U.S. SECURITIES AND EXCHANGE COMMISSION

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In the matter of the Application of

COMMONWEALTH CAPITAL SECURITIES CORP.

For Review of Action Taken By

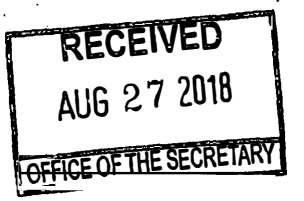
FINRA

x

Admin. Proc. File No. 3-18554

APPEAL OF NAC Decision in SD-2103

ORAL ARGUMENT REQUESTED



APPLICANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS APPEAL

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PRELIMINARY STATEMENT

Commonwealth Capital Securities Corp. ("CCSC" or "Applicant") respectfully submits this Memorandum of Law in support of its appeal from a May 24, 2018 decision (the "NAC MC-400 Decision") (R. 001801[1]) of the National Adjudicatory Council ("NAC") denying CCSC's Membership Continuance Application ("MC-400 Application") (R. 000165) with respect to its indirect owner, Kimberly Springsteen-Abbott ("Ms. Springsteen-Abbott").

The MC-400 Application sought permission to allow Ms. Springsteen-Abbott to continue her association with CCSC in an extremely limited capacity – her sole association would have been as CCSC's indirect owner so that she could infuse capital into CCSC on an as-needed basis. Ms. Springsteen-Abbott had already relinquished all other roles with respect to CCSC. She noe longer served on its board of directors or as an officer or employee. She no longer served in a supervisory capacity or any other capacity. She no longer played any role in the management ore day-to-day operations of CCSC. Her office was physically separated from CCSC.

CCSC is not an ordinary general securities broker-dealer; it is an introducing broker-dealer. It has no customers or clients, no customer accounts, no access to investor funds, and does not deal with the public in any way. CCSC's sole role is as the dealer-manager with respect to other broker-dealers that sell investment funds that specialize in equipment leasing (the "Funds") originated and managed by Commonwealth Capital Corp. ("CCC") and its subsidiaries (CCC together with its subsidiaries shall be referred to as "Commonwealth"). Before CCSC was formed approximately 20 years ago, Commonwealth needed to utilize an unaffiliated broker-dealer to serve as manager when Commonwealth brought Funds to the market and, unsurprisingly, these unaffiliated broker-dealers charged substantial fees for their services, which charges ultimately came out of the pocket of public investors in the Funds. When CCSC

[1] Citations to the record on appeal will be "R ___".

undertook the role previously undertaken by the unaffiliated broker-dealers, the costs were greatly reduced, thereby directly benefiting public investors in the Funds. Because of its limited business, CCSC generates virtually no income or profits; it was formed as a value-add to the Fund investors. Rather, CCSC's operations, which are for the benefit of investors in the Funds, are funded by Commonwealth and its owner, Ms. Springsteen-Abbott.

e As the result of an underlying disciplinary decision by the NAC, which is currently undere appeal to the Commission, Ms. Springsteen-Abbott was barred from associating with a FINRA member. The conduct underlying the bar had nothing to do with conduct undertaken at CCSC. Rather, the bar related to findings that that Ms. Springsteen-Abbott, as CEO of CCC, had inappropriately caused the Funds to reimburse approximately $36,000 in American Express charges ($30,000 to CCSC, which actually were continuing education expenses for employees who had roles with the General Partner subsidiary, and $6,000 to herself, errors admitted by the COO) to the detriment of Fund investors, findings that were made despite the fact that the NAC also found that during this same time period Ms. Springsteen-Abbott voluntarily contributed over $2.4 million to the Funds for the benefit of Fund investors (which voluntary contribution amount has since increased).

As discussed below in Point I, the finding in the NAC MC-400 Decision that Ms. Springsteen-Abbott's continued limited association with CCSC during the pendency of the MC-400 Application was a serious violation of FINRA rules is clearly erroneous. In fact, guidance provided by FINRA's own website makes it clear that in the circumstances presented here, where an MC-400 Application was promptly filed with respect to someone currently associated with the Applicant, the barred person may be permitted to continue to work. This guidance was confirmed by the fact that FINRA examinations of CCSC during this period, including an

examination specifically focused on Ms. Springsteen-Abbott, found no exceptions. Finally, as also discussed in Point I below, the case law cited by the NAC in its decision does *not* support its conclusion.

e As discussed in the remaining legal arguments, this initial fatal flaw poisoned the rest of the NAC's already flawed analysis. Thus, as discussed below in Point II, the NAC ignored CCSC's presentation of unrebutted evidence that its application presented extraordinary circumstances and was in the public interest – the very standard that FINRA's Department of Member Regulation stated CCSC needed to meet in order to have its application granted. As discussed in Point III below, the NAC's finding that CCSC had not demonstrated that it can properly supervise Ms. Springsteen-Abbott is clearly erroneous and tainted by its finding with respect to the impropriety of the continued limited association during the application's pendency. Point IV below demonstrates that the NAC's finding that CCSC's witnesses were not credible is similarly tainted. Finally, Point V below demonstrates that the Hearing Panel engaged in clear error, and denied CCSC its due process rights, by allowing a FINRA lawyer – who had co-authored a brief in the underlying appeal to the Commission expressing the view that Ms. Springsteen-Abbott's sanctions were appropriate – to serve as the attorney advisor to the Hearing Panel which sat in adjudication of CCSC's MC-400 Application.

eAccordingly, as discussed in more detail below, the NAC MC-400 Decision should bee reversed and CCSC's MC-400 Application for the limited association of Ms. Springsteen-Abbott should be granted.

STATEMENT OF FACTS

A. CCSC

At the time it filed the MC-400 Application, CCSC was owned by Commonwealth of Delaware, Inc. ("CDI"), which was owned by CCC, which, in turn, is owned by Ms.e Springsteen-Abbott. On July 20, 2018, after the NAC MC-400 Decision, CDI transferred its ownership of CCSC to the HJA Statutory Trust (the "Trust"). Ms. Springsteen-Abbott is not a trustee or beneficiary of the Trust and has no ownership interest in it. Accordingly, since thee transfer to the Trust, Ms. Springsteen-Abbott has no ownership interest in, or any other association with, CCSC, and CCSC and Ms. Springsteen-Abbott are in full compliance with the NAC's underlying bar order.[2]

Commonwealth is in the business of creating and managing the Funds.[3] A CCC subsidiary serves as the general partner of the various Funds and manages the Funds. Before the formation of CCSC, Commonwealth had no choice but to engage an unaffiliated broker-dealer to serve as dealer manager and put together a selling group of broker-dealers for a new fund. The costs of utilizing an unaffiliated broker-dealer were borne by investors in the various Funds. (R. 001433.)

To reduce these costs borne by Fund investors, and thereby benefit investors in future Funds, Commonwealth formed CCSC more than 20 years ago as a limited purpose broker-dealer. CCSC's sole role is as the dealer-manager with respect to other broker-dealers that sell the Funds. (R. 001432-001433.) Thus, the formation of CCSC directly benefited the public investors in the Funds by reducing the overall costs incurred by the Funds.

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[2] As discussed below, CCSC and Ms. Springsteen-Abbott had acted prior to the MC-400 Hearing to terminate all other aspects of her association with CCSC.

[3] No new funds have been created since the onset of the regulatory events underlying the instant application. Since that time, the business has been limited to managing the existing Funds.

B. CCSC Is Not a Typical FINRA Member Firm

Because of its limited role, CCSC is not a typical FINRA member firm. CCSC has no clients. CCSC has no customers. CCSC has no customer accounts. CCSC has no access to client funds or customer funds or investor funds. CCSC never deals directly with the investing public. CCSC does not have any access to the money investors have invested in the Funds. (R. 001431-001432.)

