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

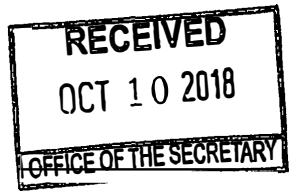
FINRA

_____x

Admin. Proc. File No. 3-18554

APPEAL
OF NAC Decision in SD-2103

ORAL ARGUMENT REQUESTED



APPLICANT'S REPLY 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 reply to FINRA's Brief in Opposition to Application for Review dated September 27, 2018, and in further 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").

In its brief, FINRA ignores or fails to refute the arguments set forth in Applicant's moving brief, much as the NAC did in the NAC MC-400 Decision. Instead, FINRA takes a simplistic approach, essentially arguing: (1) Ms. Springsteen-Abbott is a bad actor with a "demonstrated propensity for dishonest behavior," (2) Ms. Springsteen-Abbott was only recently barred, (3) Applicant allowed Ms. Springsteen-Abbott's "continued association with the Applicant while barred" in "serious violation" of FINRA rules, (4) therefore, Applicant cannot supervise Ms. Springsteen-Abbott and Ms. Springsteen-Abbott cannot be allowed to be associated in any way with a FINRA member.

With respect to the first point in FINRA's argument, Applicant recognizes now, as it was required to do at the MC-400 Application hearing, that *in that proceeding* it was not allowed to challenge the underlying NAC disciplinary decision issued following the Commission's remand (the "NAC Remand Decision"). However, FINRA is attempting to mislead the Commission when it states that Ms. Springsteen-Abbott "cannot counter credibly the fact that the misconduct underlying her statutory disqualification reflected her fundamental lack of integrity." (FINRA Opposition Brief ("Opp.") at 1-2.) As FINRA is well aware, (i) the Commission rejected the Original NAC Decision in this matter and remanded the matter to the NAC for further review,

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

(ii) the NAC Remand Decision greatly reduced the findings of alleged misconduct (from 1,840 instances involving over $208,000 to only 84 instances involving $36,000, the overwhelming majority of which – over $30,000 – in no way related to personal expenses), and (iii) most importantly, the NAC Remand Decision itself is currently under appeal to the Commission. Thus, Ms. Springsteen-Abbott absolutely *can* credibly counter FINRA's assertion that she fundamentally lacks integrity and absolutely *can* credibly counter FINRA's position that a lifetime bar from the industry was warranted, but was estopped from doing so at the MC-400 hearing by FINRA's own rules.

With respect to the second leg of FINRA's argument, FINRA's apparent position – that the type of relief sought here by Applicant cannot be obtained with respect to someone who was recently barred – runs counter to the advice set forth on FINRA's website and relied upon by Applicant. As set forth in Applicant's opening brief, the FINRA website plainly stated, "*[i]f 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.*" (Italics added; bold in original.) Clearly, FINRA itself recognized that the fact that a disqualifying event occurred recently does not, in and of itself, mean that an MC-400 application must be denied. In fact, FINRA guidance suggests the opposite – an application must be promptly filed shortly after the sanction is issued.

With respect to the third part of FINRA's argument, as discussed below in Point I, FINRA completely fails to refute the showing made in Applicant's moving brief. FINRA's own website and the results of FINRA's own examinations of Applicant make it clear that Ms. Springsteen-Abbott's continued limited association with Applicant while the MC-400

Application was pending was not a violation, serious or otherwise, of FINRA's rules. FINRA's opposition brief simply repeats the incorrect position taken by the NAC in the NAC MC-400 Decision, fails to address Applicant's discussion of the cases cited by Applicant in its opening brief on this point, and fails to inform the Commission that FINRA has changed its website guidance because FINRA is now dissatisfied with the previous website language relied on by Applicant.

With respect to the final part of FINRA's argument, FINRA's opposition brief fails to adequately address the fact that the rest of the NAC MC-400 Decision was tainted by the NAC's improper finding of a "serious violation of FINRA's rules" due to Applicant using the website guidance to allow Ms. Springsteen-Abbott's continued limited association during the pendency of the application. Further, as discussed below in Point II, FINRA's opposition brief – like the NAC MC-400 Decision itself – fails to adequately address Applicant's showing that, in light of Applicant's unique and very limited business, the proposed supervision of Ms. Springsteen-Abbott addressed any legitimate concerns raised by the NAC Remand Decision.

Finally, as discussed below in Point III, FINRA failed to refute Applicant's showing in its moving brief that it was denied fair and equitable treatment and its right to a fair hearing because the legal advisor to the panel had manifested a prejudice towards Ms. Springsteen-Abbott.

