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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Bering Strait Securities, Inc.

For Review of Action Taken By

FINRA

File No. 3-16262

BRIEF OF FINRA IN OPPOSITION TO APPLICATION FOR REVIEW

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

FINRA Rules and Guidelines

FINRA Notices

SECURITIES AND EXCHANGE COMMISSION

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I. INTRODUCTION

From the beginning of this application process, FINRA expressed serious reservations about Bering Strait Securities, Inc.'s ("Bering Strait" or "Firm") New Membership Application. FINRA communicated its well-founded apprehensions to Bering Strait on multiple occasions during the application process. It was particularly concerned that the Firm could not demonstrate that—as required by FINRA's membership rules—it was capable of maintaining net capital adequate to support its intended business operations on a continuing basis, that it possessed adequate financial controls, or that the Firm's sole employee had at least two years of related experience in the subject areas to be supervised.

Bering Strait's contentions at the beginning of the application process, and still during this appeal, are that the Firm possesses the requisite net capital and financial controls and that the Firm's sole owner and employee, Maria Ermolova, has adequate experience to run the Firm. The Firm also accuses FINRA of not reading its application, stonewalling the application and

undermining the fairness of the appeal process. The record clearly belies these claims. Not once during the FINRA proceedings did Bering Strait provide any evidence that could support the Firm becoming a FINRA member or that the Firm's application was not given due consideration in a manner that is fair and consistent with FINRA rules. The Firm's shaky and indeterminate method of capitalization consists of taking cash advances out on unsecured credit cards, as well as representations that Ermolova would take on part-time employment or get loans from family members. The financial reports the Firm provided to FINRA, including the balance sheets, net capital computation, and projected revenues, were either incorrect or unreliable. Ermolova, the Firm's sole employee and proposed Financial and Operations Principal ("FINOP"), Chief Compliance Officer ("CCO"), and Anti-Money Laundering Compliance Officer ("AMLCO"), has barely two years in the industry and no experience involving broker-dealer financial operations or compliance. Finally, in processing the Firm's application, FINRA followed its rules and gave the Firm ample opportunity to advocate in support of its application. The membership standards are a crucial tool for investor protection and market integrity, and FINRA correctly determined based on the facts presented during the application process that the Firm failed to show that it meets the minimum requirements for membership. Bering Strait's application must be denied.

II. FACTUAL BACKGROUND

A. Bering Strait's Application

Bering Strait organized as a C-Corporation on January 24, 2012, in New York. (RP 733-736).[1] The Firm is wholly owned by Maria Ermolova.[2] (Id.). On August 12, 2013, Member

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[1] References to "RP ____" are to the record of this proceeding.

Regulation received the Firm's New Member Application and supporting documentation, in which Bering Strait sought FINRA approval to register as a broker-dealer. (RP 249-281). 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)" and of "private placements of corporate securities" of client companies "only on best efforts basis." It also planned to "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." (RP 252). 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. (RP 253). 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. (Id.). Bering Strait also sought a waiver of the two principal requirement. (RP 262).

Ermolova proposed to serve as the Firm's Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operating Officer ("COO"), CCO, FINOP, and AMLCO. (RP 287-258). Bering Strait also potentially planned to hire one to two independent contractors that Ermolova would supervise. (RP 582). To support this proposed supervisory structure, the Firm

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[2] As of the date of the filing of the application, Ermolova possessed the following licenses: Series 24 (General Securities Principal), as of 6/14/13; Series 79 (Limited Representative - Investment Banker), as of 12/5/11; Series 63 (Uniform Securities Agent State Law), as of 10/17/11; and Series 28 (Introducing Broker/Dealer Financial and Operations Principal), as of 5/31/13. Subsequent to the Member Regulation's denial, Ermolova obtained her Series 7 (General Securities Representative). (RP 258).

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. (RP 285-259). 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 Securities that year. (RP 637).

In addition, with respect to maintaining adequate net capital, the Firm represented that it initially had $7,380 in its bank account. (RP 270-271). That amount increased to $7,580 during the application process. (RP 455). 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,[3] and cash advances from Ermolova's personal credit cards. (Id.; RP 509-511). Bering Strait represented that, should additional funding become necessary, Ermolova could 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. (RP 456).

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 (RP 641, 1057). 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 its projected revenues would come from underwriting and M&A business activities. (RP 641). The Firm also projected

[3] 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.

"Reimbursement Revenue" and "Credit Card Revenue" (described by the Firm as cash back received from credit card purchases). (Id.). Bering Strait also provided a trial balance sheet, balance sheet, and net capital computation. Final updated balance sheets and a net capital computation were prepared on January 25, 2014. (RP 647-656).

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

1. Bering Strait's Preliminary Interview

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. (RP 673-674). 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). (Id.). Member Regulation noted that, when asked to describe her industry experience related to acting as a general securities principal, Ermolova confirmed that she had not participated in any deal fully from origination to completion. (Id.). Furthermore, Member Regulation's letter stated that, based on Ermolova's description of her work experience at the meeting, Ermolova had no 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. (Id.).

