a liability and therefore the firm's balance sheet was accurate. She maintains that the balance sheet is prepared to reflect the financial position of the firm on the day it is approved to operate as a broker-dealer and does not include any prior expenses (except the rent deposit and cash advances on the credit card), and that all past financial information of the Bering Strait is not relevant to the financial condition before the firm is approved. Bering Strait argues that it did not commit an error in calculating, and if approved, it would count rent as a liability.

We disagree with Bering Strait's assessment of its liabilities. Bering Strait was a party to a contract to lease office space that was submitted as part of its application and it included rental expenses in many of the firm's submissions and projections. It is not a hypothetical expense, but an actual, contractually-mandated obligation and, as such, the firm's balance sheet is inaccurate.[19] We find the attempt to disregard the rent expense to reduce the appearance of the firm's liabilities, whether intentional or merely negligent, reflects poorly on the firm's financial controls.

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[17] Member Regulation notes that Bering Strait's revenue and expense projections failed to take into account certain key components necessary to the proposed business activities, such as state registrations and a clearing firm deposit, which would have been necessary given Bering Strait's business model reflecting the proposed sale of public securities to investors and to act as an introducing firm. Because we are not relying on NASD 1014(a)(4) as a basis for our denial, we do not consider Bering Strait's failure to contract with a clearing firm as contributing to the denial under this standard.

[18] Consisting of $1,420 of credit card debt and rent of $368.

[19] Ermolova testified that she was unaware that if she had cancelled her lease agreement during the application process, she was obligated to inform FINRA to ensure that her membership application remained accurate.

2. Inaccurate Net Capital Computation

Member Regulation concluded that Bering Strait's net capital computation did not follow standard net capital calculation methodology and contained a number of errors, resulting in an incorrect net capital computation.[20] On January 25, 2014, Bering Strait provided Member Regulation a net capital computation that was one line and simply stated the amount of cash in the firm's checking account.

Bering Strait argues that FINRA does not give any specific format in which Bering Strait's internal net capital computation has to be presented and does not provide a "standard" one mentioned by Member Regulation. Bering Strait notes that FINRA's website mentions that various federal and state securities rules pertaining to the recordkeeping systems of a broker or dealer rarely specify a particular format to maintain such information and that the rules specify only that certain information must be created and maintained within the broker-dealer's records.

We agree with Member Regulation that this evinces a clear misapprehension of the nature of net capital. This was not an "internal calculation" but rather a calculation presented to FINRA to support Bering Strait's membership application. Exchange Act Rule 15c3-1 provides the information that should be included in a net capital computation. By failing to calculate net capital consistent with this rule, Bering Strait made a number of errors, including failing to reflect any required line items (e.g., liabilities) other than the cash in the firm's bank account, failing to account for the deduction of non-allowable assets (such as the rent deposit of $700), failing to identify the applicable minimum net capital requirement against which the firm's net capital was calculated, and failing to reflect the firm's excess net capital status, or lack thereof. We also note that Ermolova was unaware that net capital should be calculated pursuant to U.S. Generally Accepted Accounting Principles ("GAAP").[21] By failing to utilize GAAP, Bering Strait generated an incorrect net capital computation. The failure to understand the basis for classifying assets and liabilities is a fundamental flaw in the application. Bering Strait's shortcomings in this area provide strong support for our denial of the application.

3. Incomplete Financial Projections

In defense of Bering Strait's financial projections, Ermolova states in her notice of appeal:

> As was mentioned above, in my application I clearly stated several times that the Firm will not perform any clearing function for itself or for others and will not maintain any relationship with a clearing firm (will not have to pay clearing firm deposit that was mentioned by Member Regulation). I already paid $300 NY Broker Dealer Registration Fee and prepared financial projections after

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[20] Member Regulation prepared its own net capital computation showing that the firm's current net capital is below the early warning notification level of Exchange Act Rule 17a-11. The firm presented a net capital amount of $7,580 when, in fact, when factoring in appropriate liabilities and deductions, Member Regulation found that the net capital was actually only $5,792, falling below the early warning requirements.

[21] *See* https://www.sec.gov/about/offices/oia/oia_market/key_rules.pdf.

> thoroughly researching FINRA website and checking all fees relevant to the Firm that were described there. This means that submitted financial projections are accurate and that approximately $10,000 is an accurate estimate of the Firm's expenses for the first 12 months of operation.