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

Applicant agrees with FINRA that (i) "Applicant does not dispute that FINRA's decision to bar [Ms.] Springsteen-Abbott subjected her to a statutory disqualification," and (ii) "Applicant

also does not dispute that [Ms.] Springsteen-Abbott continued to associate with the Applicant, and the Applicant continued to permit her association, while the Application was pending." (Opp. at 15-16.) However, Applicant completely disagrees with FINRA's assertion that such continued association during the pendency of the MC-400 Application was "a serious violation of FINRA rules that alone justifies the NAC's decision to deny the Application." (Opp. at 16.)

In fact, as Applicant noted in its opening brief, at all relevant times FINRA's own website stated:

> 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.*

Id. at 2 (italicized and underlined emphasis added; bold emphasis in original).[2] Incredibly, after setting forth the same quotation in its brief, FINRA makes the following inaccurate statement: "The foregoing statement, however, is expressly limited by the next statement of the paragraph: '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.*'" Opp. at 17 (italic emphasis added by FINRA in its brief).

The problem with FINRA's argument is that it conflates associated persons with member firms. The sentence setting forth when a statutorily disqualified **member firm** may be allowed

[2] FINRA's own guidance stated, on the same page, "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.*

to remain a member while making an application in no way limits, expressly or otherwise, the previous sentence relied upon by Applicant that addresses when a statutorily disqualified **associated person** may be allowed to remain associated while making an application. That is why Applicant quoted the FINRA website language applicable to associated persons and did not quote the next sentence applicable to members. FINRA quotes the next, separate sentence **that applies to members** and incorrectly assumes that the (logically) more stringent requirements applying to a **member firm** facing a bar also apply to **associated persons** facing a bar.[3]

Thus, no matter how many hoops FINRA tries to jump through in its opposition brief (or in the NAC MC-400 Decision), no matter how much FINRA tries to twist the language that was set forth on its own website, FINRA is simply wrong – the website guidance unambiguously stated, "*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*" (bold in original, italics added). That is precisely what Applicant and Ms. Springsteen-Abbott did here. The continued limited association of Ms. Springsteen-Abbott during the pendency of a promptly filed MC-400 application was not a violation, serious or otherwise, of FINRA's rules.[4]

Recent action by FINRA evidences the fact that FINRA has recognized that Applicant is correct about the FINRA website guidance. *After the hearing concerning Applicant's MC-400*

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[3] This issue came up at the hearing. While re-cross-examining Mr. Abbott, FINRA's counsel read the sentence quoted by Applicant and then continued by reading the next sentence, that applies to members. R.001531. Applicant's counsel objected: "I object to any questions about that sentence, because it obviously applies to members, which would be a member firm. The previous sentence talks about a person which is associated, which is why I read the person associated sentence." *Id.* Recognizing the appropriateness of the objection, FINRA's counsel immediately rephrased her question, beginning it with "So, going back to the prior sentence...." *Id.*

[4] FINRA's argument that the "information [in the FINRA website] is not a FINRA rule and does not inform the meaning of any FINRA rule" (Opp. at 16 n.16) is disingenuous. FINRA members, associated persons, and the public are certainly entitled to rely on FINRA's own website guidance, and FINRA should be bound to honor its own public guidance.

Application, FINRA changed its website to state the position FINRA takes in its brief, implicitly recognizing that the prior language actually supported Applicant. The recently edited website now states:

> Generally speaking a person who is subject to a disqualification may not associate with a FINRA member in **any capacity** unless and until approved in an Eligibility Proceeding as set forth in Article III, Section 3(d) of FINRA's By-Laws and FINRA Rules 9520 through 9527.
>
> However, a person who is currently associated with a FINRA member at the time the disqualifying event occurs **may be** permitted to continue to work in limited circumstances, provided that:
>
> - The member and the person are in compliance with FINRA Rule 8311; and
>
> - The member promptly files a Form MC-400 application.[5]

Thus, FINRA has added language to its website guidance specifically stating that the member firm and associated person must be in compliance with FINRA Rule 8311. In essence, FINRA's argument (Opp. at 18-19) pretends that the old website guidance actually states the requirements set forth in the new guidance. That is completely improper, seeks to mislead the Commission, and denies Applicant and Ms. Springsteen-Abbott their rights to fair and equitable treatment.