CCSC has never been conducted to turn a profit and has never made any profits. Indeed, rather than any money flowing up from CCSC to its owners, money had consistently been infused into CCSC by its then indirect owner, Ms. Springsteen-Abbott. (R. 001434-001435.) At the time of the underlying NAC decision, Ms. Springsteen-Abbott had infused approximately $2.4 million into the Funds; since that time the total amount infused has increased. (R. 001577.)

C. CCSC Filed An MC-400 Application To Allow Ms. Springsteen-Abbott To Continue Association With CCSC In A Very Limited Capacity

On August 23, 2016, the NAC issued a decision that, among other actions, barred Ms. Springsteen-Abbott from association with CCSC. Although that decision was timely appealed to the SEC,[4] CCSC and Ms. Springsteen-Abbott acted immediately to comply with the decision. Steps were taken to assure that the barred individual did not act as a principal or representative, did not supervise licensed persons in the conduct of firm business, had no role in the operation of the firm, was not held out to the public as an associated person, or otherwise carry out any role or function. (R. 001449-001451, 001454-001455.) Even when the SEC Order remanding the first decision of the NAC was issued, Ms. Springsteen-Abbott and CCSC continued to maintain the

[4] That flawed decision was remanded to the NAC by the SEC due to the deficiencies noted in the SEC's Order and Opinion. On July 20, 2017, the NAC issued a new decision (the "NAC Remand Decision") that substantially narrowed both the supporting bases for the decision and the monetary sanctions imposed, but retained the bar.

separation. Ms. Springsteen-Abbott has been completely proactive and cooperative with the process during the entire period.e

However, to permit Ms. Springsteen-Abbott to continue to fund the otherwise unprofitable broker-dealer, CCSC timely filed an MC-400 Application seeking one limited exception to the bar to permit her to continue to maintain her indirect ownership of CCSC so that she could continue to infuse funds into CCSC on an as-needed basis. Pursuant to existing FINRA guidance permitting a firm to delay compliance with a bar for a current employee if an MC-400 application was promptly filed (discussed below in Point I), Ms. Springsteen-Abbotte maintained her limited association while CCSC pursued its application. It is the denial by the NAC of CCSC's MC-400 Application that is on appeal here.

D. The Underlying FINRA Proceeding Against Ms. Springsteen-Abbott

1. The FINRA Hearing

eAfter conducting an annual examination of the broker-dealer CCSC, FINRA began ane investigation into issues that had nothing to do with the broker-dealer but, instead, related to various expenses that were reimbursed by the Funds to the parent company. Ultimately, FINRA's Department of Enforcement ("DOE") filed a complaint against Ms. Springsteen-Abbott alleging thatesome 2,282 Amex charges were improperly allocated from an American Express card to the Funds. The original complaint also named CCSC, the FINRA-member broker-dealer that had no role in the handling of these expenses, as a respondent. The 2,282 charges aggregated approximately $340,000.

The DOE admitted its first error when it later amended its complaint in 2013 to remove CCSC, the broker-dealer, from the casee– the withdrawal of claims against CCSC was a clear concession that no broker-dealer activity was involved in the case. The DOE admitted its second

and third errors when it dropped two counts against Ms. Springsteen-Abbott for misrepresentation and falsification of a document, based on proof provided to them, recognizing that the allegations were false. The DOE admitted its fourth error when it amended its complaint by reducing the item list of disputed charges with the total allocated expenses complained of from $340,000 to $208,000. The DOE apparently recognized that the original complaint contained approximately 400 errors and inflated the challenged charges by over 70%.

The DOE admitted its fifth error during the hearing, when it further reduced its claims by another $40,000, eventually seeking restitution of $174,320, further reducing the previous adjustments made by FINRA. The DOE admitted that 33 of the charges it twice had claimed to be misallocated were, in fact, never allocated to the Funds. In its closing argument, the DOE admitted to the Panel there was a possible set-off to the $208,000 of $63,622, as they themselves could not reconcile the evidence with the schedule. All of the above errors by the DOE apparently led the Extended Hearing Panel to commit yet another error – despite the DOE asking for $174,340, and conceding a lower figure might apply, the Extended Hearing Panel imposed restitution totaling $208,953.75, an amount not supported by the evidence in the record.e

Uncontroverted evidence was presented at the hearing that Ms. Springsteen-Abbott voluntarily contributed $2.4 million to the Funds; indeed, the DOE admitted as much. Thus, over the years, Ms. Springsteen-Abbott often waived fees owed to CCC by the Funds that would have been properly allocable to the Funds. In addition, up to 10% of all charges that were properly allocable to the Funds were never allocated to the Funds but were, instead, absorbed by CCC, the parent company, in order to lower operating expenses.

At the hearing, the DOE presented receipts and documents identifying the existence of some charges. However, the DOE only presented evidence supporting its objections to the

allocation of approximately 2% of these alleged improper charges. For the remaining 98% the DOE simply presented a series of spreadsheets setting forth all expenses of the same category.e DOE then argued that its "proof" regarding one item established the impropriety of every item on each list. Based on this failure of evidence, the Extended Hearing Panel found that Appellant had acted wrongly with respect to 1,840 expense items, ordered $208,953.75 in disgorgement, and imposed a lifetime bar.

2. The NAC Affirmed the Hearing Panel in the Original NAC Decision

The NAC affirmed the Hearing Panel's decision (the "Original NAC Decision"), finding that Ms. Springsteen-Abbott had improperly misallocated 1,840 expense items, totaling $208,953.75, to certain Funds of which she is a control person and ordered her to disgorge the $208,953.75; permanently barred her from the securities industry; fined her $100,000; and ordered her to pay costs of $11,037.14. In support of the Original NAC Decision, the NAC stated:

> Enforcement has the burden of proving a prima facie case based on a preponderance of the evidence that Springsteen-Abbott committed the alleged violation.... *The entire itemized list of the 1,840 charges at issue was presented and accepted into evidence....* We find that, based on the evidence presented, *Enforcement established its prima facie case of her alleged violation. An explanation detailing each of the 1,840 itemized charges was not required. Upon establishing a prima facie case, the burden shifted to Springsteen-Abbott to either discredit or rebut the evidence presented,* which she failed to successfully do. (Emphasis added.)

3. The SEC Determined that the Original NAC Decision Is Flawed

After an appeal filed by Ms. Springsteen-Abbott, the SEC reviewed the Original NAC Decision and, in an Opinion and Order, stated that it was:

> unable to discharge our review function because the NAC's decision is unclear regarding what conduct it found to violate

> FINRA Rule 2010. Although the NAC stated that it was affirming the Hearing Panel's findings of violation, it misstated those findings. The NAC stated that . .e it was affirming the Hearing Panel's "findings of violation against Springsteen-Abbott to include all of the 1,840 improperly allocated charges identified in the *Expense Schedule*." The Hearing Panel . . . did not find that all 1,840 charges identified in the Expense Schedule were improperly allocated....

See SEC Opinion and Order at 7 (emphasis in original).

Accordingly, the SEC remanded the matter back to the NAC so that the NAC could identify whether any rule violations actually occurred and, if so, to determine an appropriate remedy.

4.e The NAC Remand Decision Involves Only 84 Items, Down From 1,840 Items e

In the NAC Remand Decision, the NAC did not repeat its earlier finding that 1,840 expense items had been improperly allocated.[5] Presumably mindful of the SEC Opinion ande Order, the NAC now found that only 84 expense allocations were improper. In the NAC Remand Decision, the NAC did not repeat its order that $208,953.75 be disgorged; now it ordered that only $36,225.85 pertaining to the 84 items be disgorged. Although the NAC also reduced the fine imposed from $100,000 to $50,000, the NAC nevertheless reiterated its finding that Ms. Springsteen-Abbott be permanently barred from the securities industry.

