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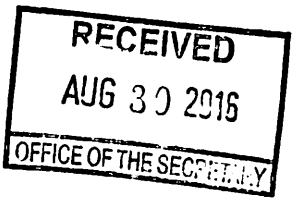

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

The Association of Bruce Meyers
With Meyers Associates, L.P.

For Review of Denial of Registration by

FINRA

File No. 3-17254

FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

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I. INTRODUCTION

Bruce Meyers ("Meyers") and his firm, Meyers Associates, L.P. (the "Firm"), appeal a May 9, 2016 decision of FINRA's National Adjudicatory Council ("NAC"). In that decision, the NAC thoroughly rejected applicants' arguments that Meyers was not statutorily disqualified as a result of a March 2015 consent order between applicants and Connecticut's Department of Banking (the "2015 Connecticut Order"), which required Meyers to withdraw his registration as a broker-dealer agent and not to reapply for three years. The NAC then held that the Firm failed to demonstrate that Meyers's continued association with the Firm was in the public interest and denied the Firm's application for Meyers to continue to associate with it. It found, based upon abundant uncontested evidence in the record, that Meyers's continued association with the Firm

would present an unreasonable risk of harm to the market or investors and warranted denial of the application.

The NAC's findings are well supported both factually and legally. Applying clear guidance issued by the Commission in 2013 (and the NAC's own precedent from December 2014) regarding what constitutes a statutorily disqualifying bar order issued by a state securities regulator, the NAC found that the 2015 Connecticut Order requiring Meyers to withdraw his registration disqualified Meyers because it had the effect of prohibiting him from engaging in a securities business in Connecticut. The NAC adhered to the Commission's instructions that, even if a state securities regulator's order does not use the term "bar," the order is a statutorily disqualifying bar order so long as it has the practical effect of prohibiting an individual from engaging in a particular activity. Here, there is no dispute that the 2015 Connecticut Order prohibited Meyers from engaging in any securities business in Connecticut requiring registration. Indeed, Meyers admits as much. The NAC soundly rejected numerous arguments by applicants in their effort to divert attention from the effects of the sanction imposed upon Meyers by the Department of Banking and circumvent the Commission's clear and controlling guidance on this issue.

The NAC also properly denied the Firm's application on the merits, and found that the Firm failed to meet its burden to show that Meyers's continued association with the Firm was in the public interest. The record unequivocally supports the NAC's denial and shows that: Meyers and the Firm each have lengthy regulatory and disciplinary histories "littered with numerous supervisory lapses and other repeat violations;" the 2015 Connecticut Order involved serious misconduct; and the Firm did not come close to showing that it could stringently supervise Meyers as a statutorily disqualified individual or that Meyers's proposed supervisors

could adequately supervise Meyers. The NAC considered these factors and determined that Meyers's continued association with the Firm presented an unreasonable risk of harm to the market and investors.

On appeal, Meyers and the Firm do not dispute the factors underlying the NAC's denial of the Firm's application. Rather, they repeat two related arguments that they made before the NAC concerning the NAC's finding that Meyers is statutorily disqualified. Meyers and the Firm argue that: (1) the NAC purportedly misinterpreted the definition of statutory disqualification contained in the Securities Exchange Act of 1934 ("Exchange Act") to erroneously find that the 2015 Connecticut Order rendered Meyers statutorily disqualified; and (2) the hearing panel improperly excluded testimony from applicants' attorney concerning the Department of Banking's intent in entering into the 2015 Connecticut Order. Applicants' arguments are unsound, lack factual and legal support, and should be rejected by the Commission.

First, the NAC did not misinterpret or improperly expand the definition of statutory disqualification when it found that Meyers is statutorily disqualified as a result of the 2015 Connecticut Order. Applicants' arguments to the contrary ignore and distort the Commission's clear guidance regarding orders such as the 2015 Connecticut Order. Indeed, Meyers acknowledged that the 2015 Connecticut Order prohibits him from doing any securities business in Connecticut that requires registration. Pursuant to the Commission's guidance, this admitted prohibition squarely places the 2015 Connecticut Order within the category of orders that bar an individual, and thus serves to disqualify Meyers. Applicants' linguistic gymnastics and focus on the verbiage used (and not used) in the 2015 Connecticut Order—rather than the practical effect of the sanction imposed by such order—is exactly the formalistic approach that the Commission

rejected in interpreting whether a state regulator's order constitutes a bar under the Exchange Act.

Second, the Commission should reject Meyers's and the Firm's argument that the NAC improperly excluded purportedly relevant testimony during the hearing and in connection with its determination that the 2015 Connecticut Order disqualified Meyers. They assert that Nathan Pereira ("Pereira"), applicants' counsel in the proceedings before the Department of Banking, needed to testify at the hearing so he could provide the hearing panel with his opinion that the Department of Banking did not intend to bar Meyers by entering into the 2015 Connecticut Order (which applicants argue is a crucial consideration in determining whether Meyers is statutorily disqualified). Applicants' arguments miss the mark. Pursuant to the Commission's guidance, the intent of the parties to the 2015 Connecticut Order has no bearing on the ultimate effect of the unambiguous order. The fact that Pereira formed an opinion concerning what the Department of Banking's intent may have been when it agreed to the 2015 Connecticut Order is simply not relevant to determining whether the 2015 Connecticut Order had the practical effect of barring Meyers because it prohibited him from engaging in a particular activity. The NAC properly analyzed the 2015 Connecticut Order and did not need to hear from Pereira to conclude that the order effectively prohibited Meyers from engaging in any securities business in Connecticut.

In short, Meyers and the Firm seek to use this forum to undo a collateral consequence of the 2015 Connecticut Order—a consequence that they should have anticipated given the clear guidance from the Commission and FINRA prior to entering into the order. While applicants may now be unhappy with the consequences of settling with the Department of Banking on the terms that they did, and may be displeased with the NAC's well-reasoned determination that

Meyers is statutorily disqualified and denial of the application, this cannot serve as a basis for setting aside the NAC's decision. The Commission should therefore dismiss this appeal.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Meyers's Employment History and Ownership of the Firm

Meyers has been associated with the Firm, which he founded, since April 1993. RP 4, 2100. He worked at the Firm (and served as its chief executive officer) until early June 2016, when the Commission denied applicants' motion to stay the NAC's decision pending this appeal. RP 138. As of the date of this filing, Meyers indirectly owns 90% of the Firm through his 90% ownership interest in Meyers Securities Corp. RP 139, 760, 2140-41. Meyers serves as the director, president, and chief executive officer of Meyers Securities Corp. RP 885.

B. Applicants' Troubling Regulatory and Disciplinary Histories

The record shows, and applicants do not contest, that they each have lengthy regulatory and disciplinary histories. As of the date of this filing, and not including the 2015 Connecticut Order, Meyers's regulatory and disciplinary history includes six final regulatory actions (three of which also named the Firm) brought by FINRA and several state regulators, as well as at least 16 customer complaints.[1] *See* RP 2236-40; *see generally* RP 16-75. As recently as April 2016, a FINRA Hearing Panel barred Meyers in all principal and supervisory capacities in connection with supervisory failures.[2] *See* RP 2191. Meyers's record also includes a four-month principal and supervisory suspension for failing to supervise, and additional findings that he failed to

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[1] These customer complaints made various allegations of wrongdoing, including unsuitable recommendations, excessive commissions, fraud, failures to supervise, and unauthorized trading. *See* RP 2238-40.