In addition, as also pointed out in Applicant's opening brief, if FINRA believed that there was an ongoing serious violation of FINRA rules, it would not have ended its examinations of Applicant – including an examination that specifically "focus[ed] on Kimberly [Springsteen-Abbott]" – with findings of "No further actions. No exceptions." (Moving Brief at 14.) FINRA argues in its brief that "a FINRA member and its associated persons cannot shift the burden of complying with FINRA rules to FINRA. The Applicant thus may not claim FINRA's implicit

[5] General Information on FINRA's Eligibility Requirements at 2 (emphasis in original), annexed hereto as Exhibit A.

approval to avoid the consequences of its, and [Ms.] Springsteen-Abbott's deliberate actions to continue in association with one another despite her bar from the securities industry." (Opp. at 19-20, citations omitted.) That is not what Applicant is doing here. This is not an instance where an examination simply failed to uncover some wrongdoing and then the member firm argued that therefore nothing wrong occurred. Rather, this is a case where FINRA looked directly at the fact that Ms. Springsteen-Abbott continued to be associated with Applicant while the MC-400 Application was pending and found no violation, let alone any serious violation. Applicant submits that under these circumstances the results of the examination evidence the fact that the FINRA examiners viewed the then-existing FINRA website guidance the same way that Applicant does – and that the position asserted in the NAC MC-400 Decision and now asserted by FINRA in this proceeding is simply wrong.

Finally, Applicant's moving brief contained a detailed four-page analysis of the cases cited on this point in the NAC MC-400 Decision, which analysis completely refuted the NAC's (and FINRA's) position. (Moving Brief at 15-19.) FINRA's opposition brief makes no attempt to refute Applicant's detailed analysis of these cases, instead merely restating without analysis the conclusory blurbs regarding some of these cases. (*See* opp. at 16, 17, 18.) FINRA's opposition brief makes no effort to explain why Applicant's analysis of the cases is incorrect for one simple reason – FINRA cannot do so.

Thus, the NAC MC-400 Decision incorrectly held that Applicant and Ms. Springsteen-Abbott violated FINRA rules by allowing her continued limited association with Applicant during the pendency of the application, and incorrectly used that finding as the primary basis for denying the MC-400 Application. Moreover, as set forth in Applicant's moving brief, that finding permeated the rest of the NAC MC-400 Decision and tainted the rest of the analysis

therein. Accordingly, the NAC MC-400 Decision was clearly erroneous and must be reversed, and Applicant's application should be granted.

Point II

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 and in Applicant's moving brief, 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 [Ms.] 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. In its opposition brief, FINRA repeats these same errors, stating that "the NAC found that the Applicant's proposed supervisory plan was inadequate, failed to reflect the gravity of [Ms.] Springsteen-Abbott's misconduct or the nature of her unqualified bar, and contained largely generic, boilerplate language that was either inapplicable to the Applicant's business or was not adequate to [Ms.] Springsteen-Abbott's proposed activities." (Opp. at 23.)

FINRA, like the NAC, has willfully chosen to ignore the simple truth here. CCSC is a small firm that 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.

Simply stated, a lengthy detailed supervisory plan makes no sense here. Applicant has put in place procedures that require Ms. Springsteen-Abbott to have *nothing at all to do with Applicant or its business*. Her only allowable association with Applicant and her only allowable conduct is to infuse capital when requested through her indirect ownership. In light of this proscription (and the fact that the underlying conduct did not even occur at Applicant), it would be pointless to have detailed lengthy written supervisory procedures stating that Ms. Springsteen-Abbott cannot do this specific thing or that specific thing – it has already been stated that she cannot do *anything at all with respect to Applicant* except in the one instance stated above. Therefore, the finding that the supervisory procedures are inadequate simply is incorrect.[6]

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 based its

[6] To the extent the procedures did include, to use FINRA's words, "boilerplate language," this was simply Applicant's response to the application process itself. Thus, when the MC-400 Application states, for example, that Ms. Springsteen-Abbott "will not maintain discretionary accounts" or "will not open any investor accounts" this so-called "boilerplate language" is there because FINRA typically focuses on these issues in reviewing such applications.

conclusion on its view that "the Non-Participation Agreement is aspirational only" (NAC MC-400 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 III

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 FAIR AND EQUITABLE TREATMENT AND ITS RIGHT TO A FAIR HEARING

In its opening brief, Applicant demonstrated that the NAC's denial of Applicant's motion to recuse Gary Dernelle as the Hearing Panel's attorney advisor was clearly erroneous and denied CCSC its right to a fair hearing. The basis of the recusal motion was straightforward. In addition to serving as attorney 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.

Applicant's moving brief demonstrated that two aspects of the NAC MC-400 Decision indicated that Mr. Dernelle's views concerning Ms. Springsteen-Abbott negatively impacted CCSC's MC-400 Application. First, 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, the unsupported statement in the NAC MC-400 Decision that CCSC's witnesses lacked credibility may be attributed to Mr. Dernelle's pre-formed negative conclusions with respect to Ms. Springsteen-Abbott. Either way, the 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.