Even assuming the statement that Bering Strait has no clearing obligations or other state registration fees is true, we still find that the financial projections are incomplete. For example, the financial projections did not include accrual for tax expenses. The projections also included projection of credit card revenue (cash back rewards) as income, when it should have been recorded as a contra-expense. As with the inaccurate balance sheets and net capital calculations, Bering Strait's inability to accurately reflect and record its projected financials raises significant red flags concerning its financial controls.

4. Financial Management Issues

Member Regulation considered Bering Strait's representation that it planned to pay a portion of the fixed expenses using the firm's credit card. Member Regulation concluded that the proposed approach could negatively impact the financial and operational soundness of the firm and reflects poorly on the financial management and decision making utilized by Ermolova. Specifically, this approach would have the effect of substituting one form of liability for another on Bering Strait's balance sheet where the substituted liability would need to be deducted from assets in its net capital computation and would likely increase the firm's total liabilities due to interest charges.

With respect to Member Regulation's concerns about its financial management, Bering Strait's notice of appeal states that: "If I use the Firm's credit card to pay for Firm's expenses, I will also add cash to the Firm's bank account to make sure that the Firm's net capital does not fall below $6,000. And I will include the Firm's credit card debt in the Firm's liabilities and count it as a deduction when calculating the Firm's net capital."

This response is not sufficient to support a finding that Bering Strait meets the standards of NASD Rule 1014(a)(8) and does not assuage our concerns. Ermolova testified that she would be relying on part-time jobs, personal credit cards, and cash advances to make sure the net capital does not fall below $6,000. For reasons previously stated, we find that this funding scenario is very precarious and relies on sources of money that may not actually be available, thus evincing serious financial management issues. We therefore affirm Member Regulation's findings and conclude that Bering Strait failed to demonstrate that it meets the standards of NASD Rule 1014(a)(8).

C. Ermolova Lacks the Requisite Related Experience to Serve as Bering Strait's Sole Supervisor

Perhaps the most salient deficiency is Member Regulation's determination that Bering Strait does not have a "supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and NASD Rules." NASD 1014(a)(10). Specifically, Member Regulation determined that Ermolova did not have at least one year of direct or two

years of related experience in the subject areas to be supervised. Member Regulation focused on Ermolova's lack of experience as it relates to her roles as FINOP, CCO, and AMLCO for its denial of the firm's application.

In her appeal and during the hearing, Ermolova provided lists and descriptions of all of her relevant work experience and how she believes that experience satisfies this standard. After a careful review of the record and Ermolova's testimony, we affirm Member Regulation's denial and conclude that Ermolova lacks the appropriate relevant experience to serve in a supervisory capacity.

1. FINOP

Member Regulation determined that Ermolova lacks adequate experience to serve as Bering Strait's FINOP. Ermolova's stated relevant experience is her employment as an Investment Banking Associate at Mid-Market Securities (as an independent contractor), for one year and 10 months, an Investment Banking Representative for two months at National Securities Corporation, and assorted intern roles held for brief periods of time. While Ermolova has the Series 28 License, which is a required qualification to serve as FINOP, Member Regulation found that her underlying experience does not support her ability to carry out the role in accordance with NASD Rule 1014(a)(10). Member Regulation noted that in her past work experience, Ermolova did not have any direct or related responsibilities in financial operations and found that her lack of meaningful experience in those roles is evidenced by the inaccuracies in the firm's books and records and its untenable revenue projections.

Ermolova argues that she has clearly explained throughout the application process and on appeal how her previous work experience at Mid-Market Securities, National Securities, Palladium Capital Advisors, LLC, and related internship positions qualify her as FINOP, particularly in light of Bering Strait's proposed business activities. She further contends that no one at FINRA has read her application, including descriptions of her two years of related experience that would qualify her as a FINOP. She confuses the determination that her work experience does not qualify her to serve as a FINOP with the issue as to whether due consideration has been given to Bering Strait's application.

Ermolova also provided copies of, and made multiple references to, her Independent Contractor employment agreement with Mid-Market Securities as evidence of her financial operations experience. This experience includes:

- Hiring, engaging, supervising, firing and training employees, other independent contractors and/or other agents;[22]

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[22] Early in the hearing, when asked about her hiring experience, Ermolova testified that her only hiring experience was when she hired an intern while at Mid-Market Securities, who lived and worked in Russia. However, later in the hearing she conceded that while she interviewed him and reviewed his resume, she is not sure who ultimately hired the intern. Because we have concluded that Ermolova has not actually engaged in hiring or firing employees, we need not address whether she possessed the required registrations to do so.