[2] Meyers and the Firm have appealed this Hearing Panel decision.

enforce the Firm's written supervisory procedures and, in another instance, failed to reasonably supervise an individual. *See* RP 2236-38.

The Firm's regulatory and disciplinary history is similarly disconcerting. It has been the subject of 17 final regulatory and disciplinary actions since 2000 as well as one other customer complaint, and has paid approximately $390,000 in monetary sanctions and has been fined an additional $700,000 in connection with these matters.[3] *See* RP 2240-42; *see generally* 141-231, 2191. Of the 17 regulatory matters, eight involved supervisory failures, and three involved the Firm's failures to produce documents to regulators or claimants in FINRA arbitrations. Other violations occurred repeatedly during this time frame, such as failing to comply with FINRA's reporting obligations, employing unregistered personnel, and failing to make disclosures to customers. Moreover, the Firm's results from recent Commission and FINRA examinations are abysmal, and reveal a pattern of numerous deficiencies and weaknesses at the Firm. *See* RP 2243-45; *see generally* RP 1055-1271.

C. The Basis for Meyers's Statutory Disqualification: The 2015 Connecticut Order

On March 24, 2015, Connecticut's Department of Banking entered the 2015 Connecticut Order against Meyers and the Firm that, among other things: (1) ordered Meyers to withdraw his registration as a broker-dealer agent of the Firm and not to reapply for reinstatement for three years; and (2) ordered that the Firm ensure that, for so long as Meyers remained affiliated with the Firm in an unregistered capacity in Connecticut, he refrain from directly supervising or training any broker-dealer agents with respect to securities business transacted in or from

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[3] In March 2014, a FINRA arbitration panel entered an award against the Firm totaling approximately $427,000 in connection with a customer complaint alleging, among other things, common law fraud, negligent misrepresentations, and negligent supervision. *See* RP 1469-70.

Connecticut and refrain from receiving any compensation in connection with the offer, sale, or purchase of securities effected in or from Connecticut.[4] *See* RP 545-53. Meyers concedes that the 2015 Connecticut Order prohibits him from doing any securities business in Connecticut that requires registration. *See* RP 2135-36.

Subsequent to the 2015 Connecticut Order, FINRA notified the Firm that the order rendered Meyers statutorily disqualified. *See* RP 555. In response, applicants requested that the Department of Banking confirm their view that the 2015 Connecticut Order did not bar Meyers and asked it to modify the order in such a way so as to avoid FINRA's determination that the 2015 Connecticut Order disqualified Meyers. The Department of Banking refused on two occasions to modify the 2015 Connecticut Order, and then successfully opposed applicants' attempt in state court to modify the order. *See* RP 873-74, 1723, 1769-80. According to applicants, and in connection with the Department of Banking's repeated refusals to modify the 2015 Connecticut Order, the Department of Banking "wanted to put [Meyers] out of business in Connecticut." *See* RP 1771.

D. Procedural History

The Firm filed its MC-400 application (the "Application") on June 4, 2015. The Application sought to continue to employ Meyers as a general securities representative, general securities principal, and the Firm's chief executive officer, although it contested that Meyers was statutorily disqualified. *See* RP 562. After a hearing on the Application had been scheduled,

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[4] The 2015 Connecticut Order stemmed from an April 2008 examination of the Firm by the Department of Banking and ensuing examinations during the next four years that revealed numerous and varied deficiencies and violations of Connecticut law. *See* RP 809-29. Meyers and the Firm ultimately resolved these allegations by consenting to the 2015 Connecticut Order. *See* RP 545-53. Although not discussed herein, the 2015 Connecticut Order imposed additional, serious sanctions upon the Firm. *See id.*

Meyers and the Firm filed a brief with the subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee empaneled to hear the matter, arguing that the 2015 Connecticut Order did not render Meyers statutorily disqualified and that Meyers was thus not required to go through a FINRA eligibility proceeding. *See* RP 729. Meyers and the Firm requested that the Hearing Panel decide this potentially dispositive legal issue prior to conducting a hearing on the substance of the Application. The Hearing Panel postponed the hearing to allow additional briefing and to consider the arguments of the parties. *See* RP 713.

After considering applicants' brief, the brief in opposition filed by FINRA's Department of Member Regulation, applicants' reply brief, and the exhibits filed by the parties, the Hearing Panel determined that a hearing on the underlying merits of the Application should go forward because Meyers appeared to be statutorily disqualified under the Exchange Act pursuant to the 2015 Connecticut Order. *See* RP 1787-1858.

After receiving the Hearing Panel's ruling, Meyers and the Firm—seeking another chance to argue that Meyers was not subject to statutory disqualification —stated their intent to present further legal arguments at the hearing as to why the Hearing Panel's determination concerning the 2015 Connecticut Order was "flawed." They also stated that they would present telephonic testimony from Pereira as to the history of the proceedings and conversations with the Department of Banking during those proceedings. *See* RP 1861. The Hearing Panel informed the parties that it would not permit applicants to reargue that the 2015 Connecticut Order did not render Meyers statutorily disqualified; would hear testimony from Pereira—provided it was not immaterial, irrelevant, or cumulative of other testimony presented at the hearing; and expected the parties to focus at the hearing on the underlying merits of the Application and why it should be approved or denied. *See* RP 1865-66.

The Hearing Panel conducted a hearing on March 22, 2016. *See generally* 1945-2181. Meyers, his proposed supervisor, and a compliance consultant hired by the Firm testified at the hearing. Consistent with its earlier ruling, the Hearing Panel declined to hear testimony from Pereira after receiving a proffer concerning what specifically Pereira would testify to and the parties' arguments concerning the relevance and necessity of the proffered testimony.[5] RP 2038-46.

E. The NAC Denies the Application

In a decision dated May 9, 2016, the NAC denied the Application and found that permitting Meyers to continue to associate with the Firm would present an unreasonable risk of harm to the market or investors.[6] *See* RP 2225-58.

1. The NAC Finds that Meyers Is Statutorily Disqualified

As an initial matter, the NAC concluded that the 2015 Connecticut Order rendered Meyers statutorily disqualified because it was a state securities regulator's order that bars Meyers

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[5] At the hearing, applicants' counsel proffered that Pereira would testify regarding the background and history of the Connecticut proceedings, the intent of the 2015 Connecticut Order, and the expectations of Meyers and the Firm regarding the order's effects. Applicants' counsel further proffered that Pereira would testify regarding the conversations of the parties, his understanding of the 2015 Connecticut Order, the collateral consequences of that order, and his understanding that the Department of Banking never indicated to him its intent to bar Meyers. *See* RP 2038-40. This is consistent with Pereira's affidavit attached to applicants' motion to stay (and purportedly incorporated by reference into their opening brief). *See* RP 2279-81; applicants' brief, at 9 n.41. FINRA notes that Pereira's affidavit was never submitted to the Hearing Panel when applicants filed their briefs prior to the hearing (or at any time thereafter).

