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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of	
Bruce Meyers and Meyers Associates, L.P.	
For Review of Action Taken by	
FINRA	

File No. 3-17254

REPLY BRIEF IN FURTHER SUPPORT OF APPLICATION OF BRUCE MEYERS AND MEYERS ASSOCIATES, L.P. FOR A REVIEW OF DECISION OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY'S NATIONAL ADJUDICATORY COUNCIL

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PRELIMINARY STATEMENT

Pursuant to Rule 450(a) of the Commission's Rules of Practice, Meyers Associates, L.P. (the "Firm") and Bruce Meyers ("Meyers") (sometimes referred to herein collectively as "Applicants") hereby submit this Reply Brief in further support of the application of Meyers and the Firm for a review by the Securities and Exchange Commission (the "Commission") of the decision of the Financial Industry Regulatory Authority's ("FINRA") National Adjudicatory Council ("NAC") dated May 9, 2016 (the "NAC Decision") which determined that: 1) Bruce Meyers, an associated person of a FINRA-member firm is statutorily disqualified pursuant to Sections 3(a)(39) and 15(b)(4)(H)(i) of the Securities Exchange Act of 1934 (the "Exchange Act"), and 2) denying the Firm's MC-400 Membership Application (the "MC-400 Application") to permit Meyers to continue to associate with the Firm in any capacity.[1] Applicants base their appeal on the following procedural and public policy grounds: (A) FINRA erred by excluding relevant evidence in violation of FINRA Rule 9524(a)(4); (B) FINRA misinterpreted and improperly expanded Section 3(a)(39) and Section 15(b)(4)(H)(i) of the Exchange Act; and (C) as a matter of public policy, the SEC should, in this interpretation of the federal securities laws and its own rules, provide clarity to industry members and state regulators.

In the interest of avoiding undue repetition, this Reply Brief shall address only limited points raised in FINRA's Opposition to Application for Review (the "Opposition"). Applicants respectfully refer the Commission to their Opening Brief for a full briefing of the issues which form the bases of their appeal.

[1] NAC Decision, dated May 9, 2016 (Bates No. 002221) [hereinafter, "NAC Decision (Bates No. 002221)"].

LEGAL ARGUMENTS IN REPLY TO FINRA'S OPPOSITION

In their Opposition, FINRA erroneously argues that the Hearing Panel properly excluded irrelevant testimony by Nathan Pereira ("Pereira"). FINRA is incorrect on two fronts: (1) Pereira's testimony was not irrelevant, and (2) the Hearing Panel erred in excluding it.

Applicants briefed the issue of the Hearing Panel's obligation to consider all relevant evidence, including evidence of the intent of the parties in entering into the Connecticut Order, in its Opening Brief. In its Opposition, FINRA argues that the Connecticut Order is clear and unambiguous, rendering intent evidence unnecessary. FINRA argues that the "functional approach"—placing substance over form—must be used to determine whether the Order was disqualifying under the Exchange Act.[2] Ironically, placing substance over form is exactly what Applicants have been advocating all along. The absence of particular verbiage in the Connecticut Order is significant (i.e., it does not use the word "bar"). Because of the lack of specific language in the Connecticut Order clearly indicting the Department of Banking's intent to bar Meyers, Applicants proffered the testimony of Pereira to describe to the Panel the negotiations that led to the entry of the Connecticut Order which would enlighten the Hearing Panel as to the issue of the parties' intent.

Furthermore, despite the fact that FINRA claims intent does not matter, it simultaneously and repeatedly argues that the Department of Banking's intent was known and contrary to Pereira's understanding of the Department's intent. FINRA misleadingly states, "...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."[3] Contrary to FINRA's assertion, **the record**

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[2] *See, e.g.*, FINRA's Brief in Opposition to Application for Review, dated August 29, 2016, at 16, n. 9 [hereinafter, "Opposition"].

