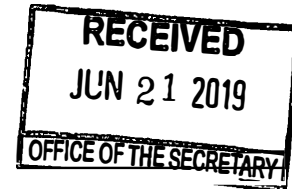


June 18, 2019



Vanessa A. Countryman  
Securities and Exchange Commission  
100 F Street, N.E.  
Room 10915  
Washington, D.C. 20549

RE: In the Matter of the Application for Review and Appeal for Bruce Zipper and  
Dakota Securities International Administration Proc. File No. 3-19138

Dear Ms. Countryman:

Enclosed please in the above referenced matter the original and three copies of  
Bruce Zipper and Dakota Securities brief in its Appeal for your review.

Please contact me at 786-327-3821 if you have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Bruce Zipper".

Bruce Zipper

Cc: Michael Smith, FINRA Attorney  
FINRA, Washington, D.C. 20006

June 18, 2019

## Appeal Brief for Bruce Zipper and Dakota Securities

I believe and will show that the sanctions in this matter of disbarment for both Bruce Zipper and Dakota Securities Intl. were unfair, unwarranted and filled with bias from FINRA in both Washington, D.C. and the office in Boca Raton, Fl.

This case began with a typical exam review for Dakota Securities in 2015. The results of which showed that Bruce Zipper did not electronically file three personal judgments on his electronic CRD page with FINRA. This was Bruce Zipper's first charge for this rule violation. It could have been resolved by saying to Mr. Zipper please file these judgments on your CRD and don't do this again or they will be sanctions placed against you. That would have taken about five minutes to accomplish and the matter would have been resolved. This has been the way FINRA has handled this matter with many first time offenders in the past but instead in Bruce Zipper's case they decided to throw the book at him. This was the first indication that there was bias being shown by FINRA as Bruce Zipper was suspended from the industry for 90 days which carried many additional sanctions that would come back to get Bruce Zipper eventually barred from the industry. Additionally there were monetary fines and other sanctions. To resolve this matter which included the monetary fines and 90 day suspension Bruce Zipper signed an AWC agreement in April of 2016 agreeing to the 90 day suspension and to not have any association with any FINRA Members for the period of his suspension which was 90 days. During his 90 day suspension Zipper did send e-mails to some of his clients, which I will explain later that I thought I had the right to do, which FINRA flagged as an offense that was used in their case to get Zipper disbarred from the industry. After Zipper served his 90 day suspension he returned as the sole employee of Dakota Securities on August 31, 2016. When a broker receives a 90 suspension it is mandatory to file an MC-400 application which is needed to be approved by FINRA in their Washington, D.C. office before he can return to the industry. Zipper filled out his MC-400

application at the end of 2016 and due to issues raised by FINRA Zipper's application to return to the industry it was denied. There were two major issues raised by FINRA to reach their decision of denial and I will explain them now and address each one and also show the bias shown by FINRA in their handling of this matter.

The first issue as stated above was that Zipper during his 90 day suspension e-mailed a few of his clients which FINRA said he was not allowed to do. The second issue was that Zipper, in the words of FINRA, falsified certain confirmation tickets with an incorrect rep code which showed not only Zipper's name on the confirm but also that of Chris McNamee, co-founder of the firm in 2004 and part of the two man business at that time of Dakota Securities. The reason that was an issue was because of a major illness McNamee had to leave the business sometime in 2016 and was not with the firm at the time the confirms in question were sent out. These are the two issues that FINRA felt were responsible for Zipper and Dakota Securities to be barred from the industry. These were the same issues that the FINRA lawyers in Washington D.C. used to deny Zipper's MC-400 application at the hearing which took place in 2017 in Boca Raton, Florida.

I will now begin to tell this story and describe to you each step of the way in this case the bias and cruelty FINRA showed against Bruce Zipper with evidence for your organization to review which was an attempt and eventually a successful attempt to throw Bruce Zipper and Dakota Securities out of the industry.

- Zipper first received a letter from the attorneys of FINRA in the Washington, D.C. office stating there would be a pre-trial hearing in Washington, D.C. that I need to attend in person early in 2017. At the time my wife Ann Zipper, who was [REDACTED], was receiving chemo therapy [REDACTED] I, Bruce Zipper was her only caregiver and went with her to all [REDACTED] and took care of [REDACTED] Due to my commitments to my wife it would be impossible for me to leave her for any length of time and wrote a letter to the FINRA attorneys in Washington, D.C. explaining this issue and why it would be impossible for me to attend in person and asked for a change in venue to the Boca Raton Fl office of FINRA or in the alternative if that was not possible

to have a video conference call which I could attend in The Boca office of FINRA for the pre-trial conference. To my dismay and disbelief I got a letter from FINRA about one week later denying my request for a change in venue and it stated I had to appear in person. And not only did I have to appear in person but that if I didn't show up my case would be thrown out and I would lose the case and then be barred from the industry. Needless to say I wasn't leaving my wife who was [REDACTED] for anyone let alone FINRA attorneys in Washington, D.C. I was resigned to my fate but decided I would write a letter to the S.E.C. letting them know what had happened and what I was being subjected to by FINRA in this matter. I also sent a copy of this letter to FINRA in Washington, D.C. for their file in this matter. It did not take two days for a letter to come to me from FINRA that they had changed their mind and that in fact they would hold the hearing in Boca Raton Fl in early 2017. This change of mind happened even before the S.E.C could respond to my letter and said to me that FINRA knew they had made of big mistake and did not want to bare the wrath of the S.E.C. due to their error once they saw what they had done. But what if I didn't respond with an appeal to the S.E.C. what if I just didn't show up and forfeit my case? I want the Commission to give what FINRA did to me in their letter of denial of my more than reasonable request for change of venue to see what I mean when I say there was bias against Bruce Zipper to not only throw him out of the business but to make his life miserable along the way. For FINRA to say, no Bruce Zipper, we don't give a dam about you and your wife's issues it is more important that you get up here Washington, D.C. in person and if your wife suffers so be it. What else could FINRA have been thinking. Was my letter of request to change the venue due to our circumstances reviewed? Who made that decision? I would hope this commission would review what happened here as it shows quite clearly that there was definite attempt to inflict as much pain as they could to me and my family. This level of bias will be shown again and again in my appeal for this commission to review.

Prior to my hearing in Boca Raton, Fl in front of the NAC panel in my MC-400 hearing FINRA attorneys in Washington, D.C., the same who originally denied my change of venue request, filed a brief stating why they believed Zipper's MC-400 application should be denied. In their brief they stated that Bruce Zipper and

Dakota Securities were involved in an arbitration case in which both Zipper and Dakota Securities were made to pay a client of their firm 280,000 dollars and did in fact pay that award after the hearing. This was a total lie and not only was it total lie but FINRA knowingly lied to the panel in order to put Zipper and Dakota Securities in the worst light possible because of their actions. The facts are that this arbitration case did not even go to a hearing. Was settled amicably for 50,000 dollars (20 cents on the dollar from claimant request) and that all parties were satisfied on the agreed settlement. FINRA knew this was settled. In fact the document was listed showing the settlement in their file log that was prepared for the panel but it didn't show Zipper and Dakota in a bad enough light so FINRA needed to embellish the story and lie about it. When Zipper sent a letter to FINRA showing what they had done he got a response that said even if there was a certain amount of bias it did not change the other issues in this case and was not an issue to reverse the decision. This is FINRA saying in a letter even if there was some bias it didn't matter. This is the way FINRA operates against Zipper and Dakota Securities. FINRA decided Zipper and Dakota must go and do whatever is necessary to make that happen. This is what I have dealt with since this case began.

FINRA's next act of putting Zipper in the worst possible light is the issue of Zipper being accused of falsifying certain confirms to his clients due to the incorrect rep code being put on the confirm. The word falsifying means an intent to deceive. FINRA in their filings have used this word about 15 times. The facts are these and again FINRA knew these facts but to state them would not put Zipper in the worst possible light. At the hearing in Boca Raton, FL FINRA asked me under oath did I tell my clients who I used the rep code in question and did I get their permission to do so. My answer was yes I did, and not only did I get their permission after explaining to them why I was doing it, but got their thanks for looking out for them in their accounts so no disruption would occur. Not only did FINRA know I asked for permission which I said I did under oath, FINRA goes behind my back and calls some of my clients to get the answer to that question and to try and dig up any dirt they could from my clients. That backfired as well as my clients told them everything I did was with their permission but asked why in the hell was FINRA bothering them and invading their privacy. My clients have been with me for 35 years. Brokers generally don't have clients for 35 years that are not both

happy with their broker but trust him implicitly with their investments and money. Please note one of my clients that was called without my knowledge was Doctor Jan Ziegler. Ziegler was so upset with FINRA for invading his privacy and trying to get dirt on Zipper that he considered going to court and filing a lawsuit against FINRA. Instead what he did was contact the FINRA Ombudsman and filed a complaint against FINRA and put FINRA on notice that if he was ever called again he would pursue his lawsuit for invasion of privacy. These are the facts relating to the wrong rep code issue which was not an issue at all but FINRA lied and embellished the facts about this to again put Zipper in the worst light possible.