The NAC listed the 84 supposedly improper expense items in a schedule attached at the end of the NAC Remand Decision. Fifty-eight of the 84 items involving $30,102.99 pertained to so-called "Broker-Dealer Expenses" (discussed in a summary manner in two short paragraphs ate page 16 of the NAC Remand Decision) and 26 items involving $6,122.86 pertained to so-called "Personal Expenses" (discussed in more detail at pages 5-16 of the NAC Remand Decision).

[5] The NAC issued the NAC Remand Decision notwithstanding briefs filed by Ms. Springsteen-Abbott arguing for new or further fact-finding following the remand by the SEC; neither the NAC or any other FINRA entity conducted any further hearings or undertook any further efforts to confirm, clarify or correct relevant information.

The 58 so-called Broker-Dealer Expense items were only discussed in a very cursory manner in the NAC Remand Decision. Indeed, 57 of the 58 (totaling $24,478.97 of the $30,102.99) were not even individually discussed; apparently, they were taken wholesale from a single exhibit prepared by a FINRA examiner. In the NAC Remand Decision, without any citation to anything in the record, the NAC stated that "[b]ased on Springsteen-Abbott's own identification of expenses that she attributed as continuing education to maintain securities registrations at the Firm [the broker-dealer], the Hearing Panel found that certain charges it characterized as "broker-dealer expenses" were improperly allocated to the Funds." The NAC then reached the same incorrect conclusion as the Hearing Panel, based on the false premise that Ms. Springsteen-Abbott somehow identified these expenses as broker-dealer related based on incorrect and materially misleading testimony by the FINRA examiner.

The NAC's finding that the continuing education expenses were for the benefit of the broker-dealer and not for the Funds was not supported by the record. Contrary to the NAC's assertion, *nowhere in the record (or elsewhere) did Ms. Springsteen-Abbott state that that the continuing education expenses referenced in these two exhibits relate to continuing education* ***to maintain securities registrations at the broker-dealer.*** Rather, she made it clear to FINRA that the co g education expenses related to continuing education for ***personnel w iced the Funds*** and were therefore Fund expenses.

The simple fact is that Ms. Springsteen-Abbott exercised her business judgment to conclude that the curriculum from some courses often taken by registered representatives as part of their FINRA continuing education requirements was also relevant and useful to the personnel who serviced the Funds. Without any basis in fact, the Hearing Panel and the NAC ignored her business judgment and substituted their own judgment to conclude – without any evidence – that

the continuing education must have been broker-dealer expenses and therefore must have been improper.

The remaining handful of personal expense items (totaling approximately $6,000), were simply mistakes due to inadequate accounting procedures, procedures that have since been corrected and have been reviewed and accepted in a number of subsequent FINRA examinations.

5. The NAC Remand Decision Is Currently Under Appeal to the Commission

Ms. Springsteen-Abbott appealed the NAC Remand Decision to the Commission.[6] That matter is fully briefed and the parties are awaiting either a decision from the Commission or notice that the Commission will hear oral argument of the appeal.

LEGAL ARGUMENT

Point I

CONTRARY TO THE NAC'S FINDING, MS. SPRINGSTEEN-ABBOTT'S CONTINUED ASSOCIATION WITH CCSC DURING THE PENDENCY OF THE MC-400 APPLICATION WAS *NOT* A VIOLATION OF FINRA RULES

At the core of the NAC MC-400 Decision denying CCSC's application was the NAC's finding that Ms. "Springsteen-Abbott's continued association with the Firm while disqualified is a serious violation of FINRA rules." NAC MC-400 Decision (R. 001801) at 10. The NAC stated that "[w]e find it troubling that the Firm and Abbott, its chief executive officer and the proposed primary supervisor, have permitted Springsteen-Abbott to improperly associate with the Firm without FINRA's approval." *Id.* at 11. The NAC then concluded that:

> This conduct leads us to conclude that [Ms. Springsteen-Abbott's] continued association with the Firm is not in the public interest. It creates a perverse risk of harm to the market and investors and demonstrates both an unreasonable failure to abide by regulatory

[6] As shown in the appeal, the NAC's finding in the NAC MC-400 Decision that Ms. Springsteen-Abbott engaged in serious misconduct is clearly erroneous. The Commission is referred to Ms. Springsteen-Abbott's briefs filed in that matter, Admin Pro.3-17560r, her Appeal of NAC Decision in Complaint No. 2011025675501.

> requirements and the potential for future regulatory problems. Thee Firm's allowance of Springsteen-Abbott's continued associatione indicates a palpable aversion to abide by the NAC's decision...e

Id. at 12.

The NAC's finding is incorrect for three reasons. First, FINRA's own website states that a person currently associated with a FINRA member at the time the disqualifying event occurs "**may be** permitted to continue to work in certain circumstances, provided the employer member promptly files a written application with FINRA seeking permission to continue that person's employment with the member firm" – exactly the procedure that was followed here. Second, FINRA's own examinations of CCSC during this period – the period when the NAC concluded CCSC was in "serious violation of FINRA rules" – identified that there were no exceptions and, accordingly, there was no further action taken. Third, the cases cited by the NAC in the NAC MC-400 Decision in support of its conclusion that Ms. Springsteen-Abbott's continuede association with CCSC was a "serious violation of FINRA rules" do *not* support such a conclusion – the cited cases are distinguishable based on the facts and FINRA's own guidance referenced above.

A. FINRA's Own Website Guidance Confirms That Ms. Springsteen-Abbott Was Allowed To Remain Associated With CCSC Pending the Decision On CCSC's MC-400 Application

FINRA's own website sets forth "General Information on FINRA's Eligibility Requirements."[7] On the second page, FINRA states:

> Generally speaking, a person who is subject to disqualification may not associate with a FINRA member in **any capacity** unless and until approved in an Eligibility Proceeding. *If a person is currently associated with a FINRA member at the time the disqualifying event occurs, the person **may be** permitted to continue to work in certain circumstances, provided the employer*

[7] This document was accepted into evidence at the hearing (*see* R. 001525-001530) and a copy is annexed hereto as Exhibit A.

> *member promptly files a written application with FINRA seeking permission to continue that person's employment with the member firm.*

Id. at 2 (italicized and underlined emphasis added; bold emphasis in original). FINRA's own guidance then goes on to say, "Once a member becomes aware that it or one of its associated persons is subject to a disqualification ... the Firm must either file a Form U-5 if it wishes to terminate the individual's association or file a Form MC-400 application if a member wishes to sponsor the association of a disqualified person." *Id.*

The facts here are undisputed: (i) Ms. Springsteen-Abbott was associated with FINRA-member CCSC at the time the disqualifying event occurred, and (ii) CCSC promptly filed the MC-400 application with respect to Ms. Springsteen-Abbott. Therefore, according to FINRA'se own guidance, Ms. Springsteen-Abbott was allowed to continue her association with CCSCe pending the NAC's decision on the application, and there was no violation of FINRA rules,e serious or otherwise.e

B. FINRA's Own Examinations of CCSC Confirm That Ms. Springsteen-Abbott's Continued Association With CCSC Pending the Decision On CCSC's MC-400 Application Was Not A Violation Of FINRA Rules

