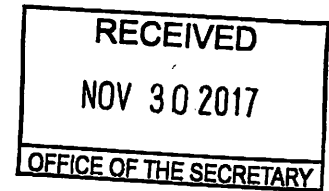


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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of
Merrimac Corporate Securities, Inc.

and

Robert G. Nash

For Review of Disciplinary Action Taken by

FINRA

File No. 3-18045

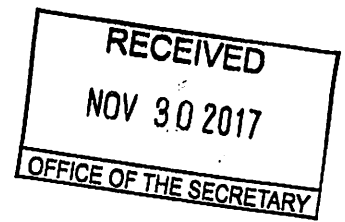
**FINRA'S MOTION TO STRIKE THE DOCUMENTS SUBMITTED BY
MERRIMAC CORPORATE SECURITIES, INC.**

Alan Lawhead
Vice President and
Director – Appellate Group

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1735 K Street, NW
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November 29, 2017



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**FINRA'S MOTION TO STRIKE THE DOCUMENTS SUBMITTED BY
MERRIMAC CORPORATE SECURITIES, INC.**

Applicant Merrimac Corporate Securities, Inc. ("Merrimac") submitted to the Commission, along with its brief in support of its application for review, a CD containing hundreds of pages of documents, with virtually no explanation of their content or purpose. The CD appears to contain both certain documents already in the record submitted by FINRA, but without the record page numbers, and additional documents *not* in the certified record.

Merrimac also appears to submit summary documents prepared to support its arguments on appeal, which are not in the record and for which there is no supporting evidence in the record.

Merrimac is essentially attempting to recreate a record favorable to it with no connection to the record developed in the underlying proceedings. Merrimac's attempt to reorganize and supplement an already lengthy record consisting of more than 19,000 pages is a transparent end-run around appellate procedures and FINRA's National Adjudicatory Council's ("NAC")

previous ruling denying its motion to adduce these documents on appeal. Merrimac has not made the required motion under Commission Rule of Practice 452 to introduce these documents, much less met the rigorous standard required pursuant to that rule. The Commission, accordingly, should strike Merrimac's submission of documents in total and decide Merrimac's application for review on the basis of the certified record only.

I. BACKGROUND

The NAC issued a May 26, 2017 decision (the "NAC Decision") finding that Merrimac provided false documents to FINRA, sold unregistered securities, failed to establish and implement adequate anti-money laundering policies, failed to maintain a reasonable supervisory system, and effected securities transactions while its registration was suspended.¹ (R. at 1,917-19,206.) For these violations, the NAC fined Merrimac a total of \$225,000, suspended it from membership for 30 days, limited its activities with respect to penny stock transactions for one year, and required it to retain an independent consultant to review and approve its procedures. (R. at 19,206.)

Merrimac filed an application for review of FINRA's disciplinary action and, on August 9, 2018, FINRA filed a certified copy of the record with the Commission and served a copy of the index to the certified record on Merrimac. (R. at 19209-19208; *see also* FINRA's Aug. 9, 2017 letter to Brent J. Fields.) The certified record contained the same numbering as the record before the NAC and the index included a description of each document and exhibit along with the exhibit number assigned during the hearing.

¹ "R. at ____" refers to the page numbers in the certified record filed by FINRA on August 9, 2017.

On October 30, 2017, Merrimac filed with the Commission its brief in support of its application for review (“Merrimac’s Br.”). Merrimac submitted its brief electronically, on a CD, along with more than 1300 pages of documents (“Merrimac’s Submission”).² Merrimac’s Submission appears to include both documents already in the record submitted by FINRA, but without the record page numbers, and additional documents not in the record. Merrimac also submitted what it labeled “analyses,” which appears to be summary documents created by Merrimac for this appeal that are not in the record.

As an example, Merrimac’s Submission contain a 6-page document marked “MERRA-0501.” Page 1 of MEERA-0501 appears to be an altered copy of Exhibit CX-75, which was introduced by FINRA’s Department of Enforcement (“Enforcement”) and admitted by the Hearing Officer at the hearing. (R. 16281-16282.) Exhibit CX-75 is a summary exhibit listing certain DSR forms provided to FINRA by Merrimac in response to FINRA’s Rule 8210 request and which Enforcement alleged contained false signatures.³ The next five pages of MEERA-0501 appear be versions of CX-75. On each version, Merrimac reduces the number of entries based on its own assertions and theories about the authenticity and relevance of the documents. On page two of MEERA-0501, Merrimac reduces the number of entries on the exhibit by 12 because it claims, without any support in the record, that these documents contained authentic signatures. Merrimac Br. pages 1-3. On page three of MEERA-0501, Merrimac removes an additional six entries to reflect its argument that documents with falsified signatures for which the underlying transaction was never executed should not count towards its violation. *Id.* On

² FINRA did not receive not paper copies of the documents submitted on the CD.

³ Merrimac appears to have altered its copy of CX-75 to include the heading “Enforcements [sic] Forged DSR List.”

page four, Merrimac removes another 10 entries because, it argues, these DSR forms were for “additional sales” for a customer who had previously sold the same security and also should not count towards its violation. *Id.* On the last page of MEERA-501, Merrimac lists the nine falsified DSR forms for which it apparently has no defense.

