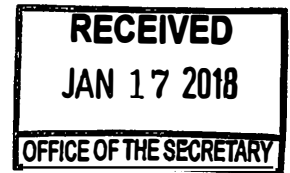


**HARD COPY**  
**BEFORE THE**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, DC**



In the Matter of the Application of  
  
The Association of Bruce Zipper  
With Dakota Securities International, Inc.  
  
For Review of Denial of Registration by  
  
FINRA  
  
File No. 3-18256

**FINRA'S BRIEF IN OPPOSITION TO**  
**REQUESTS FOR STAY**

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January 16, 2018

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File No. 3-18256

**FINRA'S BRIEF IN OPPOSITION TO  
APPLICATION FOR REVIEW**

**I. INTRODUCTION**

This matter involves FINRA's straight forward, and fully warranted, denial of a statutory disqualification application filed by Dakota Securities International, Inc. (the "Firm") to continue to employ its owner, Bruce Zipper. Zipper blatantly violated the terms of an April 2016 settlement with FINRA (which rendered him statutorily disqualified) whereby he agreed to a three-month suspension in all capacities. Instead of complying with the terms of his suspension, Zipper continued to associate with the Firm by recommending securities to his customers, continuing to advise his customers, and communicating with third parties on behalf of the Firm.

In addition to Zipper's serious breach of his settlement agreement and violation of FINRA rules, FINRA's National Adjudicatory Council ("NAC") considered that the Firm proposed wholly unqualified supervisors for Zipper because each individual lacked the necessary supervisory experience and objectivity to stringently supervise Zipper as a statutorily

disqualified individual and owner of the Firm. The NAC also considered the Firm's woefully deficient supervisory plan for Zipper a plan that the Firm revised twice but still fell far short of the comprehensive and detailed supervisory plans that are required for a statutorily disqualified individual.

The record abundantly supports each basis that the NAC relied upon in determining that approving the Firm's application was not in the public interest and that Zipper's continued association with the Firm presented an unreasonable risk of harm to the market or investors. Indeed, under the circumstances, the NAC would have been derelict in its duties under the Securities Exchange Act of 1934 ("Exchange Act") had it not denied the Firm's application.

On appeal, Zipper fails to undercut any of the three reasons supporting the NAC's denial or otherwise provide a valid reason for the Commission to reverse the NAC's denial. Instead, he continues his well-worn and improper attacks upon his agreed-upon settlement with FINRA that rendered him statutorily disqualified and argues that, contrary to the undisputed facts, he did not engage in misconduct subsequent to his disqualifying event by violating the terms of his suspension. The Commission should reject Zipper's collateral attacks on the settlement that rendered him disqualified. Moreover, the record unequivocally shows that Zipper—an industry veteran with 35 years of experience—regularly advised his customers, recommended securities to his customers, and communicated on behalf of the Firm with third parties, in violation of the terms of his suspension and FINRA's rules. The NAC thoroughly rejected Zipper's narrow and naïve view that his suspension merely prohibited him from communicating with FINRA or FINRA members, and found not credible his explanations that he had an undocumented, verbal side-agreement with FINRA staff that provided exceptions to the unambiguous suspension set

forth in his settlement document. The Commission should likewise reject Zipper's flimsy rationales to excuse his misconduct.

Moreover, Zipper ignores the other two bases of the NAC's denial—an utter lack of stringent supervision by qualified and capable supervisors. These concepts undergird the notion of permitting a statutorily disqualified individual such as Zipper to remain in the securities industry. On these points, Zipper does not contest the NAC's well-supported findings that the Firm proposed inexperienced supervisors who could not objectively supervise Zipper as owner of the Firm and proposed a half-baked supervisory plan that contained numerous gaps. Instead, Zipper points to recent changes to the Firm's management—made well after the NAC denied the application—and deflects attention from his meritless appeal by claiming that FINRA has mistreated him and misrepresented facts throughout this process.

The Commission should reject each of Zipper's arguments. The Firm's post-denial managerial changes have no bearing on this appeal and the Firm's application to continue to employ Zipper considered by the NAC. Moreover, the record is utterly devoid of any support for Zipper's repetitive and unsubstantiated claims of bias by FINRA. The NAC's conclusion that Zipper's continued association with the Firm would present an unreasonable risk of harm to the markets or investors is beyond dispute and should be affirmed. FINRA urges the Commission to dismiss Zipper's application for review.<sup>1</sup>

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<sup>1</sup> Zipper filed a brief in support of his appeal dated December 1, 2017 (referred to herein as "Br."), which the undersigned did not receive until December 13, 2017. Contrary to the Commission's scheduling order, he also filed an "addendum" to his brief dated December 9, 2017 (referred to herein as "Add.") and another "addendum" dated December 14, 2017 (referred to herein as "Second Add."). The undersigned received these documents on December 18 and 27, 2017, respectively.



## II. FACTUAL BACKGROUND

### A. Zipper and the Firm

Zipper has more than 35 years of experience in the securities industry. *See* RP 114, 406. He has been associated with the Firm, which he founded, since August 2004. *See* RP 003, 1148. Zipper generally served as the Firm's chief executive officer and chief compliance officer from the Firm's inception until his disqualifying settlement with FINRA, and at the time he filed this appeal he was again serving as the Firm's chief executive officer and chief compliance officer (although, as discussed below, that apparently has changed). *See* RP 343, 471, 1240; *see also infra* Part IV.A.2. He holds a 70% ownership interest in the Firm. *See* RP 138, 1148.

### B. Zipper Is Suspended in All Capacities for his Willful Failure to Disclose Three Judgments

Zipper is statutorily disqualified because he willfully failed to update his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to reflect three judgments totaling approximately \$22,000. *See* RP 128-33. To resolve these disclosure failures, Zipper voluntarily agreed to a Letter of Acceptance, Waiver and Consent with FINRA in April 2016 (the "Disqualifying AWC").<sup>2</sup> *See id.*

Pursuant to the Disqualifying AWC, Zipper agreed to "[a] three-month suspension from association with any FINRA member in all capacities" and a \$5,000 fine. RP 130. The Disqualifying AWC expressly stated that Zipper "may not be associated with any FINRA

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<sup>2</sup> After FINRA staff on several occasions refused to vacate the Disqualifying AWC, in April 2017 Zipper requested similar relief from the Commission (as well as requesting that the Commission order FINRA to produce documents to Zipper in connection with his unsubstantiated allegations that FINRA is biased against him). The Commission dismissed Zipper's appeal of the Disqualifying AWC, and his request for discovery from FINRA based upon his unsubstantiated claims of bias against him, on September 29, 2017. *See Bruce Zipper*, Exchange Act Release No. 81788 (Sept. 29, 2017), <https://www.sec.gov/litigation/opinions/2017/34-81788.pdf>, *motion to reconsider pending*.

member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).” RP 130-31. Similarly, the Firm’s written supervisory procedures (“WSPs”) (which Zipper was completely unfamiliar with despite creating and bearing responsibility for them) clearly provided that while under suspension, “employees may not: Have direct or indirect contact with customers” or “[g]ive investment advice or counsel.” RP 1142-43; *see also* RP 1115 (Zipper testifying that he is not “totally up to speed” and does not “know all 500 pages” of the Firm’s WSPs in discussing provisions addressing statutory disqualifications).

During the term of Zipper’s three-month suspension (which ran from May 31, 2016 until August 31, 2016), the Firm promoted Robert Lefkowitz (“Lefkowitz”) to serve as the Firm’s chief executive officer and Zipper’s supervisor. *See* RP 1125, 1156. Zipper elevated Lefkowitz to these roles despite Lefkowitz’s complete lack of any supervisory experience. *See* RP 1155-56. In fact, Lefkowitz first registered as a general securities principal just prior to Zipper’s three-month suspension so that he could serve in these roles. *See* RP 061.

C.e Zipper Engages in the Firm’s Securities Business During his Suspension

Despite the clear and unambiguous terms of the Disqualifying AWC prohibiting Zipper from associating with any FINRA member in any capacity while suspended, it is undisputed that during the term of his three-month suspension, he regularly communicated with third parties and customers concerning their securities accounts (including advising customers and recommending securities to customers).<sup>3</sup> *See generally* RP 719-59. The following email sent by Zipper to two

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<sup>3</sup> Zipper falsely states that he “served his suspension.” Br. at 1. As the NAC found, Zipper did not adhere to the terms of his suspension and violated FINRA’s rules. *See* RP 1304-07. Zipper also strongly insinuates that he paid the \$5,000 fine imposed by the Disqualifying AWC. *See* Br. at 1, 6. Zipper, however, did not pay the fine; rather, it was discharged in connection with his June 2016 bankruptcy filing. *See* RP 287.

customers during his three-month suspension is illustrative of Zipper's continued association with the Firm, and is one of numerous emails from Zipper to customers and third parties during his suspension period:

A stock I like a lot and has been getting high analyst praise is R.R. Donnelley & Sons. . . . I strongly recommend this stock RRD to both of you. You both have large cash balances and this old time blue chip would look good in each of your portfolios. Let me know if interested.

RP 723.

Lefkowitz, Zipper's purported supervisor during his three-month suspension, acquiesced to Zipper's improper activities during the term of his suspension. *See* RP 1013-17, 1156. Lefkowitz could not recall if he ever reviewed the Disqualifying AWC. *See* RP 1164. Moreover, Zipper stated that he conveyed to Lefkowitz his view that he was permitted to communicate with customers and that Lefkowitz accepted Zipper's interpretation. *See* RP 1213.