In a letter dated August 30, 2013, Bering Strait responded to Member Regulation's misgivings. (RP 675-682). 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. (RP 676). 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. (Id.). 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. (RP 677-681). 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 years of related experience necessary under NASD Rule 1014(a)(10)(D). (Id.).

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. (RP 457-476). These requests included (but were not limited to) a detailed business plan, additional financial information regarding net capital and 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 Member Regulation in a letter dated October 23, 2013, and amended its application. (RP 477-491). Specifically, in response to Member Regulation's request that Bering Strait explain its contingency plan if she is not able to pay the Firm's expenses with credit cards, the Firm opined that "Ms. Ermolova will reply [sic] on part-time outside employment to pay for Firm's expenses." (RP 491). The Firm also provided a chart documenting Ermolova's deal experience, indicating that Ermolova participated in 32 underwriting deals and 11 M&A deals.[4] (RP 2851-2856). Bering Strait also provided a chart detailing the flow of capital into to the Firm, ending on October 22, 2013, that shows the original source of the funds, the intermediary account into which the Firm placed those funds, and the final deposit into the Firm's checking account. (RP 509-511).

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. (RP 493-498). In this request, 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 work with, and, since the Firm planned to rely on the Limited Size and Resources Exception, the identities of the parties who will be responsible for reviewing the Firm's activities. (RP 494-495). The Firm updated its application and responded to Member Regulation's additional requests in a letter dated December 11, 2013. (RP 499-508). Bering Strait stated that Ermolova was still seeking part-

[4] 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 and Palladium Capital. Member Regulation thus concluded that Ermolova overstated her functions. (RP 6374-6375).

time employment but states that she was offered positions as a part-time marketing intern, part-time flyer distributor, and a freelance interpreter. The Firm also stated that Ermolova would find a person to review her activities after the broker-dealer is approved. (RP 500). In response to Member Regulation's request for information related to selling groups, the Firm vaguely offered that Ermolova has personal relationships with senior investment bankers in "almost all bulge bracket banks, and many middle market and boutique ones." (RP 499-500). The Firm represented that:

> During her work at Mid-Market Securities, LLC, National Securities Corporation, and KRD Morgan, Ltd. Maria Ermolova established business relationships with different investors that she worked with, but did not save their information separately from her Outlook e-mail account which was deleted after Maria Ermolova left these Firms. When/if Maria Ermolova starts developing relationships with investors on behalf of Bering Strait Securities, Inc., she will remember/recognize many people she worked with after looking at the investment Firm's websites and/or speaking with these people. (RP 500).

3. Bering Strait's Membership Interview

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 the requisite experience as it relates to her roles as CCO, AMLCO, FINOP, and general securities principal. (RP 6386-6387). 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. (Id.)

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. (RP 579-585). 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) (Bering Strait's application was not complete and accurate), (a)(2) (Bering Strait did not have all licenses and registrations), (a)(4) (Bering Strait failed to establish all contractual or other arrangements necessary to initiate the operations described in its business plan), (a)(7) (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), (a)(8) (Bering Strait lacked the financial controls to ensure compliance with the federal securities laws and FINRA rules), (a)(10) (Bering Strait's proposed supervisor did not have the requisite one year of direct or two years of related experience in the subject areas to be supervised), and (a)(13) (Bering Strait may circumvent, evade or otherwise avoid compliance with applicable securities laws, rules and regulations). (RP 239-248).

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. (RP 1-14). The Firm argued that Member Regulation's decision was inconsistent with the membership standards set forth in NASD Rule 1014 and complained that no one in Member Regulation read the Firm's membership application. (RP 1). Bering Strait's appeal letter laid out in specific detail why each of the reasons presented by Member Regulation should be rejected, and those reasons are nearly identical to those the Firm had been embracing throughout its back-and-forth with Member Regulation during the application process. Id.

On April 29, 2014, a Subcommittee of the NAC presided over an evidentiary hearing at which the parties presented opening and closing statements, witness testimony, and documentary

evidence. (RP 6027-6520). 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. Closing arguments were conducted telephonically on May 16, 2014. (RP 6551-6608).

After its de novo review, the NAC affirmed Member Regulation's denial of Bering Strait's New Membership Application. (RP 6613-6638). The NAC focused its decision on Bering Strait's and Ermolova's deficiencies related to three standards, holding that Bering Strait failed to demonstrate that it is capable of maintaining 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. *See* NASD Rule 1014(a)(7), (8), and (10).

III. ARGUMENT

The Commission's review of the NAC's decision is governed by Section 19(f) of the Exchange Act, which applies to proceedings to review "the denial of membership . . . in a self-regulatory organization." 15 U.S.C. § 78s(f). In accordance with that section, the Commission must dismiss Bering Strait's appeal because: (1) the specific grounds upon which FINRA based its denial "exist in fact"; (2) the action is in accordance with FINRA rules; and (3) FINRA applied its rules in a manner consistent with the purposes of the Exchange Act.[5] *Id.*; *accord*

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[5] Exchange Act § 19(f) also requires the Commission to set aside FINRA's action if it finds that the action imposed an undue burden on competition. 15 U.S.C. § 78s(f). Bering Strait does not claim that FINRA's actions imposed such a burden. In any event, "[w]hile a restriction may in theory impose a burden on competition because it limits a competitor's access to the

[Footnote continued on next page]

Leslie A. Arouh, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *25 (Sept. 13, 2010)(stating standard of review under Exchange Act § 19(f)); *Wm. J. Haberman*, 53 S.E.C. 1024, 1027 (1998) (same), *aff'd per curiam*, 205 F.3d 1345 (8th Cir. 2000) (table). For the reasons discussed below, FINRA's denial of Bering Strait's membership application meets these criteria, and the Firm's appeal should be dismissed.

