BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

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The Association of Bret M. Shapiro
With Dawson James Securities, Inc.

For Review of Denial of Registration by

FINRA

File No. 3-16933

FINRA'S BRIEF IN OPPOSITION TO MOTION FOR STAY

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I. INTRODUCTION

Bret M. Shapiro willfully failed to disclose five federal tax liens filed against him between September 2010 and September 2012, which totaled more than $631,000. In October 2013, Shapiro entered into a settlement with FINRA to put these disclosure failures behind him, and as a result FINRA suspended Shapiro for three months, fined him $5,000, and he became statutorily disqualified from participating in the securities industry.

Shapiro, however, was not completely forthcoming regarding his undisclosed judgments and liens. Indeed, and unbeknownst to FINRA at the time of the October 2013 settlement, Shapiro had also failed to disclose four additional judgments and liens filed against him covering a variety of debts (the "Additional Judgments and Liens"). Shapiro had knowledge of each of these debts, some of which remained undisclosed for years, yet he failed to timely disclose them and failed to inform FINRA of these additional matters at the time he settled his misconduct

related to the five undisclosed federal tax liens. FINRA and the investing public only became aware that Shapiro's financial problems ran deeper than he previously disclosed beginning in early 2014, when he finally began disclosing the Additional Judgments and Liens (after FINRA had notified Shapiro's firm of one of the liens).

Around this same time, Dawson James Securities, Inc. (the "Firm") filed a Membership Continuation Application (the "Application") seeking to permit Shapiro to continue to associate with the Firm. After a hearing on the matter, FINRA's National Adjudicatory Council ("NAC") denied the Application.[1] The NAC found that Shapiro engaged in serious additional misconduct by failing to disclose the Additional Judgments and Liens—misconduct identical to the misconduct underlying Shapiro's disqualifying event. The NAC was "troubled that even after entry of the October 2013 AWC, Shapiro continued to omit important information from his Form U4" notwithstanding his actual knowledge of the Additional Judgments and Liens. Decision at 18.

The NAC further found that Shapiro's numerous disclosure failures demonstrated a pattern of disregard for his obligations under FINRA's rules and "raise serious doubts that he is able, or willing to comply with securities rules and regulations." Decision at 18. Although the NAC concluded that Shapiro's disclosure failures were "sufficiently egregious on their own to warrant denial of the Application," it found further that the Firm's disciplinary and regulatory history and Shapiro's proposed supervisor's time constraints and limited experience with a portion of Shapiro's business activities further supported denial. Decision at 18-20. The Firm

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[1] A copy of the NAC's September 29, 2015 decision is attached as Appendix A. References to the NAC's decision will be cited as "Decision at ___."

appealed the NAC's decision, and currently requests that the Commission stay the decision and permit Shapiro to continue working at the Firm pending resolution of this appeal.

The Commission should deny the Firm's stay request because it has not demonstrated that such extraordinary and drastic relief is warranted. First, the Firm has not demonstrated that it has a strong likelihood of success on the merits of its appeal. Indeed, the Firm's primary argument that it is highly likely to succeed on appeal—that the NAC's denial imposed upon Shapiro punitive sanctions that are excessive and oppressive—is factually and legally baseless. The NAC's denial did not impose any sanction or penalty upon Shapiro, and the Commission has repeatedly emphasized that FINRA's denial of a statutory disqualification application does not impose a sanction or penalty upon a disqualified individual.

Second, and equally without merit, are the Firm's claims that the Firm and Shapiro will suffer irreparable harm if a stay is not granted (because they are at risk of losing Shapiro's customer base and all resulting revenue) and that imposing a stay would not result in substantial harm to other parties (as evidenced by FINRA permitting Shapiro to work pending the statutory disqualification proceedings). It is well established that an applicant's financial or economic detriment does not rise to the level of *irreparable* harm necessary to grant a stay. Further, the NAC found that permitting Shapiro to continue to associate with the Firm would harm the investing public. The Firm attempts to gloss over the fact that Shapiro repeatedly disregarded his disclosure obligations and ignores the NAC's serious concerns that he is unwilling or unable to comply with securities rules and regulations, concerns that would be amplified if Shapiro continues to work pending resolution of this appeal.

Finally, the Firm argues that a stay would serve the public interest by permitting Shapiro to continue to service his customers who rely upon him for financial advice and that Shapiro's

lack of any customer complaints (at least while employed at the Firm) demonstrates that the public will not be harmed if he is permitted to continue to work during this appeal. The Commission has previously rejected similar arguments, and the NAC found that Shapiro's continued association with the Firm presented an unreasonable risk of harm to the market and investors notwithstanding that he has not recently been the subject of customer complaints. For all of these reasons, FINRA urges the Commission to deny the Firm's request.

II. FACTUAL BACKGROUND

A. Shapiro's Willful Failure to Disclose Federal Tax Liens

Shapiro is statutorily disqualified because he willfully failed to update his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to reflect five federal tax liens totaling approximately $631,180 that were filed against him between September 2010 and September 2012 (collectively, the "Pre-September 2012 Tax Liens"). Decision at 2. Shapiro testified that the Pre-September 2012 Tax Liens resulted from his failure to file federal tax returns in 2004, 2005, 2006, 2007, and 2009, and that he subsequently "buried [his] head in the sand" when he began receiving correspondence from the IRS.[2] Decision at 2. Shapiro eventually amended his Form U4 in November 2012 to reflect the Pre-September 2012 Tax Liens, and he learned that FINRA was investigating his failures to disclose the Pre-September 2012 Tax Liens around April 2013.[3] Decision at 18. Pursuant to a Letter of Acceptance, Waiver

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[2] The subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee empaneled to hear this matter found that Shapiro's testimony on various points, including his communications with the IRS, was at times confusing and contradicted by documents in the record. Decision at 2.

[3] Question 14.M of Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" Article V, Section 2(c) of FINRA's By-Laws requires that an associated person keep his Form U4 current at all times and to update information on the Form U4 within 30 days. Further, FINRA Rule 1122 states that, "[n]o member or person associated with a member shall file with

[Footnote continued on the next page]

and Consent dated October 29, 2013 (the "October 2013 AWC"), FINRA suspended Shapiro for three months and fined him $5,000 for his failures to disclose the Pre-September 2012 Tax Liens. Decision at 2.

B. Shapiro's Additional Undisclosed Judgments and Liens

In addition to the Pre-September 2012 Tax Liens, various parties filed the Additional Judgments and Liens against Shapiro. Decision at 4-5. They consist of the following:

- A November 2004 judgment against Shapiro in the amount of $3,250 for an unpaid credit card debt. Shapiro testified that he satisfied this debt in 2007, although while the debt was due and owing it was never disclosed on Shapiro's Form U4. Shapiro finally disclosed this debt on his Form U4 in November 2014.[4]

- A July 2006 judgment against Shapiro in the amount of $3,489 for an unpaid credit card debt (unrelated to the debt underlying the November 2004 judgment). Shapiro testified that he satisfied this debt in 2007, although while the debt was due and owing it was never disclosed on Shapiro's Form U4. Shapiro finally disclosed this debt on his Form U4 in November 2014.

- A November 2008 lien against Shapiro in the original amount of $2,569 for unpaid homeowners' association maintenance fees and interest. This debt increased to more than $27,000 until Shapiro eventually paid it in April 2013. Shapiro finally disclosed this lien on his Form U4 in February 2014.

- An October 2012 federal tax lien against Shapiro in the amount of $34,220. Shapiro disclosed this outstanding lien 18 months late, in April 2014.

Shapiro has never disputed that these judgments and liens existed. Nor does he dispute that he had notice of each judgment and lien prior to entering into the October 2013 AWC, and

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[cont'd]
FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

[4] Although Shapiro testified that he satisfied this debt in 2007, his Form U4 implies that this debt was discharged in August 2014 as a result of his personal bankruptcy filing. Decision at 4.

he admitted that he did not bring any of the Additional Judgments and Liens to FINRA's attention when he was negotiating the October 2013 AWC. Decision at 4. In fact, Shapiro was in the process of resolving at least one lien (filed by his homeowners' association) around the same time that he learned FINRA was investigating him for failing to disclose the Pre-September 2012 Tax Liens. Decision at 4-5.

C. Shapiro's Employment History

Shapiro first registered in the securities industry as a general securities representative (Series 7) in November 1989. Decision at 3. He qualified as a general securities principal (Series 24) in September 2008. Decision at 3. Shapiro joined the Firm in February 2008, and at the time of the hearing he served as head of the Firm's Syndicate Department.

Shapiro was associated with the Firm at the time he entered into the October 2013 AWC and became statutorily disqualified. He remained employed by the Firm throughout the entire time that the Application remained pending.[5]

D. Shapiro's Regulatory History and Customer Complaints

In March 1992, Shapiro agreed to a consent order to settle claims by Iowa's Division of Securities that he violated Iowa law by soliciting and selling securities to an Iowa resident without being appropriately registered to do so. Iowa censured Shapiro and fined him $1,000. Decision at 4.

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[5] FINRA has long followed the practice of allowing a person, such as Shapiro, who becomes statutorily disqualified while employed in the securities industry to remain in the industry until he has had the opportunity for a hearing and FINRA's MC-400 application process has been completed. *See* FINRA By-Laws, Art. III, Sec. 3(c). Pursuant to this practice, and after Shapiro served his three month suspension pursuant to the October 2013 AWC, he continued his employment with the Firm while the Application remained pending.