- Compliance with applicable laws; and
- Maintaining all required books and records in connection with the independent contractor business.

She goes on to state that "[m]y employment agreement with Mid-Market Securities, LLC also says . . . that I had 'complete financial responsibility' for the costs of operating my independent contractor business" and points to specific examples, including the paying for the following:

- All expenses of operating the independent contractor's office;
- All costs of independent contractor personnel and contractors;
- All costs or expenses of compliance, litigation or regulatory investigations relating to the independent contractor, including attorney's fees, fines or judgments;
- All costs of record-keeping required by applicable law;
- All costs associated with the development of leads; and
- All costs associated with continuing education.

While the record may demonstrate that Ermolova was able to effectively manage her independent contractor business, her experience has not prepared her to act as a FINOP. Independent contractors are not broker-dealers and do not have the regulatory obligation to file certain financial forms, including accurate FOCUS reports. Ermolova testified that she has never filed a broker-dealer FOCUS report or participated in the filing of any of Mid-Market Securities' financial reports. When asked what she would do if the firm fell below net capital requirements, she testified she would follow the rules as written and call FINRA to ask them what Bering Strait should do. However, Ermolova believes that paying her bills and her FINRA-related fees, as well as filing her tax returns qualify her to act as a FINOP. This lack of understanding as to what actual experience is required, coupled with the net capital computation issues, the inaccuracies in the balance sheet and Bering Strait's incomplete financial projections fully support Member Regulation's decision to deny the application.

2. CCO/AMLCO

Member Regulation found that Ermolova does not meet the requirements to carry out her role as CCO and AMLCO for Bering Strait. Specifically, Member Regulation noted that in its application Bering Strait represents that Ermolova's observation of others, her overall knowledge of rules and regulations, and her reading of relevant written supervisory procedures, serve as her related experience and therefore, she purports to be sufficiently qualified and experienced to function as the CCO and the AMLCO. Moreover, Ermolova represented that she has related experience with regard to supervision, given that during her tenure at Mid-Market Securities she would oversee the other bankers she worked with, and noted they were compliant with applicable securities rules and regulations, although she did not have the Series 24 license at the time. Member Regulation did not find this related experience sufficient to satisfy NASD Rule

1014(a)(10) and noted that if she indeed was supervising other investment bankers, she was doing so in an unlicensed capacity.

Ermolova counters that she has done much more than merely observe other bankers.[23] She argues that a majority of her compliance activities at Mid-Market Securities involved not only being accountable for her own compliance with all applicable laws, rules, and regulations, but also being responsible for making sure that the other investment bankers that she worked on deals with followed all applicable laws, rules, and regulations, "through reviewing the work, documents, and actions of other bankers."[24]

Bering Strait has requested that we pay specific attention to a document it produced during the application process, attached to its notice of appeal, and discussed in great detail at the hearing, entitled "Maria M. Ermolova – Direct Compliance (including Anti-Money Laundering Compliance) Experience at Mid-Market Securities, LLC, National Securities Corporation, and Palladium Capital Advisors, LLC." In this document, Ermolova listed the types of activities outlined in the firm's proposed written supervisory procedures, explained how she has experience engaging in each of these activities, and how this experience qualifies her to be a CCO/AMLCO. We have reviewed this document, and find that it does not support a finding that Ermolova has the requisite amount of relevant experience to function as Bering Strait's CCO or AMLCO. For example, with respect to her experience with "Form Filings" as demonstrating compliance experience, the document stated:

> At Mid-Market Securities, LLC and National Securities Corporation, Maria Ermolova was filling out all forms required by FINRA (U4, U5, FINRA-issued fingerprint cards, outside business activities, outside brokerage accounts, etc.– timely filing by deadline, keeping updated and current, etc.).

When asked about this experience at the hearing, Ermolova testified that she only had experience filling out forms related to her. She also acknowledged that this filing obligation arises out of her status as a registered person and not as a compliance officer; however she insists that her status as an independent contractor added an additional level of responsibility.