A. The Specific Grounds Upon Which FINRA Denied the Membership Application Exist in Fact

1. The Firm Bears the Burden of Proving That it Meets All Admission Standards

FINRA's membership rules, the NASD Rule 1010 Series, provide a means for FINRA, through its Membership Application Program ("MAP"), to assess the proposed business activities of potential and current member firms with the ultimate goal of ensuring that each applicant is capable of conducting its business in compliance with applicable rules and regulations, and that its business practices are consistent with just and equitable principles of trade. *See FINRA Regulatory Notice 13-29*, 2013 FINRA LEXIS 41 (Sept. 2013).

NASD Rule 1014(a) delineates the 14 standards that an applicant must meet before FINRA may approve a request for admission to FINRA's membership. The applicant firm carries the burden of demonstrating that it meets each of the admission standards. *New Membership Application of Firm A*, Application No. 20090182345, 2010 FINRA Discip. LEXIS 24, at *22 (FINRA NAC Sept. 28, 2010); *see* NASD Rule 1014(a) and 1014(b). Those standards

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[cont'd]

marketplace, the issue is whether this burden is unnecessary or inappropriate, given the regulatory purpose to be served." *Sierra Nevada Sec., Inc.*, 54 S.E.C. 112, 123 (1999). Here, the regulatory purpose served by denying the Firm's application is the protection of the public interest and investors. *Id.* at 124 (denial of firm's request to modify restrictive agreement created no undue burden on competition where firm's supervisory system was inadequate and "put the public, other broker-dealers, and the market itself at risk").

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 firm meets these standards, NASD Rule 1014(a) further requires the consideration of the public interest and the protection of investors. Failure to meet any one – and only one – of these standards can be the basis for a denial.

Bering Strait cannot prove that it meets any of the three admission standards that served as the basis for the NAC's decision denying its membership application. Indeed, the record, including those documents that Bering Strait produced which purport to support the Firm's financial wherewithal, its financial controls, and the relevant work experience of Ermolova, provide no evidence that the Firm meets the requirements for FINRA membership.

2. The Firm's Failure to Demonstrate That It Is Capable Of Maintaining The Minimum Net Capital Requirement, As Required By NASD Rule 1014(a)(7), Exists in Fact

FINRA determined that Bering Strait is not capable of maintaining a minimum level of net capital – in Bering Strait's case $5,000 – 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).[6] The NAC's decision to affirm Member Regulation's denial for this standard focused on the source of the net capital and the sufficiency of the net capital to cover

[6] Exchange Act Rule 15c3-1 requires minimum net capital of $5,000 for a broker-dealer that does not receive, hold or owe customer funds or securities or carry customer accounts or trade securities other than on an agency or riskless principal basis. *See* 17 C.F.R. 240.15c3-1. In addition, Exchange Act Rule 17a-11 requires that broker-dealers notify the Commission when certain financial conditions change, including when total net capital is less than 120% of required minimum net capital. *See* 17 C.F.R. 240.17a-11.

the costs of operations. While the Firm objects to FINRA's decision to deny its application under this standard, the Firm does not dispute the essential facts.

First, the sole definite funding source of the Firm's net capital comes from credit cards. According to its application, Bering Strait was funded initially with $7,580, derived from cash advances on Ermolova's and Bering Strait's credit cards and—in a dodgy circumvention of the cash advance limits—cash withdrawals from prepaid cards purchased with Ermolova's credit cards. Ermolova initially used cash advances from her personal credit cards to fund the proposed broker-dealer. (RP 270-271). 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 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.

The record also reflects that the Firm's projected revenues and alternative funding sources are based on shaky or non-existent foundations. Ermolova has not established the requisite industry relationships to support Bering Strait's projected revenues. 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 its projected revenues would come from underwriting and M&A business activities. (RP 641). 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. (RP 483). Moreover, Bering Strait's contingency plan, if Ermolova is not able to pay the Firm's expenses

with credit card cash advances, is that she will rely "on part-time outside employment to pay for Firm's expenses." Considering that Ermolova has no such outside employment, however, this contingency plan provides no comfort.