Moreover, several customers have filed complaints against Shapiro. In May 1997, a customer filed a complaint against Shapiro alleging unsuitable recommendations, failure to supervise, misrepresentations, and breach of fiduciary duties. The customer sought $135,000 in damages. The matter was settled for $130,000, with Shapiro contributing $15,000 to the settlement. Decision at 4.

In March 1999, customers filed a complaint against Shapiro alleging that he churned the customers' account and traded without authorization. The customers sought more than $1 million in damages. This matter was settled for $250,000, with Shapiro contributing $5,000 to the settlement. Decision at 4.

In July 1999, a customer filed a complaint against Shapiro alleging that he charged excessive commissions. The customer sought $98,000 in damages. This matter was settled for $80,000, and Shapiro did not contribute personally to this settlement. Decision at 4.

III. PROCEDURAL HISTORY

The Firm filed the Application on February 27, 2014, seeking to continue to employ Shapiro as a general securities representative and general securities principal. Decision at 1. Member Regulation recommended that the Application be denied. Decision at 14. The Hearing Panel conducted a hearing on April 8, 2015. Shapiro, his proposed supervisor, and the Firm's president testified at the hearing. Based upon comments and questions raised by the Hearing Panel at the hearing, the Hearing Panel permitted the Firm to submit an amended heightened supervisory plan after the hearing. The Firm did so, and also offered to limit Shapiro's activities to that of a general securities representative (and not a general securities principal). Decision at 10, 20.

In a decision dated September 29, 2015, the NAC denied the Application and determined that Shapiro's continued association with the Firm presented an unreasonable risk of harm to the markets or investors. Decision at 16. First, the NAC concluded that Shapiro engaged in additional misconduct by failing to disclose the Additional Judgments and Liens, which were unknown to FINRA at the time of the October 2013 AWC. Decision at 16-18. The NAC was "troubled that even after entry of the October 2013 AWC, Shapiro continued to omit important information from his Form U4." Decision at 18. It found that Shapiro had actual knowledge of the Additional Judgments and Liens well before entry of the October 2013 AWC, and for years he deprived his customers and the public of important information concerning his personal financial difficulties. Decision at 18. The NAC concluded that "Shapiro's continuous neglect with respect to his disclosure obligations raise serious doubts that he is able, or willing, to comply with securities rules and regulations" and exhibited a pattern of misconduct. The NAC determined that Shapiro's disclosure failures by themselves were sufficiently egregious to warrant denial of the Application. Decision at 18. The NAC also thoroughly rejected, pursuant to Commission precedent, the Firm's argument that it should not consider the Additional Judgments and Liens when assessing the Application because they existed prior to the October 2013 AWC (and certain of the judgments and liens were satisfied prior to the October 2013 AWC). Decision at 17.

Second, the NAC held that the Firm's disciplinary and regulatory history further supported its denial. Decision at 19. The NAC found that the Firm's most recent regulatory history "relates directly to problems with the Firm's supervisory systems and controls, its failure to detect red flags in several areas, and deficient email reviews." Decision at 19. It further found that even though the Firm knew that FINRA was investigating Shapiro for disclosure violations

in April 2013, the Firm did not learn of at least one of the Additional Judgments and Liens until FINRA informed the Firm of it in January 2014. Decision at 19.

Third, the NAC had concerns that Shapiro's proposed supervisor, Rebecca Belicek, did not have sufficient time to stringently supervise Shapiro. Decision at 19. The NAC found that Belicek already supervised 28 registered representatives and had extensive supervisory duties with respect to these individuals. Decision at 19-20. It further found that Belicek also supervised three other branch managers in various locations, and that the heightened supervisory plan imposed upon her additional supervisory responsibilities. Finally, the NAC questioned—based upon Belicek's own testimony—whether she had sufficient experience with the Firm's syndicate activities, which comprised a material portion of Shapiro's activities and revenues. Decision at 20.

On October 28, 2015, the Firm appealed the NAC's denial and filed its Motion to Stay.

IV. ARGUMENT

The Commission should deny the Firm's request to permit Shapiro to work at the Firm pending the Commission's review of this appeal. The NAC carefully considered that Shapiro engaged in a troubling pattern of ignoring his disclosure obligations under FINRA's rules, as well as the Firm's problematic regulatory history and its concerns with Shapiro's proposed supervisor. The NAC appropriately concluded that Shapiro's continued participation in the securities industry would present an unreasonable risk of harm to the market or investors. The Firm has not satisfied its high burden to show that a stay of the NAC's decision is appropriate, and FINRA urges the Commission to deny the Firm's request.

A. The Standard for Considering a Request to Stay

"[T]he imposition of a stay is an extraordinary and drastic remedy," and the moving party has the burden of establishing that a stay is appropriate. *William Timpinaro*, Exchange Act Release No. 29927, 1991 SEC LEXIS 2544, at *6 & nn.12, 13, & 14 (Nov. 12, 1991). In balancing the harms that would result from the grant or denial of a stay, the Commission requires that an applicant establish four criteria: (1) a strong likelihood that he will prevail on the merits; (2) that, without a stay, he will suffer irreparable harm; (3) whether there would be substantial harm to other parties if a stay were granted; and (4) whether the issuance of a stay would serve the public interest. *John Montelbano*, Exchange Act Release No. 45107, 2001 SEC LEXIS 2490, at *12 & n.17 (Nov. 27, 2001) (internal citation omitted). As discussed below, the Firm has not shown that the extraordinary relief that it seeks is warranted.

B. The Firm Has Not Shown a Strong Likelihood of Success on the Merits

The Firm has not shown a strong likelihood that it will succeed on the merits of its appeal. Statutorily disqualified persons, such as Shapiro, should not be permitted to participate in the securities industry absent a finding by a self-regulatory organization that such participation is in the public interest. *See* 15 U.S.C. § 78o-3(g)(2). Under this framework, FINRA has the authority to evaluate whether the disqualifying event and the firm sponsoring the application will uphold high business standards. *M.J. Coen*, 47 S.E.C. 558, 563-64 (1981).

Section 19(f) of the Securities Exchange Act of 1934 sets forth the applicable standard of review for this appeal. To succeed on appeal, the Firm must show that one of the following criteria have not been met: (1) the "specific grounds" upon which FINRA based its denial "exist in fact;" (2) FINRA's denial is in accordance with its rules; and (3) FINRA's rules are consistent, and were applied in a manner consistent with, the purposes of the Exchange Act. *See* 15 U.S.C.

§ 78s(f). If all three criteria have been satisfied, then the Commission "shall dismiss the proceeding," unless it finds that such denial "'imposes any burden on competition not necessary or appropriate in furtherance of the purposes' of [the Exchange Act]." *See id.* FINRA complies with the Exchange Act in denying an application such as the Firm's when it bases its determination on a "totality of the circumstances" and explains "the bases for its conclusion." *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *46 (Sept. 13, 2010).

The record demonstrates that the specific grounds upon which FINRA denied the Application exist in fact and that FINRA followed its rules and acted consistently with the Exchange Act's purposes in denying the Application. The NAC thoroughly explained the bases for its denial of the Application and properly analyzed the Application pursuant to Commission precedent, including *Paul Van Dusen*, 47 S.E.C. 668 (1981), *Arthur H. Ross*, 50 S.E.C. 1082 (1992), and *May Capital Group, LLC*, Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006). Decision at 16-20. These cases direct that in situations where an individual's misconduct has already been addressed by the Commission or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should generally not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that when the period of time specified in the sanction has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest," it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The Commission also noted in *Van Dusen*, however, that an applicant's re-entry is not "to be granted automatically" after the expiration of a given time period. *Id.* Instead, it instructed FINRA to consider other factors, such as: (1) "other misconduct in which the applicant may have engaged;" (2) "the nature and disciplinary history of a prospective employer;" and (3) "the supervision to be accorded the applicant." *Id.* Further, in *Ross*, the Commission established an exception to the rule that FINRA confine its analysis to "new information." 50 S.E.C. at 1085. The Commission stated that FINRA could consider the conduct underlying a disqualifying order if an applicant's later misconduct was so similar that it formed a "significant pattern." *Id.* n.10; *see also Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724, at *26 n.38 (Nov. 21, 2014) (holding that, in connection with statutorily disqualified individual's failure to disclose liens subsequent to executing an AWC with FINRA for a failure to disclose his personal bankruptcy, the NAC would have been justified in relying on his original misconduct as part of a pattern).

The NAC properly applied this precedent in denying the Application in a manner consistent with its rules and the purposes of the Exchange Act. It appropriately considered the Additional Judgments and Liens—new information that was not known to FINRA at the time of the disqualifying October 2013 AWC—in evaluating the Application, and concluded that Shapiro's repeated disclosure issues reflected poorly on his ability to comply with FINRA's rules and regulations. *See Van Dusen*, 47 S.E.C. at 671; *Ross*, 50 S.E.C. at 1085, n.10. Indeed, in a recent case with similar facts, the Commission affirmed the NAC's denial of a statutory disqualification application where it considered that the disqualified individual engaged in additional failures to disclose material information on his Form U4, which were identical to his disqualifying misconduct. *See Toland*, 2014 SEC LEXIS 4724. The NAC properly weighed the

seriousness of Shapiro's repeated failures to disclose on his Form U4 judgments and liens, and that he deprived customers and the investing public of important information concerning his financial difficulties.[6]

The NAC also properly considered the Firm's history of regulatory issues, which included the Firm's failure to establish and implement an adequate supervisory system, failure to adequately review email, and maintenance of deficient procedures related to background searches for new hires. *See Van Dusen*, 47 S.E.C. at 671. In denying the Application, the NAC also properly questioned whether Belicek had sufficient time to stringently supervise Shapiro under heightened supervisory procedures. *See Citadel Sec. Corp.*, 57 S.E.C. 502, 509 (2004) ("[I]n determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of utmost importance.") (internal quotation omitted).