### **III. PROCEDURAL HISTORY**

#### **A. The Firm Files an Application to Continue to Employ Zipper**

The Firm filed an application to continue to employ Zipper notwithstanding his statutory disqualification on July 29, 2016 (the "Application"), which sought approval for Zipper's continued employment as a general securities representative (and not in any supervisory capacities). *See* RP 137, 268. The Firm initially proposed that Lefkowitz would serve as Zipper's supervisor pursuant to the following "plan:"

I, Robert Lefkowitz the acting CEO of Dakota Securities will monitor and supervise Bruce Zipper. I have been in the business for more than 20 years and at Dakota for about 8 years. I know the company and know Bruce Zipper well. Dakota is a small company and I believe I will be able to monitor all business at the company including Mr. Zipper's activities. I have a supervisor's license #24 and feel more than capable of making sure Dakota's business is run correctly and with proper supervision. Over time the plan would be to have Mr. Zipper get back to

supervising certain activities at the company when that time is right and approved by FINRA.

RP 155.

B. Proceedings Before the NAC

FINRA's Department of Member Regulation recommended that the NAC deny the Application in a filing dated June 28, 2017. *See* RP 245. After accommodating Zipper and agreeing to conduct the hearing in this matter in Boca Raton, Florida (near Zipper's residence and business), a subcommittee of FINRA's Statutory Disqualification Committee (the "Hearing Panel") agreed to conduct a hearing on July 12, 2017. *See* RP 195, 231.

Several weeks prior to the hearing, FINRA accepted from Lefkowitz a Letter of Acceptance, Waiver and Consent (the "Lefkowitz AWC"). *See* RP 1013-17. Pursuant to the Lefkowitz AWC, Lefkowitz consented to findings that he permitted Zipper to violate the terms of his suspension under the Disqualifying AWC. *See* RP 1013-14. As a result, FINRA suspended Lefkowitz in all principal capacities for five months (from July 17, 2017 until December 16, 2017). *See* RP 71-72, 1015.

Zipper and Lefkowitz appeared and testified at the hearing. *See generally* RP 1027-1200. At the hearing, they informed the Hearing Panel that because of Lefkowitz's five-month suspension in all principal capacities pursuant to the Lefkowitz AWC, Diane Alexander would serve as Zipper's primary supervisor (as well as the Firm's chief compliance officer). *See* RP 1067-68, 1207. The Firm further proposed that Drew Alexander would serve as Zipper's alternate supervisor. *See* RP 1068. However, neither Diane Alexander nor Drew Alexander

appeared at the hearing. Thus, the Hearing Panel was unable to question Zipper's proposed primary supervisor or his alternate supervisor.<sup>4</sup> *See* RP 1308.

Based upon comments and questions raised by the Hearing Panel at the hearing, it permitted the Firm to amend its proposed supervisory plan at the hearing. *See* RP 1084-87. The Firm did so, and the Hearing Panel permitted the Firm to submit a second amended heightened supervisory plan after the hearing. *See* RP 1201-03.

**C.e The NAC Finds that Zipper's Continued Association with the Firm Would Present an Unreasonable Risk of Harm to the Market or Investorse**

In a decision dated October 2, 2017, the NAC denied the Application, determined that the Firm had failed to show that Zipper's continued association with the Firm was in the public interest, and determined that Zipper's continued association with the Firm presented an unreasonable risk of harm to the markets or investors. *See* RP 1293-1312. The NAC based its denial on three distinct grounds.

First, the NAC concluded that Zipper engaged in additional, serious misconduct subsequent to the Disqualifying AWC by violating the terms of his suspension and associating with the Firm. *See* RP 1304-07. It found that Zipper "regularly communicated with his customers during his suspension and made securities recommendations during that period instead of avoiding associating with the Firm in all capacities as was required by the Disqualifying

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<sup>4</sup> Prior to the hearing, FINRA staff notified Zipper and the Firm that "[b]oth Mr. Zipper and his immediate supervisor should plan to attend [the hearing] and they should be prepared to discuss the events surrounding his disqualifying event, his proposed duties at the firm, and the manner in which he will be supervised." *See* RP 162. FINRA staff separately notified Zipper and the Firm that "[t]he Hearing Panel also will consider the manner in which the Firm proposes to supervise Zipper's activities and the qualifications and background of the Firm and its principals." *See* RP 1023-24. Although the Hearing Panel did not benefit from testimony from Diane Alexander or Drew Alexander, it reviewed their CRD records (which are part of the record) and heard testimony from Lefkowitz and Zipper concerning Diane Alexander's and Drew Alexander's experience. *See* RP 77-98.

AWC.” RP 1307. The NAC found it “troubling that a broker with Zipper’s experience in the industry” engaged in “core” broker functions during his suspension. RP 1306. The NAC further found it troubling that Lefkowitz “shared Zipper’s view of what was permissible during his suspension despite the clear language of the Disqualifying AWC.” RP 1306.

The NAC thoroughly rejected Zipper’s arguments that he was permitted to discuss customer accounts with, and recommend securities to, his customers despite the clear language prohibiting such activity in the Disqualifying AWC. *See* RP 1306-07. The NAC rejected Zipper’s “narrow interpretation” of the Disqualifying AWC that he asserted merely precluded him from talking with FINRA or FINRA members and from personally entering trades for customers (an interpretation that he continues to argue on appeal). *See, e.g.*, Br. at 4; RP 1306. The NAC found that Zipper’s view of his suspension was belied by the plain language of the Disqualifying AWC, FINRA Rule 8311 (which was expressly cited in the Disqualifying AWC), and the Firm’s own WSPs (which Zipper created and bore responsibility for). *See* RP 1306.

The NAC also rejected Zipper’s unsupported claim (repeated on appeal) that FINRA staff gave him verbal assurances that FINRA would not strictly enforce the terms of the Disqualifying AWC. Specifically, the NAC rejected Zipper’s assertion that FINRA staff told him that if an issue arose that Zipper determined only he could handle (because of the Firm’s small size) and his intervention was necessary to prevent harm to the Firm or a customer, Zipper was permitted to handle such matter regardless of the terms of the Disqualifying AWC. *See, e.g.*, Br. at 4-5; RP 1307. The NAC found not credible Zipper’s testimony on this point, and further held that even if Zipper’s testimony was truthful neither he nor the Firm explained why another registered representative could not service Zipper’s customers during his three-month suspension. *See* RP 1307.

Second, and as “an independent basis for denying the Application,” the NAC considered the Firm’s failure to show that Zipper’s proposed supervisors could stringently supervise him. *See* RP 1308. The NAC held that, despite the Firm bearing the burden to demonstrate that the Application should be approved, it failed to present either Diane Alexander or Drew Alexander at the hearing to testify. *See* RP 1308. It further held that based upon the record, neither of Zipper’s proposed supervisors possessed “the necessary supervisory experience to supervise a statutorily disqualified individual such as Zipper under heightened supervision.” RP 1309. Indeed, the NAC found that Diane Alexander “appears to have minimal (if any) direct supervisory experience during her career” and that Drew Alexander “appears to have no direct supervisory experience.” *Id.*

The NAC also found that Lefkowitz, the proposed chief executive officer with supervisory authority over everyone at the Firm (effective once his five-month principal suspension ended in December 2017) has minimal supervisory experience and FINRA disciplined him for his failure to ensure that Zipper complied with the terms of his suspension. *See id.* Moreover, the NAC held that the Firm failed to show that Zipper’s proposed supervisors possessed the necessary independence to supervise Zipper, the Firm’s owner and individual who hired each of them.<sup>5</sup> *See* RP 1309-10.

Third, the NAC found that the Firm’s revised heightened supervisory plan “remains short on detail and lacks certain basic provisions that we expect to be contained in a supervisory plan for a statutorily disqualified individual.” RP 1310. The NAC observed that the Firm’s proposed

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<sup>5</sup> The NAC accurately observed that “[s]everal key aspects of Zipper’s proposed supervision were in flux up to, during, and after the hearing, including Zipper’s proposed supervisors and the terms of his heightened supervision.” RP 1299. It also found that “Zipper demonstrated a lack of appreciation for the crucial requirement that statutorily disqualified individuals be subject to stringent supervision by qualified supervisors.” RP 1308.

plan was inconsistent in several respects with statements by the Firm, contained no provisions concerning where exactly Zipper would work and whether Diane Alexander and Drew Alexander would provide in-person supervision, and that certain provisions of the plan lacked sufficient detail required of a heightened supervisory plan for a statutorily disqualified individual. *See* RP 1311.

For all of these reasons, the NAC ultimately concluded that Zipper's continued association with the Firm was not in the public interest and would present an unreasonable risk of harm to the market or investors. *See* RP 1312.

On or about October 4, 2017, Zipper and the Firm appealed the NAC's denial. *See* RP 1315. Several weeks later, Zipper filed with the Commission several requests to stay the NAC's denial pending this appeal. The Commission denied Zipper's stay requests on November 27, 2017. *See* Bruce Zipper, Exchange Act Release No. 82158 (Nov. 27, 2017) (Order Denying Stay), <https://www.sec.gov/litigation/opinions/2017/34-82158.pdf>.

#### **IV. 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).<sup>6</sup>

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 \*47-48 (Sept. 13, 2010) (affirming FINRA's denial of an application based upon misconduct after disqualifying event and inadequate supervisory plan); see also *Citadel Sec. Corp.*, 57 S.E.C. 502, 509 (2004) (affirming FINRA's denial of an application based upon, among other things, inadequate supervision); *Frank Kufrovich*, 55 S.E.C. 616, 624-26 (2002) (affirming FINRA's conclusions based on the sponsoring firm's inadequate plan of supervision, among other considerations).