Bering Strait makes several arguments related to this basis for denial.[7] 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." Ermolova also represents that she can borrow funds from family members and charge the Firm's registered representatives, of which there are at present none, monthly or annual fees that would cover the Firm's expenses. 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 and that the only requirement for these sources is that they are legal. Ermolova also asserts—for the first time—that she has approximately $23,000 in available credit on personal and business cards.[8] Bering Strait also maintains that the credit card cash advances

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[7] In its brief, Bering Strait accuses FINRA of "lying" or not reading the New Membership Application completely because she alleges that FINRA, at some unidentified point during the application process or the proceedings on appeal, stated that she would rely "only on her credit cards to pay all the Firm's expenses during the first 12 months of the Firm's operation." Brief at 5-6 (emphasis added). But the NAC's decision does not make that assertion. Instead, the NAC's decision acknowledges that Ms. Ermolova, in conjunction with the use of credit cards, proffered that she would take on a part-time job or borrow funds from her family to support the Firm.

[8] The amount of available credit that the Firm represents in its opening brief that it has is more than the Firm possessed during the application process. However, this purported increase in available unsecured credit does not assuage FINRA's concerns.

are Ermolova's personal debt and not that of the Firm.[9] These arguments miss the mark and evidence a lack of comprehension of the importance of a firm's net capital.

As an initial matter, FINRA is entitled to deference in its interpretation and application of its rules. *See Heath v. SEC*, 586 F.3d 122, 138-39 (2d Cir. 2009) (noting deference accorded to SRO's in interpreting their rules). FINRA serves as gatekeeper, evaluating the qualifications of proposed firms against the 14 delineated standards for membership. Such an evaluation requires the exercise of professional expertise and judgment that often involves analysis that extends beyond the strictures of the text of a particular rule.

FINRA acknowledged that NASD Rule 1014 does not specifically state what could be considered appropriate sources of capital, but 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 potentially fund the Firm in the future demonstrates a lack of the financial wherewithal necessary for FINRA membership. Relatedly, Ermolova's inability to provide FINRA with a legitimate course of action should the Firm be unable to use or access its unsecured credit is disturbing – a part-time job, hypothetical or otherwise, or borrowing money from family, are not reliable resources.

Indeed, the Firm's proposed funding sources are inconsistent with the purposes of the net capital rule. 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 F. App'x 31 (2d Cir. 2011) (internal quotations omitted). The Commission has noted that "[e]nsuring compliance with the

[9] Even if Ermolova planned to pay for the Firm's expenses, however, that did not permit the Firm to exclude them from its liabilities. *See* III.A.3 *infra*.

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. Thus, the fact that the assets must be liquid is of critical importance to the success of the rule.[10] Available credit on an unsecured credit card is not an asset, let alone a liquid one, and converting that credit to cash does not change that fact.

The mere fact that the Firm cannot comprehend why FINRA is concerned about the source of its net capital and reads NASD Rule 1014(a)(7) in a cramped and inflexible fashion in itself provides color to the Firm's shortcomings. Bering Strait's funding sources are "inherently problematic, and the [its] current capitalization is insufficient to meet the Standards for approval." (RP 240). The use of unsecured credit, as well as possibly obtaining part-time employment to capitalize the business and fund it for the first 12 months, exposes the Firm to serious financial complications and could result in the Firm falling below its net capital requirement. Therefore, the Firm's lack of reliable, liquid funding exists in fact and is well-supported by the record.

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[10] In its brief, the Firm states that it included the Macy's store credit card as part of its 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." Brief at 14. Statements such as this should give the Commission pause – as it provides additional support for FINRA's concerns that Bering Strait will continue to monetize debt, and department store credit, and further undermines the Firm's argument that it has net capital adequate to support the Firm's intended business operations on a continuing basis.

3. The Firm's Failure to Demonstrate That It Possesses the Requisite Financial Controls, As Required By NASD Rule 1014(a)(8), Exists in Fact

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. The NAC found that there were a number of financial control deficiencies in Bering Strait's membership application, aside from the Firm's interrelated net capital issues, including an inaccurate balance sheet, inaccurate net capital computation, incomplete financial projections, and financial management issues that warranted a denial of the application. All exist in fact.

FINRA properly concluded that Bering Strait's balance sheet was inaccurate. The balance sheet reflected total liabilities of $1,360 comprised of the Firm's credit card debt, but it failed to also include the Firm's office rent. Likewise, 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. The Firm presented a net capital amount of $7,580. When factoring in the incorrectly calculated owner's equity derived from the balance sheet however, the net capital was actually only $5,792, falling below the early warning requirements of Exchange Act Rule 17a-11. (RP 653-656).

The record also demonstrates deficiencies with the Firm's financial management. Bering Strait's plan to pay a portion of the fixed expenses using the Firm's credit card 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 and, if anything, would likely increase the Firm's total liabilities, due to interest charges. And as explained above, the Firm's proposed reliance on cash advances from credit cards and

Ermolova's undefined part-time jobs—along with its absurd plan to raise funds by re-selling consumer goods purchased at Macy's—to maintain its required net capital is very precarious and relies on sources of money that may not actually be available.