The next issue FINRA used to show why Zipper and Dakota Securities should be barred from the industry was that Zipper had the audacity to e-mail a few of his clients during his 90 day suspension from his AWC agreement. Yes, I did contact a few clients who sent questions to my e-mail for my help in resolving issues in their account. Please note I am a one man business whose accounts have been with me for 35 years. These accounts have only dealt with me in all those years. That being said I reviewed my AWC agreement which clearly states that Zipper can not have any contact with any FINRA Members for 90 days. I felt then and still do that if I had contact with a NON FINRA Member I would not be violating the rules of the AWC. Additionally I spoke with FINRA supervisors, which I will show evidence in the transcripts supplied for your review, which said after my inquiry because I am a one man company if a problem comes up and I am the only one who could resolve it could I then act to get involved to fix the problem and go back to my suspension. The answer was YES, I could do that if I was the only one to fix a problem. I will now show this commission the transcript testimony of a Ms. Dawn Colange. Ms Colange was brought in as FINRA's star witness to refute Zipper's claims that he had permission to intervene or that he could communicate with NON FINRA Members. Ms. Colange is a FINRA Supervisor and is Dakota Securities Supervisor. She works in the FINRA office in Boca Raton Florida. She has been with FINRA for 13 years. I have sent this commission the testimony of Ms. Colange for your review that will show that I am right on each issue discussed above. I draw your attention to pages 531-534 which is direct testimony from the FINRA attorney asking Ms. Colange if what Zipper said was true in regard to his saying if

he would be the only person that could answer an issue for the company could I do so. In these pages Ms. Colange agrees with the attorney for FINRA and that could not happen and this would not be allowed. I now direct you to pages 557-561 which is when I cross examined Ms. Colange about this issue and read carefully my questions and Ms. Colange's answers. She in fact says that she had given permission to Dakota for such issues but that if the request was reasonable that yes Zipper could get involved. A complete contradiction what she said earlier to the FINRA attorney.

The next issue in the transcript has to do with Zipper's statement that if the communication he had was with a NON FINRA Member would be a violation of the AWC in question. I direct you to pages 565-567. I ask Ms. Colange the same question at least 4 times. First I have her read the AWC agreement in question which she does. I ask her to read page 3 where it states Zipper is to not have any communication with any FINRA MEMBER in any capacity for the terms of the suspension. I then ask her the simple question. "Ms. Colange if I have communication with any NON FINRA MEMBER am I violating the agreement. There is a long pause. She doesn't quite know how to answer. She asks for me to repeat the question. Ms. Colange is now squirming in her chair and can't give me a yes or no answer. Its because she is afraid if she gives me the answer that I can it would ruin FINRA's case and she was panicking. She never did answer the question but I refer you to page 575 in Ms. Colange's last response to my cross examination and is the most telling and is the dagger in the heart for their star witness. On page 567 line 14 Ms. Colange after being flustered and not answering an obvious question gets exasperated and finally says I AM NOT IN ENFORCEMENT. This is Ms. Colange telling me and the panel I don't know if you can speak to a non finra member without violating the AWC agreement, what the hell do I know I am not in enforcement whose responsibility is to know the agreement and what it says. Here is a 13 year supervisor with FINRA who was asked a simple question 4 times in a row and would not or could not answer the question. Finra is lambasting Zipper for his audacity to communicate with non finra members and their star witness Ms. Colange a 13 veteran in a supervisory position did not know the answer to or which is worse knew the answer but was to afraid to blow the case for her buddies from the FINRA legal department and

answer YES he could!! I also want to bring the commission's attention to Zipper's intent in sending these so called improper e-mails. Zipper has been in an ownership position for about 20 of his 35 years in the industry. In no less than 20 different FINRA exams all e-mails are captured and reviewed by FINRA. Zipper obviously knows these e-mails were to be reviewed and thought he was acting within the rules of the AWC agreement. There was zero effort to hide these e-mails which shows Zipper's intent was never to sneak around and do something he shouldn't. This is important to my case in that I thought then and still think today I was acting within the rules of the AWC agreement. In looking at the transcript of Ms. Colange who was FINRA star witness she agrees with me. Anyone reading her testimony can see she says one thing when talking to her friends from FINRA but completely contradicts herself when cross examined by Zipper a non lawyer by the way.

### Conclusion

I have tried to show this commission in this appeal how unfair the charges were against me and my company Dakota Securities International. Let's go over the facts in this case.

1. In any of the rules violations Zipper was accused of which all have been debunked there was not a penny lost by any client. There was not a single complaint filed against Zipper or Dakota Securities. There was absolutely no harm caused by any alleged offenses that FINRA accused Zipper of doing. And with those facts Zipper and Dakota Securities were given the maximum penalties that could be given which was in essence the death penalty for an alleged misdemeanor at most.
2. Zipper and Dakota Securities were alleged to be dangers to the investing public. Did FINRA ever bring up what those dangers would be? Clients of Zipper for 35 years stayed with the company and sent letters to the S.E.C stating how unfair they think Zipper was treated by FINRA. Where is the public danger? Where is one letter from a client that says Zipper and Dakota Securities have done something wrong in regard to the issues he is being punished for? Where are they?



3. Fairness? People in this country say there is a two tiered system of justice in this county. That there is one type of justice for the rich and well connected and another for the less fortunate who are not super wealthy and cannot afford to defend themselves from organizations that have unfettered power and use it, when they want with no fear of being reviewed, to expel people and companies that they don't like.
4. Zipper and Dakota Securities thrown out of the industry for allegedly violating certain rules of the industry. It feels like going to jail for jaywalking.
5. Let's now look at that two tiered system in the financial industry world.
6. We have Wells Fargo Company. Convicted of making up 2 million phony accounts from their clients and in essence stealing money from them. Too many felonies to even list. The last I looked Wells Fargo is still a member in good standing with both FINRA and the S.E.C. They conduct business as usual. This sounds fair doesn't it. Zipper and Dakota Securities are gone for alleged rules violations and Wells Fargo goes on like nothing has happened after committing multiple felonies and bilking their clients out of tens of millions of dollars and yet Zipper and Dakota are a threat to the investing public and Wells Fargo and many many others in their world go happily on their way. And one wonders if there really is a two tiered system of justice. Really?
7. Lastly I would like to discuss the appeal of Dakota Securities International. I founded Dakota Securities in 2004. I worked with my partner, Chris Mcnamee, and were a two man firm until 2015 when Chris got very sick and had to leave the industry. So Dakota Securities since 2015 was a one man business. I, Bruce Zipper was that one man and wore all the hats and had all the licenses to run the firm. Bruce Zipper was Dakota Securities and Dakota Securities was Bruce Zipper. It seems so totally unfair that Dakota Securities had to lose their ability to stay in business because Dakota Securities allowed Bruce Zipper to do what FINRA says he allegedly did. That is so blatantly unfair it defies logic to even explain. What did FINRA expect Dakota Securities to do? Say no to the one person who ran the company. But why would FINRA do anything that is fair. Their hatred for Zipper and Dakota is rather evident. If the Commission can't see that from their actions than fortunately for me I am afforded another chance to

appeal my case. But this time it will be in front of a judge or even better in front of a jury where I can tell my story and hopefully have a better result.

Thank you very much for your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Bruce Zipper". The signature is written in a cursive style with a large, prominent 'Z'.

Bruce Zipper

1 (A short recess was taken.)

2 MR. WILLIAMS: Lets go back on the record.

3 Department of Enforcement, call your next  
4 witness.

5 MR. FOUKAS: Dawn Calonge.

6 MR. WILLIAMS: Good afternoon, Ms. Calonge. I  
7 am the Hearing Officer assigned to this matter and  
8 with me are the members of the panel, members of  
9 the Department of Enforcement, and Respondents,  
10 Mr. Zipper and Mr. Cuccia with Dakota.

11 You have been called as a witness by the  
12 Department of Enforcement.

13 To my left is the court reporter, who will be  
14 taking down the questions that you are asked and  
15 your answers.

16 I will ask the court reporter to swear in the  
17 witness at this time.

18 D A W N C A L O N G E,

19 Having been duly sworn by the Notary Public, was  
20 examined and testified as follows.

21 EXAMINATION

22 BY MR. FOUKAS:

23 Q. Ms. Calonge, can you start by please stating  
24 and spelling your full name?

25 A. Dawn Calonge, D-A-W-N, C-A-L-O-N-G-E.

1 Q. Ms. Calonge, can you start by telling us what  
2 it is that you do here at FINRA?

3 A. I'm a Surveillance Director. I oversee a  
4 staff of regulatory coordinators, who are responsible  
5 for the daily monitoring of their assigned firms.