In situations where an individual's misconduct has already been addressed by the Commission or FINRA, and sanctions have been imposed for such misconduct, the Commission has instructed that FINRA generally should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. Instead, the Commission has directed FINRA to consider other factors, such as: (1) "other misconduct in which the applicant may have engaged"; (2) "the nature and disciplinary history of a prospective employer"; and (3) "the supervision to be accorded the applicant." *Paul Van Dusen*, 47 S.E.C. 668, 671 (1981); see also *May Capital Group, LLC*, Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at \*21 (May 12, 2006). FINRA has "broad discretion" to evaluate whether the firm sponsoring the application will uphold high business standards. *M.J. Coen*, 47 S.E.C. 558, 563-64 (1981); see also *Halpert & Co.*, 50 S.E.C. 420, 422 (1990) ("Particularly in matters involving a firm's

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<sup>6</sup> Zipper does not assert, and the record does not demonstrate, that FINRA's denial of the Application imposes an unnecessary or inappropriate burden on competition.

employment of persons subject to a statutory disqualification, it is appropriate to recognize the NASD's evaluation of appropriate business standards for its members."").

As explained below, the NAC's decision fully comports with the standards of Exchange Act Section 19(f). The record conclusively shows that the NAC's denial of the Application was appropriate based on the specific grounds it articulated: Zipper's intervening misconduct; the Firm's failure to demonstrate that Zipper's proposed supervisors possess the experience and objectivity to stringently supervise Zipper; and the Firm's failure to propose for Zipper an adequate heightened supervisory plan. FINRA acted in accordance with its rules and in a manner consistent with the Exchange Act. Zipper's arguments on appeal are without merit, and the Commission should dismiss his appeal.

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

The record demonstrates that the grounds for the NAC's denial of the Application exist in fact.

1. Zipper is Statutorily Disqualified

It is undisputed that the Disqualifying AWC rendered Zipper statutorily disqualified. *See* 15 U.S.C. § 78c(a)(39)(F) (providing that an individual is subject to a statutory disqualification if he willfully makes in any application or report filed with FINRA a false or misleading statement of material fact, or omits to state a material fact required to be disclosed). FINRA's By-Laws provide that a person subject to statutory disqualification is ineligible for membership unless he obtains special relief from FINRA to become associated with a member through the eligibility process. *See* Art. III, Sections 3(b) and (d) of FINRA's By-Laws. Pursuant to that process, the

Firm applied to FINRA to request that Zipper be permitted to continue to associate with the Firm in spite of his statutory disqualification.

Although Zipper does not contest that the Disqualifying AWC rendered him statutorily disqualified, he argues that his willful failures to disclose three liens “could have been dealt with by the [FINRA] examiner saying, Bruce update your U-4 and don’t do this again or there will be a penalty.” Add. at 2; *see also* Second Add. at 2. Zipper, however, voluntarily agreed to the terms of the Disqualifying AWC including the three-month suspension, \$5,000 fine, and his resulting statutory disqualification. The Commission should reject Zipper’s collateral attacks upon the Disqualifying AWC in this proceeding. *See Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (stating that “[i]t is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have previously been made against him”); Part IV.B, *infra*.

## 2. The Firm Proposed Inadequate Supervisors

Zipper does not contest that the NAC’s concerns with his proposed supervisors’ lack of supervisory experience and objectivity exist in fact. Indeed, the record shows that the NAC’s concerns are well-documented and may serve as a basis to deny the Application. *See Van Dusen*, 47 S.E.C. at 671; *Citadel*, 57 S.E.C. at 509 (“[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.”); *Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (“We have made it clear that [statutorily disqualified] persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.”).

The Firm bore the burden to demonstrate that approving the Application was in the public interest. *See Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at \*16 & n.17 (Mar. 26, 2010). Despite bearing this burden, neither Diane Alexander nor

Drew Alexander (Zipper's proposed primary and alternate supervisors, respectively) appeared at the hearing to testify. *See Robert J. Sayegh*, 52 S.E.C. 1110, 1112 (1996) (affirming denial of statutory disqualification application and stating that it was the disqualified individual's "responsibility to marshal" witnesses and evidence).

Regardless, the record fully supports that each individual lacked the necessary experience to supervise an industry veteran such as Zipper. At and subsequent to the hearing, the Firm generally asserted that Diane Alexander had ample supervisory experience in various capacities. *See, e.g.*, RP 1207 (Firm stating that Diane Alexander's experience includes working "in all capacities of the industry including cashiering with Dean Witter, being a compliance officer with Community Bank, and as a registered rep for Dakota Securities for the last 13 years"). When pressed, however, Lefkowitz admitted that he was not familiar with Diane Alexander's experience. *See* RP 1174-75. Further, Diane Alexander's record in FINRA's Central Registration Depository ("CRD"®) undercuts the Firm's claim that she has significant supervisory experience. *See* RP 80-81; *see also* RP 1218 (Member Regulation's analysis of Diane Alexander's purported supervisory experience). The NAC appropriately concluded that Diane Alexander "appears to have minimal (if any) direct supervisory experience during her career" and that Drew Alexander "appears to have no direct supervisory experience." RP 1309; *see also* RP 90-92 (Drew Alexander's CRD record).

Further, the NAC found that Lefkowitz—the proposed chief executive officer with supervisory authority over everyone at the Firm—admittedly has minimal supervisory experience (and FINRA disciplined him for his failure to ensure that Zipper complied with the terms of his suspension). *Id.* Consequently, the NAC properly relied upon the Firm's inadequate

proposed supervisors to deny the Application. *See Van Dusen*, 47 S.E.C. at 671; *see also Kantrowitz*, 55 S.E.C. at 102.

Moreover, the NAC found that the Firm failed to show that any of Zipper's proposed supervisors could supervise Zipper in an objective manner. Zipper owns the Firm and hired his proposed supervisors, and the Firm presented no evidence to assuage the NAC's concerns that his supervisors lacked the independence and objectivity to stringently supervise Zipper as a statutorily disqualified individual.<sup>7</sup>

The Commission has highlighted the challenges of supervising a firm owner:

In evaluating the adequacy of a proposed supervisory system for a statutorily disqualified person, we have also found that it is especially difficult for employees to supervise effectively the activities of the owner of a firm. The owner of the firm will almost certainly continue to exercise control over the firm's operations, including the ability to fire an employee charged with the responsibility to supervise the firm's owner.

*See Asensio & Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at \*28 (Dec. 20, 2012); *see also Bruce Meyers*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096, at \*29-30 (Sept. 29, 2017) ("We agree with FINRA that . . . the inability of the firm's proposed supervisors to stringently supervise Meyers as a statutorily disqualified individual and owner of the Firm provided a basis for its conclusion that the membership continuance application should be denied"); *Citadel*, 57 S.E.C. at 510 (stating that it is "difficult" for employees to effectively supervise the activities of a statutorily disqualified owner of a firm). The NAC's observation that "during the hearing, Zipper attempted to answer questions on Lefkowitz's behalf" underscores its concerns regarding the independence of Zipper's proposed supervisors. *See* RP 1310.

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<sup>7</sup> Zipper and Lefkowitz have a close personal relationship. Zipper testified that Lefkowitz was "as close to me as my brother . . . He would do anything for me and me him." RP 623.

On appeal, Zipper does not contest any of these facts. Instead, he states that the Firm “has a new CEO and Finop [Gary Cuccia] who Finra has reviewed and believes is more than qualified to run Dakota Securities at this time” Add. at 4-5; *see also* Second Add. at 1. The Firm’s post-denial management changes, however, have no bearing on the NAC’s denial of the Application and the facts presented to it in connection with that denial. Indeed, it is too late for the Firm to suggest that Zipper may be supervised by individuals other than those proposed during the proceedings below prior to the NAC’s final decision on the Application.<sup>8</sup> *See Kantrowitz*, 55 S.E.C. at 102 (affirming denial of application to employ statutorily disqualified individual based upon, among other things, supervisor’s lack of experience and rejecting firm’s post-denial effort to replace inexperienced supervisor). At no time during the proceedings below was FINRA made aware of Cuccia’s hiring (and, in fact, the Firm hired Cuccia more than five weeks *after* the NAC issued its denial and after Zipper’s appeal to the Commission).<sup>9</sup>

The NAC evaluated the Application based upon the individuals that Zipper and the Firm represented would be supervising him, and the Hearing Panel gave Zipper and the Firm latitude in presenting its case in support of the Application (including their original last minute change from Lefkowitz to the tandem of Diane Alexander and Drew Alexander as Zipper’s proposed

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<sup>8</sup> In none of Zipper’s various filings does he actually state whether Cuccia will serve as his primary supervisor, or whether Diane Alexander will continue in that role. Regardless, Zipper and the Firm proposed Diane Alexander in connection with the Application, and that is who the NAC assessed as Zipper’s primary supervisor. Moreover, it is unclear how Cuccia’s hiring addresses the NAC’s concerns regarding the independence and objectivity of Zipper’s supervisors.

<sup>9</sup> *See attached Appendix A* (CRD report for Cuccia showing his association with the firm began on November 10, 2017). Zipper’s sudden focus on hiring competent supervisors at the Firm is puzzling given that Member Regulation made it clear that, as early as June 2017, the Firm needed to propose experienced supervisory personnel to supervise Zipper as a disqualified individual, and that Lefkowitz and Diane Alexander lacked such experience. *See* RP 258-61.

supervisors). Zipper's latest post-denial managerial changes have no impact on this appeal, although they serve to underscore the NAC's concerns that the Firm's proposed supervision of Zipper was in a continual state of flux.