[6] Applicants erroneously state that the NAC's decision is a final disciplinary sanction as to which a notice must be filed with the Commission pursuant to Exchange Act Section 19(d). Applicants' brief, at 1. A denial of an application to continue to associate with a broker-dealer notwithstanding a statutory disqualification is not a sanction, but rather a denial of membership or participation to any applicant under Section 19(d)(1). *See also Halpert and Co.*, 50 S.E.C. 420, 422 (1990) (holding that denial of an MC-400 application is not a remedial sanction or penalty). FINRA filed its decision with the Commission pursuant to Exchange Act Rule 19d-1(e).

from engaging in the business of securities pursuant to Exchange Act Section 15(b)(4)(H)(i). *See* RP 2230-36. The NAC, adhering to the Commission's 2013 interpretation of the language contained in Exchange Act Section 15(b)(4)(H)(i) and the NAC's own precedent, determined that the 2015 Connecticut Order was the functional equivalent of an order barring Meyers because it prohibited him from engaging in any securities business in Connecticut that required registration, even though the order did not contain the phrase "bar." The NAC found that the 2015 Connecticut Order "squarely meets the definition of disqualification under Exchange Act Section 15(b)(4)(H)(i)." RP 2232.

The NAC carefully considered, and thoroughly rejected, each of applicants' numerous arguments in support of their claim that the 2015 Connecticut Order did not render Meyers statutorily disqualified (which applicants repeat on appeal). *See* RP 2232-36. Many of applicants' arguments ignored or downplayed the Commission's guidance and NAC precedent addressing this very issue. For instance, the NAC rejected applicants' assertion that Meyers's "voluntary withdrawal" of his registration in Connecticut is not the equivalent of a bar and did not have the effect of a bar because he was not suspended and his license was not revoked. Meyers's and the Firm's argument that the 2015 Connecticut Order was not disqualifying because it did not use the phrase "bar" (whereas other, unrelated orders issued by the Department of Banking sometimes use that term) was similarly rejected.

The NAC also rejected applicants' suggestion that because Meyers consented to the 2015 Connecticut Order, it could not serve to disqualify him, and found unavailing their efforts to distinguish the 2015 Connecticut Order from prior NAC precedent and the Commission's guidance. The NAC also flatly rejected applicants' argument that they had no notice that the

2015 Connecticut Order could constitute a disqualifying event, as the Commission's guidance and NAC precedent predated the 2015 Connecticut Order.

2. The NAC Finds the Parties' Intent Is Not Relevant to the Practical Effect of the 2015 Connecticut Order and Pereira's Testimony Was Properly Excluded

Second, the NAC rejected applicants' argument that the 2015 Connecticut Order is not disqualifying because the parties to the order allegedly never intended that it bar Meyers. The NAC, once again turning to the Commission's guidance, held that "it is the effect of a state regulator's order that we must consider in determining whether it is disqualifying under Exchange Act Section 15(b)(4)(H)(i). The effect of the 2015 Connecticut Order pursuant to the language contained therein, and agreed to by the parties, is to prohibit Meyers from engaging in any securities business in the state[.]" RP 2233-34. The NAC further held that even if the parties' intent was relevant to determining whether the 2015 Connecticut Order is disqualifying, the record contained evidence that the Department of Banking intended to bar Meyers (which was much more probative than Pereira's proposed opinion of the Department of Banking's intent). *See* RP 2234.

Turning to the Hearing Panel's exclusion of Pereira's testimony regarding the parties' intent underlying the 2015 Connecticut Order and his understanding of the Department of Banking's intent in entering into that order, the NAC found that this testimony was properly excluded because it had no bearing on the ultimate effect of the order, which served to prohibit Meyers from conducting any securities business in Connecticut requiring registration. *See* RP 2233-35. The NAC distinguished a prior NAC decision from 2004 (and its citation to a 1992 CTFC decision) that applicants relied upon to demonstrate the purported relevance of Pereira's testimony and the parties' intent underlying the 2015 Connecticut Order. *See* RP 2235-36.

3. The NAC Finds Meyers's Continued Association with the Firm Presents an Unreasonable Risk of Harm

Finally, the NAC determined that the Firm had not demonstrated that Meyers's continued association with the Firm was in the public interest, and that his continued association presented an unreasonable risk of harm to the markets or investors.[7] The NAC based its denial on Meyers's and the Firm's lengthy and "deeply troubling" regulatory and disciplinary histories, as well as the serious nature of the misconduct underlying the 2015 Connecticut Order. *See* RP 2252-58. The NAC did not mince words, and found that:

> Meyers's extensive disciplinary and regulatory history, which mirrors the Firm's extensive disciplinary and regulatory history, indicates that he, personally and on behalf of the Firm, is unwilling or unable to comply with securities rules and regulations and that compliance with securities rules and regulations has been an afterthought. Under the circumstances, such a track record strongly suggests that any future in the securities industry will result in further noncompliance.

RP 2256. The NAC concluded that the Firm could not stringently supervise Meyers, and found that "the Firm's litany of violations and the repeated occurrence of numerous violations, particularly supervisory violations—demonstrates that the Firm lacks the ability to provide adequate supervision in the normal course of business, let alone stringently supervise a statutorily disqualified individual such as Meyers." RP 2253. The NAC also expressed concerns with Meyers's proposed supervisors and their abilities to effectively supervise Meyers as the owner of the Firm. *See* RP 2257-58.

On May 19, 2016, applicants filed a motion to stay, which again raised many of the same arguments as this appeal. *See* RP 2259. On June 3, 2016, the Commission denied applicants' motion. Meyers and the Firm appealed the NAC's decision on June 8, 2016.

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[7] On appeal, applicants do not contest any of the bases for the NAC's findings on the substance of the Application.

III. ARGUMENT

Exchange Act Section 19(f) sets forth the applicable standard of review in an appeal from a FINRA decision denying a firm's application to associate with a statutorily disqualified person. That section provides that if the Commission finds that: (1) the "specific grounds" upon which FINRA based its denial "exist in fact;" (2) such denial is in accordance with FINRA's rules; and (3) such rules are, and were applied in a manner consistent with the purposes of the Exchange Act, it "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* 15 U.S.C. § 78s(f); *William J. Haberman*, 53 S.E.C. 1024, 1027 (1998), *aff'd*, 205 F.3d 1345 (8th Cir. 2000) (table).[8]

FINRA complies with the Exchange Act in denying an application such as the Firm's when that application is inconsistent with the public interest and the protection of investors. *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *47 (Sept. 13, 2010); *Frank Kufrovich*, 55 S.E.C. 616, 624-26 (2002) (affirming FINRA's conclusions based on its stated analysis, which included an evaluation of the individual's prior misconduct and the sponsoring firm's inadequate plan of supervision); *Citadel Sec. Corp.*, 57 S.E.C. 502, 509 (2004) (affirming FINRA's denial of an application based upon inadequate supervision and individual's prior misconduct).