On appeal, Bering Strait makes numerous arguments concerning the adequacy of its financial controls and the accuracy of the documents submitted to FINRA, but these arguments fall flat when evaluated against information contained in the record. Bering Strait argues that its balance sheets, net capital calculations, and projections of monthly income and expenses were all accurate and in any event merely illustrative of the Firm as it will exist in the future. Bering Strait contends that the Firm's balance sheet was accurate because Ermolova paid for all the Firm's expenses herself and that the Firm did not have any liabilities. Brief at 13. This is incorrect. Under Exchange Act Rules17(a)(1) and (2), a broker-dealer must record all expenses related to its business, regardless of whether the liability is joint or several or a third party (in this case, Ermolova) has agreed to pay the expense. This requirement applies even if an expense is not required to be recorded under generally accepted accounting principles ("GAAP") or whether the expense is considered a liability for net capital purposes. Expenses include all costs for which a broker dealer derives a direct or indirect benefit and all expenses for which it would be responsible if another party had not agreed to pay them (e.g., rent, telephone, copy services, etc.). *See NASD Notice to Members* 03-63, 2003 NASD LEXIS 76, at *4 (Oct. 2003).

In its brief, the Firm also focuses on its accounting for its lease agreement obligations. The Firm maintains that, with respect to the Firm's office lease, FINRA erred in calculating rent as a liability because the lease agreement was month-to-month after an initial three-month period

and that the Firm's future hypothetical rent was not a missing liability.[11] Brief at 8. Regardless of whether the lease was a term lease or month-to-month, Bering Strait was still subject to the terms of a lease that required written notice to terminate, a notice that is not in the record.[12] (RP 982). Moreover, the Firm includes rental expense in its Projection of Monthly Income and Expenses. RP 641. The incongruity between this document (which included rental expenses) and the balance sheet (which did not), whether intentional or negligent, exists in fact and supports FINRA's denial.

The Firm also believes that its net capital computation, which was one line and simply stated the amount of cash in the Firm's checking account, was accurate because Ermolova paid for the Firm's expenses herself. However, even if Ermolova planned to pay for the Firm's expenses, that did not permit the Firm to exclude them from its liabilities. Attempts to enhance the Firm's financial position are misleading, since the liabilities still exist.

The Firm also argues that the issue of accounting for credit card cash back was not mentioned by FINRA during its membership interview or in the decision letter and states that it was "included in income section because there are different ways to receive it including cash deposit into a bank account." Brief at 14. This argument misses the mark. First, FINRA is not obligated to point out each and every error contained in Bering Strait's New Membership Application. Furthermore, regardless of where the "cash back" is put, it is still not "income," but

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[11] The Firm also contends that should it not be able to pay rent, the Firm can operate from a residential address. Brief at 6. Again, this representation only further supports FINRA's concerns about the precarious financial condition of the Firm. If the Firm cannot pay approximately $350 a month in rent without falling below net capital, it is not at present financially sound enough to be granted FINRA membership.

[12] Ermolova stated 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. (RP 472).

rather an incentive program operated by credit card companies where a percentage of the amount spent is paid back to the card holder. The Firm has failed to provide any GAAP standards or FASB statements which could support its cash back accounting claim. Moreover, Bering Strait's attempt to place it in the same category as the flow of cash or cash-equivalents received from employment, investment capital, or other proceeds serves as further evidence of how thinly funded the Firm is and the weakness of its financial controls. Therefore, it is evident that in light of the issues with the Firm's financial documents and its overall funding plan, the Firm has failed to demonstrate that it has the financial controls required by NASD Rule 1014(a)(8).

4. The Firm's Failure to Demonstrate That Ermolova Possesses the Requisite Experience, As Required By NASD Rule 1014(a)(10), Exists in Fact

NASD 1014(a)(10) requires that the proposed firm 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). In addition, the rule requires that "each Associated Person identified in the business plan to discharge a supervisory function has at least one year of direct experience or two years of related experience in the subject area to be supervised." NASD Rule 1014(a)(10)(D). FINRA 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. Based on the facts as they exist in the record, it is clear that Ermolova does not possess the requisite amount of compliance or financial operations experience to act as the Firm's supervisor. Bering Strait has time and time again exhaustively laid out the facts that it believes support Ermolova's qualifications to serve as its FINOP, CCO, and AMLCO. While FINRA does not dispute Ermolova's resume, her experience

is inadequate. Ermolova has never served in any financial operations or compliance role or capacity. To permit someone with Ermolova's lack of experience, both as it relates to her proposed supervisory activities and her investment banking activities in general, to serve as the FINOP, the CCO, or the AMLCO poses a risk to the investing public, the securities markets, other member firms and Bering Strait itself.[13]

a. FINOP

The record amply supports FINRA's finding that Ermolova did not have either one year of direct experience or two years of related experience in the areas that a FINOP supervises.