The Firm argues that it has a strong likelihood of success on the merits because the NAC imposed punitive sanctions upon Shapiro that amounted to a "death sentence" for Shapiro's career in the securities industry and is disproportionate to the misconduct underlying the October

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[6] Before the Hearing Panel the Firm argued that under *Van Dusen*, the NAC should not consider the Additional Judgments and Liens when weighing the merits of the Application because they did not constitute intervening misconduct and were related to events that existed, or were resolved, prior to the October 2013 AWC. The NAC flatly rejected the Firm's artificially narrow reading of *Van Dusen* and its progeny, finding that FINRA did not know about the Additional Judgments and Liens at the time of the October 2013 AWC and therefore it could consider Shapiro's additional failures to comply with his disclosure obligations (new information concerning additional misconduct by Shapiro) in weighing the merits of the Application. Decision at 17. The NAC also found the fact that the Additional Judgments and Liens "may have existed at the time Shapiro agreed to the October 2013 AWC is irrelevant to our determination that for a period prior and subsequent to the October 2013 AWC, Shapiro's Form U4 remained materially inaccurate, in violation of FINRA's rules." Decision at 17. The Firm raises this identical argument in its Application for Review (although not expressly in its Motion to Stay as a basis for granting the motion), but has provided no legitimate reason why the NAC should not have considered the Additional Judgments and Liens.

2013 AWC. Motion to Stay at 4. The Commission should reject the Firm's argument, as it is well established that in a statutory disqualification proceeding, FINRA neither seeks nor intends punishment by denying an individual's ability to remain in the securities industry. *See Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *26-27 (July 17, 2009) (holding that FINRA's denial of an application for a statutorily disqualified individual to associate with a firm did not impose a penalty or remedial sanction); *Frank Kufrovich*, 55 S.E.C. 616, 629-30 (2002) (finding that FINRA had not imposed a penalty in a statutory disqualification matter, but had "simply determined that it would not grant relief from a disqualification previously incurred"); *Halpert & Co.*, 50 S.E.C. 420, 422 (1990) (holding that in denying a statutory disqualification application, FINRA "has not expelled [applicant] from the securities industry . . . [n]or is it imposing a penalty . . . or even a remedial sanction."). FINRA did not impose a sanction on Shapiro in connection with the statutory disqualification proceeding, and the Firm has not come close to demonstrating that it has a strong likelihood of success on appeal.[7]

* * *

[7] The Firm does not allege that FINRA misapplied its rules by denying the Application, although it suggests that the NAC committed prejudicial error by failing to adequately consider the Firm's proposal (submitted after the hearing) to limit Shapiro's activities to that of a general securities representative (and not a general securities principal). Motion to Stay at 3. The Firm does not explain why it is likely on appeal to succeed on the merits of this argument. Regardless, the NAC found that even if it considered the Firm's eleventh hour, post-hearing proposed limitation on Shapiro's activities, it would not cure Shapiro's repeated failures to comply with his obligations under FINRA's rules—misconduct that the NAC deemed sufficiently egregious on its own to deny the Application. Decision at 18, 20. For similar reasons, the Firm's argument that the NAC erred in concluding that Belicek was "stretched too thin" because she already supervises 28 registered representatives and three branch office managers and has substantial supervisory responsibilities cannot serve as the basis for showing that the Firm is highly likely to succeed on the merits of its appeal.

The bases for the NAC's denial "exist in fact," and the NAC's denial was consistent with its rules and the purposes of the Exchange Act. The Firm has not provided any credible argument or evidence that it has a strong likelihood of success on the merits of the underlying denial of the Application, and the Commission should deny the Motion to Stay.

C. The Firm Has Not Demonstrated That a Denial of the Stay Request Will Impose Irreparable Harm

The Firm must also show that the NAC's decision will impose injury that is "irreparable as well as certain and great." *Whitehall Wellington Invs., Inc.*, Exchange Act Release No. 43051, 2000 SEC LEXIS 1481, at *5 (July 18, 2000). The Firm argues that it and Shapiro will suffer economic and financial harm if the Commission denies the Motion to Stay, and that these purported consequences constitute irreparable harm.[8] Motion to Stay at 5. The Commission, however, has emphasized that the disruption and economic harm caused by not being able to work pending resolution of a matter does not outweigh the need to protect the public interest and does not amount to irreparable harm. "The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough." *Timpinaro*, 1991 SEC LEXIS 2544, at *8; *see also Mitchell T. Toland*, Exchange Act Release No. 71875, 2014 SEC LEXIS 4621, at *9 (Apr. 4, 2014) (Order Denying Stay) (holding that movant did not demonstrate irreparable harm based upon alleged loss of financial opportunities and finding that any such adverse impact "would appear to

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[8] It is unclear why the Firm would necessarily lose the business of Shapiro's customers if the Commission denied the Firm's request to permit Shapiro to continue working pending this appeal. Regardless, even if the Firm could show irreparable injury to itself and Shapiro, which it cannot, the Commission should still deny the Motion to Stay. A showing of irreparable injury is not, standing alone, sufficient grounds upon which to grant a stay, particularly given the strength of the other three factors that overwhelmingly weigh against the Firm. As discussed below, the potential harm to the public interest outweighs any economic or financial injuries to the Firm or Shapiro.

be attributable to the ultimate resolution of his appeal, not that of his stay motion") (citing cases); *Richard L. Sacks*, Exchange Act Release No. 34-57028, 2007 SEC LEXIS 3019, at *9-10 (Dec. 21, 2007) (denying stay despite petitioner's claim that denial would destroy his business).[9]

D. Denial of the Stay Request Will Avoid Potential Harm to Others and Will Serve the Public Interest

Turning to the third and fourth criteria in deciding whether to grant a stay, the balance of equities weighs heavily against staying the effectiveness of the NAC's decision. The public interest strongly favors protecting investors based on the NAC's conclusions. Shapiro has a long history of ignoring FINRA's reporting obligations, and he failed to inform FINRA of the Additional Judgments and Liens at the very time he was negotiating a resolution of his other disclosure failures. For years Shapiro has provided FINRA and his customers with an incomplete history of his personal finances, and deprived the investing public of important information regarding his lengthy and varied history of unpaid debts and judgments.[10]

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[9] The Firm admits that the potential harm of which it complains is, "for the most part, economic losses." Motion to Stay at 5. Nonetheless, it argues that such losses would be irreparable because "there will be no recourse for Mr. Shapiro or the Firm to recapture the revenues and clients lost as a result of the NAC's misguided decision. *Id.* The Firm's argument makes a distinction without a difference, as prohibiting an applicant from working during an appeal almost always will cause economic losses that cannot be recouped. *See, e.g.*, *Timpinaro*, 1991 SEC LEXIS 2544, at *8 (stating that "[m]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough").

[10] Shapiro argues that permitting him to continue working pending this appeal would not result in any harm to other parties because he was permitted to work pending resolution of the Application before FINRA. As described above, it is FINRA's policy to permit statutorily disqualified individuals such as Shapiro, who are disqualified while working at the member firm sponsoring their continued employment, to continue working pending resolution of FINRA's proceedings. Shapiro's continued employment during FINRA's process, however, bears no relation to the specific harm that may result by permitting him to continue to work while this appeal remains pending, especially considering that the end result of FINRA's process was the NAC's conclusion that Shapiro's continued association with the Firm presents an unreasonable risk of harm to the market or investors. Further, the Commission has previously rejected similar arguments, and should do so here. *See Mitchell T. Toland*, 2014 SEC LEXIS 4621, at *12.

The Commission, in emphasizing the critical role that Form U4 plays in the screening process used to determine who may enter (and remain in) the industry, has stated that a registered representative's financial problems "raise concerns about whether [he] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional." *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *32 (Nov. 9, 2012). Shapiro has repeatedly demonstrated that he is unwilling to comply with his reporting obligations and provide his customers and the investing public with vital information concerning his financial affairs. Permitting Shapiro to engage as an active participant in the securities industry places the markets and public customers at risk. Similarly, the Firm has a troubling regulatory history and it proposed an inadequate supervisor for Shapiro.

The Firm argues that Shapiro does not have a single customer complaint while employed at the Firm and that the public interest supports staying the NAC's decision to permit Shapiro to continue servicing his customers. Motion to Stay at 6. The NAC, however, determined that irrespective of Shapiro's lack of recent customer complaints, his failures to disclose the Pre-September 2012 Tax Liens, failures to disclose the Additional Judgments and Liens, the Firm's regulatory and disciplinary history, and concerns regarding Belicek's ability to stringently supervise Shapiro, all supported its conclusion that it was not in the public interest for Shapiro to remain employed in the securities industry. Moreover, the Commission has rejected the argument that customers' lost access to a broker's services constitutes irreparable harm or otherwise weighs in favor of staying a decision to deny a statutory disqualification application. *See The Dratel Group, Inc.*, Exchange Act Release No. 72293, 2014 SEC LEXIS 5094, at *18

(June 2, 2014) (Order Denying Stay). In balancing the potential injury to the Firm and Shapiro against the possibility of harm to the public, the necessity of protecting the public far outweighs any potential injuries to the Firm and Shapiro. The Commission will further the public interest by denying the Firm's stay request.