As explained below, the NAC's decision fully comports with the standards of Exchange Act Section 19(f). The NAC properly found that Meyers is statutorily disqualified, and there is no dispute that denial of the Application was appropriate under the facts and circumstances.

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[8] Meyers and the Firm do not assert, and the record does not demonstrate, that FINRA's denial of the Application imposes an unnecessary or inappropriate burden on competition.

A. The Specific Grounds for the NAC's Denial Exist in Fact

The record demonstrates that the grounds for the NAC's denial of the Application exist in fact. Meyers's and the Firm's arguments to the contrary should be rejected.

1. Meyers Is Statutorily Disqualified

As an initial matter, Meyers is statutorily disqualified. Article III, Section 4 of FINRA's By-Laws incorporates by reference the definition of "statutory disqualification" set forth in Exchange Act Section 3(a)(39). Section 604 of the Sarbanes-Oxley Act of 2002 expanded the definition of statutory disqualification in Exchange Act Section 3(a)(39) by creating and incorporating Exchange Act Section 15(b)(4)(H) so as to include persons that are subject to any final order of a state securities commission or state authority that supervises or examines banks that, among other things, "bars such person from association with an entity regulated by such commission . . . or from engaging in the business of securities." *See* 15 U.S.C. § 78o(b)(4)(H)(i); *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *4-5 (April 2009).

In July 2013, the Commission in an adopting release interpreted the language of Exchange Act Section 15(b)(4)(H)(i). The Commission stated that if a final order of a state securities commission has the effect of barring an individual, then it is disqualifying regardless of the exact language contained in the order, and regardless of whether the order uses the term "bar." *See Disqualification of Felons and Other Bad Actors from Rule 506 Offerings*, Securities Act Release No. 9414, 2013 SEC LEXIS 2000, at *75 (July 10, 2013). Specifically, the Commission observed that:

> Our requests for comment focused on whether there was a need for the Commission to explicitly state that all orders that have the practical effect of a bar (prohibiting a person from engaging in a particular activity) should be treated as such, even if the relevant order did not call it a 'bar.' . . . We believe the statutory language [of Section 15(b)(4)(H)(i)] is clear: bars are orders issued by one of the specified regulators that have the effect of barring a person from association with

> certain regulated entities; from engaging in the business of securities, insurance or banking; or from engaging in savings association or credit union activities. Any such order that has one of those effects is a bar, regardless of whether it uses the term 'bar.'

Id.

The Commission repeated nearly verbatim its interpretation of the language contained in Exchange Act Section 15(b)(4)(H)(i) in October 2013. *See Crowdfunding*, Release Nos. 33-9470 & 34-70741, 2013 SEC LEXIS 3346, at *512 (Oct. 23, 2013) (stating, in the context of proposed rules governing crowdfunding and funding portals and whether certain state regulatory orders would be disqualifying under such proposed rules, that "bars are orders issued by one of the specified regulators that have the effect of barring a person from: (1) associating with certain regulated entities; (2) engaging in the business of securities, insurance or banking; or (3) engaging in savings association or credit union activities. We believe that any such order that has one of those effects would be a bar, regardless of whether it uses the term 'bar.'").

Further, prior to Meyers entering into the 2015 Connecticut Order, the NAC adopted the Commission's interpretation of Exchange Act Section 15(b)(4)(H)(i) and the functional approach to determining whether a state regulatory order is disqualifying as an order barring an individual. Indeed, under facts and circumstances nearly identical to those present here, in December 2014 the NAC held that a consent order with a state securities regulator ordering a registered representative to withdraw his registration and not to reapply for a specified period of time constitutes a disqualifying order barring the individual. *See In the Matter of the Continued Association of Ronald Berman with Axiom Capital Management, Inc.*, SD 1997, slip op. at 1-5 (FINRA NAC Dec. 14, 2014) (rejecting argument that consent order was not disqualifying),

available at http://www.finra.org/sites/default/files/Berman%20SD-1997%20FINAL%2019%28d%29%20DECISION%2012%2011%2014_0_0_0_0_0_0_0.pdf.[9]

In interpreting the 2015 Connecticut Order in the context of Exchange Act Section 15(b)(4)(H)(i), the NAC followed the Commission's clear and repeated guidance and properly found that the 2015 Connecticut Order rendered Meyers statutorily disqualified because it had the practical effect of prohibiting him from engaging in any securities business in Connecticut that requires registration. The NAC considered—and thoroughly rejected—numerous arguments by Meyers and the Firm that the 2015 Connecticut Order did not render Meyers statutorily disqualified.

On appeal, Meyers and the Firm argue that the NAC's decision is not based upon specific grounds that exist in fact because the NAC erroneously concluded that the 2015 Connecticut Order rendered Meyers statutorily disqualified. They paint FINRA as "an overzealous regulator" playing "gotcha" by improperly expanding the definition of statutorily disqualifying state orders. In support, applicants raise several arguments, each of which the Commission should reject.

Applicants' claim that a state regulator's order must contain the term "bar" to qualify as a statutorily disqualifying order under Exchange Act Section 15(b)(4)(H)(i) is directly at odds with the Commission's interpretation of the language of the statute and instruction that the practical effects of an order—not the specific verbiage used by a regulator—is determinative. *See*

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[9] As early as 2000, the NAC utilized the functional approach in determining whether an order was disqualifying under the Exchange Act. *See In the Matter of the Association of X*, Redacted Decision No. SD00003, slip op. (NASD NAC 2000), *available at* http://www.finra.org/sites/default/files/NACDecision/p011567_0.pdf (applying the functional approach to determine that a consent order between an individual and the CFTC in which the individual agreed that he would not apply for registration in any capacity was disqualifying as an order "denying, suspending, or revoking" such person's registration under the Commodity Exchange Act).

applicants' brief, at 13. Similarly, that the Department of Banking may have used the phrase "bar" in other regulatory orders unrelated to this case has no bearing on whether Meyers's withdrawal of his registration in Connecticut has the practical effect of prohibiting him from engaging in any securities business requiring registration in the state. *See* applicants' brief, at 13-14. It does, and Meyers admitted as much as the hearing.[10] *See* RP 2135-36.

Meyers and the Firm also argue that the NAC "failed to recognize the importance of the fact that the Order is limited to one capacity in one jurisdiction" and that Meyers's withdrawal of his registration is limited to only one state. Applicants' brief, at 15. They argue that Meyers is not barred from association with a broker-dealer and not disqualified under Exchange Act Section 15(b)(4)(H)(i). Applicants are mistaken. As an initial matter, Exchange Act Section 15(b)(4)(H)(i) provides that a state securities regulator's order is disqualifying if it bars an individual from associating with a broker-dealer *or* bars an individual from engaging in the business of securities. Applicants' argument that Meyers can still associate with a broker-dealer focuses on only one part of the statute while ignoring the other.[11]

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[10] Applicants' characterization of Meyers's sanction as a "voluntary withdrawal" of his registration does not alter the fact that the 2015 Connecticut Order has the effect of prohibiting him from engaging in securities business in Connecticut. *See* applicants' brief, at 13. Meyers cannot avoid being subject to statutory disqualification simply by labeling his sanction under the 2015 Connecticut Order as something other than a bar while ignoring the sanction's effects. Indeed, applicants' approach of placing form over substance is exactly what the Commission sought to avoid by instructing that adjudicators look to the practical effect of an order—and not the exact language used to describe the sanction—and whether it prohibits an individual from engaging in a particular activity.