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 at National Securities Corporation for two months, and assorted intern roles held for brief periods of time. Ermolova points to her Independent Contractor employment agreement with Mid-Market Securities, which purports to show her responsibilities for hiring, engaging, supervising, firing and training employees, other independent contractors and/or other agents; compliance with applicable laws; and maintaining all required books and records in connection with the independent contractor business. (RP 67-82). Ermolova goes on to state that the Mid-Market Securities employment agreement "says . . . I had 'complete financial responsibility' for the costs of operating my independent contractor

[13] 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 to support her business model. For example, Ermolova provided a chart purporting to show that, in a little over two years with Mid-Market Securities, National Securities Corporation, and Palladium Capital Advisors, she meaningfully participated in 32 underwriting deals, 18 of which she originated, and 11 M&A deals, eight of which she originated. (RP 2851-2856). Ermolova's earnings records, however, indicate that during this time period, she earned only approximately $8,500. Because of the apparent incongruity between the number of deals and the income generated during that time, the NAC found Ermolova's salary to be the more reliable indicator of the depth of her experience.

business" and points to specific examples, including her own books and records, reports, budgets, client fees, travel, insurance, taxes, and paying utilities and FINRA registration fees. (RP 8); Brief at 10. Bering Strait also maintains that she worked with Mid-Market Securities' FINOP and became "familiar with the structures and required data of the FOCUS reports and net-capital computations for different years and filed by the firm." Brief at 10.

Regardless of all this purported experience, Ermolova testified that she has never had experience signing an annual audit report for a broker-dealer, never filed a broker-dealer FOCUS report, and never participated in the creation or filing of any financial reports. (RP 248-252). Yet the accurate preparation and filing of these financial reports is central to a FINOP's responsibilities.

While Ermolova has the Series 28 License, which is a required qualification to serve as FINOP, Ermolova's underlying experience does not support her ability to carry out the role in accordance with NASD Rule 1014(a)(10). In her past work experience, Ermolova did not have any direct or related responsibilities in financial operations and 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 discussed above in III.A.3.

The FINOP plays vital role in ensuring investor protection by being responsible for the Firm's compliance with applicable net capital, recordkeeping and other financial and operational rules. Indeed, NASD Rule 1022 outlines a FINOP's specific duties, which include final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such

reports are derived; supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Securities Exchange Act of 1934 (Exchange Act); and overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations. *See* NASD Rule 1022(b).

Excluding the supervisory responsibilities, which the Firm admits that Ermolova has no experience with, as the proposed FINOP, Ermolova does not have any related experience with the other requirements of NASD Rule 1022(b). Notably, she admits to having never prepared or filed a financial report to a regulatory body. Rather, 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 financial operations experience is required on top of her insufficient related experience fully supports FINRA's denial pursuant to NASD Rule 1014(a)(10).

b. CCO/AMLCO

FINRA also correctly found that Ermolova does not meet the experience requirements to carry out her roles as CCO or AMLCO.

The Firm represents that Ermolova has observed other employees at her prior firms, possesses an overall knowledge of rules and regulations, and has read relevant written supervisory procedures. Ermolova represents that she gained related supervisory experience at Mid-Market Securities where, although she was neither registered nor qualified to serve as a general securities principal, she purportedly oversaw the other bankers she worked with and noted whether they were compliant with applicable securities rules and regulations.

In addition, Bering Strait relies on a document that lists the types of activities outlined in the Firm's proposed written supervisory procedures, explains how Ermolova has experience at her prior firms engaging in each of these activities, and argues how this experience qualifies her to be a CCO/AMLCO. (RP 683-692.) 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.). (RP 683).

When asked about this experience at the hearing, however, 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. (RP 6208-6210). 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 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. (RP 684).

Ermolova maintained 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 the compliance by the other investment bankers with whom she worked on deals. (RP 684-686).

Despite these assertions, the Firm produced no evidence of any such real experience apart from Ermolova's self-serving statements.[14] Regardless, 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. Indeed, given Ermolova's exaggerated description of her deal involvement, the Firm has not provided a reliable basis for even determining the amount of time she was involved in activities requiring compliance with FINRA rules. Ermolova's experience is insufficient to satisfy the requirements of NASD Rule 1014(a)(10) and poses a risk to the investing public, the securities markets, other member firms, and Bering Strait itself.

B. FINRA's Denial of Bering Strait's New Membership Application Was Conducted in Accordance with FINRA's Rules

1. The New Membership Application Process Was Consistent With NASD Rules Governing Membership Proceedings

FINRA's membership process was conducted in accordance with its rules. 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.

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[14] Bering Strait relies on *Sierra Nevada Sec., Inc.*, 54 S.E.C. 112 (1999) to support the proposition that she has enough experience to serve as the Firm's sole supervising employee. There, the Commission affirmed NASD's finding that neither proposed supervisor possessed the requisite one year of market making experience or, in the alternative, two years of indirect experience related to market making. The Commission's conclusion, however, was fact specific. The findings in *Sierra Nevada* have no bearing on whether Ermolova has enough related experience to serve as a FINOP or CCO.

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. *See* NASD Rule 1013(a)(4) & (b). In accordance with NASD Rule 1014(b) and (c), Member Regulation assessed whether the Firm met each of the standards for admission and issued a written decision that explained in detail the reasons for denial. The Firm appealed to the NAC. The NAC Subcommittee held an evidentiary hearing during which the parties presented their arguments to the Subcommittee. In accordance with NASD Rule 1015(j), the NAC issued a decision that provided a rationale that referenced the applicable standards for admission. All rules were followed.

2. The New Membership Application Proceeding Was Consistent With FINRA's Procedural Rules

The Firm makes numerous accusations that its application was not read and that FINRA failed to provide a fair membership application procedure. These arguments lack merit. Even assuming, *arguendo*, that a procedural rule was not followed, any related error was entirely harmless.