IV. CONCLUSION

The Commission should deny the Firm's request to stay the effectiveness of the NAC's September 29, 2015 decision. The Firm relies upon arguments repeatedly rejected by the Commission in support of the extraordinary relief that it seeks, and it has failed to demonstrate that it has any likelihood of succeeding on the merits. Further, the Firm has failed to show that the Firm and Shapiro will suffer irreparable harm if the stay is not granted, and the public interest and the protection of investors will not be served by permitting Shapiro—an individual who has serially deprived FINRA and investors important information related to his personal finances—to work at the Firm during the Commission's review of the NAC's decision. The Commission therefore should deny the Firm's request.

Respectfully submitted,

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November 4, 2015

CERTIFICATE OF COMPLIANCE

I, Andrew J. Love, certify that this Brief of FINRA in Opposition to Motion for Stay complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 5,739 words.

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Dated: November 4, 2015

CERTIFICATE OF SERVICE

I, Andrew J. Love, certify that on this 4th day of November 2015, I caused a copy of the foregoing FINRA's Brief in Opposition to Motion for Stay, Administrative Proceeding No. 3-16933, to be served by messenger on:

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and via facsimile and overnight delivery service on:

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Service was made on the Commission by messenger and on applicant's counsel by facsimile and overnight delivery service due to the distance between the offices of FINRA and applicant's attorney.

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APPENDIX A

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of The Continued Association of Bret M. Shapiro as a General Securities Representative and General Securities Principal with Dawson James Securities, Inc.	Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD-2029 September 29, 2015

I. Introduction

On February 27, 2014, Dawson James Securities, Inc. ("the Firm"), submitted a Membership Continuance Application ("MC-400" or "the Application") to FINRA's Department of Registration and Disclosure. The Application seeks to permit Bret M. Shapiro ("Shapiro"), a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative and general securities principal. On April 8, 2015, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. Shapiro appeared at the hearing, accompanied by the Firm's counsel, Gregg Breitbart, Esq., Shapiro's proposed primary supervisor, Rebecca Belicek ("Belicek"), and the Firm's president, Thomas Hands ("Hands"). Lorraine Lee-Stepney, Ann-Marie Mason, Esq., and Bernard Canepa, Esq., appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we deny the Firm's Application.[1]

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[1] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council ("NAC").

II. The Statutorily Disqualifying Event

Shapiro is statutorily disqualified due to FINRA's acceptance, on October 29, 2013, of a Letter of Acceptance, Waiver and Consent (the "October 2013 AWC"). The October 2013 AWC found that Shapiro willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer ("Form U4").[2] Specifically, the October 2013 AWC found that between September 2010 and September 2012, Shapiro willfully failed to disclose on his Form U4 five outstanding federal tax liens totaling approximately $631,180 (collectively, the "Pre-September 2012 Tax Liens").[3] FINRA suspended Shapiro for three months and fined him $5,000. Shapiro served his suspension and paid the fine in full.

In the Application, Shapiro stated that although he was aware that he owed money for back taxes, he did not realize that correspondence from the IRS was notification that tax liens had been filed against him. Shapiro's Form U4 states that he first learned that the IRS had filed liens against him when the Firm received a notice of wage levy in October 2012.

At the hearing, Shapiro testified that he "made some really bad – some poor decisions, poor judgment." Shapiro explained that his tax problems originated after he received a large check as compensation for an investment banking transaction and he decided not to take any taxes out. Things "snowballed" from there, and Shapiro did not file tax returns for tax years 2004, 2005, 2006, 2007, and 2009. He eventually filed returns for those years sometime after 2009.[4] Shapiro stated that he "buried [his] head in the sand" after he started receiving correspondence from the IRS, and sometimes would not open the correspondence. He hired a tax attorney to negotiate with the IRS regarding a payment plan after the IRS sent the Firm a writ of garnishment and began garnishing his wages sometime between late 2010 and 2011.[5] Shapiro

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[2] Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") provides that a person is subject to statutory disqualification if he has willfully made a false or misleading statement of material fact, or has omitted to state a material fact required to be disclosed, in any application or report filed with a self-regulatory organization.

[3] Question 14.M of Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" Article V, Section 2(c) of FINRA's By-Laws requires that an associated person keep his Form U4 current at all times and to update information on the Form U4 within 30 days. Further, FINRA Rule 1122 states that, "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." Shapiro updated his Form U4 to reflect the Pre-September 2012 Tax Liens in November 2012.

[4] Shapiro timely filed returns for 2008.

[5] Shapiro's testimony on this point is somewhat different than what is disclosed on his Form U4. The Hearing Panel found that Shapiro's testimony was at times confusing and contradicted documents in the record.

entered into a payment arrangement with the IRS sometime in 2011, but he could not make the required payments. Shapiro further testified that after he could not make payments pursuant to an agreed-upon revised payment plan, the IRS became more aggressive. Although Shapiro knew at the time that he owed the IRS money, he testified that he did not understand that the IRS had filed liens against him for the back taxes and stated that he made a mistake.

Shapiro is not currently on a payment plan with the IRS, and although he acknowledges that he owes money for back taxes, he believes that the amount actually owed is approximately half of what the IRS asserts he owes.

III. Background Information

A. Shapiro

1. Employment History

Shapiro qualified as a general securities representative in November 1989, as a general securities principal in September 2008, and he passed the uniform securities agent state law exam in September 1990. Shapiro also was grandfathered in as an investment banking representative. *See FINRA Regulatory Notice 09-41*, 2009 FINRA LEXIS 114 (July 2009).

Shapiro has been associated with the Firm since February 2008, and he currently serves as head of the Firm's Syndicate Department.[6] He was previously associated with eight FINRA member firms.

The Application indicated that Shapiro borrowed money from the Firm pursuant to seven promissory notes executed between December 2012 and May 2013. As of March 2015, the Firm represented that Shapiro owed it approximately $70,000. At the hearing, Shapiro testified that he had recently repaid the Firm all amounts due and owing under the promissory notes.

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[6] Shapiro testified that his duties as head of the Syndicate Department have decreased since the October 2013 AWC. The Syndicate Department does not have any other registered personnel working for it and Shapiro does not supervise anyone in connection with this role.

Further, Shapiro has continued to work at the Firm during this proceeding because FINRA has interpreted Article III, Section 3(c) of FINRA's By-Laws to permit individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process. Shapiro became statutorily disqualified upon entry of the October 2013 AWC while employed at the Firm.

2. State Regulatory Actions and Customer Complaints

In March 1992, Shapiro agreed to a consent order to settle claims by Iowa's Division of Securities that he violated Iowa law by soliciting and selling securities to an Iowa resident without being appropriately registered to do so. Iowa censured Shapiro and fined him $1,000.

In May 1997, a customer filed a complaint against Shapiro alleging unsuitable recommendations, failure to supervise, misrepresentations, and breach of fiduciary duties. The customer sought $135,000 in damages. The matter was settled for $130,000, with Shapiro contributing $15,000 to the settlement.

In March 1999, customers filed a complaint against Shapiro alleging that he churned the customers' account and traded without authorization. The customers sought more than $1 million in damages. This matter was settled for $250,000, with Shapiro contributing $5,000 to the settlement.

In July 1999, a customer filed a complaint against Shapiro alleging that he charged excessive commissions. The customer sought $98,000 in damages. This matter was settled for $80,000, and Shapiro did not contribute personally to this settlement.

3. Bankruptcy

In May 2014, Shapiro and his wife filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Florida. Shapiro received a discharge of his debts (excluding amounts due and owing to the IRS) in August 2014. Shapiro testified that he filed for bankruptcy to obtain some breathing room from the IRS, not to "get away" from his debt. Shapiro also testified that he did not believe that any of his debts had been forgiven as a result of his bankruptcy filing. Shapiro timely disclosed his bankruptcy filing on his Form U4.