6 Q. And I guess how long have you been with FINRA?

7 A. I have been with FINRA since January of 2005,  
8 so that makes about 13 years. A little over 13 years.

9 Q. And I guess I'll take it out of order here,  
10 maybe you can tell us a little bit about your background  
11 before FINRA?

12 A. Sure. I studied accounting at the University  
13 of Miami. I did a little private accounting first and  
14 then I worked at the New York Stock Exchange as a FINOP  
15 examiner. I've also worked at the Miami Office of the  
16 Securities Exchange Commission, and joined FINRA in  
17 January of 2005 as a Special Investigator.

18 I was a Special Investigator for about a year,  
19 and then I was an Examiner Manager for about five or six  
20 years, and I am now a Surveillance Director for about  
21 seven years.

22 Q. And I guess are you familiar with Dakota  
23 Securities?

24 A. I am.

25 Q. And how is it that you are familiar with

1 Dakota Securities?

2 A. Sure. Dakota is a firm that by law is a  
3 Florida District firm. As the Surveillance Director, I  
4 am responsible and my staff are responsible for all of  
5 so the surveillance that falls under that purview.

6 Q. Are you familiar with Bruce Zipper?

7 A. I am.

8 Q. And I guess can you tell us a little bit about  
9 how you came to know Mr. Zipper?

10 A. Sure. Mr. Zipper is the owner of Dakota  
11 Securities. And throughout the time of me being the  
12 Surveillance Director, the firm had come through with an  
13 application for ownership changes over three or four  
14 year. And also, more recently related to the issues  
15 that we are discussing today.

16 Q. I guess I want to focus your attention on  
17 those issues, and the period around April 2016.

18 I guess, did you become aware at some point  
19 that Mr. Zipper was going to be suspended from  
20 association with the FINRA member?

21 A. Yes, I was. With our Enforcement staff, Kevin  
22 Rosen, he had come to an agreement, a settlement with  
23 Mr. Zipper. And Kevin looped me in to discuss the  
24 firm's plan for Mr. Zipper's suspension, in light of the  
25 small size of the broker-dealer.

1 Q. So in the course of getting looped in by Kevin  
2 related to the suspension, did you have any discussions  
3 with Mr. Zipper prior to him signing the AWC about the  
4 suspension?

5 A. No, I did not.

6 Q. And did you have any discussions with  
7 Mr. Zipper after he signed the AWC about what he or  
8 Dakota would need to do?

9 A. Yes, there were multiple discussions about  
10 what the firm's plan would be during his suspension.

11 Q. And I guess we'll look at a couple of  
12 documents. But can you, I guess, just tell us over the  
13 course of these discussions what you conveyed to  
14 Mr. Zipper about what he would need to do during the  
15 suspension?

16 A. Sure. And a little bit of background, when  
17 there is a suspension we, through surveillance, will be  
18 looking for firms to respond to the suspension. And how  
19 they're going to address the suspension of the person.

20 In this case, because Mr. Zipper was the  
21 owner, CCCO, and FINOP of the firm there was obviously  
22 bigger implications to it. So we were looking for him  
23 to provide a plan of who was going to take on those  
24 roles.

25 And basically, what we consider the minimum

1 standards of membership. There needs to be a president,  
2 CCO, a CEO, a FINOP at the firm. And this case of  
3 Dakota's case they also needed to have two registered  
4 principals at the firm.

5 So in the planning of his being suspended in  
6 this period, we needed to see who at the firm would  
7 taking on those roles.

8 Q. During the course of your discussions with  
9 Mr. Zipper before he was suspended, did he ask any  
10 questions about what he could or couldn't do while he  
11 was suspended?

12 A. There were questions and there were multiple  
13 discussions. Our message has been pretty consistent to  
14 him, that he needed to have no association with Dakota  
15 Securities during his suspension.

16 He had questions about as far as was there a  
17 grace periods for various registrations for different  
18 people. For example, Mr. Lefkowitz was going to take on  
19 certain roles, but he did not maintain a Series 24  
20 registration. So, there was the discussion about how  
21 long did he have in order to get that license.

22 Also, from the options principal standpoint,  
23 that was one of the last kind of registration  
24 requirements that Mr. Zipper was trying to get somebody  
25 to fill. And he was asking if there was any grace

( )  
1 period with that. And obviously, in an options  
2 principal there is no grace period. So it was those  
3 kind of communications.

4 Also, we were posing the questions to him  
5 about his customers. Who will be the rep of record for  
6 his customers. And that is basically it, details like  
7 that is what we were looking for in his response to the  
8 suspension plan.

9 Q. Let me ask you if you can take a look at  
10 Exhibit CX-16. And so, we will put it up on the screen  
11 if you prefer that, or we can blow it up so you can read  
12 it, or you can certainly look at it in the book if you  
13 go to tab 16.

14 A. Sure.

15 MR. FOUKAS: Maybe just blow up the first  
16 email there.

17 MR. FOUKAS:

18 Q. Ms. Calonge, this is an email from you to  
19 Mr. Zipper and Ms. Brunelle. And the subject says,  
20 business plan for FINRA, the date is April 22nd, 2016.

21 And you wrote there, "Mr. Zipper, as  
22 discussed, provide a written explanation of the  
23 following." And item one there is describe the firm's  
24 plan for your suspension including but not limited to  
25 who will be designated a the president, chief compliance



1 officer and chief financial officer, who will be  
2 responsible for supervising and approving all  
3 transactions, who will be designated as the rep of  
4 record for all of your customer accounts, who will be  
5 responsible for preparing and maintaining the books and  
6 records of the firm.

7 So did you have a conversation with Mr. Zipper  
8 about the items in your email on or around April 22nd?

9 A. Yes. We had not yet received the plan and  
10 Mr. Zipper had been communicating with Angela about  
11 entering into this other arrangement. So it was, again,  
12 another reminder for Mr. Zipper to provide the plan  
13 before his suspension was to commence.

14 Q. And another thing you mentioned earlier, and  
15 you mention it here, you wanted an explanation of who  
16 would be designated as the registered rep of record for  
17 all of his customer accounts. Why was that something  
18 that he needed to do?

19 A. He could not be associated with the firm in  
20 any capacity. And so, we would be looking for him to be  
21 transferring those customers to another registered rep  
22 of record during his suspension time.

23 Q. Is that something that you made clear to  
24 Mr. Zipper?

25 A. Absolutely.

1 Q. And I guess did you at any point receive a  
2 plan from Mr. Zipper at Dakota about what he would be  
3 doing during the suspension?

4 A. Yes, I believe we received a response to this  
5 email, and then we also received a formal plan.  
6 Although, it was short in nature, it was his submission  
7 as a formal plan.

8 MR. FOUKAS: So I guess what I would like to  
9 do now is put up a document that is going to be a  
10 new exhibit. It will be CX-89. We provided  
11 copies to the Respondents.

12 So I have copies that are not labeled at all.  
13 I can give those to the panel or I can put them on  
14 the screen as well?

15 MR. WILLIAMS: Just give us the unlabeled  
16 copies.

17 MR. FOUKAS: So this will be CX-89.

18 BY MR. FOUKAS:

19 Q. Can you tell us what CX-89 is?

20 A. Sure. This is Mr. Zipper's response to the  
21 suspension plan.

22 Q. I guess just looking at what is written here,  
23 we see that Mr. Zipper has written that, "Our firm,  
24 Dakota Securities International, has taken steps to make  
25 sure that the firm can continue operations without Bruce

1 Zipper for three months of the suspension."

2 And then it went on to say, "Robert Lefkowitz,  
3 a broker now with the firm, will take over as the CEO  
4 and supervisor of the firm. And he will handle all of  
5 the day-to-day business of the firm."

6 Where he says Mr. Lefkowitz will handle all of  
7 the day-to-day business of the firm, is that something  
8 that you indicted to Mr. Zipper that needed to happen,  
9 that he couldn't be involved in the day-to-day business?

10 A. That is correct.

11 Q. The plan goes on to say, "We are hiring a  
12 consultant with a Series 27 and Series 4 license to  
13 oversee the financial operations and the options side of  
14 the business."

15 Again, was that something that Mr. Zipper was  
16 told he needed to make happen?

17 A. Yes, that is correct.

18 Q. And then it goes on to say, "Bruce Zipper's  
19 email and phone numbers will be redirected to Robert  
20 Lefkowitz." Is that something that you had discussed  
21 with Mr. Zipper, as to whether he could email or talk to  
22 people on the phone?

23 A. That is correct. As far as if any customers  
24 were trying to contact him in any way, he was going to  
25 be forwarding his email and phone numbers in order for

1 Mr. Lefkowitz to be able to talk to his customers.

2 Q. Did Mr. Zipper prior to suspension ask you  
3 whether he could during his all capacity suspension  
4 continue to communicate with his customers about  
5 securities commissions?