At the hearing, FINRA took the ridiculous position that its website was inaccurate ande that Ms. Springsteen-Abbott's continued association with CCSC pending the decision on the MC-400 application was a violation of FINRA rules. Putting aside the fact that CCSC wase entitled to rely on the website's guidance, FINRA's own conduct before the hearing confirmse that, in fact, the website guidance is accurate and that CCSC and Ms. Springsteen-Abbott weree not violating FINRA rulese

Each year after FINRA barred Ms. Springsteen-Abbott, FINRA conducted an annual examination of CCSC. Hank Abbott, CCSC's CEO, confirmed that FINRA never cited CCSC

with respect to Ms. Springsteen-Abbott's continued limited association with CCSC during the pendency of the MC-400 Application. *See* R. 001446, 001454-001455, 001533. In fact, in response to the specific question "Did FINRA cite CCSC or you, as a supervisor, or anybody with respect to an issue as to the fact that this limited association [of Ms. Springsteen-Abbott with CCSC] continued while the MC400 application was pending?", Mr. Abbott confirmed that the answer was "No. The concluding letter from FINRA said no exceptions noted. No further action required." R. 001524-001525. Mr. Abbott's testimony was confirmed by CCSC's Chief Compliance Officer, James Pruett. (R. 001638-001639.) Indeed, Mr. Pruett confirmed that the 2016 exam specifically "focus[ed] on Kimberly [Springsteen-Abbott]" and found no exceptions. *Id.* Mr. Pruett further testified as follows:

> Q: You testified earlier that in the exam that FINRA conducted right after the bar went into effect, they looked at the efirm generally, and they specifically, as one of their bullet subjects,e so to speak, they examined with respect to Kim Springsteen-Abbott?e
>
> A: Yeah. They popped that one on me in the middle of the conversation with them. They said we have dual exam going on.
>
> Q: And no exceptions were found in that exam?
>
> A; No further actions. No exceptions.

R.e001656.e

Of course, these facts came as no surprise to FINRA at the hearing. Indeed, in its March 1, 2017 submission in this matter (R. 000205 at page 13), FINRA's Department of Member Regulation conceded that "FINRA conducted its most recent examinations of the Firm in 2014, 2015 and 2016. Each of the exams closed with no exceptions identified or no further action was taken."

The fact that FINRA found no exceptions in its examinations of CCSC – even during the examination that focused on Ms. Springsteen-Abbott after the bar went into effect – confirms that there was no violation of FINRA rules and that CCSC acted appropriately in allowing Ms. Springsteen-Abbott's limited association to continue after the prompt filing of its MC-400 Application. The position taken by FINRA during the MC-400 hearing – and the position stated by the NAC in the NAC MC-400 Decision – is simply incorrect.

C. The Cases Cited By The NAC In The NAC MC-400 Decision In Support Of Its Conclusion That Ms. Springsteen-Abbott's Continued Association With CCSC Was A "Serious Violation Of FINRA Rules" Do *Not* Support Such A Conclusion

At pages 10-12 of the NAC MC-400 Decision, the NAC cites five cases that it believes support its conclusion that Ms. Springsteen-Abbott's continued association with CCSC during the pendency of the MC-400 application was a serious violation of FINRA rules. A review of these cases demonstrates no such thing. Rather, the cases are either distinguishable or inapposite.

The first case relied on by the NAC is *In the Matter of the Association of Marc N. Jaffe as Gen. Sec. Representative with Integrity Brokerage Servs, Inc.*, SD-2103 (FINRA NAC May 16, 2017). However, even a cursory reading of the *Jaffe* decision reveals that it is distinguishable from the instant case. As stated above, guidance on the FINRA website provides that "[i]If a person is *currently associated* with a FINRA member at the time the disqualifying event occurs, the person **may be** permitted to *continue* to work" (italicized emphasis added; bold emphasis in original). In other words, if a person is barred while currently associated with a FINRA member, *that member* may allow the person to *continue* to work if it promptly files an MC-400 application, as was done with respect to Ms. Springsteen-Abbott. By its own terms,e FINRA's guidance does not allow a second, different firm to hire an individual who was barred

at a prior firm and allow that barred individual to be associated with the second firm during the pendency of an MC-400 application. Yet that is precisely the situation in *Jaffe* – page 2 of the *Jaffe* decision notes that "Jaffe's employing firm at the time he entered into the 2015 AWC terminated him just prior to the beginning of his suspension." Jaffe then "served his suspension" and was later hired by Integrity Brokerage Services, Inc., the firm that Jaffe was associated with during the pendency of the MC-400 application. Accordingly, Integrity Brokerage Services was a *new* employer.[8] Thus, the finding in *Jaffe* that he "engaged in serious misconduct after the entry of the 2015 AWC by improperly associating with the Firm while the [MC-400] Application was pending" (*Id.* at 17), is irrelevant to the case at bar. Unlike Ms. Springsteen-Abbott, who continued her association at one firm and therefore fits exactly within the language of the guidance on FINRA's website, Mr. Jaffe was barred at one firm andethen associated withe another, which does not fall within the terms of the FINRA website guidance.

The next case relied on by the NAC – *Association of X*, Redacted No. SD11001 (FINRA NAC 2011) – suffers from the same problem. In *Association of X*, Mr. X became "statutorily disqualified because of a Summary Denial of Agent Registration dated June 2004." *Id.* at 2. The applicant, called "Sponsoring Firm" in the decision, did not even become a FINRA member until September 2009 – more than five years later, at which time Mr. X became associated with Sponsoring Firm. *Id.* at 4, 9. Thus, the finding in *Association of X* that "X's association with Sponsoring Firm while statutorily disqualified was a serious violation of FINRA's rules" (*Id.* at 15), is also irrelevant to the case at bar. Again, unlike Ms. Springsteen-Abbott whose association at a single firm is covered by the guidance on FINRA's website, Mr. X does not fall within the

[8] *See also Jaffe* at 7, noting that "in September 2015 Jaffe's firm terminated him" – after the August 26, 2015 AWC that suspended him – and that "Jaffe agreed to move to the Firm [Integrity Brokerage Services] ... [and] the Firm agreed to initiate an eligibility proceeding."

situation outlined by the guidance on FINRA's website because he was barred at one firm and then associated with another firm while the application was pending.

The third case relied on by the NAC – *In the Matter of the Application of Leslie Arouh*, Exchange Act Release No. 62898, 2010 SEC Lexis 2977 (Sept. 13, 2010) – also suffers from the same problem. In *Arouh*, "[o]n February 25, 2005 ... the Bar Order became final. Arouh terminated his employment with Raymond James." *Id.* at *8. Arouh subsequently joined STG Secure Trading Group and remained with STG until April 2005. *Id.* at *19. "In March 2008, Raymond James applied to FINRA for consent to continue as a FINRA member if Arouh became an associated person." *Id.* at *20. FINRA denied the application, finding that Arouh had been associated with STG in violation of the Bar Order. *Id.* at *23. The SEC affirmed FINRA's decision, stating that Arouh engaged in serious intervening misconduct by associating with STGe while the Bar Order was in effect. *Id.* at *59. Thus, once again, the facts of the case cited by thee NAC are distinguishable. Once again, the case does not come under the guidance provided by FINRA's own website where a firm may allow its employee to continue to be associated after a bar when the firm promptly files an MC-400 application.