Merrimac’s Submission also includes documents marked MEERA-3001 and MEERA-4001, which Merrimac previously attempted to introduce on appeal to the NAC. The NAC denied admission of these documents because Merrimac failed to establish their relevance and good cause for failing to introduce the documents at the hearing, as required under FINRA Rule 9346.

II. ARGUMENT

Commission Rule of Practice 452 allows a party to move to adduce additional evidence on appeal. A moving party must demonstrate “with particularity” that “such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.” 17 C.F.R. 201.452 (2017). Merrimac has failed to make any motion to adduce, much less meet this high standard for the admission of additional evidence. It is well-settled that the Commission will not admit documents on appeal where the party submitting the document has not made the required motion and not established why the documents are material and reasonable grounds for failure to adduce the evidence previously. *See, e.g., Capwest Sec., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at *28n.43 (Jan. 17, 2014) (excluding documents attached to an applicant’s brief on appeal where the applicant did not file a motion to introduce under Rule of Practice 452 and did not explain why it did not adduce the documents earlier or their materiality); *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *46n.83 (Apr. 18, 2013) (declining to admit a document attached to applicant’s

brief where he did not make a motion pursuant to Rule of Practice 452 and did not explain why he could not have adduced the document previously), *aff'd*, 575 F. App'x 1 (D.C. Cir. 2014); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *58-59 (Nov. 9, 2012) (declining to admit exhibits on appeal where the applicant made “no attempt to seek permission” to introduce them and, accordingly, did “not explain[] his failure to introduce the exhibits earlier”).

Merrimac does not make a motion under Rule of Practice 452 and does not even attempt to meet that standard in that rule. Instead, Merrimac includes with its submission a short cover letter claiming that it was providing the documents because: (1) it had “not received its copy of the documents”; (2) FINRA had added “new bates [sic] numbers” to the documents; and (3) Merrimac was “concerned” that documents referenced in its brief “are not within” the certified record submitted by FINRA. None of Merrimac’s arguments has merit.

First, FINRA provided Merrimac with a copy of the index to the certified record as required by Rule of Practice 420(e). There is no requirement that FINRA also provide Merrimac with a copy of the record. The index to the certified record referred to the evidence admitted at the hearing with the exhibit numbers marked on the hearing. Presumably, Merrimac has copies of the evidence that was introduced during the hearing in which it participated.

Second, it is not true that FINRA changed the bates numbers on the certified record. To the contrary, the bates numbers in the certified record are based on the certified record submitted by the Hearing Officer, with additional appeals documents added. (R. 18,477-92.

Finally, Merrimac’s assertion that it is submitting documents because it is “concerned” that FINRA omitted these documents is disingenuous. Merrimac is well aware that these documents are *not* part of the record. Certain of these documents were created by Merrimac for

its appeal before the Commission and others are documents for which the NAC denied admission on appeal before it.

Merrimac's Submission is nothing more than an attempted document-dump and end-run around appropriate appellate procedures. Merrimac has no reasonable grounds for piling on an already voluminous record with hundreds of pages of *additional* documents at this late stage of the proceeding. Merrimac fails to state with any particularity why it did not offer the additional documents into evidence during the hearing.

The evidentiary hearing before the Hearing Panel below provided Merrimac with ample opportunities to rebut any evidence presented in the case and offer evidence and testimony of its own accord to support its defense. Merrimac's introduction of new evidence at the eleventh-hour will undermine a fair and orderly administrative process and the finality of FINRA's disciplinary proceedings. Accordingly, the Commission should deny its motion.

III. CONCLUSION

Merrimac provides no reasonable grounds for its submission of documents to the Commission, which improperly includes newly created documents, and explains no reasonable grounds for failing to adduce additional evidence at an earlier time. The Commission should

strike Merrimac's Submission and ignore any references made by Merrimac in its brief that refer to documents that are not part of the certified record.

Respectfully submitted,



Celia L. Passaro
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November 29, 2017

CERTIFICATE OF SERVICE

I, Celia L. Passaro, certify that on this 29th day of November 2017, I caused a copy of the foregoing FINRA's Motion to Strike Documents Submitted by Merrimac Corporate Securities, Inc. (File No. 3-17560) to be sent via messenger and fax to:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

and via FedEx on:

Merrimac Corporate Securities, Inc.,
c/o Stephen D. Pizzuti
2341 Westwood Drive
Longwood, FL 32779

Robert G. Nash

██████████
Deltona, FL ██████████

Service was made on the Securities and Exchange Commission by messenger and on the Applicants by overnight delivery service and electronic mail due to the distance between the offices of FINRA and the counsel for the Applicant.

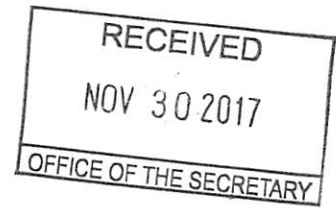


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Financial Industry Regulatory Authority

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November 29, 2017

VIA MESSENGER AND FACSIMILE

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

RE: In the Matter of the Application for Review of Merrimac Corporate Securities, Inc. and Robert G. Nash, Administrative Proceeding No. 3-18045

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Motion to Strike the Documents Submitted by Merrimac Corporate Securities, Inc.

Please contact me at (202) 728-8985 if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to be "C. Passaro", with a long horizontal flourish extending to the right.

Celia L. Passaro

Enclosures

cc: Robert G. Nash (via FedEx)
Stephen Pizzuti (via FedEx)