[11] For similar reasons, the Commission should reject applicants' argument that Meyers is not barred because the 2015 Connecticut Order permitted him to remain affiliated with the Firm in an unregistered capacity so long as he refrained from supervising or training broker-dealer agents and refrained from receiving compensation from securities transactions in Connecticut. Meyers conceded that the 2015 Connecticut Order prohibited him from engaging in any securities business requiring registration in the state, and it is undisputed that the order does not

[Footnote continued on the next page]

Moreover, the NAC considered—and rejected—this argument. *See* RP 2235-36. It highlighted the fallacy of applicants' argument and held that

> [O]rders issued by state regulators always govern only the individual's registrations and licensing in that particular state. Meyers's and the Firm's interpretation of the statute would mean that state regulators' orders barring individuals would never be disqualifying because the individual was not limited from engaging in activities in other states.

RP 2236. The Commission should reject applicants' reading of the Exchange Act as absurd.

The NAC also properly distinguished a previous NAC decision relied upon by applicants' in support of this argument. *Id.*; *In the Matter of the Association of X*, Redacted Decision No. SD04014, slip op. (NASD NAC 2004), *available at* http://www.finra.org/sites/default/files/NACDecision/p036507_0.pdf [hereinafter "NAC 2004 SD Decision"]. In the NAC 2004 SD Decision, the NAC determined that the consent order at issue, which barred an individual in a limited capacity, did not constitute an order of the CFTC "denying, suspending, or revoking his registration under the Commodity Exchange Act" and thus was not disqualifying. That order, however, did not revoke the individual's registration or prohibit him from being registered in any category pursuant to the Commodity Exchange Act, did not prevent him from being registered in "many other capacities," and the individual in fact continued to be registered with the CFTC. *See* NAC 2004 SD Decision, at 3-4. Unlike the sanction at issue in the NAC 2004 SD Decision, Meyers's sanction pursuant to the 2015 Connecticut Order is not akin to a limited-capacity bar, but rather prohibits Meyers from engaging in any securities

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[cont'd]
contain any carve out for Meyers to engage in any securities business or activity in Connecticut, or remain registered in any capacity in the state.

activity in Connecticut that requires registration. The 2015 Connecticut Order rendered Meyers statutorily disqualified.

Applicants further cite to the NAC 2004 SD Decision, and a 1992 decision of the CFTC (*Peterson v. Nat'l Futures Ass'n*, 1992 CFTC LEXIS 416 (Oct. 7, 1992)), to argue that Meyers's voluntary withdrawal of his registration cannot be interpreted as a bar under Section 15(b)(4)(H)(i). In particular, applicants argue that these cases held that the individuals at issue were not statutorily disqualified because their withdrawals of registration in certain capacities were not the equivalent of "denying, suspending, or expelling" under the Commodity Exchange Act. Based upon these holdings, applicants assert that Meyers's withdrawal of his registration is not the equivalent of a bar under Exchange Act Section 15(b)(4)(H)(i). The NAC rejected this argument and so should the Commission. The Commission's interpretation of the language in Exchange Act Section 15(b)(4)(H)(i) is more relevant contextually and temporally than the NAC 2004 SD Decision and the CFTC's 1992 *Peterson* decision, each of which interpreted different statutes well before the Commission issued its guidance on the statutory provision at issue here.[12]

Finally, Meyers and the Firm state that the NAC erroneously decided and relied upon *Berman* and argue that the Commission's interpretation of Exchange Act Section 15(b)(4)(H)(i) should not have been used to find Meyers statutorily disqualified because

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[12] Further, *Peterson* held that to find the individual disqualified under a more general provision of the Commodity Exchange Act (providing that the CFTC is authorized to refuse to register an individual for "other good cause"), as urged by the National Futures Association, would undermine the notice provided by more specific disqualification provisions set forth in the Commodity Exchange Act. There are no similar concerns regarding notice here, as the Commission's guidance and relevant NAC precedent were available to Meyers well before he entered into the 2015 Connecticut Order. *See* Part III.D, *infra*.

the Commission's interpretation was in a different context. Applicants are wrong on both counts. Like here, *Berman* involved an individual's withdrawal of his state securities registration for a specified period pursuant to a consent order with a state securities regulator. The NAC followed the Commission's guidance and held that Berman was barred under Exchange Act Section 15(b)(4)(H)(i). The NAC did not err in relying upon this precedent in finding that Meyers is statutorily disqualified, and properly applied its precedent to Meyers.

Moreover, the Commission's 2013 guidance is directly applicable to the 2015 Connecticut Order even though it was issued in the context of when a state securities order disqualifies an individual from relying upon registration exemptions under Regulation D (and not when a state securities order disqualifies an individual from associating with a broker-dealer under FINRA's rules).[13] The statutory language analyzed is for all intents and purposes identical, and the applicability of the guidance does not depend upon the context of the disqualification. *See Disqualification of Felons and Other Bad Actors from Rule 506 Offerings*, 2013 SEC LEXIS 2000, at *69 (stating that the disqualification provision at issue, Section 926(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, "is essentially identical to Section

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[13] Meyers also attempts to distinguish himself from the individuals that were the subject of the Commission's interpretation of this issue under Regulation D by arguing that unlike the felons and other bad actors that were the focus of that interpretation, Meyers's personal conduct did not form the basis for the 2015 Connecticut Order. *See* applicants' brief, at 18-19. Meyers harps on a distinction without a difference, as the Commission's 2013 guidance applies equally to the context at issue here. Moreover, although Meyers has continuously asserted that the 2015 Connecticut Order did not involve any personal misconduct on his part, Meyers was charged with, and settled allegations that, he failed to reasonably supervise various aspects of the Firm and materially assisted, and willfully aided and abetted, the Firm's failure to provide documents requested by the Department of Banking in a complete and timely manner. *See* RP 817-29.

15(b)(4)(H) of the Exchange Act . . . The only difference is that Section 926(2)(A)(ii) contains a ten-year look-back period for final orders based on violations of laws and regulations that prohibit fraudulent, manipulative and deceptive conduct, while the Exchange Act and Advisers Act provisions have no express time limit for such orders"); *see also Crowdfunding*, 2013 SEC LEXIS 3346, at *509 (stating that the disqualification provision at issue, Section 302(d)(2)(B) of the Jumpstart Our Business Startups Act, is "substantively identical" to Exchange Act Section 15(b)(4)(H)).