In its opposition brief – co-authored by Mr. Dernelle – FINRA ignores these points and simply states, in a conclusory manner, that "[n]o view taken or expressed by FINRA in [Ms.] Springsteen-Abbott's appeal of FINRA's disciplinary decision bears upon the Applicant's membership continuance proceeding and thus cannot serve as a basis for a claim of bias in this matter." (Opp. at 28.) This unsupported conclusion defies logic and cannot be the law. As legal

advisor to the panel, Mr. Dernelle clearly played a role in misapplying the facts and law in this case – particularly with respect to the FINRA website guidance – and his animus towards Ms. Springsteen-Abbott as reflected in his brief on the underlying appeal tainted the MC-400 application hearing. Further, FINRA's opposition brief filed herein, co-authored by Mr. Dernelle, further reflects the bias against Applicant and Ms. Springsteen-Abbott, as evidenced by FINRA's misleading presentation regarding its prior website guidance and its failure to disclose to the Commission its recent amendment of that guidance, as discussed above in Point I. Accordingly, the NAC MC-400 Decision must be reversed.[7]

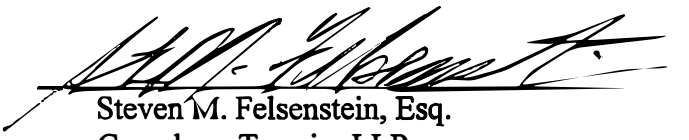
[7] Any additional arguments from FINRA's opposition brief not specifically refuted in this reply brief are not conceded by Applicant. Rather, Applicant refers the Commission to its moving brief.

CONCLUSION

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

October 9, 2018

Respectfully submitted,



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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) of the Securities Exchange Act of 1934 ("Exchange Act").o

Disqualification Defined

Article III, Section 4 of the By-Laws states that a person is subject to a "disqualification" with respect too 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:o

- certain misdemeanor and all felony criminal convictions for a period of ten years from the date ofo conviction.o
- temporary and permanent injunctions (regardless of their age) issued by a court of competento jurisdiction involving a broad range of unlawful investment activities.o
- expulsions or bars (and current suspensions) from membership or participation in a self-regulatory organization (SRO). Includes bars with a right to re-apply.o
- bars (and current suspensions) ordered by the Securities and Exchange Commission (SEC),o Commodity Futures Trading Commission (CFTC) or other appropriate regulatory agency oro authority. Includes bars with a right to re-apply.o
- denials or revocations of registration by the SEC, CFTC or other appropriate regulatory agency or authority.o
- findings that a member or person has made certain false statements in applications or reportso made to, or in proceedings before, SROs, the SEC on other appropriate regulatory agency oro authority.o
- any final order of a State securities commission (or any agency or officer performing likeo functions), State authority that supervises or examines banks, savings associations, or credito 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 Insuranceo Act (12 U.S.C. 1813(q)), or the National Credit Union Administration, thato

i.obars such person from association with an entity regulated by such commission,o authority, agency, or officer, or from engaging in the business of securities,o insurance, banking, savings association activities, or credit union activities; oro

ii.oconstitutes a final order based on violations of any laws or regulations that prohibito fraudulent, manipulative, or deceptive conduct.o

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

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

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 as set forth in Article III, Section 3(d) of FINRA's By-Laws and FINRA Rules 9520 through 9527.

However, a person who is currently associated with a FINRA member at the time the disqualifying event occurs may be permitted to continue to work in limited circumstances, provided that:

- the member and the person are in compliance with FINRA Rule 8311; and
- the member promptly files a Form MC-400 application.o

Likewise, a member subject to disqualification also may be allowed to remain a member, provided it promptly files a Form MC-400A application requesting approval of its continued membership, and the disqualifying œevent does not involve a licensing sanction, such as a bar, revocation or expulsion.o

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 othe proposed supervision to be accorded the disqualified person. Firms are reminded that the Eligibilityo Proceedings process extends to all associated persons, including those individuals for whom firms would file ao Non-Registered Fingerprint (NRF).o

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 filing a Form MC-400 and filing a Form MC-400A is $5,000. The member must authorize FINRA to deduct the application fee from its CRD account when submitting the Form MC-400 or the Form MC-400A application.

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 SDo 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), which includes current or former members of the NAC or SD Committee, or former FINRA Directors or Governors, 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's 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.

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

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

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

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

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

Any questions related to RAD's functions should be directed to Patricia L. Delk-Mercer at (240) 386-5461 ore 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.e

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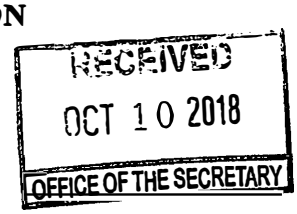
United States of America
before the
U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.



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 October 9, 2018, I caused a true and correct original and three additional copies of APPLICANT'S REPLY 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