6 A. He had raised different scenarios throughout  
7 our conversations and our message had always been  
8 consistent to him, that he needed to not conduct any  
9 securities business, he needed to disassociate himself  
10 from the broker-dealer, and this included not talking to  
11 his customers.

12 Q. Did Mr. Zipper ask you whether an exception  
13 could be made for customers that he knew for a long  
14 time?

15 A. No, not that I am aware of. He didn't come to  
16 us with any exceptions. He was asking a lot of  
17 hypothetical types of questions. And our message had  
18 been consistent, that he needed to disassociate in all  
19 capacities during the suspension.

20 Q. Well, you mentioned that Dakota, prior to  
21 Mr. Zipper's suspension, Mr. Zipper had wore all of the  
22 hats at the firm; right?

23 A. Yes, he was the CEO, CCO and FINOP.

24 Q. Did Mr. Zipper ask what would happen during  
25 the suspension, given that type of firm, whether if

1 something came up that only he knew whether he could  
2 just handle it?

3 A. He never asked that specific question, but  
4 that was the whole point of all of our discussions, was  
5 that someone else had to be in those roles and that he  
6 could not be acting in those roles during the  
7 suspension, and that he needed to disassociate from the  
8 firm.

9 Q. Did you tell Mr. Zipper that if something came  
10 up during his suspension that only he could handle, that  
11 he could just go ahead and handle it?

12 A. No, I did not.

13 Q. To your knowledge, did anyone else at FINRA  
14 tell him that?

15 A. No. To my knowledge, no one would tell him  
16 that. And, you know, at the time Angela Brunelle --  
17 well, she still is, is the Regulatory Coordinator.

18 We ensure to all have all conversations  
19 together with Mr. Zipper. And so, any discussions  
20 during that time frame were always between either myself  
21 and Angela with Mr. Zipper, and none of those specific  
22 scenarios ever came up. It was all more general.

23 And we, again, continued to reiterate that  
24 same message, that he needed to have a plan to  
25 completely disassociate himself.

1 Q.t Now it says here that part of the plan wast  
2 that Mr. Lefkowitz was going to take over as CCO and  
3 handle all of the day-to-day business of the firm.

4 Did Mr. Zipper ever tell you that in additiont  
5 to what's on the plan that he would be around, t  
6 Mr. Zipper would be around to handle any emergencies  
7 that came up?t

8 A. No. No, that never came up and, you know --  
9 so, no, it never came up.

10 Q.t So Mr. Lefkowitz, before he took every duringt  
11 Mr. Zipper's suspension, did you speak with  
12 Mr. Lefkowitz about the upcoming suspension and what he  
13 needed to do?

14 A.t I do recall that there might have been somet  
15 brief discussions with Mr. Lefkowitz before the  
16 suspension. And then, obviously, during the suspension.

17 I think prior it was mostly to talk through  
18 with him about what his plan was to actually obtain the  
19 Series 24 registration. Also, about what his plan was  
20 going to be to take on these roles.

21 And we also wanted to know what his experience  
22 was. You know, although we couldn't really tell him,  
23 no, he could not do these functions because it was a  
24 small firm, we were still trying to establish whether or  
25 not he had the experience level to be able to be a

1 supervisor.

2 MR. WRIGHT: What was your determination on  
3 that?

4 THE WITNESS: His experience, and he had been  
5 in the industry a long time. He seemed to have  
6 general understanding of the industry.

7 You know, when a firm comes in as a new member  
8 we do try to look for one year direct or two years  
9 indirect experience in a principal experience  
10 role. In this case, because they were already an  
11 existing member, he had been there, we were trying  
12 to understand what his experience level was.

13 I don't know that we could have said, no, he  
14 couldn't. If he had obtained the Series 24, it  
15 would have been a tough thing for us to say he  
16 could not satisfy that role.

17 MR. WRIGHT: Okay.

18 BY MR. FOUKAS:

19 Q. Did Mr. Lefkowitz ask you whether during the  
20 suspension if something came up that he didn't know how  
21 to handle whether he could talk to Mr. Zipper about it?

22 A. He never asked us that.

23 Q. Whether he asked you or not, did you tell him,  
24 look, if something comes up during the suspension that  
25 you don't know what to do just go ask Mr. Zipper?

1 A. No, absolutely not. The message to him was  
2 clear. Again, Mr. Zipper could not associate with the  
3 firm in any capacity. And that he, in those roles, was  
4 also responsible to ensure that Mr. Zipper did not  
5 associate with the broker-dealer.

6 Q. And then, I guess I asked you whether you told  
7 him. And to kind of follow up, did anyone else at FINRA  
8 ever tell Mr. Lefkowitz that if anything came up that he  
9 wanted to ask Mr. Zipper about that he could just ask  
10 Mr. Zipper?

11 A. No, I am not aware that anyone would tell him  
12 that or that they had told him that.

13 Q. And so, during Mr. Zipper's three-month  
14 suspension, did Mr. Zipper ever get in touch with you to  
15 say that some emergency was happening and he needed to  
16 be involved with the firm?

17 A. No, he did not.

18 Q. Did he ever reach out to you or anyone else at  
19 FINRA, to your knowledge, to say that, hey, there were  
20 customers that wanted to talk to him?

21 A. No, I am not aware of any of that.

22 Q. And during the suspension, did Mr. Lefkowitz  
23 ever reach out to you and say that there was some crisis  
24 that he couldn't resolve without Mr. Zipper's  
25 intervention?



1 A. He never did. No, he did not.

2 Q. Did he ever reach out to you and mention, hey,  
3 Mr. Zipper has a customer that will only talk to  
4 Mr. Zipper can Mr. Zipper do that?

5 A. No, no, he did not.

6 Q. So I want to fast forward, I guess, to the  
7 more recent past and talk about just last year, 2017.

8 Are you aware of whether or not that in --  
9 well, let me ask you, are you aware whether or not  
10 Mr. Zipper is or has been statutorily disqualified?

11 A. I am aware that he has become statutorily  
12 disqualified, yes.

13 Q. And did you hear anything about it in an  
14 MC-400 Application that was filed for Mr. Zipper to  
15 continue to associate with Dakota?

16 A. Yes, and that application was denied by FINRA,  
17 and the decision was issued to him.

18 And not to jump ahead, but I had discussions  
19 with Mr. Zipper about that decision and what needed to  
20 happen as well.

21 Q. So what did need to happen as a result of  
22 this?

23 A. So when the disposition was issued, again, it  
24 was asking for a plan from the firm, as far as how  
25 Mr. Zipper would become permanently disassociated with

1 the firm. Also, the dissolution of his ownership at the  
2 firm and who was going to take on the various roles.

3 Also, the main office at the time was in  
4 Mr. Zipper's home, where would the main office be moved.  
5 So again, we needed to revisit all of what the firm's  
6 plan would be to basically satisfy the decision of  
7 Mr. Zipper being denied continued association with the  
8 firm.

9 Q. So I guess did you receive notice of the fact  
10 that MC-400 Application was denied?

11 A. Yes, I was aware that it was denied. And I  
12 knew that the firm needed to -- I was copied and  
13 internally made aware that this decision was issued and  
14 the firm would be given a time frame to come up with the  
15 plan, as far as how they would be satisfying this.

16 Q. And did you discuss with Mr. Zipper that as  
17 long as he appealed the MC-400 Application that he could  
18 continue to associate with Dakota?

19 A. No. No, our discussions have been that he  
20 needed to immediately disassociate from the  
21 broker-dealer. He needed to, also, you know, tell us  
22 who was going to be the president, who is going to be  
23 the FINOP, what he was going to do to dissolve his  
24 ownership, what was going to be the plan for the main  
25 office and the books and records of the firm.

1           So basically we were back to he needed to  
2 immediately -- and in this case immediately address  
3 this.

4           Q. At some point after that -- I guess, well, you  
5 see Mr. Cuccia here today. At some point did Mr. Cuccia  
6 fill in some roles at Dakota?

7           A. Yes. So there was a short period of time  
8 before Mr. Cuccia, that there was another woman, Dianne  
9 Alexander, who was going to take on certain roles.

10           And then, shortly, maybe a week or two later,  
11 Mr. Cuccia became involved. And then, all of the  
12 interactions became of Mr. Cuccia.

13           Mr. Cuccia clearly understood what was needed  
14 to happen and worked pretty closely with Angela Brunelle  
15 and myself to come up with a plan to satisfy  
16 Mr. Zipper's disassociation.

17           Q. So I want to show you a document, and I guess  
18 I got it from Mr. Cuccia.

19           MR. FOUKAS: So this is one of the documents  
20 that you wanted to use, Mr. Cuccia. So I guess I  
21 propose that since Ms. Calonge is here we might as  
22 well show it to her now.