On appeal, applicants have presented no good reason to reverse the NAC's finding that Meyers is statutorily disqualified as a result of the 2015 Connecticut Order.[14]

2. The Factors Underlying NAC's Denial of the Application Exist in Fact

Further, the factors relied upon by the NAC to deny the Application—Meyers's and the Firm's extensive regulatory and disciplinary histories, the recency and seriousness of the 2015 Connecticut Order, and serious concerns with Meyers's proposed supervision—all "exist in fact," are amply supported by the record, and are not contested by applicants on appeal. In denying the Application, the NAC fully considered the totality of the circumstances and clearly explained the bases of its decision. Meyers and the Firm failed to overcome their burden of proof and also failed to demonstrate grounds for Meyers's continued association in the securities industry. *See Gershon Tannenbaum*, 50 S.E.C. 1138, 1139-40 (1992); *M.J. Coen*, 47 S.E.C. 558, 561 (1981) ("[A]ny member wishing to employ such a [statutorily disqualified] person . . . must 'demonstrate why the application should be granted.'"); *Halpert & Co.*, 50 S.E.C. at 422 (same).

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[14] Moreover, FINRA did not act as "an overzealous regulator" by determining that the 2015 Connecticut Order rendered Meyers statutorily disqualified under the Exchange Act. Rather, it acted in accordance with its obligations under federal securities laws and its own rules and by-laws when it determined whether the 2015 Connecticut Order disqualified Meyers. *See infra* Part III.C.

B. The NAC's Review and Denial of the Application Were Fair and in Accordance with FINRA Rules

The record also shows that the NAC's review and denial of the Application were conducted fairly and in accordance with FINRA rules. Article III, Section 3(b) of FINRA's By-Laws prohibits a member firm from remaining in membership if it employs a statutorily disqualified individual. Article III, Section 3(d) of FINRA's By-Laws provides that any member ineligible for continuance in membership may file an application requesting relief from the ineligibility pursuant to FINRA rules. FINRA Rules 9520 through 9525 set forth FINRA's procedures for eligibility proceedings.

FINRA followed its by-laws and rules in processing this matter. After the Firm filed the Application to initiate the eligibility proceeding, the Hearing Panel was convened in accordance with FINRA Rule 9524(a)(1). The Hearing Panel gave the parties an opportunity—at applicants' request—to file briefs on the legal issue of whether the 2015 Connecticut Order rendered Meyers statutorily disqualified, and the parties did so. *See* RP 729-58, 1787-1858; *see also* FINRA Rule 9524(a)(3)(C) (granting the Hearing Panel authority to order the parties to provide additional information at any time prior to the issuance of its recommendation). FINRA's Office of General Counsel gave applicants proper advance notice of the hearing, as required by FINRA Rule 9524(a)(2), and the Hearing Panel conducted a hearing on March 22, 2016. Meyers appeared at that hearing accompanied by counsel, his proposed supervisor, and the Firm's outside compliance consultant. All three individuals testified, and Meyers and the Firm were given ample opportunity to demonstrate why it would be in the public interest to allow Meyers to continue to associate with the Firm.

Meyers and the Firm do not dispute any of this. They argue, however, that FINRA did not follow its rules in denying the Application because the Hearing Panel did not permit Pereira

to testify. Specifically, they argue that under FINRA Rule 9524(a), which provides that applicants may present any relevant evidence at a hearing in an eligibility proceeding, the Hearing Panel should have permitted Pereira to testify because the Firm in the Application disputed that Meyers is statutorily disqualified. *See* applicants' brief, at 5. Applicants' argument is a non-sequitur, and would require hearing panels to admit any evidence presented by firms or disqualified individuals, regardless of its relevance, so long as they disputed the basis for the disqualification in the application. This is not what FINRA Rule 9524 requires.

Meyers and the Firm also argue that Pereira's testimony concerning the intent of Meyers, the Firm, and the Department of Banking in entering into the 2015 Connecticut Order (and Pereira's opinion that the Department of Banking did not intend that the order bar or serve to bar Meyers) was relevant because it was necessary to determine whether Meyers is statutorily disqualified. For the reasons set forth above, Pereira's testimony and opinion concerning the Department of Banking's intent had no bearing on the practical effect of the sanction imposed upon Meyers by the 2015 Connecticut Order. Despite applicants' arguments to the contrary, the NAC 2004 SD Decision and *Peterson* do not "make it abundantly clear that the intent of the parties in entering into a settlement is relevant to the determination of statutory disqualification." Applicants' brief, at 6. These cases are factually distinguishable, dealt with different statutory provisions, and were issued well before the Commission's guidance on the language in Exchange Act Section 15(b)(4)(H)(i) and the NAC's decision in *Berman*.[15]

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[15] Moreover, neither decision focused on the intent of the parties in determining whether a settlement was disqualifying. *Peterson* held that the "settlement should be construed as written" and does not address the parties' underlying intent. *See Peterson*, 1992 CFTC LEXIS 416, at *9-10 (citations omitted). Similarly, in the NAC 2004 SD Decision, the NAC did not decide whether the individual was disqualified based upon the parties' intent at the time the settlement order was entered.

Likewise, applicants' reliance upon *U.S. v. Armour & Co.*, 402 U.S. 673 (1971) and *U.S. v. ITT Cont'l Baking Co.*, 420 U.S. 223 (1975) are misplaced. In *U.S. v. Armour*, the Court interpreted a 1920 consent decree and stated that "the scope of a consent decree must be discerned within its four corners" and that a consent decree represents a compromise and "embodies as much of [the parties'] opposing purposes as the respective parties have the bargaining power and skill to achieve." 402 U.S. at 681-82. In *ITT Cont'l Baking*, the Court interpreted the meaning of the word "acquiring" in a consent order, and stated that "[s]ince a consent decree or order is to be construed for enforcement purposes basically as a contract, reliance upon certain aids to construction is proper" and that "evidence of events surrounding its negotiation and tending to explain ambiguous terms would be admissible in evidence." 420 U.S. at 238 and n.11. The Court, "[s]ince the parties themselves so provided," looked to an appendix to the parties' agreement underlying the consent order, as well as the complaint, as aids to the construction of the order. *Id.*

Here, outside evidence is unnecessary to interpret the 2015 Connecticut Order. The language of the 2015 Connecticut Order clearly and unambiguously provides that Meyers shall withdraw his registration in the state and not reapply for three years. There is no dispute regarding this. Nor is it disputed that the Department of Banking achieved, and Meyers agreed to, a sanction that prohibited Meyers for at least three years from engaging in any securities business in Connecticut that required registration. No clarification is needed of the unambiguous language in the 2015 Connecticut Order that required Meyers to withdraw his registration and the Department of Banking's enforcement of that sanction. *See ITT Cont'l Baking*, 420 U.S. at 238; *see also SEC v. Levine*, 881 F.2d 1165, 1179 (2d Cir. 1989) (holding that, in connection with the interpretation of a consent order, "[e]xtrinsic evidence, however, may generally be

considered only if the terms of the judgment, or of documents incorporated in it, are ambiguous").