In addressing CCSC's reliance on the guidance on FINRA's website, the NAC asserts (R. 001801 at 11 n. 15) that "[i]t [the guidance] applies instead to those cases in which an individual has already served a time-limited sanction or whose statutorily disqualifying event does not otherwise restrict the individual's ability to associate with a member firm," and cites two cases – *In the Matter of the Continued Association of Robert J. Escobio with S. Trust Sec., Inc.*, SD-2130 (FINRA NAC July 27, 2017), and *In the Matter of the Association of Scott Mathis with DPEC Capital, Inc.*, SD-1960 (FINRA NAC Apr. 30, 2015) – in support of this assertion. However, neither *Escobio* nor *Mathis* discuss the FINRA website guidance in any way and

neither case purports to draw the distinction made by the NAC. In each case, the NAC simply noted that the applicant has been permitted to work at the applying firm pending resolution of the MC-400 application, consistent with FINRA's interpretation of Article III, Section 3(c) of FINRA's By-Laws permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process. *Escobio* at 5 n.3; *Mathis* at 3 n.5.[9]

Thus, the NAC's finding that CCSC and Ms. Springsteen-Abbott violated FINRA rules by Ms. Springsteen-Abbott's continued limited association with CCSC during the pendency of the MC-400 Application is clearly erroneous and premised upon a misreading of the law and FINRA's own pronouncements, and a misreading of the facts. In light of CCSC's compliance with the guidance provided by FINRA on its website coupled with the fact that FINRA's own multiple examinations of CCSC found no exceptions arising from Ms. Springsteen-Abbott's limited association with CCSC after the bar, the NAC MC-400 Decision should be reversed and CCSC's application granted. This is especially so given the fact that the NAC's finding on this point poisoned the rest of its decision.

[9] The only other case cited in the NAC MC-400 Decision is another NAC opinion, *In the Matter of the Association of X as an Associated Person with the Sponsoring Firm*, SD11003 (2011). In this case, Mr. X was barred and his employer, Sponsoring Firm, promptly filed an MC-400 application, terminated Mr. X's association as a general securities registered representative, and allowed Mr. X to continue as an investment advisory representative. After discussions with Member Regulation, Sponsoring Firm then terminated that limited association as well. In a footnote, the NAC discussed the website guidance and, without any explanation, stated that Mr. X should not have been associated in any capacity with Sponsoring Firm pending the application. Tellingly, however, perhaps recognizing that FINRA's website allows the continued association, the NAC also stated that "[u]nder the circumstances, we have not considered X's continued association with Sponsoring Firm subsequent to the AWC as a factor in rendering this decision." *Id.* at 5 n.3. This is in sharp contrast to our case, where the continuing association based on the website was a primary reason given for the denial of the MC-400 application.

Point II

CCSC PRESENTED UNREBUTTED EVIDENCE THAT ITS APPLICATION PRESENTED EXTRAORDINARY CIRCUMSTANCES AND WAS IN THE PUBLIC INTEREST

In her opening statement, counsel for Member Regulation stated that "the firm [CCSC] has the task in demonstrating that extraordinary circumstances are present in this case and that the requested association is in the public interest. The sole task before this panel today is to determine whether the firm has met this burden." (R. 001420.) CCSC presented evidence demonstrating both points. Member Regulation presented *no* evidence rebutting CCSC's evidence. Accordingly, based on FINRA's own statement as to the standards governing CCSC's application, the NAC's denial of the application was clearly erroneous and unsupported by the record.

A. CCSC Demonstrated That Extraordinary Circumstances Are Present In This Case

As discussed above in the Statement of Facts, CCSC presented evidence demonstrating that extraordinary circumstances are present in this case. None of this evidence was rebutted by FINRA.

Thus, CCSC proved that:

- CCSC is not an ordinary broker-dealer.
- CCSC's sole role is as a dealer-manager with respect to other broker-dealers that sell the Funds.
- CCSC has no clients.
- CCSC has no customers.
- CCSC has no customer accounts.
- CCSC has no access to client funds or customer funds or investor funds.

- CCSC never deals directly with the investing public.
- CCSC does not have any access to the money investors have invested in the Funds.
- CCSC has never been conducted so as to turn a profit and has never made any profits. Indeed, rather than any money flowing up from CCSC to its owners, money had consistently been infused into CCSC by its then indirect owner, Ms. Springsteen-Abbott.
- CCSC played no role in the underlying conduct with respect to expense charges. Rather, all of the alleged misconduct occurred at a different Commonwealth entity, so no supervisory procedures at CCSC could affect, one way or the other, the alleged underlying conduct.

Rather than recognizing the unrebutted evidence that CCSC's MC-400 Application involves extraordinary circumstances, the NAC chose to ignore the facts and simply, without basis, state that CCSC "has fallen far short of meeting its burden." NAC MC-400 Decision at 10.

B. CCSC Demonstrated That Granting Its Application Is In The Public Interest

As discussed above in the Statement of Facts, CCSC presented evidence demonstrating that granting its application would be in the public interest. CCSC's application made it clear that, if the application were granted, Ms. Springsteen-Abbott's association with CCSC would be extremely limited. In fact, her sole association would have been to remain as CCSC's indirect owner so as to be able to infuse capital into CCSC on an as-needed basis. Ms. Springsteen-Abbott had already relinquished all other associations with CCSC – she was no longer a director or officer or supervisor and played no role whatsoever in CCSC's operation or management.

The benefit to the public interest of granting the MC-400 Application was also made clear. With CCSC still able to act as dealer-manager instead of a more expensive unaffiliated broker-dealer serving in that role, investors in any future Commonwealth funds would face lower costs and would therefore have more of their investment working for them. In other words, and as the witnesses made clear, investors in future Commonwealth funds would receive a direct economic benefit if Ms. Springsteen-Abbott were allowed to maintain her limited association with CCSC and infuse it with capital on an as-needed basis.

Finally, it must be remembered that the underlying misconduct that Ms. Springsteen-Abbott was alleged to have engaged in had nothing to do with CCSC. Simply put, CCSC played no role in the underlying conduct with respect to expense charges. Rather, all of the alleged misconduct occurred at a different Commonwealth entity, so no supervisory procedures at CCSC could affect, one way or the other, the alleged underlying conduct.[10] Therefore, allowing Ms. Springsteen-Abbott the requested limited association with CCSC would not, in any way, (to use the NAC's own words) "create an unreasonable risk of harm to the market or investors."

Accordingly, CCSC presented unrebutted evidence that its application presented extraordinary circumstances, was in the public interest, and created no risk to the market or investors. The NAC's failure to grant the MC-400 Application was clearly erroneous and should be reversed.

[10] In any event, unrebutted evidence was presented at the MC-400 hearing demonstrating that Commonwealth had changed its procedures to ensure that no future expenses were improperly charged to the Funds. *See, e.g.*, R. 001444-001447, 001558-00001560.

Point III

THE NAC'S FINDING THAT CCSC HAS NOT DEMONSTRATED THAT IT CAN PROPERLY SUPERVISE MS. SPRINGSTEEN-ABBOTT IS CLEARLY ERRONEOUS AND IS TAINTED BY ITS FINDING THAT CCSC IMPROPERLY ALLOWED MS. SPRINGSTEEN-ABBOTT TO REMAIN ASSOCIATED WITH IT PENDING THE DECISION ON CCSC'S MC-400 APPLICATION

As stated above in Point I, at the core of the NAC MC-400 Decision denying CCSC's application was the NAC's finding that Ms. "Springsteen-Abbott's continued association with the Firm while disqualified is a serious violation of FINRA rules." NAC MC-400 Decision (R. 001801) at 10. The NAC's finding on this point poisoned the rest of its decision. Indeed, the NAC stated that "[w]e find it troubling that the Firm and Abbott, its chief executive officer and the proposed primary supervisor, have permitted Springsteen-Abbott to improperly associate with the Firm without FINRA's approval." *Id.* at 11. In essence, the NAC concluded that Ms. Springsteen-Abbott could not be properly supervised because, in the NAC's (erroneous) view, she was already not being properly supervised.