[3] Opposition at 25, n. 16; *see also* Opposition at 11.

contained no evidence as to the Department of Banking's intent to bar Meyers. As explained in Applicants' Opening Brief, on April 23, 2015, FINRA's Department of Member Regulation ("Member Regulation") notified the Firm that it had determined that based on the Order, Meyers was subject to statutory disqualification as defined in Section 3(a)(39) of the Exchange Act.[4] After receiving said notification, Meyers contacted the Department of Banking and informally sought confirmation that the Department did not intend the Order to constitute a statutory disqualification under Exchange Act Section 15(b)(4)(H)(i) as it did not constitute a "bar" against Meyers.[5] **Without explanation**, the Department declined the request and Meyers subsequently filed with the Department a formal Petition for Reconsideration and Modification of the Order.[6] In June 2015 the Banking Commissioner denied Meyers' Petition for Reconsideration **without setting forth the rationale or basis for its decision**.[7] After the Department's denial of the Petition for Reconsideration, Meyers filed a Complaint in Connecticut state court requesting that the Court require the Department to amend the Order to state that it should not be construed as a "statutory bar," arguing that the Department and Meyers did not intend that the Order serve as a disqualifying order under the Exchange Act.[8] This was evidenced by, *inter alia*, the fact that Meyers was permitted to remain registered with the Firm notwithstanding the entry of the Order and was not required to divest himself of ownership of the Firm.[9] In October 2015 **the Court dismissed the Complaint on procedural grounds having never addressed Meyers' substantive arguments.**[10]

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[4] Notice of Statutory Disqualification, dated April 23, 2015 (Bates No. 000555).
[5] NAC Decision (Bates No. 002221) at 5.
[6] NAC Decision (Bates No. 002221) at 5.
[7] NAC Decision (Bates No. 002221) at 5.
[8] NAC Decision (Bates No. 002221) at 5.
[9] *Meyers Associates, L.P. and Bruce Meyers*, Docket No. CFNR-14-8132-S, State of Connecticut Department of Banking, Consent Order, dated March 24, 2015 (Bates No. 000545) at p. 5, ¶ 7.
[10] NAC Decision (Bates No. 002221) at 5–6.

In addition, the record contained numerous Department cases relied on by Applicants which provide that when the Department intends to bar someone from conducting securities business in Connecticut, it clearly states as much in its order.

Further, in footnote 5 of its Opposition, 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)."[11] The reason for this is, of course, that Applicants relied on the Hearing Panel's continued assurances that Pereira would be permitted to testify at the hearing. Applicants believed that it would be more beneficial to subject Pereira to questioning and cross-examination, rather than being forced to rely on a limited written affidavit. FINRA erroneously states in its Opposition that, "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."[12] The Hearing Panel's refusal to allow Pereira to testify is entirely inconsistent with its earlier rulings. In a March 4, 2016 letter, Mr. Love advised that the Hearing Panel would "not consider legal arguments already raised by the applicant in its briefs" but would permit Pereira to testify at the hearing "reserv[ing] its right to exclude any testimony (including testimony that is deemed immaterial, irrelevant or cumulative of other testimony presented at the hearing)."[13] The proposed testimony to be offered by Pereira was consistent with what had been indicated in pre-hearing communications. At the hearing, the Hearing Panel initially indicated that, consistent with prior communications, it *would* allow limited testimony from Pereira concerning the facts

[11] Opposition at 9.
[12] *Id.*
[13] Letter to parties regarding testimony at hearing, dated March 4, 2016, at 1 (Bates No. 001865).

underlying negotiation of the Order.[14] However, after Member Regulation repeated its objections to the testimony,[15] the Hearing Panel reversed its decision without explanation and ruled that it would not allow him to testify at all.[16] The Hearing Panel did not offer any reasoned basis for precluding the testimony that it previously determined it would allow. When counsel for Applicants stated, "Before we go forward, I just want to clarify, initially, Mr. Denton, you had indicated you were willing to take some limited testimony from Mr. Pereira, but I understand that's no longer the case, that we are not going to be permitted to offer Mr. Pereira's testimony. I just want to clarify." the Chairman simply responded, "Correct." without offering any reasoned basis for its reversal of its decision.[17]

In addition to the aforementioned preservation of Applicants' objection at the hearing itself, Applicants further preserved their objection in subsequent correspondence to FINRA on April 6, 2016, well before the NAC issued its Decision.[18]

If Applicants had any advance notice that Pereira would not be permitted to testify, or that the pre-hearing submission of legal briefs would be considered analogous to a motion for summary disposition pursuant to FINRA Rule 9264(d) (which governs enforcement proceedings and not eligibility proceedings), then Applicants would have taken the opportunity to submit Pereira's affidavit.[19] However, this was never raised until the NAC issued its Decision, and erred in applying Rule 9264(d). Prior to the hearing Applicants were instructed that legal briefs would