4. Additional Judgments and Liens

The record shows that, in addition to the Pre-September 2012 Tax Liens, four additional judgments and liens were filed against Shapiro. Shapiro testified that he did not bring these additional judgments or liens to FINRA's attention at the time he was negotiating the October 2013 AWC.[7]

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[7] Shapiro further testified that "[h]ad I known that [these additional judgments and liens] existed, I would have" brought them to FINRA's attention when negotiating the October 2013 AWC. As described below, however, Shapiro had notice of each of the four additional liens and judgments prior to the October 2013 AWC.

a. October 2012 Tax Lien

In October 2012, the IRS filed another tax lien against Shapiro in the amount of $34,220. He disclosed this lien 18 months late, in April 2014. Shapiro testified that although he had notice of this lien, he believed that this lien was not an additional lien but rather duplicative or part of the Pre-September 2012 Tax Liens.

b. Homeowner's Association Lien

In November 2008, Shapiro's homeowner's association filed a lien in the original amount of $2,569 for unpaid maintenance fees and interest. This debt increased to more than $27,000 until Shapiro eventually paid it in April 2013. Shapiro disclosed this lien on his Form U4 in February 2014. Shapiro testified, and his Form U4 reflects, that he was aware of the lien around the time it was filed, although the Firm was unaware of this lien until FINRA's Florida office brought it to the Firm's attention on January 2, 2014.

c. 2004 Judgment

In November 2004, Premium Asset Recovery Corp. obtained a judgment against Shapiro in the amount of $3,250. Shapiro testified that this debt related to a credit card and that he satisfied this debt in 2007. Shapiro disclosed this judgment on his Form U4 in November 2014. Although Shapiro testified that he satisfied this debt in 2007, his Form U4 implies that this debt was discharged by his 2014 bankruptcy filing.

d. 2006 Judgment

In July 2006, Asset Acceptance, LLC obtained a judgment in the amount of $3,489 against Shapiro. Shapiro testified that this debt also related to a credit card (which he believed was issued by First Premier Bank) and that he satisfied this debt in 2007. Shapiro disclosed this judgment on his Form U4 in November 2014.

* * *

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Shapiro.

B. The Firm

The Firm is based in Boca Raton, Florida, and it has been a FINRA member since 2004. The Firm has four Offices of Supervisory Jurisdiction ("OSJ") and two branch offices. The Firm employs 57 registered representatives and 30 registered principals. A significant portion of the Firm's revenue is generated from its underwriting business. The Firm does not employ any other individuals subject to statutory disqualification.

1. Regulatory Actions

In December 2014, the Firm entered into an AWC with FINRA for violations of NASD Rule 3010 and FINRA Rule 2010. Without admitting or denying the allegations, the Firm consented to findings that from January 2011 through May 30, 2012, it failed to establish and implement a supervisory system such that it could appropriately assess whether a registered representative's purported outside business activities were actually private securities transactions, failed to conduct adequate due diligence of the disclosed outside business activities, and failed to identify red flags concerning the outside business activities. FINRA censured the Firm and fined it $30,000.

In April 2014, the Firm entered into an AWC with FINRA for violations of NASD Rules 3010 and 2110 and FINRA Rule 2010. Without admitting or denying the allegations, the Firm consented to findings that in 2007 and 2008, its written supervisory procedures ("WSPs") were inadequate, that it failed to investigate numerous red flags relating to the activities of a registered representative, failed to enforce its WSPs because it failed to review electronic correspondence on a daily basis, and failed to ensure that the Firm's head trader was reasonably carrying out his supervisory responsibilities. FINRA censured the Firm, fined it $75,000, and required it to amend its WSPs to address deficiencies.

In August 2013, the Firm entered into an AWC with FINRA for violations of NASD Rules 2440, 2320, and 2110, IM-2440, and FINRA Rule 2010. Without admitting or denying the allegations, the Firm consented to findings that it failed to comply with fair pricing and best execution requirements. FINRA censured the Firm and fined it $12,500.

In November 2012, the Firm executed a Minor Rule Violation Letter for Order Audit Trail Systems violations. FINRA fined the Firm $2,500.

In October 2011, the Firm and its executive officers (including Hands) entered into an Order Accepting Offer of Settlement with FINRA to settle allegations that the Firm and certain executives violated FINRA's membership rules, violated the Customer Protection Rule, failed to maintain required minimum net capital, sold unregistered securities, failed to adequately document the basis for research analyst compensation, and filed false attestations. FINRA censured the Firm and fined it $90,000. FINRA fined Hands $10,000 and suspended him in all capacities for 15 business days for submitting inaccurate NASD Rule 2711(i) attestations to FINRA on behalf of the Firm from 2007 to 2009. Hands testified that although he believed that the documents supporting the attestations at issue existed, he could not locate them.

In February 2011, the Firm stipulated to a $1,500 fine with the New York Department of Financial Services for failing to provide complete information on the Firm's application for an insurance license.

In September 2008, the Firm entered into an AWC with FINRA for violations of NASD Rules 3070 and 2110. Without admitting or denying the allegations, the Firm consented to findings that it associated with a statutorily disqualified individual without first seeking FINRA's approval. FINRA censured the Firm and fined it $7,500.

In March 2006, the Firm entered into an AWC with FINRA for violations of NASD Rules 2711 and 2110. Without admitting or denying the allegations, the Firm consented to findings that it issued at least 50 research reports or "Morning Notes" that did not include adequate disclosures. FINRA censured the Firm and fined it $25,000.

2. Routine Examinations

In March 2015, and in connection with the Firm's 2014 cycle examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the failing to establish and implement WSPs and controls to ensure compliance with Regulation T. FINRA also cited the Firm for deficient WSPs related to background searches for new hires (because the Firm failed to detect outstanding judgments and liens), safe harbor conditions set forth in Exchange Act Rule 10b-18, and the Firm's options business. The Firm responded in writing that it corrected the deficiencies noted.

In September 2014, and in connection with the Firm's 2014 examination, the SEC identified a possible fraudulent churning scheme in 13 customer accounts at the Firm. In its deficiency letter, the SEC also found that the Firm, Belicek, and others failed to adequately implement the Firm's WSPs to prevent churning. The Firm responded in writing denying allegations of churning, and asserted that it maintained a reasonable system of supervision and account review. Member Regulation asserts that the SEC referred this matter to FINRA for further investigation.[8]

In April 2013 and in connection with the Firm's 2013 examination, the SEC identified deficiencies related to the Firm's sale of a REIT and whether such sales were suitable. In its deficiency letter, the SEC also found that the Firm omitted material information in the REIT's sales literature, failed to maintain and produce books and records, and failed to implement certain WSPs. The Firm responded in writing that, among other things, it had revised its WSPs to address certain of the issues raised by the SEC.

3. Arbitrations and Customer Complaints

Member Regulation asserts that since 2004, the Firm has had 23 customer-initiated arbitrations filed against it, of which the Firm settled 20 for almost $1 million. Hands testified that the Firm settled a majority of these arbitrations for less than the anticipated cost of defending them and that the Firm's E&O insurance covered certain of these actions.[9]

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[8] In addition to this matter, Member Regulation asserts that FINRA is currently investigating the Firm in connection with several other potential areas of misconduct (and Shapiro in connection with one those matters). For purposes of this decision, we have not considered these pending investigations.

[9] Member Regulation refers to three additional arbitration claims that are pending, which seek damages of approximately $2.5 million. For purposes of this decision, we have not

[Footnote continued on next page]

The record shows no additional complaints, disciplinary proceedings, or arbitrations against the Firm.

IV. Shapiro's Proposed Business Activities and Supervision

A. Shapiro's Proposed Business Activities

The Firm proposes to continue to employ Shapiro at the Firm's home office in Boca Raton, Florida as a general securities representative, including servicing retail customers, and as a general securities principal by heading the Firm's Syndicate Department. Shapiro testified that approximately 70 percent of his revenue relates to syndication, and the rest relates to his 42 retail customers.[10]

Regarding Shapiro's syndication activities, the Firm represents that Shapiro will present "investment products identified by [the Firm] to other member firms to determine such other firms' interest in participating in syndicated transactions, and reviewing investment products identified by other member firms and presented to [the Firm] to determine the Firm's interest in such syndicated transactions." The Firm further represents that Shapiro will continue to be compensated by commission.

B. Shapiro's Proposed Supervisors

The Firm proposes that Shapiro will be supervised on-site primarily by Belicek. Belicek was employed by the Firm from February 2005 until April 2009, and returned to the Firm in May 2013. She first registered as a general securities representative in July 1991 and as a general securities principal in March 2007. She also registered as an equity trader in April 2000, as an

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[cont'd]

considered these pending arbitration claims. Further, Member Regulation asserts that in the past 10 years, the Firm has disclosed more than 330 customer complaints pursuant to FINRA Rule 4530 (and its predecessor). At the hearing, the Firm argued that focusing on matters disclosed pursuant to Rule 4530 artificially inflates the true number of complaints filed against the Firm, and Hands estimated that of the approximately 330 complaints disclosed by the Firm, only 43 related to sales practice complaints. For purposes of this decision, we do not rely on the customer complaints disclosed by the Firm pursuant to Rule 4530.

[10] In a pleading filed by the Firm after the hearing, Shapiro clarified that when he testified that 70 percent of his revenue is derived from his syndicate activities, this includes the commissions he receives on account of his own retail customers participating in such transactions. Shapiro stated that approximately 20 percent of his total compensation is derived from his activities as head of the Firm's Syndicate Department. As stated below, this clarification has no bearing on our decision to deny the Application.

investment banking representative in November 2009, and as an options principal in August 2013. She passed the uniform securities agent state law exam in August 1991. Belicek has been associated with 12 other firms. The record shows no complaints, disciplinary proceedings, or arbitrations against Belicek.