3. The Firm Proposed a Deficient Supervisory Plan

The record also shows, and Zipper does not contest (or even address), that the NAC's findings that the Firm's proposed heightened supervisory plan lacked sufficient detail and provisions sufficient to provide for stringent supervision of Zipper exist in fact and may serve as a basis for denying the Application. *See Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at \*63 (June 26, 2014) (affirming FINRA's denial of application to employ disqualified individual based upon, among other things, an inadequate supervisory plan). The NAC's decision details numerous problems with the Firm's proposed supervisory plan (its third plan filed in these proceedings) and inconsistencies between statements made by the Firm and the contents of the proposed plan. *See* RP 1310-11. In sum, the Firm's proposed supervisory plan is the antithesis of a comprehensive, well-designed plan to supervise a statutory disqualified individual such as Zipper.

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The Firm proposed unqualified supervisors and a deficient heightened supervisory plan for Zipper. The record shows that these factors "exist in fact" and the NAC properly relied upon them in denying the Application.

4. Zipper Violated the Terms of his Suspension

The record also shows that Zipper violated the terms of his agreed-upon three-month suspension by regularly communicating with his customers about their securities accounts and recommending to customers specific securities. The record further shows that Zipper

communicated with third parties on behalf of the Firm during the term of his suspension.

Through this misconduct, Zipper improperly associated with the Firm, in direct violation of the Disqualifying AWC and FINRA's rules. Zipper's misconduct subsequent to the Disqualifying AWC, which the NAC found was serious and showed that "he is currently unable to demonstrate that he can comply with FINRA's rules and regulations," properly serves as a basis to deny the Application. *See* RP 1312; *Van Dusen*, 47 S.E.C. at 671; *Arouh*, 2010 SEC LEXIS 2977, at \*59 (affirming denial of firm's MC-400 where disqualified individual improperly associated with the firm as a principal while subject to a bar order, which constituted "serious intervening misconduct").

On appeal, Zipper does not dispute that he sent emails to customers and third parties; nor does he contest the NAC's analysis that such activities demonstrated that he associated with the Firm during this time. Instead, Zipper repeatedly downplays the extent of this activity during his suspension and continues to assert that he was permitted to communicate with his customers and third parties during his suspension based upon his interpretation of the Disqualifying AWC and his alleged conversations with FINRA staff that purportedly created exceptions to the Disqualifying AWC. The Commission should reject Zipper's unsupported claims.

First, Zipper falsely and repeatedly claims that he sent only four emails during the term of his suspension, and focuses on a single email he sent to a third party vendor. *See* Br. at 1, 4, 6; Add. at 2, 3, 4. The record, however, shows that Zipper sent at least 28 emails to customers and third parties from May 31, 2016 through August 31, 2016. *See* RP 623, 717-59. He also



admitted to speaking with customers on the telephone during this time.<sup>10</sup> In many of these emails, Zipper recommended securities to his customers or otherwise advised customers on their securities accounts, or communicated with third parties on behalf of the Firm.

Regardless of Zipper's characterization of his serious misconduct, as the NAC properly concluded Zipper improperly associated with the Firm by regularly communicating with customers and third parties during his suspension. *See* FINRA By-Laws, Art. I(rr) (defining "person associated with a member" as a "natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member"); FINRA By-Laws, Art. I(u) (defining investment banking or securities business as "the business, carried on by a broker . . . of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others"). The NAC concluded, based upon Zipper's own emails and testimony, that he engaged in "core functions of a registered representative" by discussing with customers their securities accounts and recommending to customers securities during his suspension period. *See* RP 1306. Such misconduct violated the express terms of the Disqualifying AWC, FINRA Rule 8311, and the Firm's WSPs. *See* RP 1306.

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<sup>10</sup> In an attempt to minimize his misconduct, Zipper argues that he did not intend to violate the Disqualifying AWC, and disingenuously states that he "could have easily called the [customers] by phone" and he "obviously" knew that his emails would be reviewed after he served his suspension. Add. at 2-3; *see also* Second Add. at 3. Zipper, however, *did* talk with customers on the phone. *See* 639, 1142-43. Further, the only party who would have been reviewing Zipper's emails was Lefkowitz (who accepted Zipper's erroneous interpretation of what activities he could engage in under the Disqualifying AWC). In any event, the NAC rejected Zipper's "narrow interpretation" of what he was prohibited from doing during his suspension given his roles at the Firm and his experience in the industry, and found that Zipper's misconduct was serious. *See* RP 1304-06.

Second, the Commission should reject Zipper's purported justifications for his misconduct (each thoroughly rejected by the NAC). Zipper's assertion that the Disqualifying AWC merely prevented him from communicating with FINRA members during his suspension is belied by: (1) the plain language of the Disqualifying AWC (which clearly states that he "may not be associated with any FINRA member in any capacity, including clerical or ministerial functions"); (2) FINRA Rule 8311 (stating the same); and (3) the Firm's WSPs (which Zipper created and prohibit suspended employees from having "direct or indirect contact with customers" or "[g]iv[ing] investment advice or counsel"). The NAC found it troubling that Zipper gave investment advice during his suspension and failed to comply with the terms of his agreed-upon suspension, and so too should the Commission.

Moreover, the NAC rejected as not credible Zipper's claim that he received verbal assurances from the FINRA attorney who drafted the Disqualifying AWC that Zipper could break the terms of the Disqualifying AWC and violate his suspension if Zipper determined that his intervention was necessary to prevent harm to the Firm or a customer. *See* RP 1307. On appeal, Zipper has not presented any evidence (let alone substantial evidence) to overturn the NAC's finding that his testimony was not credible. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) ("Credibility determinations by a fact-finder deserve special weight. These determinations can be overcome only when there is 'substantial evidence' for doing so.").

The NAC also found that even if a FINRA staff member granted Zipper a verbal exception to the terms of the Disqualifying AWC (which the record does not show), Zipper's communications with customers—especially his recommendations that they purchase securities—did not fall within the exception. *See* RP 1307. Zipper's claim on appeal that one of the customers he communicated with "was quite upset" does not rise to the level of the purported

verbal exception, and does not serve as a basis for reversing the NAC's findings on this point.<sup>11</sup>

*See Br.* at 5.

In sum, Zipper violated the terms of his suspension under the Disqualifying AWC.

Zipper's misconduct exists in fact, and on appeal he has presented no legitimate justifications for his misconduct.

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 conducted its review and denial of the Application 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, FINRA convened the Hearing Panel in accordance with FINRA Rule 9524(a)(1). The Hearing Panel ultimately granted Zipper's

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<sup>11</sup> Zipper states that three of the four emails to customers he claims are at issue were sent to family members. *See Br.* at 4. The NAC rejected this attempt to rationalize Zipper's misconduct, and the Commission should do the same. *See RP 1306*. It is undisputed that Zipper regularly advised his customers concerning their securities accounts and recommended securities to his customers while he should have been conducting no securities or investment banking business on behalf of the Firm. That some of Zipper's customers may have been family members is irrelevant. Moreover, on appeal Zipper candidly and repeatedly states that he still believes that he could recommend securities to, and communicate with, customers notwithstanding his suspension from associating with the Firm in all capacities. *See Br.* at 5, *Add.* at 4; *Second Add.* at 2-3. Zipper's admission strongly suggests that he would engage in the same misconduct if given the opportunity, and underscores the NAC's findings that "he is currently unable to demonstrate that he can comply with FINRA's rules and regulations."

request to continue and relocate the hearing in this matter, and FINRA's Office of General Counsel gave Zipper and the Firm proper advance notice of the continued hearing, as required by FINRA Rule 9524(a)(2). *See* RP 0337-39. The Hearing Panel conducted a hearing on July 12, 2017. Zipper and Lefkowitz appeared at that hearing and testified. Zipper and the Firm were given ample opportunity to demonstrate why it would be in the public interest to allow Zipper to continue to associate with the Firm and rebut Member Regulation's contentions that the Application should be denied. In fact, the Hearing Panel granted the Firm an opportunity to revise its heightened supervisory plan during the hearing, and again subsequent to the hearing. *See* RP 1084-87, 1201-03. The Hearing Panel also considered several unsolicited post-hearing submissions by the Firm. *See* RP 1241, 1275.

Zipper does not dispute any of this. Instead, he complains about Member Regulation's "behavior prior to [the NAC's denial] showing both lies and deceit [sic]" to paint Zipper in a poor light. *See* Br. at 2-4. Zipper's arguments miss the mark. The NAC—not Member Regulation—analyzed the parties' arguments and the evidence presented to conclude that the Application should be denied. *See Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, \*66 (Feb. 20, 2007) ("Moreover, it is the NASD, not the staff, that makes decisions. Even if a member of the staff were biased, that would not mean that the NASD decision is biased."). The record does not show, and Zipper has never alleged, that the Hearing Panel or NAC exhibited any bias towards him.

Moreover, Zipper's specific complaints concerning alleged misrepresentations and "half-truths" by Member Regulation (concerning the amount for which Zipper settled a customer complaint, Member Regulation's omission of the reasons behind one of Zipper's three personal bankruptcy filings, and Zipper's on-the-record testimony regarding the parameters of his

suspension) had no bearing on the NAC's denial.<sup>12</sup> The NAC based its denial on Zipper's serious intervening misconduct and the Firm's proposal of wholly unqualified supervisors and a deficient supervisory plan. The fact that the NAC denied the Application, however, does not, by itself, support Zipper's bias claims. *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at \*62 (Jan. 30, 2009) (holding that adverse rulings on their own do not evidence bias; "bias by a hearing officer is disqualifying only when it stems from an extrajudicial source and results in a decision on the merits based on matters other than those gleaned from participation in a case"), *aff'd*, 416 F. App'x 142 (3d Cir. 2012).