Likewise, speaking to her experience as it related to "Business Conduct," the document indicated that:

> At Mid-Market Securities and National Securities, I was making sure that all my activities as well as the activities of the bankers I worked with and the intern I

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[23] In support of her related compliance experience, Bering Strait states in its membership application that Ermolova "[d]eveloped strategic and marketing initiatives and provided capital raising and M&A services to client companies in accordance and compliance with the SEA, rules and regulations thereunder, and FINRA Rules for introducing broker-dealers providing capital raising and M&A services."

[24] At the hearing, Ermolova testified that she did not witness nor was she involved in the reporting of any violations of securities laws, but that her actual experience was "watching for [violations]."

> worked with, to the extent that I was aware of them, were in compliance with business conduct, rules and procedures of these firms' written supervisory procedures, specifically unethical business practices, receipt of funds and securities, sexual harassment, mutual respect and collaboration and working inside the firm as well as with client companies and investors.

While Ermolova contends that her experience extends far beyond monitoring her own activities and observing the activities of others, there has been no evidence produced of any such real experience.

Contrary to Bering Strait's assertions, Ermolova's purported compliance experience amounts to nothing more than engaging in conduct required of all FINRA's registered representatives. Keeping Forms U4 and U5 accurate and up to date, complying with an employer firm's policies and procedures, and acknowledging an obligation to report violations of federal securities laws and FINRA rules are basic and fundamental functions required of each and every one of FINRA's registered persons. They do not represent functions unique to compliance officers. When Ermolova registered with FINRA, she agreed to abide by its rules. *See Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006). These rules require her to update her personal information and accurately report the many events identified in those forms. This does not amount to actual compliance experience, and evinces a lack of understanding of what actual compliance work entails. Therefore, we conclude that Ermolova's experience is insufficient to satisfy the requirements of NASD Rule 1014(a)(10).

D. Ermolova's Representations Concerning her Work Experience are Unreliable

In addition to her assurances that she possesses adequate related experience to serve as the sole supervisor at Bering Strait, Ermolova represents that she has a great deal of investment banking experience in general, supporting her decision to start her own broker-dealer. For example, during the application process she provided Member Regulation with a chart detailing the deals that she worked on while employed by Mid-Market Securities, National Securities Corporation, and Palladium Capital Advisors. This chart showed that in a little over two years, Ermolova meaningfully participated in 32 underwriting deals, 18 of which she originated, and 11 M&A deals, eight of which she originated. On the other hand, the earnings records Ermolova produced during the application process indicate that during this time period, she earned approximately $8,500. The conclusion we draw from the disconnect between the volume of work she purportedly engaged in and her earnings is that Ermolova is either mischaracterizing her role or exaggerating her experience.

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Bering Strait argues that Ermolova's experience should be considered adequate in light of the size of the firm and the line of business in which Bering Strait will be engaged. Member Regulation did consider the nature of the firm's investment banking business and its limited size and determined that Ermolova's relevant experience was not sufficient. Member Regulation's concerns stem from the fact that the line of business Bering Strait is proposing is risky, the fact that Ermolova has only been in the industry for a short period of time, the apparent exaggeration of her actual experience, and that Ermolova plans on acting as sole proprietor, with no checks

and balances. We agree with Member Regulation and conclude that Ermolova's lack of experience, both as it relates to her proposed supervisory activities and her investment banking activities in general, poses a risk to the investing public, the securities markets, other member firms and Bering Strait itself.

IV. Bering Strait's Procedural Arguments

Bering Strait makes several procedural arguments, related to both the underlying application process and the instant appeal. For the reasons discussed below, we find that Bering Strait's procedural arguments fail, and any procedural defects were non-prejudicial or cured by our de novo review. "[Bering Strait's] arguments confuse its inability to meet its burden under Rule 1014 with its assertion of an inherently unfair and futile process for reviewing NMA's." *Asensio and Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *53 (Dec. 20, 2012).

A. The Membership Application Process Was Fair

Bering Strait argues that its membership application was not read or properly considered by Member Regulation. We find no evidence in the record to support that the application was not read or given due consideration. Moreover, even if there had been evidence that the application was not properly considered, our de novo review, in which we have carefully considered all of the evidence in the record as well as the hearing testimony, "dissipates even the possibility of unfairness." *Robert Tretiak*, 56 S.E.C. 209, 232 (2003); *see also Robert E. Gibbs*, 51 S.E.C. 482, 484-85 (1993) (discussing how de novo review by the NASD Board during NASD disciplinary proceedings insulates against bias), *aff'd*, 25 F.3d 1056 (10th Cir. 1994) (table).