Belicek currently supervises approximately 28 producing registered representatives, who are all located at the Firm's home office. She also serves as a Regional Branch Compliance Manager, pursuant to which she supervises three branch office managers (located in New York, NY, Baltimore, MD, and Manasquan, NJ).[11]

The Firm further proposed that Cary Meth ("Meth") will serve as Shapiro's primary alternate, on-site supervisor under the plan. Meth currently serves as the Firm's chief compliance officer (and as the chief compliance officer for the Firm's affiliated investment adviser and as president of another entity affiliated with the Firm). He first registered as a general securities representative in October 1984, as a general securities principal in August 1994 (and requalified in May 2006), an options principal in October 1999, a financial and operations principal ("FINOP") in October 2000, a municipal securities principal in December 2000, and a research principal in December 2007. Meth also passed the uniform securities agent state law exam in November 1984, the national commodity futures examination in December 1984, and the uniform combined state law examination in December 2007. Using FINRA's opt-in procedures, Meth also registered as an investment banking representative and operations professional in January 2010 and October 2011, respectively. Meth has been with the Firm since February 2008, and was previously associated with 13 other firms. Meth has no disciplinary or regulatory history, and he does not directly supervise any individuals at the Firm.

In the event that both Belicek and Meth are out of the office (which Hands testified rarely happens), Hands will serve as Shapiro's supervisor. Hands currently serves as the Firm's president, and previously served as the Firm's chief compliance officer and chief operating officer. He first registered as a general securities representative in February 1985, as a general securities principal in August 1987, a municipal securities principal in May 1993, a FINOP in May 1995, and an options principal in December 2004. He also passed the uniform securities agent state law exam in March 1985. Hands has been with the Firm since August 2004, and he was previously associated with eight firms.

In addition to the 2011 Order of Offer of Settlement with FINRA, the record shows one other regulatory matter involving Hands. In May 1997, Hands entered into an Order of Offer of Settlement with FINRA to settle allegations that his former firm, acting through him, conducted a securities business while maintaining insufficient net capital. FINRA censured Hands, fined him and his firm, jointly and severally, $10,000, and required Hands to requalify as a FINOP.

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[11] Although Belicek's title is Regional Branch Compliance Manager, she testified that her position is really that of a regional branch manager and supervisor of the branch managers at the Firm's other offices.

C. The Firm's Proposed Heightened Supervisory Plan

The Firm submitted the following proposed heightened plan of supervision:[12]

Proposed Supervisors

1. Rebecca Belicek, the Regional Branch Compliance Manager for the Firm, will serve as the primary supervisor for Mr. Shapiro's activities. Ms. Belicek has been registered in the securities industry since 1991 (and as a general securities principal since 2007), and has no disciplinary history. She is physically located in the Firm's Boca Raton, Florida headquarters office, the same location in which Mr. Shapiro is located.

2. If Ms. Belicek is out of the office, Cary Meth, the Firm's CCO, will serve as Mr. Shapiro's alternate supervisor. Mr. Meth has been licensed in the securities industry since 1984 (and as a general securities principal since 2006), and has no disciplinary history. He also is located in the same office as Mr. Shapiro. If neither Ms. Belicek nor Mr. Meth is in the office, then Thomas Hands, the Firm's President (and former CCO) will serve as Mr. Shapiro's supervisor. Mr. Hands also has substantial industry and supervisory experience and is located in the same Boca Raton, Florida office as Mr. Shapiro.

Form U4 Disclosure Issues

3. Ms. Belicek and/or Mr. Meth will meet with Mr. Shapiro on no less than a monthly basis to ensure that his Form U4 is current and accurate. In connection with each of these monthly meetings, Mr. Shapiro will give written consent to the Firm to obtain an updated McDonald Information Systems ("MIS") report at his expense, which should identify all outstanding liens, judgments, and similar events reported in public records. Any events that appear on this report will be discussed with Mr. Shapiro and, if disclosure on his Form U4 is required, then the supervisor will give instructions to immediately process and submit a U4 amendment and disclosure reporting page. Written evidence of this monthly meeting will consist of (a) a then current copy of the MIS report, initialed by the supervisor(s) and Mr. Shapiro and (b) a then current copy of Mr. Shapiro's U4, initialed by the supervisor(s) and Mr. Shapiro, both of which will be maintained in Mr. Shapiro's personnel file.

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[12] The Hearing Panel permitted the Firm to file an amended heightened supervisory plan based upon comments and questions raised at the hearing.

4. Mr. Shapiro will provide the Firm with copies of his federal income tax returns on or around April 15th of each calendar year; provided, however, that if Mr. Shapiro requests an extension of his filing deadline, he will provide a copy of that extension to the Firm, and will provide a copy of his tax return for that year immediately upon its submission to the IRS. Under no circumstances will Mr. Shapiro will file his federal income tax return any later than October 15th of each year. Failure to abide by this condition will result in Mr. Shapiro's immediate termination by the Firm.

5. Mr. Shapiro will immediately provide to Ms. Belicek copies of all correspondence he receives from any taxing authority.

6. Mr. Shapiro will immediately provide to Ms. Belicek copies of any demand letters or lawsuits against him seeking to recover monies.

General Business Conditions

7. Mr. Shapiro will not act in a supervisory capacity.

8. For the purposes of client communication, Mr. Shapiro will only be allowed to use an e-mail account that is held at the Firm, with all e-mails running through the Firm's system. If Mr. Shapiro receives a client communication in a non-Firm e-mail account, he will immediately forward it to his Dawson James e-mail address and to Ms. Belicek's Dawson James e-mail address. Ms. Belicek will review 100% of Mr. Shapiro's incoming and outgoing e-mails on a timely basis and in accordance with the Firm's e-mail review procedures.

9. With respect to other written communication (e.g., hard copy, faxes, letters), incoming communications will be reviewed upon arrival, and outgoing communications will be reviewed before being sent. Ms. Belicek will evidence her review of these communications by placing her initials thereon, and all such communications will be maintained in accordance with the Firm's correspondence retention procedures.

10. Ms. Belicek will observe Mr. Shapiro's work activities on an ongoing basis. Among other things, (a) Ms. Belicek will share an office with Mr. Shapiro, which will allow her the ability to observe and hear Mr. Shapiro while he is conducting business, and (b) Ms. Belicek will make use of the Firm's "barge" functionality on its phone system to listen in to Mr. Shapiro's phone conversations on a periodic, random basis. Ms. Belicek will maintain a record of the times at which she utilizes this feature in Mr. Shapiro's personnel file, and will note any concerns and follow-up with Mr. Shapiro or others at the Firm.

11. In the event that Mr. Shapiro plans to be away from the office during regular business hours, he must notify Ms. Belicek of his intentions, including the reason for his non-attendance (i.e., whether it is a personal matter or a

business meeting). If the reason for his non-attendance is business-related, then Mr. Shapiro must include (a) the names and business affiliations of the persons with whom he expects to be meeting, and (b) a general description of the expected topics of conversation. To the extent practicable, Mr. Shapiro will provide this notice at least 24 hours before any planned business meeting away from the office during regular business hours. While written approval will not be necessary, if Ms. Belicek informs Mr. Shapiro that he is not permitted to participate in any proposed meeting, or that certain conditions will apply (e.g., he must be accompanied by another Firm representative), then Mr. Shapiro will abide by Ms. Belicek's directives in that regard. Written notice from Mr. Shapiro and any response from Ms. Belicek can be communicated by e-mail or by separate written memo, both of which will be retained by the Firm. In the event that a client of Mr. Shapiro's requests assistance in Mr. Shapiro's absence, Mr. Shapiro has been assigned a Registered Sales Assistant who is available to all of Mr. Shapiro's clients during regular market hours. In her absence, Ms. Rebecca Belicek will be available to assist those clients.

12. If Mr. Shapiro seeks to engage in business-related meetings after regular business hours, he must notify Ms. Belicek, in writing, of his intentions, including (a) the names and business affiliations of the persons with whom he expects to be meeting, and (b) a general description of the expected topics of conversation. To the extent practicable, Mr. Shapiro will provide this notice at least 24 hours before any such planned business meeting. While written approval will not be necessary, if Ms. Belicek informs Mr. Shapiro that he is not permitted to participate in any proposed meeting, or that certain conditions will apply (e.g., he must be accompanied by another Firm representative), then Mr. Shapiro will abide by Ms. Belicek's directives in that regard. Written notice from Mr. Shapiro and any response from Ms. Belicek can be communicated by e-mail or by separate written memo, both of which will be retained by the Firm.

13. Mr. Shapiro will be expected to use the Firm's phone system for all business calls during regular business hours. The Firm will obtain itemized cell phone records for Mr. Shapiro's cell phone on a monthly basis, and Ms. Belicek or her designee will review those records to determine whether Mr. Shapiro is adhering to this condition.

Syndicate Activities

14. In regards to Mr. Shapiro's syndicate activities: (a) his e-mail and written correspondence will be reviewed as set forth herein; (b) Ms. Belicek will be physically present in his office and will use the phone system's "barge" functionality as set forth herein; and (c) Mr. Shapiro will be required to submit a "Proposed Offering Checklist" substantially in the form attached hereto as Exhibit A, prior to seeking to have the Firm participate as a syndicate member in other firms' offerings. Ms. Belicek will be responsible for granting

approval for or denying the proposed syndicate participation, although she may consult with other members of the Firm's management in reaching her decision. Ms. Belicek's decision, and any communications with other Firm representatives had in connection therewith, will be noted on the checklist. Mr. Shapiro will not commit the Firm to participate in any syndicate project unless or until he obtains written approval to do so, and will abide by any conditions imposed as part of that participation.

Retail Business Activities

15. Ms. Belicek will review and pre-approve each securities account for a customer of Mr. Shapiro prior to the opening of the account. Account paperwork will be documented as approved with a date and signature and maintained in the Firm's Boca Raton office. The account paperwork will be readily available for ease of review during any statutory disqualification review.