23           MR. CUCCIA: Sure.

24           MR. FOUKAS: I will give her a copy.

25           MR. CUCCIA: I have a copy for these folks.

1 MR. FOUKAS: So I guess we can identify this  
2 as CX-90 or a joint Exhibit 2.

3 MR. WILLIAMS: Let's call it JX-2.

4 BY MR. FOUKAS:

5 Q. Okay. So, Ms. Calonge, JX-2 is an email  
6 exchange. This is all from November 15th and November  
7 16th of last year. And I guess I want to direct your  
8 attention to the bottom email, where you received an  
9 email from -- is that Mr. Cuccia's email address?

10 A. Yes.

11 Q. And you can see a signature block on the  
12 second page. So this is a November 15th, 2017, he wrote  
13 you an email saying subject email review.

14 And it says, "Dawn, I am trying to get my  
15 email and ability to review email with Dakota's  
16 provider. Robert Lefkowitz is listed as the global  
17 administrator and will not add me to the Dakota email  
18 without instruction from Robert.

19 "There is no one else listed as an administer.  
20 Robert cannot act as a principal of Dakota Securities.  
21 I am at an impasse as to getting access to email.

22 "Would FINRA have an objection or view Robert  
23 Lefkowitz contacting a prior to add me on to the  
24 administrator list for the Dakota Securities? After I  
25 gain access I will remove Robert as administrator from

1 the Dakota Security account as a prior."

2 So during this time was Mr. Lefkowitz  
3 suspended from a principal capacity?

4 A. That is correct.

5 Q. And I guess if you can tell us about this  
6 email. What was your reaction to receiving an email  
7 like this about whether Mr. Cuccia could interact with  
8 Mr. Lefkowitz?

9 A. Sure. So at the time we had been working with  
10 Mr. Cuccia on coming up with a plan. Clearly, he had  
11 come across this issue, where he was not able to get the  
12 access to do what he needed to do what he needed to get  
13 the firm in his ability to review the email without  
14 potentially violating a suspension of Mr. Lefkowitz.

15 So when I got this I did raise it internally.  
16 I discussed it with my director, Yvette Panetta. I  
17 believe we also had a sales practice policy, and we  
18 discussed the implications of this. And, you know,  
19 quite frankly we weren't sure whether or not it actually  
20 violates his suspension or not.

21 But because the firm is a small firm, they  
22 were trying to get -- you know, Mr. Cuccia was trying to  
23 do the right thing here and get the structure. We  
24 thought it would be appropriate. We wouldn't object to  
25 this happening in order for him to be able to set up the

1 firm in the appropriate way.

2 So that's why I sent him the email there  
3 saying that we would not object to the request that was  
4 detailed.

5 Q. So shifting back to 2016 and Mr. Zipper's  
6 suspension, did you ever get an email like this from  
7 Mr. Lefkowitz?

8 A. No.

9 Q. What about even from Mr. Zipper, anything like  
10 this asking permission as to whether he could do  
11 something during his all capacity suspension?

12 A. No.

13 MR. FOUKAS: Before I forget, I would like to  
14 offer CX-89 into evidence and JX-2 into evidence.

15 MR. WILLIAMS: Any objection to CX-89?

16 MR. ZIPPER: No.

17 (Enforcement Exhibit Number CX-89  
18 was marked for identification.)

19 MR. WILLIAMS: And JX-2 is a joint exhibit, so  
20 I will admit that.

21 (Joint Exhibit Number JX-2  
22 was marked for identification.)

23 MR. WRIGHT: I had a question on CX-89.

24 In the response there was nothing regarding  
25 who would take over Mr. Zipper's accounts.

1           Do you have any subsequent email about who  
2           that would be?

3           THE WITNESS: You know, I don't recall if it  
4           was actually in the email. There was another --  
5           so the response to my email, he did send a  
6           response email.

7           I'm not -- you know, from my memory, I am not  
8           sure if that was just spoken that it would be  
9           Mr. Lefkowitz or if it was included in an email.

10          But our understanding was that Mr. Lefkowitz  
11          would become the rep of record. And I believe  
12          that is what happened. And I believe that is also  
13          what is currently today, that Mr. Lefkowitz is the  
14          rep of all of Mr. Zipper's accounts.

15          MR. WRIGHT: When did FINRA expect that to  
16          happen? Could Mr. Zipper remain on the account  
17          and just Mr. Lefkowitz manage the account, so to  
18          speak, or did you expect the rep to actually  
19          change of record on the records?

20          THE WITNESS: We expected a complete change of  
21          record, that Mr. Lefkowitz would be the  
22          representative communicating with the customers,  
23          making recommendations to the customers, answering  
24          any customers' questions, helping them to  
25          facilitate any securities business.

1 MR. WRIGHT: And internal records should have  
2 been updated?

3 THE WITNESS: That is correct.

4 BY MR. FOUKAS:

5 Q. Ms. Calonge, you have obviously dealt with  
6 Mr. Zipper quite a bit over last couple of years?

7 A. That is correct.

8 Q. Are you out to get Mr. Zipper?

9 A. Absolutely not. I mean, in fact, quite  
10 frankly we were trying to -- we actually went a little  
11 above and beyond to try to help and work with him on  
12 creating this plan.

13 There was extension requests, we granted  
14 extension requests. You know, usually there is not as  
15 much communication even trying to work through if there  
16 is problems potentially with the plan.

17 And even things like the options principal.  
18 And, you know, was there a grace period, no.

19 So, you know. So quite frankly we still even  
20 with Mr. Cuccia continue to try to work with a plan,  
21 understanding that it is small and limited resources and  
22 trying to help them get compliant with all of the rules.

23 Q. Are you aware of whether others in this office  
24 are out to get Mr. Zipper, is that something that anyone  
25 has ever told you?



1           A. Absolutely not.

2           MR. FOUKAS: I have no further questions at  
3 this point.

4           MR. WILLIAMS: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. CUCCIA:

7           Q. The examination, do you remember if I asked  
8 you if we could get an extension on that and addressing  
9 my concerns about just starting there and being able to  
10 supply information in a timely and accurately matter?

11          A. Can you just clarify?

12          Q. The last exam.

13          A. Okay.

14          Q. Do you remember me asking for an extension  
15 until February, and me expressing my concerns about not  
16 knowing the firm sufficiently, and the audit there, and  
17 the regular audit, and the examination and the ability  
18 to supply the information that you needed in a timely  
19 and accurately manner?

20          A. Yes, I do recall you asking for an extension  
21 on the examination. I don't oversee examinations. I  
22 oversee surveillance. I did raise that extension  
23 request through our district director, who oversees the  
24 exam program. And I believe they still needed to come  
25 in and they tried to work with you on document

1 production and understood that you were just coming on  
2 new.

3 I think your biggest concern was that you  
4 would be responsible for things like the WSPs not being  
5 updated. And, you know, I know that we tried to work  
6 with you as much as we could.

7 Q. But it was denied basically?

8 A. I think we had an exam requirement. So  
9 internally we have exam requirements. Again, not  
10 something that I oversee, but they sometimes we are able  
11 to grant extensions on examinations. Maybe move it a  
12 few weeks. Yours I do not believe was able to be  
13 granted. Although, they were able to work with you on  
14 your document production requests.

15 MR. CUCCIA: I don't have any more questions.

16 MR. WILLIAMS: Do you have any questions,

17 Mr. Zipper?

18 MR. ZIPPER: Yeah, I have a few.

19 CROSS-EXAMINATION

20 BY MR. ZIPPER:

21 Q. How are you?

22 A. Great.

23 Q. You mentioned before that you were made aware  
24 of the suspension that caused me to go out of business  
25 on October 2nd.

1 MR. FOUKAS: Just to clarify, you're talking  
2 about the MC-400 denial?

3 MR. ZIPPER: Yes.

4 BY MR. ZIPPER:

5 Q. The MC-400 denial, when were you made aware of  
6 that?

7 A. I don't recall the exact date. But when the  
8 decision was issued, internally I was made aware that  
9 that decision was issued.

10 Q. So you and I worked together sometime in  
11 November and you were asking at that time and made some  
12 calls. You said Bruce, who is going to come on and who  
13 is going to do this, and we had a chance to work with a  
14 Dianne Alexander. Do you recall?

15 A. I do.

16 Q. This was sometime in November; correct?

17 A. I think it was October. I don't have all of  
18 the information in front of me. And why I think it was  
19 October, I think you had a due date of an October due  
20 date to respond to the letter.

21 And our first conversation, I believe, was on  
22 the day following the due date. And Angela and I called  
23 you asking you what the status is of the plan.

24 Q. What date was that?

25 A. I believe it was sometime in October. Off the

1 top of my head, I don't know the exact date.

2 Q. Well, you, I and Dianne talked around 11/6,  
3 11/7, 11/8 in that first week time frame, where you were  
4 asking who will be taking over for Dakota. Do you  
5 recall those calls when we were talking?