The NAC also erroneously ignored the extraordinarily limited nature of CCSC's business when looking at the supervision issue. As previously stated, CCSC engages in a very limited business – CCSC's sole role is as an introducing broker-dealer that serves as the dealer-manager with respect to other broker-dealers that sell the Funds to the public. CCSC has no clients, no customers, no client accounts, no access to investor money and does not deal with the public. Further, the underlying wrongdoing that Ms. Springsteen-Abbott allegedly committed (which is now under appeal to the Commission and which, according to the unrebutted testimony, could not occur in the future because of new procedures put in place), did not involve CCSC in any way. In light of these facts, the proposed plan of supervision is more than sufficient to protect the public and ensure that proper supervision occurs.

Finally, the NAC's conclusion that Ms. Springsteen-Abbott cannot be properly supervised because she still retains control over CCSC is clearly erroneous. The NAC bases its conclusion on its view that "the Non-Participation Agreement is aspirational only" (NAC MC-4000 Decision at 15). However, the Non-Participation Agreement is clear – by its terms, Ms. Springsteen-Abbott agreed to give up all control over CCSC and agreed not to participate in any way in its governance. Pursuant to the terms of the Non-Participation Agreement, Ms. Springsteen-Abbott resigned from CCSC's board of directors and gave up all of her positions at CCSC. Her sole role on a going-forward basis is to provide funds to CCSC, when requested, on an as-needed basis. If the NAC had approved CCSC's application, the Non-Participation Agreement would be a binding commitment to FINRA by CCSC and Ms. Springsteen-Abbott, no different than other agreements member firms make with FINRA when filing membership applications and the like.

In light of the above, the NAC's finding that CCSC could not properly supervise Ms. Springsteen-Abbott is clearly erroneous and the NAC MC-400 Decision should be reversed.

Point IV

THE NAC'S FINDINGS THAT THE TESTIMONY OF CCSC'S CEO AND OF MS. SPRINGSTEEN-ABBOTT LACKED CREDIBILITY ARE CLEARLY ERRONEOUS AND ARE TAINTED BY ITS FINDING THAT CCSC IMPROPERLY ALLOWED MS. SPRINGSTEEN-ABBOTT TO REMAIN ASSOCIATED WITH IT PENDING THE DECISION ON CCSC'S MC-400 APPLICATION

At the end of the NAC MC-400 Decision, the NAC stated "[w]e are left therefore to consider the stated intentions of Springsteen-Abbott and Abbott .... The Hearing Panel that heard the testimony of Springsteen-Abbott and Abbott in this membership continuance proceeding found their testimony lacked credibility. Given these circumstances, we are unwilling at this time to make the great leap of faith that the Firm ask of us by requesting that we

approve the Application for Springsteen-Abbott's 'limited association' with the Firm." NAC MC-400 Decision (R. 001801) at 16.e

Notably, the NAC does not provide a single example of the alleged lack of credibility.e This is so for a simple reason – all of CCSC's witnesses, includingeMr. Abbott and Ms.e Springsteen-Abbott, testified credibly. No cross-examination by Member Regulation and no questions from the Hearing Panel demonstrated or even reflected a lack of credibility. The failure in the NAC MC-400 Decision to cite any instance of "incredible" testimony is, in and of itself, clear error requiring reversal of the NAC MC-400 Decision.

The lack of any support for the Hearing Panel's conclusion that CCSC's witnesses supposedly were not credible leads to one of two conclusions: (1) as previously stated, the (erroneous) conclusion that Ms. "Springsteen-Abbott's continued association with the Firm while disqualified is a serious violation of FINRA rules" poisoned the Hearing Panel's and the NAC's view of Mr. Abbott and Ms. Springsteen-Abbott; and/or (2) as explained below in Point V, the Hearing Panel's attorney advisor improperly prejudiced the Hearing Panel and the NAC against CCSC's application. Either way, the NAC MC-400 Decision should be reversed.

Point V

THE NAC'S DECISION TO UPHOLD THE HEARING PANEL'S DENIAL OF CCSC'S MOTION TO RECUSE THE HEARING PANEL'S ATTORNEY-ADVISOR WAS CLEARLY ERRONEOUS AND DENIED CCSC ITS DUE PROCESS RIGHTS TO A FAIR HEARING

On January 31, 2018, CCSC filed a motion to recuse Gary Dernelle as the Hearing Panel's attorney advisor. (R. 001375.) On February 12, 2018, the Hearing panel denied the motion. (R. 001381.) The NAC MC-400 Decision reveals that the denial of the recusal motion was clearly erroneous and denied CCSC its due process rights to a fair hearing.

eThe basis of the recusal motion was straightforward. In addition to serving as attorneye advisor to the Hearing Panel with respect to the MC-400 Application, Mr. Dernelle also played a substantive role in opposing Ms. Springsteen-Abbott's appeal to the Commission of the underlying NAC disciplinary decision. In fact, as explained in the recusal motion, Mr. Dernelle was one of the attorneys who authored and submitted a brief to the Commission that stated, among other things, that "the sanctions that FINRA imposed on [Ms. Springsteen-Abbott] are not excessive or oppressive." In other words, Mr. Dernelle – who is supposed to be a fair, neutral attorney advisor to the MC-400 Hearing Panel – has formed a personal view that Ms. Springsteen-Abbott should have been sanctioned and that the sanctions were appropriate. These negative views of Ms. Springsteen-Abbott made it impossible for Mr. Dernelle to render fair advice to the MC-400 Hearing Panel.

Two aspects of the NAC MC-400 Decision indicate that Mr. Dernelle's views concerning Ms. Springsteen-Abbott negatively impacted CCSC's MC-400 Application. First, as discussed above in Point I, the NAC MC-400 Decision's conclusion that Ms. "Springsteen-Abbott's continued association with the Firm while disqualified is a serious violation of FINRA rules" and the decision's discussion of the case law in this area was fundamentally flawed and poisoned the rest of the NAC MC-400 Decision. As attorney advisor to the Hearing Panel, Mr. Dernelle was presumably responsible for this flawed legal analysis. Second, as discussed above in Point IV, the unsupported statement that CCSC's witnesses lacked credibility may be attributed to Mr. Dernelle's pre-formed negative conclusions with respect to Ms. Springsteen-Abbott.e

Either way, NAC MC-400 Decision demonstrates that the Hearing Panel's denial of the recusal motion was clearly erroneous and denied CCSC its due process rights to a fair hearing. Accordingly, the NAC MC-400 Decision should be reversed.

CONCLUSION

For the reasons set forth above, Applicant CCSC respectfully submits that the NAC MC-400 Decision should be reversed and CCSC's application for the a narrowly tailored, limited association of Ms. Springsteen-Abbott should be approved.

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Respectfully submitted,

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FINRA
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Exhibit A

General Information on FINRA's Eligibility Requirements

Article III, Section 3 of FINRA's By-Laws provides that no member shall be continued in membership if it becomes subject to disqualification; and that no person shall be associated with a member, continue to be associated with a member, or transfer association to another member if such person is or becomes subject to disqualification. FINRA's authority to deny the registration and/or membership of disqualified persons or members is set forth in Section 15A(g)(2)tof the Securities Exchange Act of 1934 ("Exchange Act").t

Disqualification Defined

Article III, Section 4 of the By-Laws states that a person is subject to a "disqualification" with respect to membership, or association with a member, if such person is subject to any "statutory disqualification" as such term is defined in Section 3(a)(39) of the Exchange Act.