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[14] Hearing Transcript, dated March 22, 2016 (Bates No. 001945) at 97:9-15 (Chairman Denton: "Okay. The panel has heard -- has read the record and is willing in a very limited basis to let Mr. Pereira testify, but we will cut it off very quickly if it seems like it is going on . . .") [hereinafter "Hearing Tr. (Bates No. 001945)"]; *see also* Hearing Tr. (Bates No. 001945) at 19:3-8 (Ms. Rohrer: "...We are laying the groundwork for appeal. If you have already determined that issue, we ask for leeway to get that evidence in as to intent." Chairman Denton: "Okay.").

[15] Hearing Tr. (Bates No. 001945) at 99:5 – 101:16.

[16] Hearing Tr. (Bates No. 001945) at 101:13-16; 101:25 – 102:8.

[17] Hearing Tr. (Bates No. 001945) at 101:25 – 102:8.

[18] *See* Applicant's letter regarding the testimony of Nathan Pereira, dated April 6, 2016 (Bates No. 002187).

[19] NAC Decision (Bates No. 002221) at 10, n. 11.

be permitted but there was no discussion of motions for summary disposition for which there is no provision under the FINRA rules related to eligibility proceedings.[20] The correspondence from the Hearing Officer and statements made by the Hearing Panel directly contradict the conclusion that the briefs were the equivalent of a summary judgment motion requiring the submission of affidavits.

Lastly, Applicants again dispute FINRA's assertion in its Opposition that, "...the Commission's 2013 guidance applies equally to the context at issue here."[21] As explained in Applicants' Opening Brief, the SEC Release focuses on the underlying conduct of "felons and other bad actors" in connection with their disqualification in relying on the Rule 506 exemption from registration in connection with private securities offerings.[22] Thus an issuer or person involved in a distribution of securities could not rely on the exemption from registration and would have to consider other alternatives. Not being able to utilize the exemption from registration in a private securities offering provided by Regulation D is a minor inconvenience; not being able to maintain your securities registration and with it, your livelihood, is much more than that. For FINRA to make such a massive interpretive leap based on the language of the SEC Release is unwarranted, given that the SEC Release did not address whether a state sanction could form the basis for statutory disqualification in a FINRA eligibility proceeding. The repercussions for FINRA's broad interpretation and expansion of the SEC Release to determine that an individual would be permanently barred from the securities industry (rather than simply

[20] *See, e.g.*, FINRA Rule 9520, *et seq.*
[21] Opposition at 20, n. 13.
[22] *Id.*

ineligible to take advantage of an exemption from registration in a private securities offering) are so severe that it is imperative that the SEC directly address this issue.[23]

To further this point, Applicants intend to file a motion for leave to adduce additional evidence pursuant to Rule 452 of the Commission's Rules of Practice to further illustrate the lack of reliable guidance in this area.

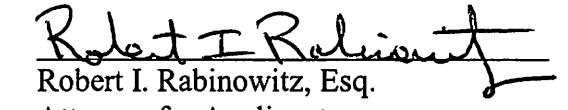
CONCLUSION

For the foregoing reasons, Meyers Associates, L.P. and Bruce Meyers respectfully request that the Commission overturn the NAC Decision because (A) FINRA erred by excluding relevant evidence in violation of FINRA Rule 9524(a)(4); (B) FINRA misinterpreted Section 3(a)(39) and Section 15(b)(4)(H)(i) of the Exchange Act; and (C) as a matter of public policy, the SEC should, in this interpretation of its own rules, provide clarity to industry members and state regulators.

Dated: September 12, 2016

Respectfully Submitted,

Bruce Meyers and Meyers Associates, L.P. by:



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[23] FINRA has also indicated that the period of statutory disqualification extends through the time that the Department approves Meyers' registration in the State and not merely after the three-year term has expired, citing the SEC Release. It is also imperative that the Commission interpret this language in the context of Section 3(a)(39) and provide clear guidance to FINRA and the industry to ensure that a statutory disqualification does not remain in place for longer than the sanction that created it.

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2016 I caused a true and correct copy of the foregoing Applicants' Reply Brief in Further Support of the Application for Review and Certificate of Filing by Facsimile Transmission to be served upon the following by Facsimile transmission and overnight mail, addressed to:

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