First, the Firm argues that Member Regulation violated FINRA's rules when it failed to discuss in detail the standards of membership and the Firm was not given an opportunity to provide FINRA additional insight during the interview and "refused to listen to [Ermolova] or accept updated financial information, and acted as if they had already decided to deny my application." Brief at 25-26. The Firm also argues that topics listed on the membership interview checklist were in fact not discussed during the interview and that Member Regulation attempted to coerce the Firm in signing the checklist even though not everything was discussed.

These arguments have no support. There is no evidence in the record that the Firm was coerced into signing a checklist. Nor is there evidence in the record showing that Member

Regulation refused to consider the revised financial statements that Ermolova offered during the interview. As to whether FINRA should have provided additional insight as to its concerns with Bering Strait's application and the Firm's perception that FINRA had already decided to deny its application, FINRA could not have been any more forthcoming about the issues it had with Bering Strait's application. A mere two weeks after the Firm filed its application, FINRA asked Ermolova to come to FINRA's office for a preliminary discussion of FINRA's concerns with the application, specifically, concerns about the Firm's net capital and Ermolova's experience. Over the course of the next five months, FINRA worked with the Firm, seeking out additional information and documentation to support the Firm's application, while continuing to voice its concerns. As the NAC has noted:

> The new membership application process allows for some flexibility in an application. Member Regulation can raise concerns with an applicant's proposal, and an applicant can attempt to satisfy such concerns in response. Such flexibility ensures that applicants for membership receive a fair opportunity to hone an application to demonstrate that it can operate in a manner consistent with the public interest and the protection of investors.
>
> *New Member Application of Applicant Firm*, Application No. 20090196759, at 12-13 (FINRA NAC Dec. 2010)[15]

Member Regulation worked as best as it could with a Firm that had provided a fatally flawed application, and gave the Firm every opportunity to amend its application to assuage FINRA's well-chronicled concerns. The Firm was unable to do so and thus its application was denied.

The Firm also represents that Joseph Sheirer accused the Firm of money laundering and threatened to file a suspicious activity report against the Firm and that this "seems to have been one of the deciding factors behind that denial of [the] application." Brief at 26. The Firm maintains that this violates NASD Rule 1014(c)(2)'s requirement that a decision denying an

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[15] http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p125380.pdf (last visited February 4, 2015)

application "shall explain in detail the reason for denial, referencing the applicable standard or standards." FINRA, however, did provide the Firm a denial letter that comports with NASD Rule 1014(c)(2). Member Regulation's denial relied on the type of funds used to capitalize the Firm, not the method of deposit. Furthermore, the NAC in its de novo review expressly stated that it did not rely on Sheirer's testimony with respect to this issue in its consideration of the appeal or as a basis for the decision.[16] (RP 6633-6634).

The Firm also accuses FINRA of using information contained on Ermolova's CRD to deny the Firm's application and failing to provide the Firm with a copy of the CRD during the membership interview, in violation of NASD Rule 1013(b)(7).[17] Again, this argument is misplaced. Member Regulation did not rely on information contained in Ermolova's CRD to deny the Firm's application, it simply used the CRD to corroborate the representations that the Firm made in its application concerning Ermolova's employment history. (RP 673). Furthermore, it is clear from reading Member Regulation's decision that the decision to deny was based on the Firm's application alone and no other outside factors.

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[16] The Firm makes a related argument about other portions of hearing testimony provided by Danby and Sheirer that the NAC also explicitly stated it did not rely on to render its decision. Brief at 27. Therefore, the Firm's arguments are moot.

[17] NASD Rule 1013(b)(7) states that:

> During the membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

Finally, the Firm again raises the same procedural arguments that it made before the NAC, including the delay in communicating the identities of the subcommittee members,[18] Member Regulation's failure to initially transmit a complete copy of the record to the NAC at the outset of the appeal, the fact that the hearing was held five days outside the 45-day requirement of NASD Rule 1015(f)(1), and that the closing arguments were not heard until two weeks after the hearing. The Firm argues generally that these issues resulted in a biased and prejudiced review of its application and further delay of the appeals process. The Firm, however, waived the 45-day requirement by agreeing to the hearing date and subsequent participation, and never voiced any objections, until this appeal, to the timing of the closing arguments. Furthermore, the timing of the hearing and closing argument did not delay consideration of the Firm's appeal. The Subcommittee has 60 days after the hearing to present its recommended decision to the full NAC. *See* NASD Rule 1015(i). The NAC, in turn, presents its decision to FINRA's Board of Governors. If the Board of Governors does not call the matter for review, the decision is then released. *See* NASD Rule 1015(i) & (j). The NAC and the Board of Governors typically consider membership appeals during meetings scheduled months apart and far in advance. Even if the hearing and closing arguments had been held within 45 days after the Firm's appeal, the NAC and the Board of Governors would not have considered the Firm's appeal any earlier. Thus, the timing of the hearing and closing arguments in this matter had no effect on when the Firm received FINRA's final action on its application and caused the Firm no prejudice.