Zipper also claims that FINRA violated its rules by "seriously overcharging" him for willfully failing to update his Form U4, his "first offense."<sup>13</sup> *See* Second Add. at 2. He claims that this evidences FINRA's bias against him. *See* Second Add. at 2. Zipper is mistaken, and the Commission should reject Zipper's baseless collateral attack upon the settlement agreement he agreed to. *See Tannenbaum*, 50 S.E.C. at 1140 (stating that "[i]t is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have previously been

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<sup>12</sup> In fact, with respect to the customer complaint, the NAC noted that CRD showed that Zipper settled this matter for the amount he claims. *See* RP 1297. Similarly, as Zipper concedes, the NAC noted that he clarified his initial on-the-record testimony that he could not communicate with customers to solicit stocks or email customers (whereas he alleges that Member Regulation omitted his subsequent clarification). *See* RP 1306. Further, the NAC did not mention the reasons for Zipper's personal bankruptcy filing in 2016, although it did note that Zipper made misrepresentations to the Hearing Panel about this bankruptcy case in an effort to postpone the hearing in this matter. *See id.* Regardless, Zipper's bankruptcy filing and subsequent misrepresentations concerning that filing had no bearing on the NAC's denial.

<sup>13</sup> Contrary to Zipper's suggestion that he had no disciplinary history prior to agreeing to the Disqualifying AWC, the record shows that he did. The NAC discussed, but did not rely upon, these matters in denying the Application. *See* RP 1296-97. Further, to the extent that Zipper argues that the terms of the Disqualifying AWC were inconsistent with the purposes of the Exchange Act because FINRA "overcharged" him, the Commission should reject such argument for the same reasons discussed herein.

made against him”). Moreover, and setting aside that Zipper agreed to the sanctions for his Form U4 violations, FINRA has broad discretion in charging respondents. *See David Adam Elgart*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097, \*23 (Sept. 29, 2017) (stating, in context of respondent’s argument that FINRA “has acted inconsistently” in bringing Form U4 disclosure cases, that “FINRA has broad prosecutorial discretion in deciding against whom charges should be brought and what those charges should be”), *appeal docketed*, No. 17-15283 (11th Cir. Nov. 28, 2017); *Wedbush Secs., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at \*59-60 (Aug. 12, 2016) (rejecting applicant’s claim of bias and reiterating that FINRA has broad prosecutorial discretion). The record shows that FINRA acted fairly and in accordance with its rules in denying the Application.<sup>14</sup>

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

Finally, the NAC’s denial of the Application was entirely consistent with the purposes of the Exchange Act. A central purpose of the Exchange Act is to promote market integrity and enhance investor protection. *See, e.g., United States v. O’Hagan*, 521 U.S. 642, 658 (1997) (stating that in passing the Exchange Act, one of Congress’s animating objectives was “to insure 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).

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<sup>14</sup> In mid-December 2017, Zipper demanded that FINRA produce all emails and other communications that reference Zipper or the Firm originating from three FINRA offices from 2014 to the present. FINRA properly declined to produce such documents in response to Zipper’s last-minute fishing expedition to bolster his baseless claims that FINRA is biased against him. *See attached Appendix B* (correspondence between Zipper and FINRA).

Within the structure created by the Exchange Act, FINRA promulgates and enforces rules to protect investors and the public interest.

The Commission has found, “[p]articularly in matters involving a firm’s employment of persons subject to a statutory disqualification, . . . [it] appropriate to recognize the NASD’s evaluation of appropriate business standards for its members.” *See Halpert & Co.*, 50 S.E.C. at 422; *Am. Inv. Serv., Inc.*, 54 S.E.C. 1265, 1271 (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*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at \*14 (July 17, 2009); *see also Van Dusen*, 47 S.E.C. 668; *May Capital Group*, 2006 SEC LEXIS 1068.

The NAC properly found that Zipper and the Firm failed to demonstrate that Zipper’s continued association with the Firm would be in the public interest, and the NAC provided a convincing and detailed rationale as to why Zipper’s continued association with the Firm

presented an unreasonable risk of harm to the market or investors. The NAC appropriately considered, pursuant to the Commission precedent discussed extensively herein, that Zipper engaged in serious misconduct subsequent to the Disqualifying AWC by violating the terms of his suspension. It also appropriately considered the quality of Zipper's proposed supervisors and the Firm's proposed heightened supervisory plan for Zipper. The NAC's conclusions that Zipper "demonstrated a lack of appreciation for the crucial requirement that statutorily disqualified individuals be subject to stringent supervision by qualified supervisors" and could not comply with securities rules and regulations underscore that his continued association with the Firm presents an unreasonable risk of harm to the market or investors. Zipper's continued assertion that he could advise, and recommend securities to, his customers while prohibited from associating with a member firm in any capacity further highlights this point.

Rather than address these points, on appeal Zipper points to the lack of customer complaints during his career and that his customers allegedly have never suffered harm at his hands. *See* Br. at 6; Add. at 4. The NAC, however, reviewed Zipper's record and his arguments concerning his lack of customer complaints, and nonetheless denied the Application based upon the other factors discussed herein. The record abundantly supports the NAC's denial, which is well within the parameters set forth in the Commission's precedent.<sup>15</sup> *See May Capital Group*, 2006 SEC LEXIS 1068, at \*21-24 (providing that in situations where an individual is

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<sup>15</sup> Indeed, the Commission has affirmed FINRA's denial of statutory disqualification applications based upon factors other than a disqualified individual's customer complaints. *See, e.g., Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724 (Nov. 21, 2014) (affirming FINRA's denial of statutory disqualification application based upon disqualified individual's misconduct subsequent to disqualifying FINRA settlement, the sponsoring firm's regulatory and disciplinary history, and problems with the proposed supervisors and supervisory plan); *Arouh*, 2010 SEC LEXIS 2977 (affirming FINRA's denial of a statutory disqualification application where disqualified individual violated the terms of his disqualifying bar order and his firm proposed an inadequate supervisory plan).



disqualified as a result of a FINRA action, FINRA should generally consider whether the disqualified individual has engaged in subsequent misconduct, the nature and disciplinary history of the sponsoring firm, and the proposed supervision of the disqualified individual in assessing whether to approve a statutory disqualification application).

Moreover, Zipper equates the assertion that he has never had a customer complaint (for which he is the broker of record) with the Firm having satisfied its burden to show that Zipper's continued association with the Firm is in the public interest. Zipper is wrong. The standard for approving a statutory disqualification application is not simply whether a disqualified individual lacks customer complaints, but includes a number of additional factors that bear heavily on investor protection (including the factors relied upon by the NAC in denying the Application). The NAC appropriately concluded that Zipper's continued association presented an unreasonable risk of harm to the market or investors because he engaged in serious misconduct after the Disqualifying AWC and the Firm proposed unqualified supervisors and a deficient supervisory plan to help ensure that going forward Zipper complies with securities rules and regulations. Zipper fails to recognize these crucial facts.<sup>16</sup>

Zipper also argues that his "punishment is much too excessive for the offense committed" and that the penalty imposed upon him for failing to update his Form U4 (the "permanent barring of Bruce Zipper from the securities industry") is unfair. *See Add. at 1, 3.* The Commission has

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<sup>16</sup> For example, Zipper states that the NAC found that his continued association with the Firm presents an unreasonable risk of harm to the market or investors because he failed to timely update his Form U4 to reflect older judgments against him and "had the mitigated gall to contact 4 people during his 90 day suspension." Br. at 6. Once again, Zipper misstates the facts and ignores others. The NAC did not base its denial of the Application on Zipper's underlying misconduct of failing to update his Form U4, but rather on the three key factors discussed repeatedly herein. Further, despite Zipper's attempt to minimize violating the terms of his suspension, the NAC appropriately concluded that Zipper's misconduct was serious and warranted denying the Application.

previously rejected similar arguments and should do so here. The effect of a statutory disqualification proceeding cannot be equated with a disciplinary action. In a statutory disqualification proceeding, there is no adjudication of liability. FINRA neither seeks nor intends punishment by denying an individual's ability to remain in the securities industry. And significantly, the Commission has consistently recognized that a "statutory disqualification is not a FINRA-imposed penalty or remedial sanction." See *Anthony A. Grey*, Exchange Release No. 75839, 2015 SEC LEXIS 3630, at \*47 n.60 (Sept. 3, 2015); see also *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*37 (Mar. 15, 2016) (holding that "FINRA does not subject a person to statutory disqualification as a penalty or remedial sanction. Instead, a person is subject to statutory disqualification by operation of Exchange Act Section 3(a)(39)(F)."), *aff'd*, 672 F. App'x 865 (10th Cir. 2016); *Kufrovich*, 55 S.E.C. at 629-30 (finding that FINRA had not imposed a penalty in a statutory disqualification matter, but had "simply determined that it would not grant relief from a disqualification previously incurred").