Under the Exchange Act, FINRA (and now the Commission)—and not the applicants or the Department of Banking—are charged with determining whether that sanction is the practical equivalent of a bar (i.e., whether a collateral consequence of the order is that Meyers is statutorily disqualified). FINRA did so, applying the Commission's clear legal guidance on the issue, and the parties' intent regarding the unambiguous language of the 2015 Connecticut Order simply has no bearing on the practical effect of the sanctions imposed by that order and any collateral consequences under the Exchange Act. Pereira's opinion of the Department of Banking's intent was irrelevant, and properly excluded.[16]

Applicants further argue that FINRA did not follow its rules based upon a statement in the letter conveying the Hearing Panel's ruling that the 2015 Connecticut Order "appeared" to render Meyers statutorily disqualified. They contend that this statement justified their belief that additional argument and evidence on the issue would occur at the hearing and that a decision on whether the 2015 Connecticut Order rendered Meyers statutorily disqualified had not been conclusively made. *See* applicants' brief, at 7. The Commission should reject this argument, as applicants' mistaken belief that they could present further argument and evidence on this issue is not germane to the NAC's ultimate determination that the excluded testimony was irrelevant.

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[16] Moreover, even if the parties' intent was relevant (it was not), the record already contained evidence of the Department of Banking's intent that was more direct, and contrary to, Pereira's opinion of its intent. When repeatedly pressed by applicants to address the potential collateral consequences of the 2015 Connecticut Order prior to FINRA's eligibility proceeding, the Department of Banking twice refused to buy into applicants' and Pereira's interpretation of its intent (and later successfully fought applicants' attempt to modify the 2015 Connecticut Order in state court). Pereira's proposed testimony was irrelevant, properly excluded at the hearing, and cannot serve as a basis for overturning the NAC's denial.

Further, any determination by the Hearing Panel concerning whether Meyers was statutorily disqualified was subject to review and approval by FINRA's Statutory Disqualification Committee and then the NAC. *See* FINRA Rules 9524(a)(10) & 9524(b)(1).

Finally, applicants point to a non-dispositive comment in the NAC's decision related to the exclusion of Pereira's testimony to purportedly demonstrate that FINRA failed to follow its rules. *See* applicants' brief, at 8. Applicants' argument is a red herring. The NAC affirmed the Hearing Panel's exclusion of Pereira's testimony as irrelevant and repetitious. *See* RP 2234. The NAC also noted, in the comment that applicants attempt to place in controversy, that applicants should have offered an affidavit from Pereira when they filed their pre-hearing legal briefs on the potentially dispositive issue of whether Meyers was statutorily disqualified (instead of holding back evidence that they claim was relevant and necessary to the dispositive determination). *See id.* In so doing, the NAC compared applicants' unsolicited brief on the issue to a request for summary disposition in a FINRA disciplinary proceeding such that they should have presented evidence in support of their legal arguments with their briefs.[17] *See id.*

Applicants, who were represented by two different law firms before the Hearing Panel and NAC, should have tendered an affidavit from Pereira for the Hearing Panel's consideration if such evidence was as important as they claim. Regardless of the NAC's statement concerning

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[17] The NAC also pointed to FINRA Rule 9263(a), which provides that a hearing officer in a disciplinary proceeding may exclude any testimony or evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial, to support its exclusion of Pereira's irrelevant and duplicative testimony. *See* RP 2234. Meyers and the Firm argue that this FINRA rule does not apply to eligibility proceedings. *See* applicants' brief, at 9. Regardless of whether this specific rule applies to the current matter, it is undisputed that the concept underlying the rule does—hearing panels in eligibility proceedings may exclude evidence and testimony that is irrelevant. *See, e.g.*, FINRA's By-Laws, Art. III, Section 3(d) (providing that in connection with an eligibility proceedings, FINRA may review "the relevant facts and circumstances as it, in its discretion, considers necessary to its determination").

applicants' omission, the NAC ruled on the substance of the matter and affirmed the Hearing Panel's exclusion of Pereira's irrelevant testimony. The Commission should reject applicants' argument that the NAC's reference to FINRA's rule concerning summary disposition proceedings and statement that they should have filed Pereira's affidavit with their legal briefs warrants overturning the NAC's decision, or somehow renders Pereira's proposed testimony relevant. It does not.

C. The NAC Applied FINRA's Rules in a Manner Consistent with the Purposes of the Exchange Act

The NAC's denial of the Application was entirely consistent with the purposes of the Exchange Act. The NAC discharged its obligations on behalf of FINRA under federal securities laws by analyzing whether the 2015 Connecticut Order rendered Meyers statutorily disqualified under the Exchange Act and whether Meyers's continued association with the Firm was in the public interest. The NAC properly concluded that Meyers is statutorily disqualified, and based its denial of the Application on a totality of the circumstances and thoroughly explained and articulated the bases for its denial.

A central purpose of the Exchange Act is to promote market integrity and enhance investor protection. *See, e.g., U.S. v. O'Hagan*, 521 U.S. 642, 658 (1997) (stating that in passing the Exchange Act, one of Congress's animating objectives was "to ensure honest securities markets and thereby promote investor confidence"). In this vein, FINRA was formed to "adopt, administer, and enforce rules of fair practice," "[t]o promote . . . high standards of commercial honor," and "to promote just and equitable principles of trade for the protection of investors." FINRA Manual, Restated Certificate of Incorporation of Financial Industry Regulatory Authority, Inc., Objects or Purposes (Third) (1) and (3) (July 2, 2010). Within the structure

created by the Exchange Act, FINRA promulgates and enforces rules to "protect investors and the public interest." *See* 15 U.S.C. § 78o-3(b)(6).

FINRA must determine whether individuals are ineligible as a result of a statutory disqualification to associate or continue to associate with a member firm, and if so, whether they may associate or continue to associate with their firms notwithstanding their ineligibility. *See* FINRA's By-Laws, Art. III, Sec. 3; *see also* 15 U.S.C. § 78o-3(g)(2) (providing that a registered securities association such as FINRA may prohibit a statutorily disqualified individual from associating with a firm); *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *25-34 (June 26, 2014) (affirming NAC's findings that individual was statutorily disqualified and denying application).

The Commission has found it "appropriate to recognize the NASD's evaluation of appropriate business standards for its members . . . [p]articularly in matters involving a firm's employment of persons subject to a statutory disqualification." *See Halpert*, 50 S.E.C. at 422; *Am. Inv. Serv., Inc.*, 54 S.E.C. 1265, 1271 n.16 (2001). As the Commission stated in *Haberman*, "NASD may, in its discretion, approve association with a statutorily disqualified person only if the NASD determines that such approval is consistent with the public interest and the protection of investors." 53 S.E.C. at 1027 n.7. In reviewing an application to permit a statutorily disqualified person to remain associated with a member firm, the NAC follows the factors enumerated in Article III, Section 3(d) of FINRA's By-Laws by reviewing:

> the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification, may include the proposed or present business of a member and the conditions of association of any current or prospective associated person.