The list of disqualifying events according to Section 3(a)(39) of the Exchange Act are as follows:

- certain misdemeanor and all felony criminal convictions for a period of ten years from the date of conviction.
- temporary and permanent injunctions (regardless of their age) issued by a court of competent jurisdiction involving a broad range of unlawful investment activities.
- expulsions or bars (and current suspensions) from membership or participation in a self-regulatory organization (SRO). Includes bars with a right to re-apply.
- bars (and current suspensions) ordered by the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC) or other appropriate regulatory agency or authority. Includes bars with a right to re-apply.
- denials or revocations of registration by the SEC, CFTC or other appropriate regulatory agency or authority.
- findings that a member or person has made certain false statements in applications or reports made to, or in proceedings before, SROs, the SEC on other appropriate regulatory agency or authority.
- any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), or the National Credit Union Administration, that
    - i.t bars such person from association with an entity regulated by such commission, authority,t agency, or officer, or from engaging in the business of securities, insurance, banking, savingst association activities, or credit union activities; ort

ii.e constitutes a final order based on violations of any laws or regulations that prohibit fraudulent,e manipulative, or deceptive conduct.e

- findings by the SEC, CFTC or an SRO that a person: 1) "willfully" violated the federal securities or commodities laws, or the Municipal Securities Rulemaking Board (MSRB) rules; 2) "willfully" aided,e abetted, counseled, commanded, induced or procured such violations; or 3) failed to supervise anothere who commits violations of such laws or rules.e
- Certain associations with disqualified persons. In determining "association" for purposes of Exchangee Act Section 3(a)(39)(E), FINRA uses the definition of "associated person" set forth in Exchange Acte Section 3(a)(21).e

Special Permission to Continue in or Enter the Securities Industry Notwithstanding a Disqualification

Article III, Section 3(d) of FINRA's By-Laws permits a disqualified person or member to request permission to enter or remain in the securities industry. FINRA Rules 9520 through 9527 set forth procedures for a member to sponsor the proposed association of a person subject to disqualification or for a member to obtain approval to remain a member notwithstanding the existence of a disqualification. These actions are referred to as "Eligibility Proceedings."

Generally speaking, a person who is subject to disqualification may not associate with a FINRA member in **any capacity** unless and until approved in an Eligibility Proceeding. If a person is currently associated with a FINRA member at the time the disqualifying event occurs, the person **may be** permitted to continue to work in certain circumstances, provided the employer member promptly files a written application with FINRA seeking permission to continue that person's employment with the member firm. Likewise, a member subject to disqualification also **may be** allowed to remain a member, provided the member promptly files an application requesting approval of its continued membership, and the disqualifying event does not involve a licensing sanction, such as a bar, revocation or expulsion.

Filing an Application under the Eligibility Rules

Once a member becomes aware that it or one of its associated persons is subject to a disqualification, the member is obligated to report the event to FINRA. In the case of a disqualified person, the Firm must either file a Form U5 if it wishes to terminate the individual's association or file a Form MC-400 application if a member wishes to sponsor the association of a disqualified person. The member should file any MC-400 application when it amends the Form U4 and it must amend the Form U4 within 10 days of learning of a statutory disqualifying event (see Article 5, Section 2(c) of the FINRA By-Laws). The MC-400 application requests information about the terms and conditions of the proposed employment, with special emphasis on the proposed supervision to be accorded the disqualified person. Firms are reminded that the Eligibility Proceedings process extends to all associated persons, including those individuals for whom firms would file a Non-Registered Fingerprint (NRF).

The member may request, in writing, an extension of time to file the application. However, a member must not assume that an extension request has been granted if it has not received written approval from the Department of Member Regulation (Member Regulation). Failure of the member to either terminate the individual or submit an MC-400 application renders the member ineligible to continue in FINRA membership (see Article 3, Section 3(a) of the FINRA By-Laws). Further, pursuant to Rule 9522(a)(2) & (3), FINRA may **cancel the membership of a firm or revoke the registration of a disqualified person where a firm fails to respond to FINRA's notice of disqualification**.

One exception to the requirements to file an MC-400 application concerns persons or members that are subject to an injunction that is greater than 10 years old. In these situations, pursuant to Rule 9522(e)(1)(A), the member may provide to FINRA's Registration and Disclosure Department (RAD) a written request for relief. If the member submits the written request, RAD will send it to Member Regulation, which will review the proposed employment or change in

membership and in its discretion may either approve the proposed association/continued membership or require that the sponsoring or disqualified member file a Form MC-400 application.

Members subject to disqualification that wish to retain their membership are required to submit a Form MC-400A. A member that becomes subject to disqualification must immediately amend its Form BD, in accordance with FINRA By-Laws, to report the disqualifying event and file an MC-400A application with RAD if it wishes to continue in membership.

Instructions for completing the MC-400 and MC-400A Applications

If a person subject to disqualification is approved to associate with a member and later wishes to become associated with another firm, the new firm is not required to undergo the full Eligibility Proceedings process in all cases (see Rule 9522(e)(2)(A)). Instead, the proposed new employer should file a Form MC-400 application, which will be reviewed by Member Regulation. If Member Regulation finds: (1) that the terms and conditions of the proposed employment are the same in all material respects as those previously approved, and (2) that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or protection of investors, then pursuant to SEC Rule 19h-1(a)(3)(ii), Member Regulation may approve the application and provide the SEC with notification of the new employment. If Member Regulation does not believe that the application meets that standard, it may exercise its discretion to require the firm to submit to the full Eligibility Proceedings process.

As set forth in Section 12(a) of Schedule A to FINRA By-Laws, the application fee for a Form MC-400 is $1,500. This fee should be submitted along with the Form MC-400. Payment can be made either with a check from the member, or by means of a member's written request to have the amount deducted from its CRD account. There is no fee for a Form MC-400A.

Registration and Disclosure's Role

When a member files a Form MC-400 or Form MC-400A, RAD first examines the applicable NRF, Form U4, or Form BD to determine whether there are any deficiencies. For example, all persons must be qualified (by examination or waiver) in the capacity for which they seek to associate before RAD will process an application.

RAD then compiles a package of relevant information (to be known as the "Record"), including, but not limited to: documentation regarding the disqualifying event; CRD Records for the disqualified person, the sponsoring or disqualified member firm, and the proposed supervisor of the disqualified person; and documentation in the form of orders, decisions, and the like related to the disciplinary events concerning the disqualified person, member firm, and proposed supervisor. RAD prepares an index of this information, together with the application form and the Form U4 or Form BD, and sends the index and documents to Member Regulation, FINRA's Office of General Counsel (OGC), and the applicant member firm.

In addition to compiling the MC-400 package, RAD updates the individual's/member firm's statutory disqualification status "SD Status" in CRD. CRD composite screens for both member firms and representatives contain a statutory disqualification (SD) status. For member firms, the SD status shows a null value, a "yes," or a "no."

SD status codes for representatives contain additional detail. A full list of SD status codes is available on this site.

Member Regulation's Role

Under the Eligibility rules, Member Regulation acts as a party in all Eligibility Proceedings. Member Regulation is responsible for evaluating MC-400 and MC-400A applications and making recommendations either to approve or deny the application to the National Adjudicatory Council (NAC). Member Regulation conducts a thorough review of each file. Part of this function includes obtaining additional information, as required, from the applicant member firm, the proposed associated person, and/or various other sources.

To ensure a uniform and consistent approach, Member Regulation staff conducts a prescribed analysis of each application. This analysis takes into account:

- the nature and gravity of the disqualifying event;
- the length of time that has elapsed since the disqualifying event;
- whether any intervening misconduct has occurred;
- any other mitigating or aggravating circumstances that may exist;
- the precise nature of the securities-related activities proposed in the application; and
- the disciplinary history and industry experience of both the member firm and the person proposed by the firm to serve as the responsible supervisor of the disqualified person.