In a final attempt to obfuscate the NAC's well-reasoned and well-supported denial of the Application, Zipper asks the Commission to compare his current situation (where he simply claims to have made a "mistake in clerical updating") to that of Wells Fargo and what he characterizes as its felonious fraud while it continues in business. See Add. at 4; Br. at 6. Zipper argues that this situation is inherently unfair. Notions of "fairness" and broader policy arguments, however, are not relevant to Zipper's status as a disqualified individual and the NAC's denial of the Application. See *McCune*, 2016 SEC LEXIS 1026, at \*37 (holding that "[c]onsiderations of 'fairness' or policy arguments do not bear upon the automatic statutory disqualification imposed upon McCune"). The Application, and FINRA's discharge of its obligations under the Exchange Act in reviewing and denying it, have nothing to do with third

parties and any potential or actual misconduct that they have engaged in.<sup>17</sup> Once Zipper became subject to statutory disqualification under the Exchange Act, the NAC considered the merits of the Application with respect to the individual factors relevant to its determination in this case (i.e., whether Zipper engaged in intervening misconduct and the Firm's proposed supervision of Zipper). Based upon those factors, the NAC appropriately denied the Application.

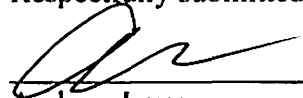
## V. CONCLUSION

The NAC denied the Application because the relevant factors for disqualified individuals such as Zipper weighed heavily against permitting him to continue to associate with the Firm. Zipper violated the terms of his agreed-upon suspension and still to this date believes that his flimsy rationales for engaging in such misconduct pass muster. The NAC appropriately concluded that Zipper's intervening misconduct shows that "he is currently unable to demonstrate that he can comply with FINRA's rules and regulations." Moreover, the Firm proposed unqualified individuals to supervise Zipper—individuals lacking the supervisory experience and objectivity necessary to supervise a statutorily disqualified industry veteran such as Zipper. These factors, along with the Firm's deficient supervisory plan for Zipper, all led to the inescapable conclusion that the Application must be denied. The Commission should affirm the NAC's denial of the Application and dismiss Zipper's baseless appeal.

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<sup>17</sup> To the extent that Zipper is arguing that FINRA has unfairly targeted him in connection with his willful failures to disclose material information on his Form U4, the record is utterly devoid of any support for this assertion. See *Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at \*67 (Sept. 28, 2017) ("To establish a claim of selective prosecution, Respondents must demonstrate that FINRA unfairly singled them out for enforcement action when others similarly situated were not, and that the prosecution was motivated by improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right.").

Respectfully submitted,



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Andrew Love  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8281

January 16, 2018

**APPENDIX A**

## Notice

**CRD® or IARD(TM) Information:** This report contains information from the CRD (Central Registration Depository) system, or the IARD system (Investment Advisers Registration Depository), which are operated by FINRA, a national securities association registered under the Securities Exchange Act of 1934. The CRD system primarily contains information submitted on uniform broker-dealer and agent registration forms and certain other information related to registration and licensing. The IARD system primarily contains information submitted on uniform investment adviser and agent registration forms and certain other information related to registration and licensing. The information on Uniform Forms filed with the CRD or IARD is deemed to have been filed with each regulator with which the applicant seeks to be registered or licensed and shall be the joint property of the applicant and such regulators. The compilation constituting the CRD database as a whole is the property of FINRA. Neither FINRA nor a participating regulator warrants or guarantees the accuracy or the completeness of the CRD or IARD information. CRD information consists of reportable and non-reportable information.

FINRA operates the CRD system in its capacity as a registered national securities association and pursuant to an agreement with the North American Securities Administrators Association, Inc. (NASAA).

FINRA operates the IARD system as a vendor pursuant to a contract with the Securities and Exchange Commission and undertakings with NASAA and participating state regulators.

**Reportable Information:** Information that is required to be reported on the current version of the uniform registration forms.

**Non-Reportable Information:** Information that is not currently reportable on a uniform registration form. Information typically is not reportable because it is out-of-date; it was reported in error; or some change occurred either in the disposition of the underlying event after it was reported or in the question on the form that elicited the information. Although not currently reportable, this information was once reported on a uniform form and, consequently, may have become a state record. Users of this information should recognize that filers have no obligation to update non-reportable data; accordingly, it may not reflect changes that have occurred since it was reported.

**Details for Request#:** 20133423  
**Report:** Snapshot - Individual  
**Requested By:** MP

<u>Parameter Name</u>	<u>Value</u>
Request by CRD# or SSN:	CRD#
Individual CRD# or SSN	██████████
Include Personal Information?	Yes
Include All Registrations with Employments:	Both Current and Previous Employments
Include All Registrations for Current and/or Previous Employments with:	All Regulators
Include Professional Designations?	Yes
Include Employment History?	Yes
Include Other Business?	Yes
Include Exam Information?	Yes
Include Continuing Education Information? (CRD Only)	Yes
Include Filing History? (CRD Only)	Yes
Include Current Reportable Disclosure Information?	Yes
Include Regulator Archive and Z Record Information? (CRD Only)	Yes

Individual 1386493 - CUCCIA, GARY JOHN

**Administrative Information**  
**Composite Information**

Full Legal Name CUCCIA, GARY JOHN  
 State of Residence FL

**Active Employments**

Current Employer DAKOTA SECURITIES INTERNATIONAL, INC.(132700)  
 Firm Main Address 5966 S DIXIE HIGHWAY - SUITE 300  
 MIAMI  
 FL, USA  
 33143  
 Firm Mailing Address 5966 S. DIXIE HIGHWAY - SUITE 300  
 MIAMI  
 FL, USA  
 33143  
 Business Telephone# 732-713-9607  
 Independent Contractor Yes

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
BD Main			Yes	No	11/10/2017		Supervised From
	Address 5966 S DIXIE HIGHWAY - SUITE 300 MIAMI, FL 33143 USA		No	Yes	11/10/2017		Located At
	Address 390 Mallard Drive Weston, FL 33327 United States						

Reportable Disclosures? The specified individual has no disclosure that qualifies for reporting under this section (i.e., disclosure required to be reported on Form U-4 or Form U-5). Regulatory and Broker/Dealer Users: Please note that there are three types of disclosure in Web CRD: Reportable, Legacy and Archive disclosure. An individual with no reportable disclosure may or may not have Legacy or Archive disclosure. Investment Adviser Users: Please note that IARD does not include Legacy disclosure. Information reported on previous form filings through IARD is available under Filing History.

Statutory Disqualification? BLNK  
 Registered With Multiple Firms? No  
 Material Difference in Disclosure? No

**Personal Information**

Individual CRD# 1386493  
 Other Names Known By CUCCIA, GARY  
 Year of Birth 1953



Individual 1386493 - CUCCIA, GARY JOHN

**Administrative Information**

**Registrations with Current Employer(s)**

From 11/10/2017 To Present DAKOTA SECURITIES INTERNATIONAL, INC.(132700)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	FN	01/04/2018	APPROVED	11/13/2017
FINRA	GP	01/04/2018	APPROVED	11/13/2017
FINRA	GS	01/04/2018	APPROVED	11/13/2017
FINRA	TD	11/13/2017	DEFICIENT	
FINRA	TP	11/13/2017	DEFICIENT	
FL	AG	11/13/2017	APPROVED	11/13/2017

**Registrations with Previous Employer(s)**

From 03/06/2017 To 06/08/2017 STATETRUST INVESTMENTS INC.(104651)

Reason for Termination Other  
 Termination Comment Company restructuring

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	FN	07/05/2017	TERMED	03/09/2017
FINRA	GP	07/05/2017	TERMED	03/09/2017
FINRA	GS	07/05/2017	TERMED	03/09/2017
FINRA	OS	07/05/2017	TERMED	03/09/2017
FL	AG	07/05/2017	TERMED	03/09/2017

From 08/12/2015 To 02/24/2017 BRICKELL GLOBAL MARKETS, INC.(104316)

Reason for Termination Voluntary  
 Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	FN	03/03/2017	TERMED	08/19/2015
FINRA	GP	03/03/2017	TERMED	08/19/2015
FINRA	GS	03/03/2017	TERMED	08/19/2015
FINRA	OS	03/03/2017	TERMED	08/19/2015
IN	AG	03/18/2016	T_NOREG	
NJ	AG	03/18/2016	T_NOREG	

From 05/19/2006 To 05/08/2015 CITIZENS SECURITIES, INC.(39550)

Reason for Termination Other  
 Termination Comment JOB ELIMINATION.

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	FN	05/21/2015	TERMED	05/19/2006
FINRA	GP	05/21/2015	TERMED	03/23/2015
FINRA	GS	05/21/2015	TERMED	05/28/2012
FINRA	OS	05/21/2015	TERMED	10/28/2011
MA	AG	11/09/2006	T_NOREG	
RI	AG	11/09/2006	T_NOREG	

From 02/28/2005 To 05/16/2006 VAN DER MOOLEN SPECIALISTS USA, LLC(32034)

Reason for Termination Voluntary  
 Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
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Individual 1386493 - CUCCIA, GARY JOHN

**Administrative Information**

**Registrations with Previous Employer(s)**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
NYSE	AM	05/16/2006	TERMED	04/07/2005
NYSE	FE	05/16/2006	TERMED	05/04/2005

From 06/04/2001 To 02/18/2005 CIBC WORLD MARKETS CORP.(630)

Reason for Termination Voluntary

**Termination Comment**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CBOE	FN	03/03/2005	TERMED	06/11/2001
FINRA	FN	03/03/2005	TERMED	06/11/2001

From 09/11/2000 To 01/15/2002 M.V.P. FINANCIAL LLC(104133)

Reason for Termination Voluntary

**Termination Comment**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	FN	01/15/2002	TERMED	01/03/2001
NY	AG	01/15/2002	T_NOREG	

From 05/28/1985 To 10/01/1999 GRUNTAL & CO., L.L.C.(372)

Reason for Termination Permitted to Resign

Termination Comment DUE TO JOB RESTRUCTURING

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	FN	10/27/1999	TERMED	05/12/1993
NYSE	AM	10/27/1999	TERMED	02/22/1996