The Commission has stated that 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 Arouh*, 2010 SEC LEXIS 2977, at *46; *Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *14 (July 17, 2009). The NAC thoroughly explained its holding that Meyers is statutorily disqualified. And, it properly found, and applicants do not dispute, that Meyers and the Firm failed to demonstrate that Meyers's continued association with the Firm would be in the public interest and the NAC provided a convincing and detailed rationale as to why Meyers represented an unreasonable risk of harm to the market or investors. The NAC properly found that applicants' lengthy regulatory histories strongly weighed strongly against approving the Application. *See Kufrovich*, 55 S.E.C. at 626 (holding it is appropriate to consider individual's prior disciplinary history); *In the Matter of the Continued Association of Mitchell T. Toland with Hallmark Investments, Inc.*, SD 1812, slip op. at 14-15 (FINRA NAC Feb. 19, 2014), *available at* http://www.finra.org/sites/default/files/NACDecision/ p448164_0.pdf (denying application based upon firm's troubling regulatory and disciplinary history and stating that "[t]he totality of the Firm's disciplinary and regulatory history is disconcerting and supports our conclusion that it is not capable of assuming the additional heavy burden of supervising a statutorily disqualified individual"), *aff'd*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724 (Nov. 21, 2014).

The NAC also appropriately considered that the 2015 Connecticut Order involved serious, securities-related misconduct. *See Citadel Sec. Corp.*, 57 S.E.C. at 509 (finding that in denying firm's application, FINRA properly considered the seriousness and nature of the disqualifying permanent injunction involving an individual's failure to supervise employees in

connection with market manipulation, which is "relevant to his fitness to associate with a member firm").

Finally, the NAC properly found that the Firm failed to demonstrate that it would be able to stringently supervise Meyers as a statutorily disqualified individual and owner of the Firm. *See Citadel Sec. Corp.*, 57 S.E.C. at 509-10 ("[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 quotations omitted). Indeed, the NAC found that "the Firm lacks the ability to provide adequate supervision in the normal course of business, let alone stringently supervise a statutorily disqualified individual such as Meyers." RP 2253.

In sum, FINRA's determination that Meyers is statutorily disqualified and denial of the Application were consistent with the purposes of the Exchange Act.

D. Applicants' Public Policy Argument Lacks Merit

Finally, Meyers and the Firm argue that the Commission should provide, as a matter of public policy, clarity as to what constitutes a state regulator's order barring an individual because "[t]here is a severe lack of guidance from FINRA or the SEC." *See* applicants' brief, at 20. They further assert that "Meyers could not have been on notice" that the 2015 Connecticut Order would disqualify him. *See* applicants' brief, at 21. Even assuming that the current proceeding is the proper forum to advance applicants' purported public policy initiatives, applicants' argument that clarity is needed in this area is based on the fallacy that clear and repeated guidance in this area has not already been issued by the Commission and FINRA.

This is simply not the case. The Commission on two different occasions in 2013 spoke clearly and consistently on what constitutes a state securities regulator's order barring an individual, and FINRA applied this guidance in 2014 in a case nearly identical to this one. As far back as 2000, the NAC adopted a similar functional approach in a different context to determine whether an individual was statutorily disqualified. Clarity is not lacking in this area, and the aforementioned guidance and precedent was available to parties well in advance of Meyers agreeing to the 2015 Connecticut Order in March 2015.[18] Simply put, Meyers's and the Firm's "public policy" arguments are thinly-veiled attempts to undo a completely foreseeable consequence of entering into the 2015 Connecticut Order. The Commission should reject these efforts and dismiss applicants' appeal.[19]

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[18] Under these circumstances, applicants' argument that "Meyers could not have been on notice" that consenting to the 2015 Connecticut Order under which he agreed to withdraw his registration could have rendered him statutorily disqualified is perplexing. *See* applicants' brief, at 21. Equally confusing is applicants' statement that "neither the Applicants nor the Department [of Banking] were on notice that the voluntary withdrawal they were negotiating would be considered the functional equivalent of a bar by FINRA" when negotiations apparently began in April 2014. *See* applicants' brief, at 9. At that time, however, the Commission's clear guidance had been publically available for almost ten months, and by the time the parties signed and executed the 2015 Connecticut Order in March 2015, the NAC's *Berman* decision was also available.

[19] Applicants also state that "FINRA has also indicated that the period of statutory disqualification extends through the time that the Department [of Banking] approves Meyers' registration in the State and not merely after the three-year term has expired," and urge the Commission to provide guidance on this issue "to ensure that a statutory disqualification does not remain in place for longer than the sanction that created it." Applicants' brief, at 21 n.81. Even assuming that this issue is properly before the Commission on appeal (it is not), FINRA has provided guidance on this issue directly contrary to applicants' position that Meyers's status as a statutorily disqualified individual expires automatically after three years. *See* 2009 FINRA LEXIS 52, at *14 n.12 (stating that "[a] person would no longer be subject to a statutory disqualification when the time limitation of a bar . . . has expired, provided that (1) application for reentry is not required or has been granted . . ."). Here, Meyers must file an application with the Department of Banking to re-register as an agent in the state. *See* RP 549, 2189-90.

IV. CONCLUSION

The NAC properly concluded, applying clear and consistent guidance by the Commission as to what constitutes a statutorily disqualifying state regulator's order, that Meyers is statutorily disqualified because he is indisputably prohibited from engaging in any securities business in Connecticut. The NAC also properly concluded, based upon ample and uncontested evidence set forth in a fully-developed record, that permitting Meyers to continue to associate with the Firm would present an unreasonable risk of harm to the market and investors. Meyers's and the Firm's numerous arguments that the 2015 Connecticut Order somehow does not serve to disqualify Meyers do not withstand scrutiny and should be rejected. Meyers's and the Firm's procedural argument that the Hearing Panel improperly excluded evidence is similarly baseless. Applicants have not presented any legitimate grounds for disturbing any portion of the NAC's decision. Accordingly, the Commission should dismiss this appeal.

Respectfully submitted,

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August 29, 2016

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August 29, 2016

VIA MESSENGER

Brent J. Fields, Secretary
Securities and Exchange Commission
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Washington, DC 20549

Re: In the Matter of the Application for Review of Bruce Meyers with Meyers Associates, L.P., Administrative File No. 3-17254

Dear Mr. Fields:

Please find enclosed for the above-referenced matter an original and three copies of FINRA's Opposition to Application for Review. Please contact me at (202) 728-8281 if you have any questions.

Very truly yours,

Andrew J. Love

cc: Robert I. Rabinowitz, Esq.

Enclosures

CERTIFICATE OF COMPLIANCE

I, Andrew J. Love, certify that this Brief in Opposition to Application for Review (File No. 3-17254) complies with the length limitation set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 9,976 words.

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Dated: August 29, 2016

HARD COPY

CERTIFICATE OF SERVICE

I, Andrew J. Love, certify that on this 29th day of August, 2016, I caused a copy of FINRA's Brief in Opposition to Application for Review, Administrative Proceeding No. 3-17254, to be served by messenger on:

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5400

and via facsimile and overnight delivery service on:

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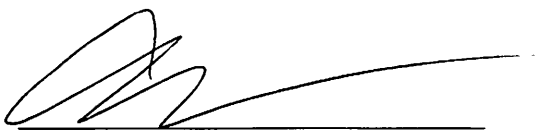
Service was made on the Commission by messenger and on the applicants' counsel by overnight delivery service and facsimile due to the distance between the offices of FINRA and applicants' attorney.



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