[18] The identification of the Subcommittee members prior to the hearing was merely a professional courtesy and not part of the rules. In any event, the names of the Subcommittee members could not be released until their appointment was approved by the NAC's Review Subcommittee. *See* NASD Rule 1015(d).

FINRA acted consistently with its rules governing the application process and subsequent appeal.[19] Bering Strait failed to demonstrate that it meets the standards of NASD Rule 1014(a)(7), (8), and (10). FINRA's decision to deny the application based on these standards was wholly consistent with its rules. The inconvenient truth for the Firm is that the denial of the Firm's membership application does not reflect any procedural shortcomings or that the Firm's application was not given proper consideration, but rather that the Firm put forward an extremely weak application that failed to meet FINRA's membership standards. FINRA expressly considered each of the facts associated with the particular standard at issue, and its opinion set forth the reasons for its determination to deny the NEW MEMBERSHIP APPLICATION.

C. FINRA Applied Its Rules in a Manner Consistent With the Purposes of the Exchange Act

FINRA's denial of the Bering Strait's membership application is fully consistent with several purposes of the Exchange Act. FINRA's denial protects the public interest, protects investors, and precludes persons who lack the necessary experience or firms that lack the necessary net capital and financial controls from participating in a securities business. Section 15A(b)(6) of the Exchange Act requires that FINRA have rules that are "designed to. . . promote just and equitable principles of trade . . . [and] protect investors and the public interest." Section 15A(g)(3)(A) of the Exchange Act provides, in pertinent part, that a registered securities association "may deny membership to . . . a registered broker or dealer if (i) . . . such broker or dealer or any natural person associated with such broker or dealer does not meet such standards

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[19] The decision by the NAC to focus its decision on the three most striking deficiencies in Bering Strait's application was not, as Bering Strait complains, because the NAC was cutting corners or shirking responsibility, but rather because there were so many issues with the proposed Firm that focusing on three of the most startling shortcomings was prudent. NASD Rule 1015(j)(2) states that the NAC's decision shall address the "principal issues" and does not require an exhaustive exposition of every issue flagged in a deficient application.

of training, experience, and competence as are prescribed by the rules of the association." That section further provides that a securities association "may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant." 15 U.S.C. § 78o-3.

FINRA acts consistent with such statutory provisions by evaluating membership applications pursuant to the membership procedures in the NASD Rule 1010 Series, including the 14 admission standards contained in NASD Rule 1014. Indeed, the Commission has expressly found that those rules and admission standards are "consistent with the [Exchange] Act." *See Order Approving Proposed Rule Change,* 62 Fed. Reg. 43385, 43398-43400 (Aug. 13, 1997).

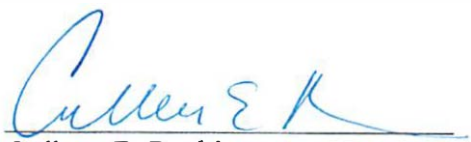
Not only are FINRA's rules consistent with the Exchange Act, so was FINRA's application of those rules here. The Firm's proposal was blatantly inconsistent with the public interest and the protection of investors. The intractable problem is that the Firm proposed to be owned and operated solely by someone who uses personal unsecured credit and part-time work to fund the Firm and who lacks enough experience to own and operate her firm in a manner that satisfies the rules. The Commission has upheld FINRA's membership denial in similar circumstances. *See, e.g., Sierra Nevada*, 54 S.E.C. at 115-16, 122 (finding that denial of request to modify restrictive agreement was consistent with the Exchange Act where the Firm had an inadequate system of supervision, and also stating that "[t]he Exchange Act recognizes the importance of establishing and enforcing standards of training and experience for broker-dealers and their personnel"); *Monroe Parker Sec.*, 53 S.E.C. 155, 160-61 (1997) (denial of request to increase the number of representatives was consistent with the Exchange Act where there was evidence of a "lack of adequate supervision and . . . deficiencies in [the Firm's] compliance

procedures"). Denying Bering Strait's New Membership Application is fully consistent with the Exchange Act.

IV. CONCLUSION

The Firm failed to demonstrate that it satisfied all admission standards, FINRA's proceeding was in accordance with its rules, and FINRA applied its rules in a manner that is consistent with the purposes of the Exchange Act. Denying the Firm's application—where the Firm has failed to demonstrate that it is capable of maintaining adequate net capital, that it maintains sufficient financial controls, or that it has an adequate supervisory system as required by FINRA's membership standards—is consistent with the public interest and the protection of investors. The SEC should sustain FINRA's denial of the Firm's new membership application.

Respectfully submitted,



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Dated: February 9, 2015

FINRA

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February 9, 2015

VIA MESSENGER

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

RE: In the Matter of the Application for Review of Bering Strait Securities, Inc., Administrative Proceeding No. 3-16262

Dear Mr. Fields:

Enclosed please find the original and three copies of the Brief of FINRA In Opposition To Application for Review in the above-captioned matter.

Please contact me at [redacted] if you have any questions.

Very truly yours,

Colleen Durbin, Esq.

cc: Maria Ermolova

Enclosures