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Individual 1386493 - CUCCIA, GARY JOHN

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**Administrative Information**

**Professional Designations**

<<No Professional Designations found for this Individual.>>

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**Employment History**

From	07/2017	To	Present	<b>Name</b>	FINOP & CFO Solutions, LLC
				<b>Location</b>	Weston, FL, United States
				<b>Position</b>	President
				<b>Investment Related</b>	Yes
From	03/2017	To	06/2017	<b>Name</b>	StateTrust
				<b>Location</b>	Miami, FL, United States
				<b>Position</b>	CFO
				<b>Investment Related</b>	Yes
From	08/2015	To	02/2017	<b>Name</b>	BRICKELL GLOBAL MARKETS, INC.
				<b>Location</b>	MIAMI, FL, United States
				<b>Position</b>	CFO
				<b>Investment Related</b>	Yes
From	05/2006	To	05/2015	<b>Name</b>	CCO INVESTMENT SERVICES CORP
				<b>Location</b>	QUINCY, MA, United States
				<b>Position</b>	CFO
				<b>Investment Related</b>	Yes
From	02/2005	To	05/2006	<b>Name</b>	VAN DER MOOLEN SPECIALISTS USA, LLC
				<b>Location</b>	NEW YORK, NY, United States
				<b>Position</b>	CHIEF FINANCIAL OFFICER
				<b>Investment Related</b>	Yes
From	06/2001	To	02/2005	<b>Name</b>	CIBC WORLD MARKETS CORP
				<b>Location</b>	NEW YORK, NY, United States
				<b>Position</b>	FINANCE
				<b>Investment Related</b>	Yes
From	05/2000	To	06/2001	<b>Name</b>	CAPITAL MARKETS CREDIT CORP.
				<b>Location</b>	NEW YORK, NY, United States
				<b>Position</b>	CHIEF FINANCIAL OFFICER
				<b>Investment Related</b>	Yes
From	09/2000	To	11/2000	<b>Name</b>	M.V.P. FINANCIAL LLC
				<b>Location</b>	EAST HAMPTON, NY, United States
				<b>Position</b>	FINOP

Individual 1386493 - CUCCIA, GARY JOHN

**Administrative Information**

**Employment History**

			<b>Investment Related</b>	Yes
From	12/1999	To	05/2000	
		<b>Name</b>	UNEMPLOYED	
		<b>Location</b>	METUCHEN, NJ, United States	
		<b>Position</b>	UNEMPLOYED	
		<b>Investment Related</b>	No	
From	05/1985	To	11/1999	
		<b>Name</b>	GRUNTAL & CO., L.L.C.	
		<b>Location</b>	NEW YORK, NY, United States	
		<b>Position</b>	NOT PROVIDED	
		<b>Investment Related</b>	Yes	

**Office of Employment History**

From 11/2017 To Present  
**Name** DAKOTA SECURITIES INTERNATIONAL, INC.(132700)

**Independent Contractor** Yes

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
BD Main			Yes	No	11/10/2017		Supervised From
	Address 5966 S DIXIE HIGHWAY - SUITE 300 MIAMI, FL 33143 USA						
			No	Yes	11/10/2017		Located At
	Address 390 Mallard Drive Weston, FL 33327 United States						

From 03/2017 To 06/2017  
**Name** STATETRUST INVESTMENTS INC.(104651)

**Independent Contractor** No

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
BD Main			Yes	No	03/06/2017	06/08/2017	Located At
	Address 800 BRICKELL AVENUE - SUITE 100 MIAMI, FL 33131 USA						

From 08/2015 To 02/2017  
**Name** BRICKELL GLOBAL MARKETS, INC.(104316)

**Independent Contractor** No

**Office of Employment Address**

Individual 1386493 - CUCCIA, GARY JOHN

**Administrative Information**

**Office of Employment History**

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
284256			Yes	No	08/12/2015	02/24/2017	Located At
Address 1395 BRICKELL AVENUE, SUITE 490 MIAMI, FL 33131 United States							

From 08/2015 To 08/2015

Name BRICKELL GLOBAL MARKETS, INC.(104316)

**Independent Contractor**

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	08/12/2015	08/19/2015	Located At
Address 1395 BRICKELL AVENUE 4TH FLOOR MIAMI, FL 33131 United States							

From 05/2006 To 05/2015

Name CITIZENS SECURITIES, INC.(39550)

**Independent Contractor No**

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
123498			Yes	No	03/19/2011	05/08/2015	Located At
Address 45 DAN ROAD, MCD340 CANTON, MA 02021 United States							
BD Main			Yes	No	10/23/2006	03/18/2011	Located At
Address 770 LEGACY PLACE, MLP240 DEDHAM, MA 02026 UNITED STATES							
123810			Yes	No	05/19/2006	10/23/2006	Located At
Address ONE CITIZENS PLAZA, 3RD FLOOR PROVIDENCE, RI 02903 United States							
123498			Yes	No	05/19/2006	06/16/2006	Located At
Address 45 DAN ROAD, MCD340 CANTON, MA 02021 United States							

From 02/2005 To 05/2006

Name VAN DER MOOLEN SPECIALISTS USA, LLC(32034)

**Independent Contractor**

**Office of Employment Address**

Individual 1386493 - CUCCIA, GARY JOHN

**Administrative Information**

**Office of Employment History**

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
BD Main	0		Yes	No	02/28/2005	05/16/2006	Located At

Address ██████████  
 NEW YORK, NY 1 ██████████ UNITED STATES

From 03/2005 To 03/2005

Name VAN DER MOOLEN SPECIALISTS USA, LLC(32034)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	03/08/2005	03/16/2005	

Address 45 BROADWAY 32ND FL  
 NEW YORK, NY 10006 United States

From 06/2001 To 02/2005

Name CIBC WORLD MARKETS CORP.(630)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	06/04/2001	02/18/2005	Located At

Address 622 THIRD AVENUE  
 NEW YORK, NY 10017 United States

From 09/2000 To 01/2002

Name M.V.P. FINANCIAL LLC(104133)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	09/11/2000	01/15/2002	Located At

Address ██████████  
 EAST HAMPTON, NY ██████████ United States

From 05/1985 To 10/1999

Name GRUNTAL & CO., L.L.C.(372)

Independent Contractor No

**Office of Employment Address**

Individual 1386493 - CUCCIA, GARY JOHN

**Administrative Information**

**Office of Employment History**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	05/28/1985	10/01/1999	Located At
Address ONE LIBERTY PLAZA NEW YORK, NY 10005-2176 United States							

**Other Business**

<<No Other Business found for this Individual.>>

**Exam Appointments**

Exam ID	Enrollment ID	Appointment Status	Appointment Date	Vendor	Confirmation Number	Vendor Center ID	Location	Window Dates
S57								11/14/2017-03/14/2018

**Exam History**

Exam	Enrollment ID	Exam Status	Status Date	Exam Date	Grade	Score	Window Dates
S7	18470511	Official Result	05/28/2012	05/25/2012	Passed	82	05/04/2012-09/01/2012
S24	34886228	Official Result	03/23/2015	03/23/2015	Passed	76	03/11/2015-07/09/2015
S27	18470508	Official Result	05/10/1993	05/10/1993	Passed	75	-
S63	35498968	Window Expired	07/18/2016				03/18/2016-07/16/2016
S63	18470510	Window Expired	09/18/2006				05/20/2006-09/17/2006
S63	18470509	Window Expired	02/27/2001				10/30/2000-02/27/2001

**CE Regulatory Element Status**

Current CE Status SATISFIED  
 CE Base Date 05/12/1993

**CE Appointments**

<<No CE Appointments found for this Individual.>>

**Current CE**

<<No Current CE found for this Individual.>>

**Next CE**

Window Dates	Enrollment ID	Requirement Type	Session
05/12/2019-09/08/2019		Anniversary	201
05/12/2019-09/08/2019		Anniversary	201
05/12/2019-09/08/2019		Anniversary	201

**CE Directed Sequence History**

<<No CE Directed Sequence History found for this Individual.>>

**Inactive CE History Dates**

<<No Inactive CE History Dates found for this Individual.>>

**Individual 1386493 - CUCCIA, GARY JOHN**

**Administrative Information**

**Previous CE Requirement Status**

Requirement Type	Enrollment ID	Session	Status	Status Date	Window Dates	Result
Anniversary	██████	201			05/12/2016-09/08/2016	
Anniversary	██████	201			05/12/2016-09/08/2016	
Anniversary	██████	201	SATISFIED	08/09/2016	05/12/2016-09/08/2016	08/09/2016 - CMPLT
Anniversary	██████	201	REQUIRED	05/12/2016	05/12/2016-09/08/2016	
Anniversary	██████	201	SATISFIED	08/12/2013	05/12/2013-09/08/2013	08/12/2013 - CMPLT
Anniversary	██████	201	REQUIRED	05/13/2013	05/12/2013-09/08/2013	
Anniversary	██████	201	SATISFIED	09/02/2010	05/12/2010-09/08/2010	09/02/2010 - CMPLT
Anniversary	██████	201	REQUIRED	05/12/2010	05/12/2010-09/08/2010	
Anniversary	██████	201	SATISFIED	08/15/2007	05/12/2007-09/08/2007	08/15/2007 - CMPLT
Anniversary	██████	201	REQUIRED	05/14/2007	05/12/2007-09/08/2007	
Anniversary	██████	201	SATISFIED	07/15/2004	05/12/2004-09/08/2004	07/15/2004 - CMPLT
Anniversary	██████	201	REQUIRED	05/12/2004	05/12/2004-09/08/2004	
Anniversary	██████	201	SATISFIED	07/26/2001	05/12/2001-09/08/2001	07/26/2001 - CMPLT
Anniversary	██████	201	REQUIRED	05/13/2001	05/12/2001-09/08/2001	
Anniversary	██████	201		08/18/1998	05/12/1998-09/08/1998	08/18/1998 - CMPLT
Anniversary	██████	201	SATISFIED	08/18/1998	05/12/1998-09/08/1998	
Anniversary	██████	101			05/12/1995-09/08/1995	