In addition, Bering Strait maintains Member Regulation failed to keep the firm apprised of purported deficiencies in its application, during the application process, including but not limited to the need to have a Series 7 license and the firm's inaccurate net capital computation. Bering Strait and Ermolova's view is that "FINRA is required to play a consultative role with respect to an applicant for new membership. While Member Regulation may opt to do so, such as when it benefits the efficiency of the overall membership application process, it is not mandated by the rules. Rather, it is the Applicant Firm's burden to demonstrate that its application meets the standards for new membership, not FINRA's." *New Membership Application of Firm A*, Application No. 20090196759, at 12-13 (FINRA NAC Dec. 2010).[25] Thus, the burden was on Bering Strait, not FINRA, to make sure that it was aware of its obligations and requirements. We therefore conclude that the application process was not unfair.

B. The Proceedings Before the NAC Were Fair

At the hearing and during her closing statement, Ermolova made several arguments as to why the instant proceedings were unfair. First, Ermolova argues that the hearing was held outside the 45-day requirement of NASD Rule 1015(f)(1). She argues that she was to be given a

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[25] *Available at*: http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p125380.pdf.

written form in which to waive the requirement but was never presented such a form. However, in an e-mail to Ermolova, FINRA's Office of General Counsel ("OGC") informed her that her attendance at the hearing would be sufficient to reflect that the parties had agreed to hold the hearing outside the 45-day requirement in order to accommodate the schedules of all the individuals (attorneys, NAC Subcommittee members, etc.) involved. Furthermore, Ermolova does not argue that she was actually prejudiced by holding the hearing at 50 days rather than 45 days, and we find no prejudice as well.

Ermolova also notes that during the proceedings, several deadlines were missed. She points to the fact that the identities of the Subcommittee members were not revealed according to the timeline articulated in a letter to the parties. We cannot find, nor does Bering Strait point to, any prejudice suffered by not knowing the names of the Subcommittee member six days later than anticipated. *Cf. RFG Options Co.*, 49 S.E.C. 878, 885 (1988) (holding that respondents failed to show prejudice from defective notice, where they did "not explain[] how they would have proceeded differently had the notice they received been more to their liking").

Bering Strait also argues that Member Regulation failed to transmit all documents that were considered in connection with its decision and an index within 10 days after the filing of the request for review, as required by Rule 1015(b), and that she was prejudiced because the Subcommittee did not have access to all the documents in a timely manner. While Member Regulation produced some documents in a timely manner, the remaining documents were produced six days late. Again, we fail to find prejudice. The Subcommittee represented at the hearing that the late document production had not impeded its ability to prepare for the hearing and would not impede its consideration of the appeal after the hearing or the drafting of the instant decision.

Bering Strait contends that Member Regulation presented testimony at the hearing that was outside the scope of the record, previously unknown to the firm, and unfair. Member Regulation offered testimony concerning its consideration of Blue Chip Energy's bankruptcy as a supporting factor for denial, and a post-decision telephone conversation with Ermolova's former supervisor concerning her employment at Mid-Market Securities, and a comparison of Bering Strait's net capital funding mechanism to money-laundering activity. "As long as a party to an administrative proceeding is reasonably apprised of the issues in controversy and is not misled, notice is sufficient." *KPMG Peat Marwick, LLP*, 55 S.E.C. 1, 4 (2001), *petition for review denied*, 289 F.3d 109 (D.C. Cir. 2002). Moreover, as we have stated previously, "Member Regulation's decision is the primary way for Member Regulation to provide notice of its concerns." *Membership Continuance Application of Member Firm*, Application No. 20060058633, at 20 (FINRA NAC July 2007).[26]

However, advancing new grounds in defense of Member Regulation's decision for the first time on appeal raises fairness concerns if a party is not reasonably apprised of such grounds. *See Membership Continuance Application of Member Firm*, Application No. 20060058633, at 20 (finding that Member Regulation failed to provide the firm with notice about issues that it

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[26] *Available at*: http:// www.finra.org/web/ groups/industry/@ip/@enf/@adj/documents/ nacdecisions/p117387.pdf.