Member Regulation has the discretion to approve the applications of member firms seeking to associate disqualified persons in a purely clerical and/or ministerial capacity without requiring applicants to undergo the hearing process before the NAC prescribed by Rule 9524 (see Rule 9522(e)(2)). The sponsoring firm is required to file a Form MC-400. In the event Member Regulation does not approve an application to associate a person in a clerical and/or ministerial capacity, the sponsoring member will have the right to proceed under Rule 9524 (*i.e.*, to have the matter decided by the NAC after a hearing and consideration by the SD Committee). For more information see NASD Notice to Members 05-12.

In addition, Member Regulation has the authority to approve the applications of member firms with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act (see FINRA Rule 9523(b); Regulatory Notice 09-19).

The Important Role of Supervision

Pursuant to FINRA Rule 3110, each member must establish, maintain, and enforce written procedures to supervise the activities of its registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules. It is particularly important for members to be prepared to implement appropriate supervisory controls when it sponsors the association of a person who is subject to disqualification or when it seeks to retain its membership after becoming subject to disqualification. This is the case because in virtually every application that the NAC approves, it will do so subject to the applicant member's agreement to implement a special supervisory plan.

There is no one prescription for an appropriate supervisory plan. FINRA considers the following four factors to determine whether the supervision proposed for a disqualified person is adequate: 1) the nature of the underlying disqualification, 2) the disciplinary history of the sponsoring member and proposed supervisor of the disqualified person, 3) the nature of the proposed business activities for the disqualified person, and 4) the overall supervisory plan that the firm agrees to impose. For firms with rigorous written supervisory procedures, it may be sufficient to simply apply those procedures to the disqualified individual. Depending on the nature of the disqualification, the firm may need to propose additional controls and/or business restrictions.

As a general matter, FINRA and the SEC prefer that disqualified individuals seeking to act as registered representatives in retail sales capacities be supervised on-site by a qualified and experienced general securities principal to ensure active, immediate, and comprehensive supervision. In cases where on-site supervision is not feasible, an alternative supervisory system should be proposed that will assure the protection of investors.

For more information on the important role supervision plays in governing the employment of persons who are subject to disqualification as well as other persons with regulatory history, please see the Winter 1999 Regulatory &

Compliance Alert article re: Special Supervisory Plans and Notice to Members 97-19 (Guidance on Heightened Supervision Recommendations).

Hearings

Eligibility Proceedings hearings, which are held in Washington DC, are conducted pursuant to Rule 9524. Hearing panels are comprised of two individuals who can be industry or non-industry representatives. The applicant member firm and the disqualified person are afforded the opportunity to be heard in person, to be represented by an attorney, and to submit any relevant evidence. Member Regulation is represented by a staff attorney at the hearings. The applicant member firm ordinarily presents both the disqualified person and his/her supervisor at the hearing, together with counsel and any other witnesses or individuals who may have relevant information. A disqualified member is similarly entitled to have appropriate representatives attend the hearing. A FINRA OGC staff attorney attends each hearing and serves as the custodian of the record and as advisor to the NAC.

As set forth in Section 12(a) of Schedule A to FINRA By-Laws, the hearing fee is $2,500. Applicants must pay this fee to RAD prior to the hearing.

Decisions

The Statutory Disqualification Committee (SD Committee), consisting of 10 individuals comprised of eight securities industry members, and two non-industry representatives, meets after the hearing to consider the application. The SD Committee presents a recommended decision to the NAC for approval. The NAC decision is the final decision on behalf of FINRA, unless FINRA Board of Governors calls the matter for review. The critical inquiry in every case is the same: whether the admission of the disqualified person or member would be inconsistent with the public interest and the overriding regulatory goal to ensure the protection of investors.

Statutory Disqualification Decisions

Expedited Review

The Eligibility Proceedings process may be accelerated in certain, appropriate cases when Member Regulation and the applicant member firm agree to the terms and conditions that would govern a disqualified person's or member's association. In these cases, a hearing would not be conducted and the period of the NAC's review could be significantly reduced (see Rule 9523).

SEC Review

If FINRA approves an application, it must then file a notice with the SEC pursuant to SEC Rule 19h-1 notifying the Commission of its decision. The SEC must review and approve that decision **before** it takes effect. The SEC will notify FINRA of its decision by written communication.

If FINRA denies an application (pursuant to SEC Rule 19d-1), the member firm and the aggrieved individual have rights of appeal to the SEC. The appeal must be filed within 30 days of FINRA's decision. The appeal process usually takes at least several months.

Length of Time for the Eligibility Proceedings Process

(The following ranges of periods of time are approximate and can deviate depending on individual facts and circumstances.)

Stage of Application	Length of Time
RAD/Regulatory Review & Disclosure's processing of an application	1 - 3 weeks, provided that members supply RAD with the required documentation in a timely manner.
Member Regulation's review	3 weeks to several months, depending on when Member Regulation receives the application and accompanying documentation from RAD in relation to the next scheduled hearing days, the complexity of the application, and whether the member provides Member Regulation with requested information in a timely manner.
NAC review and decision	3 - 4 months, provided that the SD Committee and NAC do not remand the proceeding, and provided FINRA Board does not call it for review.
SEC review	This process may take several months.

Examinations

FINRA examiners conduct periodic special SD examinations to ensure compliance with supervisory conditions and to monitor for other problems. FINRA classifies individuals and members subject to disqualification into three tiers with corresponding examination requirements.

Tier I generally consists of individuals and members subject to disqualification because of securities or commodities-related misconduct including crimes described in Section 15(b)(4) of the Exchange Act.

Tier II generally consists of individuals and members subject to disqualification whose disqualifying misconduct does not relate to activities enumerated in Tier I or Tier III (below). The disqualifying event for Tier II firms and individuals in most circumstances will be based on (1) felonies that are not securities or commodities related or (2) findings by certain foreign entities.

Disqualified members and persons in Tiers I and II are subject to periodic examination. District Office staff has discretion to conduct more frequent or additional SD examinations if it believes that more frequent examinations are appropriate, for example because of past violations of the approved terms and conditions.

Tier III consists of those individuals and members subject to disqualification that were permitted to associate or remain as a member without any special supervision. There are no special examination requirements associated with this class of disqualified persons and members.

Pursuant to Section 12(b) of Schedule A to the FINRA By-Laws, members employing Tier I disqualified persons are required to pay an annual fee in the amount of $1,500. Members that employ Tier II disqualified persons are required to pay an annual assessment in the amount of $1,000.

Any questions related to RAD's functions should be directed to Patricia L. Delk-Mercer at (240) 386-5461 or Chris Dragos at (240) 386-5440. All other questions related to this process should be directed to Lorraine Lee-Stepney, Manager, Statutory Disqualification Program in Member Regulation at (202) 728-8442.

United States of America
before the
U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

In the Matter of the Application of

COMMONWEALTH CAPITAL SECURITIES CORP.

For Review of Action Taken By

FINRA

CERTIFICATE OF SERVICE

Steven M. Felsenstein, Esq., being of full age, hereby certifies:

1. I am a Shareholder in the firm of Greenberg Traurig, LLP.

2. On August 24, 2018, I caused a true and correct original and three additional copies of APPLICANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS APPEAL to be filed electronically and to be sent via United Parcel Service Express delivery to:

The Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549

and

Gary Dernelle, Esq.
Office of General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006

3. I certify under penalty of perjury that the foregoing is true and correct.

Steven M. Felsenstein, Esq.
Greenberg Traurig, LLP
2700 Two Commerce Square
Philadelphia, Pennsylvania 19103