16. Mr. Shapiro will not maintain any discretionary accounts.

17. Ms. Belicek will review and approve Mr. Shapiro's orders after execution, on or about a T+1 basis but not later than T+3 basis. Ms. Belicek will evidence her review by initialing and/or placing an electronic signature on a trade blotter containing all of Mr. Shapiro's trades.

18. Ms. Belicek will randomly review 25% of Mr. Shapiro's client files on a monthly basis, and will indicate her findings in a memo, which will be maintained in a segregated file for ease of review. This is in addition to the "regular" reviews of Mr. Shapiro's client files, which are triggered each time that a client engages in a securities transaction at the Firm.

General Conditions

19. Mr. Shapiro will be assigned at least two (2) additional continuing education modules (at his expense) for each of the first three (3) years under this Plan. The additional modules will be selected by Ms. Belicek and will relate to subjects that she deems relevant to Mr. Shapiro's business.

20. It is not anticipated that Mr. Shapiro will engage in any outside business activities while associated with Dawson James. If he does seek to engage in any outside business activities, he (a) will request and obtain prior written approval from the Firm's CCO before engaging in any such activity and (b) will disclose to the CCO in writing, on no less than a quarterly basis, the details of such activity. All requests, approvals, and activity reports will be maintained in a segregated file for ease of review.

21. If Mr. Shapiro is the subject of a customer complaint (verbal or written), such complaint immediately will be referred to Ms. Belicek for review and then to the CCO. Mr. Shapiro promptly will provide a written statement addressing

the customer's allegations and provide it to Ms. Belicek. Ms. Belicek and/or the Compliance Department will prepare a memorandum to the file as to what measures were taken to investigate the complaint, and the outcome of the complaint. If necessary, the matter will be escalated to the Firm's President for further consideration. Documents pertaining to any customer complaint relating to Mr. Shapiro will be segregated for ease of review.

22. Mr. Shapiro will not be permitted to accept, and will not have access to, any funds or securities from a client. Mr. Shapiro will have no access to or involvement with the Firm's funds.

Monitoring and Certifications

23. For the duration of Mr. Shapiro's statutory disqualification, the Firm will notify Member Regulation, in writing, if it wishes to change Mr. Shapiro's primary supervisor from Ms. Belicek to another person, and, to the extent possible, will obtain such approval before making the change. In the event prior notice/approval is not possible, Mr. Meth will serve as Mr. Shapiro's primary supervisor, and Mr. Hands will serve as the alternate supervisor, until Member Regulation approves the change to a new primary supervisor.

24. Mr. Shapiro will certify to Ms. Belicek, on a quarterly basis, that (a) he understands the requirements of the Firm's Written Supervisory procedures as they apply to his conduct, including but not limited to his obligation to keep accurate books and records, and (b) he is in full compliance with all of his disclosure reporting obligations pursuant to FINRA rules. The quarterly certification will be maintained in a segregated file for ease of review.

25. Ms. Belicek and Mr. Shapiro will certify quarterly to the CCO that they are in compliance with the requirements of this supervision plan. Ms. Belicek will document her performance of these supervisory procedures by completing and signing a Compliance Checklist created by the Firm. The certifications and checklist will be maintained in a segregated file for ease of review.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied, because in its view, (1) Shapiro engaged in intervening misconduct, and "the similarity between Shapiro's disqualifying misconduct and intervening misconduct is evidence of a troubling pattern of repeated misconduct;" (2) the Firm's regulatory history indicates that it is unable to effectively supervise Shapiro; (3) the Firm proposed unsuitable supervisors; and (4) the Firm's proposed heightened supervisory plan is inadequate.[13]

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[13] Prior to the hearing, Member Regulation also asserted that the Firm could not effectively supervise Shapiro given that he owed money to the Firm. However, as stated above, Shapiro and

[Footnote continued on next page]

VI. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the SEC's controlling decisions in this area, we deny the Firm's Application to continue to employ Shapiro as a general securities representative and general securities principal.

A. The Legal Standards

We recognize that, in connection with the October 2013 AWC, FINRA's Department of Enforcement ("Enforcement") weighed the gravity of Shapiro's failure to disclose the Pre-September 2012 Tax Liens. Enforcement concluded that a three-month suspension and $5,000 fine were appropriate sanctions for Shapiro's misconduct. Shapiro served this suspension and has paid the fine in full. In such circumstances, the SEC has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the SEC's decisions in *Paul Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *See May Capital Group, LLC* (hereinafter "*Rokeach*"), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

Van Dusen and *Rokeach* provide that in situations where an individual's misconduct has already been addressed by the SEC or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The SEC stated that when the period of time specified in the sanction has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest," it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The SEC also noted in *Van Dusen,* however, that an applicant's re-entry is not "to be granted automatically" after the expiration of a given time period. *Id.* Instead, the SEC instructed FINRA to consider other factors, such as: (1) "other misconduct in which the applicant may have engaged;" (2) "the nature and disciplinary history of a prospective employer;" and (3) "the supervision to be accorded the applicant." *Id.* Further, in *Ross*, the SEC established a narrow exception to the rule that FINRA confine its analysis to "new information." 50 S.E.C. at 1085. The SEC stated that FINRA could consider the conduct underlying a disqualifying order if an applicant's later misconduct was so similar that it formed a "significant pattern." *Id.* n.10; *see also Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 SEC

[cont'd]

the Firm represented that he no longer owes the Firm any funds and they do not contemplate that he will borrow additional funds.

LEXIS 4724, at *26 n.38 (Nov. 21, 2014) (holding that, in connection with statutorily disqualified individual's failure to disclose liens subsequent to executing an AWC with FINRA for a failure to disclose his personal bankruptcy, the NAC would have been justified in relying on his original misconduct as part of a pattern).

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we find that the Firm has failed to show that, "despite the disqualification, it is in the public interest to permit the requested employment." *See Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992). Based upon our review of the entire record in this matter, we find that the Application should be denied because Shapiro's continued association with the Firm would create an unreasonable risk of harm to the market or investors. Shapiro engaged in serious additional misconduct by failing to disclose several other judgments and liens, misconduct that is identical to the misconduct underlying the disqualifying October 2013 AWC. We also have serious concerns whether the Firm and Belicek can properly supervise a statutorily disqualified individual such as Shapiro. Consequently, we deny the Application.

1. Shapiro's Additional Failures to Disclose

The parties do not dispute that Shapiro did not timely disclose on his Form U4 the October 2012 tax lien, 2008 homeowner's association lien, the 2004 judgment, and the 2006 judgment. Indeed, the record shows that Shapiro disclosed the 2008 homeowner's association lien in February 2014; the October 2012 tax lien in April 2014; and the 2004 judgment and the 2006 judgment in November 2014.

Shapiro, as a registered representative and principal, was responsible for knowing the rules of the securities industry and for timely updating his Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table); *see also Toland*, 2014 SEC LEXIS 4724, at *24 (stressing the "critical importance of an associated person's accurate disclosure on his Form U4, and the material risks that such inaccurate disclosure conceals"). Every associated person must keep his Form U4 current at all times. *See* FINRA By-Laws, Article V, Section 2(c); FINRA Rule 1122 ("No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."). The SEC has emphasized that Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public." *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *25-26 (Nov. 9, 2012) (holding that representative's failure to disclose numerous judgments, liens, and bankruptcy filings violated FINRA's rules). A registered representative's financial problems "raise concerns about whether [he] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional." *Id.* at *32.

Notwithstanding Shapiro's undisputed obligation to keep his Form U4 current and failure to satisfy this obligation, Shapiro and the Firm argue that the four additional judgments and liens did not constitute "intervening" misconduct because each judgment and lien existed at the time Shapiro agreed to the October 2013 AWC (and certain of the judgments and liens had already been satisfied at that time). We reject applicant's argument for several reasons.

First, *Van Dusen* and its progeny instruct us to generally confine our analysis to "new information" that the regulator behind the statutorily disqualifying event did not possess at the time it sanctioned the disqualified individual. *Van Dusen*, 47 S.E.C. at 671; *Rokeach*, 2006 SEC LEXIS 1068, at *26 (stating that FINRA should "generally confine its analysis to new information" when evaluating a membership continuance application where FINRA has already addressed an individual's misconduct). Shapiro did not disclose on his Form U4 any of the four additional judgments and liens until well after entry of the October 2013 AWC, and the record does not show that FINRA had notice of any of these matters prior to the October 2013 AWC. Thus, we may properly consider the four additional matters that Shapiro failed to disclose on his Form U4 in weighing the merits of the Application. *See Toland*, 2014 SEC LEXIS 4724, at *8, *24-27 (finding that FINRA properly considered disqualified individual's failure to disclose eight additional liens and judgments, two of which predated the original disqualifying order and all of which FINRA learned about subsequent to the disqualifying order).