**Filing History**

Date	Type	Submitted by
11/13/2017	U4 Initial	DAKOTA SECURITIES INTERNATIONAL, INC. (132700)
07/05/2017	U5 Full	STATETRUST INVESTMENTS INC. (104651)
03/09/2017	U4 Relicense All	STATETRUST INVESTMENTS INC. (104651)
03/03/2017	U5 Full	BRICKELL GLOBAL MARKETS, INC. (104316)
03/18/2016	U5 Partial	BRICKELL GLOBAL MARKETS, INC. (104316)
03/17/2016	U4 Amendment	BRICKELL GLOBAL MARKETS, INC. (104316)
03/16/2016	BR Filing	BRICKELL GLOBAL MARKETS, INC. (104316)



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Individual 1386493 - CUCCIA, GARY JOHN

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**Administrative Information**

**Filing History**

<b>Date</b>	<b>Type</b>	<b>Submitted by</b>
02/09/2016	U4 Amendment	BRICKELL GLOBAL MARKETS, INC. (104316)
01/15/2016	U4 Amendment	BRICKELL GLOBAL MARKETS, INC. (104316)
09/22/2015	U4 Amendment	BRICKELL GLOBAL MARKETS, INC. (104316)
08/19/2015	U4 Initial	BRICKELL GLOBAL MARKETS, INC. (104316)
08/12/2015	NRF Initial	BRICKELL GLOBAL MARKETS, INC. (104316)
05/21/2015	U5 Full	CITIZENS SECURITIES, INC. (39550)
03/10/2015	U4 Amendment	CITIZENS SECURITIES, INC. (39550)
05/03/2012	U4 Amendment	CITIZENS SECURITIES, INC. (39550)
10/28/2011	U4 Amendment	CITIZENS SECURITIES, INC. (39550)
03/23/2011	U4 Amendment	CITIZENS SECURITIES, INC. (39550)
07/24/2009	U4 Willful Questions Update	CITIZENS SECURITIES, INC. (39550)
01/18/2007	U5 Amendment	VAN DER MOOLEN SPECIALISTS USA, LLC (32034)
11/09/2006	U5 Partial	CITIZENS SECURITIES, INC. (39550)
10/24/2006	U4 Amendment	CITIZENS SECURITIES, INC. (39550)
06/16/2006	U4 Amendment	CITIZENS SECURITIES, INC. (39550)
05/19/2006	U4 Relicense CRD	CITIZENS SECURITIES, INC. (39550)
05/16/2006	U5 Full	VAN DER MOOLEN SPECIALISTS USA, LLC (32034)
04/18/2005	U4 Amendment	VAN DER MOOLEN SPECIALISTS USA, LLC (32034)
03/21/2005	U4 Amendment	FINRA
03/16/2005	U4 Amendment	VAN DER MOOLEN SPECIALISTS USA, LLC (32034)
03/16/2005	U4 Relicense All	VAN DER MOOLEN SPECIALISTS USA, LLC (32034)
03/10/2005	NRF Initial	VAN DER MOOLEN SPECIALISTS USA, LLC (32034)
03/03/2005	U5 Full	CIBC WORLD MARKETS CORP. (630)
02/09/2005	U4 Amendment	CIBC WORLD MARKETS CORP. (630)
02/03/2005	U4 Amendment	CIBC WORLD MARKETS CORP. (630)
01/15/2002	U5 Full	GRACE FINANCIAL GROUP LLC (104133)
11/27/2001	U4 Amendment	CIBC WORLD MARKETS CORP. (630)
06/11/2001	U4 Relicense All	CIBC WORLD MARKETS CORP. (630)
09/20/2000	U4 Initial	GRACE FINANCIAL GROUP LLC (104133)
10/27/1999	U5 Full	GRUNTAL & CO., L.L.C. (372)
07/05/1999	U4 Conversion	GRUNTAL & CO., L.L.C. (372)

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CRD® or IARD(TM) System Current As Of: 01/11/2018

Snapshot - Individual

CRD® or IARD(TM) System Report provided to: ENFORCEMENT

Request Submitted: 1/12/2018 11:41:59 AM

Page 13 of 13

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Individual 1386493 - CUCCIA, GARY JOHN

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**Reportable Events**

<<No Reportable Events found for this Individual.>>

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**Regulator Archive and Z Records**

<<No Regulator Archive and Z Records found for this Individual.>>

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**APPENDIX B**

December 15, 2017

Finra

1735 K Street NW

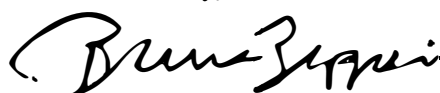
Washington, D.C. 20006

RE: Discovery Request from Bruce Zipper related to S.E.C. Proceeding #  
3-18256e

ATT: Andrew Love

I am asking for certain documents from the Finra Office located in Boca Raton, Fl. and the other Finra offices in both Washington, D.C. and Rockville, Md. It is my belief there is an unfair bias against Bruce Zipper and I am now requesting all e-mails, memos, and all inter and intra office communications from the year 2104 through the present from these 3 different offices of Finra listed that have either Bruce Zipper or Dakota Securities in the e-mails. I am asking that these e-mails would come from the Finra archiving company that monitors all of these mails requested. Please respond to this request by December 31, 2017.

Sincerely,

A handwritten signature in black ink that reads "Bruce Zipper". The signature is written in a cursive style with a large initial "B".

Bruce Zipper

cc: Ms. Jill Peterson, Assistant Secretary, S.E.C. Washington, D.c.



Financial Industry Regulatory Authority

**Andrew J. Lovo**  
Associate General Counsel

Direct (202) 728-8281  
Fax (202) 728-8264

December 22, 2017

**VIA EMAIL AND CERTIFIED MAIL**

Bruce Zipper

[REDACTED]

Miami, FL [REDACTED]

[REDACTED]

**RE: In the Matter of the Continued Association of Bruce Zipper with Dakota Securities International, Inc., SEC Admin. Proc. No. 3-18256**

Dear Mr. Zipper:

This office has received your letter dated December 15, 2017, in which you request documents from FINRA in connection with your pending SEC appeal. You state generally that you believe “there is an unfair bias” against you, and request all emails and other communications that reference you or your firm originating from three FINRA offices from 2014 to the present. For the reasons described below, FINRA will not produce the documents that you request.

As you are aware, FINRA’s National Adjudicatory Council (the “NAC”) denied the firm’s statutory disqualification application on October 2, 2017. That decision set forth, in detail, the bases for the NAC’s denial. You appealed the NAC’s denial to the SEC, and FINRA filed with the SEC a certified record in connection with your appeal on October 25, 2017, in accordance with SEC Rule of Practice 420. FINRA served you with a copy of the index to that record, and the record contains documents reviewed by the NAC in connection with its denial and the documents referenced in FINRA Rule 9524(a)(7). The SEC will review your pending appeal, and the parties’ arguments in connection with that appeal, in the context of the existing record. *See* SEC Rule of Practice 460 (providing that the Commission shall determine an appeal of a FINRA decision based upon the record, which consists of the certified record filed by FINRA, the application for review, and submissions on appeal).

Bruce Zipper  
December 22, 2017  
Page 2

In light of these facts, your current request to obtain additional documents outside of the record in this matter is improper. *See also Bruce Zipper*, Exchange Act Release No. 81788 (Sept. 29, 2017), <https://www.sec.gov/litigation/opinions/2017/34-81788.pdf> (“We have previously rejected requests for discovery related to unsubstantiated allegations that FINRA is biased, and do so again here because Zipper has failed to substantiate any claim of bias.”).<sup>1</sup>

Very truly yours,



Andrew Love

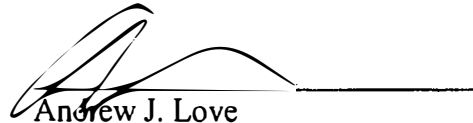
cc: Brennan Love

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<sup>1</sup> This letter does not address any additional reasons to deny your request based upon the pending FINRA complaint filed against you on or about November 8, 2017.

**CERTIFICATE OF COMPLIANCE**

I, Andrew J. Love, certify that this Brief in Opposition to Application for Review (File No. 3-18256) 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 9,438 words.



Andrew J. Love

Associate General Counsel

FINRA

1735 K Street, NW

Washington, DC 20006

(202) 728-8281

Dated: January 16, 2018



**CERTIFICATE OF SERVICE**

I, Andrew Love, certify that on this 16th day of January 2018, I caused the original and three copies of the brief in opposition to application for review in the matter of Application for Review of Bruce Zipper, Administrative Proceeding No. 3-18256, to be served by messenger on:

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, DC 20549-1090

and via overnight FedEx on:

Bruce Zipper  
Dakota Securities International, Inc.  
[REDACTED]  
Miami, FL [REDACTED]

Different methods of service were used because courier service could not be provided to Zipper.

Respectfully submitted,



Andrew Love, Associate General Counsel  
FINRA  
1735 K Street, N.W.  
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(202) 728-8281