6 A. I do and I think it went into November because  
7 you asked for an extension on the plan.

8 Q. Absolutely.

9 A. Did you ask for an extension until the end of  
10 October, I think?

11 Q. No. Because I'm talking now that you and I  
12 are talking in the first week of November.

13 A. Okay.

14 Q. That could have happened; right? Do you  
15 remember those talks?

16 A. I do know that there was a lot of discussions  
17 at the end of October beginning of November, yes.

18 Q. Yeah. So the suspension went into effect,  
19 from what the MC-400 said, October 2nd; true?

20 A. That sounds right. Without it in front of me  
21 I can't say for sure, but that sounds about right.

22 Q. And you and I were working closely certainly  
23 in November. When did you first come to me and bring up  
24 that I was disqualified?

25 A. Well, I think we should clarify.

1 Q. It's a simple question.

2 A. The letter that was issued stated the  
3 decision. Our communication was about what your plan  
4 was going to be, what the firm's plan was going to be to  
5 satisfy this decision. Which means that you had to  
6 immediately disassociate and immediately dissolve your  
7 ownership.

8 Q. Did you tell me -- were you surprised in the  
9 first week of November when you, I and Dianne were  
10 talking about the plan and that I was still working?  
11 Because you certainly never mentioned anything to me,  
12 Dianne or anyone relative to me not being in the  
13 business.

14 A. I have to disagree with that. I think our  
15 communication had always been to you, to Dianne, to  
16 Mr. Cuccia that you needed to immediately disassociate  
17 from the firm in light of the decision.

18 Q. And when was that conversation made?

19 A. The first conversation that Angela Brunelle  
20 and I had with you was asking you what the plan was.

21 Q. No, that's not what I'm asking. In other  
22 words, when did you tell me that or express to me that I  
23 couldn't be working there anymore? When was the first  
24 date?

25 A. Our conversations had been around who is going

1 to take on all of the these roles.

2 Q. But while we were having that discussion did  
3 you assume that I was not working anymore?

4 A. No, I was concerned that you were still  
5 working.

6 Q. Did you express that concern to me?

7 A. We had multiple discussions saying that you  
8 needed to immediately disassociate from the firm. If  
9 you recall, you were also still using your log-in to get  
10 into CRD, and we asked you -- and it might have  
11 continued when Mr. Cuccia was there -- that there was a  
12 log-in still with B Zipper.

13 Q. Mr. Cuccia didn't come until the middle of  
14 November. We are talking about October 2nd is when  
15 FINRA was stating when I was out of the business.

16 I asked you specifically when did you know  
17 October 2nd I would be out, because we were having  
18 discussions with Dianne Alexander as to who is now going  
19 to come on.

20 And while I'm on that topic, did Dianne  
21 Alexander in those conversation with you, now that it  
22 was past November 6th -- and I'll go into why November  
23 6th is relevant -- ask you, Dawn, there might be a time  
24 when because she was taking over that I might not know  
25 something that Mr. Zipper does, do you have a problem

1 with me dealing with him. Do you remember that  
2 question?

3 A. I recall that there was one instance where --  
4 I had had multiple discussions with Dianne  
5 Alexander that week. It was new to her that she was  
6 going to be taking on these roles. She wanted an  
7 opportunity to be able to discuss with you what that  
8 would entail.

9 And I believe that there was a weekend, maybe  
10 a Friday or something, I don't know the dates offhand,  
11 that it was asked could the two of you speak so that she  
12 could decide if she was going to take on the role. And  
13 we said that we would not object to you and her speaking  
14 about that specifically.

15 Q. And you also made the statement, correct me if  
16 I'm wrong, that if anyone at FINRA bothers you just give  
17 them my number. Do you recall saying something like  
18 that?

19 A. I don't recall saying something like that.

20 Q. But that was in November; correct?

21 A. What was in November?

22 Q. The call that Dianne had we with me on the  
23 phone with you.

24 A. Off the top of my head, I don't know if that  
25 was the last week of October or the first week of

1 November. But for argument's sake, it's that two-week  
2 period.

3 Q. So from October 2nd going forward what's the  
4 first day that you called me and said, Bruce, are you  
5 suspended or did you immediately suspend, or before you  
6 made a statement to the other attorney that you were  
7 giving him time to get a plan, meaning to me, on this  
8 last suspension? Do you recall saying that?

9 A. So, no, I don't.

10 And just to clarify, I'm your surveillance  
11 director. I have nothing to do with the decisions being  
12 issued related to your statutory disqualification  
13 hearing.

14 So where my role comes into play is once the  
15 firm had to submit a plan. So the plan was due sometime  
16 in October, and we waited to call you until the due  
17 date. The day after the due date we were waiting for  
18 your plan. That is when surveillance kind of steps in  
19 to look at what the firm's plan would be.

20 So Angela and I called you the next day. You  
21 were not aware that you had to do the plan. You asked  
22 for a two-week extension, and I think that brought us to  
23 the end of October. I'm going off of memory here.

24 So just to clarify, my role at FINRA would not  
25 be to communicate with you the decision of the statutory



1 disqualification hearing.

2 MR. WRIGHT: Can the panel have a copy of that  
3 letter?

4 MR. FOUKAS: Which letter are we talking about  
5 now?

6 MR. WRIGHT: The notification letter of the  
7 denial and the request to the firm for the plan.

8 MR. FOUKAS: I believe CX-45 contains an email  
9 to Mr. Zipper and includes a copy of the letter  
10 that was sent Mr. Zipper.

11 But again, I don't want to interrupt  
12 Mr. Zipper's examination.

13 BY MR. ZIPPER:

14 Q. Do you know what a Form U6 is?

15 A. Yes.

16 Q. Can you explain it to the panel?

17 A. A Form U6 is when there is a regulatory  
18 action. The regulatory agency will file a Form U6  
19 disclosing the regulatory action.

20 Q. And what is the action? When a U6 is filed  
21 what does it explain, what does it say?

22 A. It would depend on the action.

23 Q. Well, I received a Form U6 from FINRA on  
24 November 6th of 2017. Are you aware of that?

25 A. No, I was not aware of that.

1 Q. Should you have been made aware of that?

2 A. I typically don't deal with U6s. No, not in  
3 my role.

4 Q. Because I called FINRA after getting that  
5 email, and it was explained to me that a U6 is very  
6 simple. It means that you're out of the business;  
7 correct?

8 A. That -- I'm not sure I fully understand what  
9 you're asking because a U6 doesn't necessarily mean that  
10 you are out of the business. It is a disclosure. It is  
11 a disclosure on an individual rep's or firm's record.

12 Q. This is the very important point. You're  
13 stating that the calls you had with me could have been  
14 late October or sometime in November.

15 You're testifying that on October 2nd you knew  
16 that I was suspended?

17 A. I didn't testify that I know that on October  
18 2nd.

19 Q. When did you know?

20 A. I don't know off the top of my head.

21 Q. Could it have been November 2nd?

22 A. It was definitely before November 2nd. I  
23 don't know if it was October 2nd. I know that it was  
24 before the due date, which was sometime in October.

25 Q. So Dawn Calonge, who is the supervisor, and

1 Angela Brunelle were not aware up until when that Bruce  
2 was suspended?

3 A. Sometime in early October.

4 Q. There is no firm date, just sometime?

5 MR. WILLIAMS: Do you want to direct her to a  
6 document, Mr. Zipper?

7 BY MR. ZIPPER:

8 Q. Basically the letter of October 2nd from FINRA  
9 to me talking about the MC-400 denial was the letter  
10 that supposedly suspended me; correct?

11 A. No, that wasn't a suspension.

12 Q. It wasn't?

13 A. Are we talking about the 2017 letter?

14 Q. The October 2nd, 2017 letter was telling me  
15 that I was suspended, was it not?

16 A. No, it was telling you that your petition to  
17 stay associated with Dakota Securities was denied.

18 Q. And what did that mean?

19 A. That meant that you had to immediately  
20 disassociate from the firm, you also had to dissolve  
21 your ownership of the firm.

22 Q. Okay. And when did you discuss that with me?

23 A. I discussed requesting your plan with you.

24 Q. That is not what I asked. When did you  
25 discuss that you knew, from what you're saying, that I

1 was suspended on October 2nd? When did you speak to me  
2 about what am I doing, what's going on at Dakota? What  
3 when did you talk to me about it?

4 A. The day after your plan was due.

5 Q. When was that?

6 A. Roughly, mid-October. I am not sure exactly  
7 how long you had. Off memory, I think you had like  
8 maybe two weeks to respond and then you asked --

9 Q. Two weeks to respond to you?

10 A. The firm is supposed to respond to -- in this  
11 case because you were the owner and the president and  
12 the FINOP, the firm needed to respond on what the plan  
13 would be now that you needed to disassociate.

14 Q. Who gets that plan?

15 A. We would get that plan, Angela Brunelle and I.  
16 I believe it may be addressed specifically to our  
17 district director.