Second, with respect to Shapiro's failure to disclose the four additional judgments and liens, Shapiro had an ongoing obligation to keep his Form U4 current. The fact that the four additional judgments and liens may have existed at the time Shapiro agreed to the October 2013 AWC is irrelevant to our determination that for a period prior and subsequent to the October 2013 AWC, Shapiro's Form U4 remained materially inaccurate, in violation of FINRA's rules. *See Tucker*, 2012 SEC LEXIS 3496, at *47 (holding that judgments and liens against a registered representative are material information required to be disclosed on Form U4). Until Shapiro updated his Form U4 to reflect all of these matters, he deprived regulators and investors of important and material information concerning his finances. The same holds true for judgments and liens that Shapiro may have satisfied prior to disclosing them on his Form U4. Even if Shapiro eventually satisfied certain judgments and liens, the fact remains that they remained unsatisfied, and undisclosed, for years.[14]

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[14] Adopting Shapiro's and the Firm's rationale—that under *Van Dusen* we cannot consider any additional misconduct by a disqualified individual if the additional misconduct occurred prior to the disqualifying event but was not discovered until after the disqualifying event—would lead to absurd results and is an overly restrictive reading of the precedent in this area. *See Van Dusen*, 47 S.E.C. at 671 (stating that FINRA may consider new information under circumstances such as these); *Rokeach*, 2006 SEC LEXIS 1068, at *26 (same).

Given that Shapiro's failure to disclose the Pre-September 2012 Tax Liens led to a three-month suspension, fine, and ultimately these proceedings, we are troubled that even after entry of the October 2013 AWC, Shapiro continued to omit important information from his Form U4.[15] This is particularly true given that Shapiro had actual knowledge of all four judgments and liens well before he entered into the October 2013 AWC. Further, Shapiro testified that he satisfied the 2008 homeowner's lien in April 2013, which is around the same time that he learned that FINRA was investigating his failures to disclose the Pre-September 2012 Tax Liens. Under the circumstances, Shapiro at a minimum should have made further inquiry regarding whether this lien should have been disclosed. Shapiro, however, failed to do so.

Simply put, Shapiro for years deprived customers and the investing public of material information concerning his significant and prolonged financial difficulties and his ability to manage his own financial obligations. Shapiro's continuous neglect with respect to his disclosure obligations raise serious doubts that he is able, or willing, to comply with securities rules and regulations. Indeed, we find that Shapiro's disclosure failures demonstrate a troubling pattern. *See Ross*, 50 S.E.C. at 1085; *Toland*, 2014 SEC LEXIS 4724, at *26 n.38; *Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *16 (July 17, 2009) (holding that an individual's failure to comply with FINRA's disclosure rules "raises questions about his ability to maintain his obligations under the securities laws."). The serious nature of Shapiro's original failure to disclose the Pre-September 2012 Tax Liens, coupled with his additional failures to timely disclose other liens and judgments (some of which went undisclosed for almost 10 years), demonstrate a pattern by Shapiro of disregarding his disclosure obligations under FINRA's rules. We find that Shapiro's numerous lapses in this respect are sufficiently egregious on their own to warrant denial of the Application.[16]

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[15] At the hearing, Shapiro testified that he had no reason to fail to inform FINRA about the four additional judgments and liens while accepting the October 2013 AWC. This assertion, however, does not account for any potential increase in sanctions that may have resulted if Enforcement had learned that Shapiro's failures to disclose were significantly more extensive than it was lead to believe.

[16] The Firm argues that Shapiro should not be permanently barred through denial of the Application as a result of his failure to disclose the Pre-September 2012 Tax Liens. The effect of a statutory disqualification proceeding, however, cannot be equated with a disciplinary action. In a statutory disqualification proceeding, FINRA neither seeks nor intends punishment by denying an individual's ability to remain in the securities industry. In the context of a statutory disqualification case, the SEC has recognized that FINRA "has not expelled [applicant] from the securities industry . . . [n]or is it imposing a penalty . . . or even a remedial sanction." *Halpert & Co.*, 50 S.E.C. 420, 422 (1990); *Emerson*, 2009 SEC LEXIS 2417, at *26-27 (holding that FINRA's denial of an application for a statutorily disqualified individual to associate with a firm did not impose a penalty or remedial sanction); *Frank Kufrovich*, 55 S.E.C. 616, 629-30 (2002) (finding that FINRA had not imposed a penalty in a statutory disqualification matter, but had "simply determined that it would not grant relief from a disqualification previously incurred").

2. The Firm's Disciplinary and Regulatory History

Pursuant to *Van Dusen* and its progeny, we also look to the nature and disciplinary history of the Firm. We find the Firm's recent disciplinary and regulatory history further support our denial of the Application.

As recently as December 2014, the Firm agreed to an AWC finding that the Firm failed to establish and implement an adequate supervisory system to appropriately assess the activities of its registered representatives and failed to identify red flags concerning outside business activities. Similarly, in April 2014, the Firm agreed to an AWC finding that the Firm's WSPs were inadequate, failed to investigate numerous red flags relating to a registered representative's activities, failed to review e-mail on a daily basis, and failed to ensure that the Firm's head trader was carrying out his supervisory responsibilities. Further, in March 2015 FINRA cited the Firm for deficient WSPs related to background searches for its new hires.

Although Hands testified that he believes that the Firm has recently made improvements with respect to the Firm's overall compliance with rules and regulations, the most recent disciplinary and regulatory history of the Firm relates directly to problems with the Firm's supervisory systems and controls, its failure to detect red flags in several areas, and deficient e-mail reviews. Stringent supervision is of the utmost importance in connection with supervising a statutorily disqualified individual such as Shapiro, and all of the aforementioned deficiencies occurred in areas that are directly implicated in, and directly tied to, Shapiro's proposed supervision. *See Citadel Sec. Corp.*, 57 S.E.C. 502, 509-10 (2004) ("[I]n determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.") (internal quotation omitted); *see also Toland*, 2014 SEC LEXIS 4724, at *36 (stating the purported evidence of a sponsoring firm's current compliance with its regulatory obligations "does not negate [its] prior disciplinary and regulatory history"). We also note that the Firm, despite being on notice in April 2013 that FINRA was investigating Shapiro for disclosure violations, did not learn of at least one of Shapiro's additional judgments and liens until January 2014 (when FINRA staff informed the Firm of the homeowner's association lien).

3. The Proposed Primary Supervisor

Finally, although Belicek testified that she believed she had adequate time to supervise Shapiro pursuant to the heightened supervisory plan, we remain concerned that Belicek may be stretched too thin to provide the stringent supervision required of a statutorily disqualified individual such as Shapiro. Belicek currently supervises approximately 28 registered representatives in the Firm's Boca Raton office. Belicek testified that in connection with these supervisory duties, she reviews all of the registered representatives' trades, reviews and approves customer account paperwork, reviews e-mails (which she characterized as "a pretty significant

and thorough" review), and regularly contacts customers.[17] Belicek also supervises three other branch managers, and testified that she reviews branch manager checklists and visits the offices at least annually. *See Emerson*, 2009 SEC LEXIS 2417, at *18-19 (finding that FINRA reasonably questioned whether a proposed supervisor had sufficient time to supervise a statutorily disqualified individual when he already supervised nine other individuals); *see also Timothy P. Pedregon*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *27 (Mar. 26, 2010) (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual); *Citadel*, 57 S.E.C. at 509-10. Further, the revised plan imposed upon her additional duties. For instance, Belicek will review every e-mail Shapiro sends and receives (which she estimated will total less than 100 per day).[18] We share Member Regulation's concerns that Belicek's estimate of one-half hour to review these daily e-mails underestimates the time that it will take to thoroughly complete this task. Finally, Belicek's testimony raises questions concerning her experience with the Firm's syndicate activities—whether they comprise 20 or 70 percent of Shapiro's revenue—and her ability to stringently supervise Shapiro's syndicate activities. All of these factors lend additional support to our denial of the Application.

VII. Conclusion

In sum, we find that Shapiro's pattern of failing to disclose matters on his Form U4, including additional disclosure failures unrelated to the October 2013 AWC, demonstrate that he is currently unable to show that he can comply with FINRA's rules and regulations. Moreover, the Firm's disciplinary and regulatory history, and questions concerning its ability to adequately

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[17] Indeed, Belicek testified that "I have 10 to 12 pages of customer calls a month. I think I speak to more clients a day than some of our newer brokers."

[18] In pleadings filed after the hearing, Member Regulation states that the provision in the heightened supervisory plan regarding e-mail review (Item 8) is vague, and that Items 11 and 12 do not provide for any follow-up review by Belicek. In response, the Firm disputed Member Regulation's assertions, complained that Member Regulation refused to discuss amendments to the plan after the hearing, and stated that the Firm was willing to make further revisions to the plan. We need not reach the arguments raised by the parties, because as we have explained, Shapiro's pattern of misconduct related to his disclosure obligations under FINRA's rules is by itself sufficiently serious to warrant denial of the Application. We note, however, that Member Regulation is not required to engage in an ongoing, post-hearing dialogue concerning a supervisory plan, particularly where it has additional concerns supporting its recommendation.

Further, several months after the hearing, the Firm suggested that it would be willing to employ Shapiro solely as a registered representative and require that he relinquish his position as head of the Firm's Syndicate Department (and asked for one final opportunity to submit another revised supervisory plan to reflect these changes). Even assuming that the Firm had raised this limitation at an earlier point in these proceedings (which it did not), the limitation would not cure Shapiro's repeated failures to comply with FINRA's disclosure rules and our other concerns.

supervise Shapiro pursuant to a stringent plan of supervision, weigh heavily against approving the Application. Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Shapiro to continue to associate with the Firm as a general securities representative and general securities principal. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Senior Vice President and Corporate Secretary