18 But from a surveillance perspective, we would  
19 be looking for that plan and talking and working through  
20 to see if it seemed like a reasonable plan.

21 Q. Wouldn't that plan be communicated through at  
22 least email or mail?

23 A. That is why we were communicating with you  
24 asking you for the plan.

25 Q. Verbally. You didn't send anything in an

1 email about that?

2 A. The letter was issued to you. And then when  
3 you needed an extension, then we sent you another copy.  
4 And then, you asked for another extension, and we  
5 granted you an extension to respond to the plan in late  
6 October.

7 Q. I think that you're a little confused.

8 MR. WRIGHT: Mr. Foukas, those are not in this  
9 exhibit?

10 MR. FOUKAS: I just want to be clear. Exhibit  
11 45 certainly is an email to Mr. Zipper attaching  
12 the decision of the MC-400 Application. It has a  
13 letter instructing him that unless the commission  
14 stays the decision he must immediately  
15 disassociate.

16 Is it a specific letter asking for the plan  
17 that you're talking about?

18 MR. WRIGHT: Hm-hmm.

19 MR. FOUKAS: Okay. That is not in Exhibit 45.

20 MR. WRIGHT: Which exhibit is it?

21 MR. FOUKAS: I am sure that we can find it. I  
22 am sure that it exists.

23 BY MR. ZIPPER:

24 Q. Ms. Calonge, are you aware that between  
25 October 2nd and November 6th of 2017 I was still in the

1 business?

2 A. After speaking to you, it appeared that you  
3 potentially were still associated.

4 Q. You didn't direct object to that, did you?

5 A. We told you that you needed to immediately  
6 disassociate with the firm.

7 Q. And when would that be, in November when we  
8 were talking about setting up the plan for the  
9 changeover?

10 A. During our discussion asking for the plan,  
11 yes. And then, that is why Ms. Alexander started to  
12 speak to us, and then Mr. Cuccia started to speak to us.

13 Q. And that was all in November, all in November.  
14 And I guess the point I am making and making to everyone  
15 else is you were aware that I was doing business from  
16 October 2nd into November?

17 A. Well, I should clarify. I wasn't aware at  
18 that time. During the discussions with you, it appeared  
19 that you were still operating. And that is when we  
20 asked you -- that is when we reminded you that you  
21 needed to immediately disassociate.

22 Q. And that was in November of 2017, was it not?

23 A. I don't recall.

24 Q. Could it have been November of 2017?

25 A. It could have been early November.

1 Q. So you, as my supervisor, were more than awaree  
2 and said nothing in our discussions with Ms. Alexander  
3 or going forward that you were aware that I was doing  
4 business?

5 MR. FOUKAS: Objection, asked and answered.

6 We have gone over this quite a bit. And, frankly,  
7 it is mischaracterizing the answer repeatedly.

8 MR. WILLIAMS: I sustain your objection.

9 Ask your next question, Mr. Zipper.

10 BY MR. ZIPPER:

11 Q. A littlewhile ago Mr. Cuccia sent an email to  
12 you about having a problem getting -- because  
13 Mr. Lefkowitz at the time was on suspensign, right, and  
14 that he couldn't get something done because only  
15 Mr. Lefkowitz could help. And you went back to him and  
16 said whatever, yeah, you can do that; correct?

17 A. I told him that we would not object to the  
18 firm doing that.

19 Q. You said that he could do it; correct?

20 A.e Yes.e

21 Q. Thank you. So you agreed that there would be  
22 certain circumstances when someone is in suspension,  
23 that they're the only one that can do something, should  
24 be arable to do it; correct? You just agreed that youe  
25 can do it?

1 A. That is a mischaracterization.

2 Q. Well, characterize it for me.

3 A. This specific issue Mr. Cuccia was clearly s  
4 trying to get set up to be the CCO and CEO of the firm.  
5 He was having a technical issue. He raised this issue  
6 to us, and we decided that we would not object to him  
7 doing that.

8 Q.s Right. If he posed a question a week later to  
9 you, the same thing, he called the bank and the bank  
10 wouldn't speak to him because only Mr. Lefkowitz, who  
11 was on suspension, had the answer to the security  
12 question. Would you grant him authority to do that?

13 A. We would have to --

14 Q.s As you sit here now, would you grant that?  
15 That is an exact question.

16 A. Can you repeat the scenario?

17 Q.s Certainly. Mr. Cuccia calls you or sends you  
18 an email two weeks later. Dawn, I have another problem.  
19 Lefkowitz is gone, he's suspended and the bank won't s  
20 talk to me. I tried to get a log-in to our account and  
21 they say -- and he only knew the security. Can I speak  
22 to Mr. Lefkowitz and get that would you say okay?s

23 A.s In this scenario I probably would have given  
24 him -- again, the other thing I should clarify. I am  
25 not making the decisions by myself. We are talking



1 internally. And okay, the firm clearly if it was an  
2 operational issue and Mr. Cuccia is clearly trying to  
3 get the firm compliant.

4 Q. Yeah.

5 A. You know, sitting here today my recommendation  
6 would be internally that we would say that we wouldn't  
7 object to that.

8 Q. Right. So my point is in general if there is  
9 a person that is a one-person firm, whether Lefkowitz,  
10 Zipper, whoever it is, and you said earlier that you  
11 can't have any association with that person. There are  
12 exceptions, are there not?

13 A. You know --

14 Q. It's a yes or a no.

15 A. I'm not quite sure. Can you repeat back what  
16 you asked.

17 Q. Yes. If someone is suspended and they are the  
18 only person that knows a particular situation about a  
19 company, whether a vendor, a bank, client who doesn't  
20 know what is going on and only that person does, and  
21 they ask for permission because they are the only person  
22 that knows. That could be done, you said it could be  
23 done. You have done it.

24 A. So I can tell you that we try to be  
25 reasonable.

1 Q. Exactly.

2 A. We try to work with our firms. You know,  
3 especially in a surveillance function. You know, there  
4 are a lot small firms, there are a lot of rules. We try  
5 to help them.

6 If there are one-off scenarios that look like  
7 potentially they may be violating a rule, we will  
8 internally raise it to figure out. You know, at the end  
9 of the day we try to -- we understand that are a lot of  
10 rules out there and we try to be reasonable --

11 Q. To make it to be functionally.

12 MR. WILLIAMS: Allow her to finish her answer.

13 BY MR. ZIPPER:

14 Q. Okay.

15 A. So we try to work with the firm to help them.  
16 If they are reasonably trying to get the firm compliant,  
17 we would work with them.

18 And in this case, especially if I can go back  
19 to the actual scenario that there was here, clearly  
20 Mr. Cuccia was concerned that potentially Mr. Lefkowitz  
21 could violate his suspension, so he came to us. It was  
22 a reasonable. We understood the situation and it was  
23 reasonable. So, therefore, we thought it was reasonable  
24 to grant him that.

25 Q. Totally understandable.

1           So let's fast forward to reality here.

2           Mr. Zipper is suspended in April on the AWC. And if  
3           Bruce Zipper would come to you prior to going out, and  
4           just ask a hypothetical, if that same situation would  
5           happen, where Bruce Zipper is not available and a vendor  
6           or email account couldn't do anything without my  
7           security, you would make that exception, wouldn't you?

8           A. If you had come to us and asked, we would  
9           evaluate the facts of that circumstance, and then we  
10          would tell you whether or not we would object to  
11          something or not.

12          So I can tell you that, you know, things --  
13          different scenarios happen regardless of suspensions or  
14          not. Firm comes to us. Sometimes we say no and  
15          sometimes we say okay, you know, we don't object, or we  
16          approve. It depends on what the request is. But that  
17          never did happen.

18          Q. But I'm just saying if the request is made,  
19          where you said earlier that it was a blanket, you can't  
20          have anything to do with anything, there are exceptions  
21          to that. Based on a certain thing could happen, where  
22          only that person could answer it, a person was on  
23          suspension, as Mr. Lefkowitz was in that scenario,  
24          Mr. Cuccia came to you with a request. This is a an  
25          exception. Can we do it, yes.

1           And then I said to you if two weeks later if  
2 another request came in from the bank could he do it,  
3 probably so.

4           MR. FOUKAS: I object. And there is probably  
5 14 statements and 3 questions that are in there,  
6 but there is an objection.

7           MR. ZIPPER: I am not asking a question.

8           MR. FOUKAS: Well, I guess that's a problem in  
9 itself. But my objection is that this is asked  
10 and answered.

11          MR. WILLIAMS: Sustained.

12          MR. ZIPPER: I just need one or two minutes to  
13 review my notes.

14          MR. WILLIAMS: Okay.

15          MR. WRIGHT: While we're waiting, to your  
16 knowledge, has FINRA ever approved a suspended rep  
17 to make a securities recommendation?

18          THE WITNESS: No.

19          MR. WRIGHT: Do you see a scenario where you  
20 would do that?

21          THE WITNESS: I cannot even imagine a scenario  
22 where we would do that.

23                 We actually get rep suspension letters  
24 probably more frequently than we do having like an  
25 owner. So in this scenario it is a little more

1           extenuating.

2           So we do get rep suspensions pretty  
3 frequently. And what we are looking for in the  
4 firms is that the rep is not on premises, that  
5 they have no association at all, that their  
6 customers are assigned to a different rep, the  
7 emails are shut off, the phones, all of that.

8           And I have literally never seen a firm ask for  
9 that, and I cannot even imagine a scenario where  
10 we would ever say that that was okay.

11           MR. ZIPPER: I'm almost finished.

12 BY MR. ZIPPER:

13           Q. Are you familiar with the AWC that I signed  
14 with Mr. Rosen related to the three-month suspension?

15           A. So when you say familiar, could you clarify a  
16 little bit more?

17           Q. Yes. Are you familiar with the sanctions that  
18 I signed for this AWC in question?

19           A. Yes, I am.

20           Q. And could you tell me what those sanctions  
21 are?

22           A. I believe you were suspended for 60 days, and  
23 there may have been a monetary fine. I am not 100  
24 percent on the fine side.

25           Again, I should probably clarify. AWCs are

1 really an Enforcement function. Surveillance, really  
2 what our role is, is the ongoing monitoring of the  
3 firms. So how we're aware, I should really clarify on  
4 my -- you know, my exposure to this is that because you  
5 were suspended this became a bigger issue for  
6 surveillance because we needed to work through your  
7 plan.

8 Q. Yeah, but I'm questioning what the suspension  
9 means. You have been talking about a suspension in all  
10 capacities. In other words, what was the verbiage that  
11 you used as to what you understood the suspension in my  
12 case was?

13 A. It was in all capacities, right, because  
14 sometimes there are sanctions where it is only in a  
15 principal capacity or a registered rep capacity. In  
16 yours it was both, so you couldn't be a rep or a  
17 principal.

18 Q. Well, I have a copy of my AWC. And it says --  
19 there is two lines as to what I am consenting to the  
20 following sanctions.

21 MR. FOUKAS: Can I just suggest that we show  
22 the witness the document.

23 MR. WILLIAMS: Which exhibit is that,  
24 Mr. Zipper?

25 MR. ZIPPER: I have it at B on my thing.

1 MR. WILLIAMS: Okay. JX-01.

2 BY MR. ZIPPER:

3 Q. If you can, go to page 3 where it talks about  
4 the sanctions for me.

5 A. Okay.

6 Q. I want you to just read to yourself under the  
7 letter (b) the sanctions that I agreed and signed to.  
8 It's pretty quick, it's just two dots there.

9 A. Yes.

10 Q. When it says a three-month suspension from  
11 association with any FINRA member, you never seem to  
12 mention in all capacities the word FINRA, which is in my  
13 contract; correct?

14 A. I'm sorry, could you repeat the question?

15 Q. Sure. It says in my contract, which you can  
16 read, a three-month suspension from associating with any  
17 FINRA member in all capacities; correct?

18 A. That's correct.

19 Q. Because up until now you never used the word  
20 FINRA member. Does that have any bearing as to what is  
21 read here that way?

22 A. I mean, personally I only oversee FINRA  
23 members. So I don't say FINRA members because it's  
24 really my job. We don't have jurisdiction of non-FINRA  
25 members.

1 Q. Right, that's my point.

2 In other words, I'm not an attorney. I was  
3 given this AWC for a three-month suspension for the  
4 first time. We never went over the suspension, other a  
5 than what it says here. FINRA is always asking for a  
6 something in writing. Well, this is in writing a

7 The way I interpret it, it is I can't have any  
8 association with any FINRA member; correct? So if I  
9 were to speak to someone and I'm suspended and it is not  
10 a FINRA member, why would that not be okay if you don't  
11 have jurisdiction of people that aren't a FINRA member?

12 A. Can you -- I am not sure I follow the question  
13 you are asking me.

14 MR. WILLIAMS: What is your question for the  
15 witness?

16 BY MR. ZIPPER:

17 Q. I said if I speak to someone that is not a  
18 FINRA member, that wouldn't violate this contract, isn't  
19 that true? Did I make myself clear? I'm waiting.

20 A. I am a little confused by your question. So I  
21 am confused by the question. Could you just clarify for  
22 me?

23 Q. Third time. If I speak to a person that is  
24 not a FINRA member, is that okay?

25 A. So, could you give me an example of what a



1 scenario you're trying to talk through?

2 Q. Bruce Zipper had an association with an email  
3 vendor of Dakota Securities, who is not a FINRA member,  
4 could I send him an email and ask him a question?

5 A. Okay. So I am a little clearer on what you  
6 were saying. So, you were suspended in all capacities.

7 Q. Where does it say that? Read that to me.

8 A. "In all capacities" the third and second to  
9 last sentence.

10 Q. Yeah, but that follows any FINRA member in all  
11 capacities. So what is the point of that being there?

12 A. Well --

13 MR. ZIPPER: I have no further questions.

14 \* ( THE WITNESS: I am not in Enforcement. )

15 MR. ZIPPER: Right, so you don't understand.

16 I have asked it four times. I'm done.

17 MR. WILLIAMS: Any questions of the panelist?

18 Any redirect?

19 MR. FOUKAS: No.

20 MR. WILLIAMS: Thank you very much,

21 Ms. Calonge. You are excused.

22 Any additional witnesses or evidence?

23 MR. FOUKAS: No, Enforcement rests.

24 MR. WILLIAMS: Respondents?

25 MR. CUCCIA: I had two pieces of evidence that

1 I had.

2 MR. WILLIAMS: Do you want to propose those to  
3 me?

4 MR. CUCCIA: Sure.

5 MR. WILLIAMS: These are not marked. Okay.  
6 So the first document -- and you shared these with  
7 Enforcement already?

8 MR. CUCCIA: Yes.

9 MR. WILLIAMS: I will mark this as  
10 Respondents' 12.

11 MR. FOUKAS: And which one is that, just to be  
12 clear?

13 MR. WILLIAMS: Respondents' 12 is a November  
14 15th, 2017 email from Gary to Robert Lefkowitz.

15 And are you offering this for admission?

16 MR. CUCCIA: Yes.

17 MR. WILLIAMS: Is there any objection?

18 MR. FOUKAS: No.

19 MR. WILLIAMS: RX-12 is admitted.

20 (Exhibit Number RX-12 was marked for  
21 identification.)

22 MR. WILLIAMS: And the other exhibit I will  
23 mark as RX-13. It appears to be financial  
24 statements for Dakota Securities, projected  
25 financials it looks like.

1 I will mark this as RX-13.

2 Are you offering this for admission?

3 MR. CUCCIA. Yes, I am.

4 MR. WILLIAMS: Is there any objection?

5 MR. FOUKAS: Well, there may not be. I guess  
6 I would just want some kind of proffer, either  
7 testimonial or otherwise, as to what exactly it is  
8 that we are looking at.

9 MR. CUCCIA. I am be happy to explain.

10 MR. WILLIAMS: What is this document.

11 MR. CUCCIA. Basically I just wanted to offer  
12 that in consideration of the fines that are being  
13 proposed.

14 MR. WILLIAMS: So what is this document?

15 MR. CUCCIA: Projection of the net capital and  
16 cash at hand during the quarters during the year.

17 MR. WILLIAMS: Is this a document that you  
18 created?

19 MR. CUCCIA: Yes, it is.

20 MR. WILLIAMS: Is it a document derived from  
21 the financial records of Dakota?

22 MR. CUCCIA: Yes, it is. Well, up through  
23 December it is, then it's based on historical  
24 business records.

25 MR. WILLIAMS: I see.

1 Any objections?

2 MR. FOUKAS: I guess I would have a couple of  
3 questions to ask about that. I don't know if it  
4 is appropriate to put Mr. Cuccia under oath to ask  
5 him about them or not, but it is a couple of  
6 questions.

7 MR. WILLIAMS: Can you ask Mr. Cuccia the  
8 questions without putting him under oath?

9 MR. FOUKAS: Sure.

10 So I guess I see the net capital number on the  
11 first line of the projection, right, and an actual  
12 for October and an actual for December?

13 MR. CUCCIA: Yes.

14 MR. FOUKAS: And so we saw evidence earlier  
15 that in October of 2017 Mr. Zipper took \$35,000  
16 out of the firm. Is that reflected in the net  
17 capital number?

18 MR. CUCCIA: Yes, it is.

19 MR. FOUKAS: So, in other words -- this is the  
20 end of October. I take it October 31st?

21 MR. CUCCIA: Yes, these are all at month-end  
22 numbers, and obviously projected numbers.

23 MR. FOUKAS: So had he not taken the \$35,000  
24 out everything would be up by \$35,000?

25 MR. CUCCIA: That's correct.