POTOMAC CAPITAL MARKETS
LIMITED LIABILITY COMPANY

129 West Patrick Street, Unit 4, Frederick, MD 21701
240-409-3867

January 29, 2021

VIA EMAIL

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
apfilings@sec.gov

RE: In the matter of the Application for Review of Potomac Capital Markets LLC
Administrative Proceeding No. 3-19917

Dear Ms. Countryman:

Enclosed please find an electronic copy of Potomac Capital Markets LLC's Motion for Stay in the above-captioned matter.

Please contact me at (240) 409-3867 if you have any questions.

Sincerely,

Goodloe E. Byron, Jr.

Enc.

Cc: Ashley Martin, Assistant General Counsel, FINRA, Ashley.Martin@finra.org

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Potomac Capital Markets LLC

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-19917

POTOMAC CAPITAL MARKETS, LLC'S MOTION FOR STAY

Goodloe E. Byron, Jr., President
Potomac Capital Markets, LLC
CRD# 39800
129 West Patrick Street, Unit 4
Frederick, MD 21701
(240) 409-3867

January 29, 2021

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I. INTRODUCTION

Potomac Capital Markets, LLC ("Potomac") has been a broker-dealer for 25 years. Due to change in auditor, global pandemic constraints, delays caused by FINRA's 7-month delay in providing an examination report, and unfortunately timed vacations by auditor staff, Potomac filed its 2019 audited annual report late. FINRA initiated an expedited process to suspend and potentially expel Potomac. Potomac communicated with FINRA throughout the process, and asked for extension of time when it became apparent the audit would require time beyond the effective date of expulsion. FINRA did not respond, or provide reasons for denying extension, but rather moved straight to expulsion, without explaining why expulsion could not be cured by filing the audited annual report. Potomac has since completed the examination and audit, despite FINRA's delays. Under the circumstances, Potomac could not request a hearing or seek termination of the suspension. Its only administrative option was a request for extension of time, which it made.

Potomac moves for a stay of its suspension and expulsion, on an immediate basis until this Motion is briefed and heard, then on an interim basis pending resolution of this appeal. If Potomac cannot resume operation as a broker deal in the immediate term, it will suffer irreparable harm in the form of closure of its business, and its customers will suffer irreparable harm as they lose the services of their preferred broker-dealer, potentially in turn leading to their losing access to capital and/or closing their businesses. A stay would advance the public interest, without harm to any party or the public. Potomac has demonstrated substantial likelihood of success on the merits. Potomac exhausted available administrative remedies, and exhaustion is not required where, as here, FINRA abuses its discretion in denying a request for extension of time. FINRA also abused its discretion when, having ignored the extension request, it failed to give Potomac a hearing. The sanction of expulsion should be overturned as excessive and oppressive, and on grounds that FINRA failed to explain why expulsion should not be reversed once Potomac filed its audited annual report. Potomac engaged fully with the administrative process, filed its audited financial statements despite 7 months of delay from FINRA in providing an examination report, and engaged in no other violation, while FINRA abused its discretion, imposed an excessive sanction,

and failed to explain itself. All these grounds for success on the merits would stand in ordinary times, but are more forceful under global pandemic conditions, as the Commission itself has recognized in its procedural orders and in its handling of this case.

II. FACTUAL BACKGROUND

Much of the relevant factual background is described in Potomac's Opposition to FINRA's Motion to Dismiss, which Opposition is incorporated herein by reference. The Affidavit of Goodloe E. Byron, Jr. (attached as Exhibit A and incorporated herein by reference) verifies that factual background. Byron Aff. ¶¶17–31.

A. Potomac's Business and History

Goodloe E. Byron, Jr. ("Byron") founded Potomac in 1995, and it was continuously registered with the Commission as a broker-dealer from 1998 until its 2020 expulsion. Byron Aff. ¶4. Potomac is a minimum net capital broker-dealer that engages in private placement of securities. *Id.* ¶5. As a minimum net capital broker-dealer, it does not hold customer securities or cash balances. *Id.* It does not provide clearing services for other broker-dealers, nor does it refer or introduce customers to other broker-dealers. *Id.* Potomac has a number of customers who rely on its unique combination of private placement and clean technology expertise and strong relationships with Taft-Hartley funds and other super accredited institutional investors to place their securities. *Id.* ¶6. Contracts with those customers call for a mix of merger and acquisition advisory, placement and related consulting services. *Id.*

B. Potomac's 2019 Audited Annual Report

As of January 2020, Potomac's FINRA Coordinator was replaced with a new Risk Monitoring Analyst, (RMA). This change in personnel meant the RMA had limited familiarity with Potomac, and may be part of why FINRA was 7 months late providing an Exam Report to Potomac. The examination concluded in September 2019, with the report due in November 2019.

In preparation for filing the December 2019 Annual Audit Report, Potomac underwent a change in accounting firms in February of 2020. Potomac was able to engage with the accounting

firm in March 2020, just prior to a State-ordered shutdown due to the current pandemic. Following the initial shutdown, Potomac had to relocate to a new facility in March 2020. The Firm's Annual Filing of its completed audit was due to be filed on or before March 2, 2020. Accordingly, and based on the foregoing, the Firm spoke with its RMA to request an extension for filing. Simultaneously, the Firm worked with its Auditor to complete the above-referenced filing.

On April 2, 2020, FINRA sent Potomac a notice under FINRA Rule 9552(a) (the "Pre-Suspension Notice") advising it that Potomac would be suspended, effective April 27, 2020, for failure to file its 2019 audited annual report. (R. at 34-36). The Pre-Suspension Notice stated that Potomac could avoid imposition of the suspension if it filed the audit report before the suspension date. (R. at 35). The notice further explained that Potomac could request a hearing before the suspension date to contest the imposition of the suspension, and that such a request would stay the effectiveness of the suspension. (R. at 35); FINRA Rules 9552(d)-(e). The Pre-Suspension Notice also advised Potomac that—if it was suspended—it could seek termination of the suspension based on full compliance with the notice (i.e., by filing the 2019 audited annual report), but that failure to request termination of the suspension within three months of the issuance of the Pre-Suspension Notice would result in an expulsion of the Firm. (R. at 35.); see also FINRA Rule 9552(h).

During the course of completing the above-referenced filing, Potomac's auditor discovered that FINRA had failed to issue the Firm's Exam Report, Examination Number: 20190639753, to the firm via the CRD Firm Gateway. That report had been due in November 2019. As such, the Auditor was unable to continue the audit. FINRA issued the Exam Report, dated June 22, 2020, providing a 30-day response period – in other words Potomac's response deadline was 20 days after the due date for its Annual Audit Report.

FINRA's examination alleged: that Potomac's books and records were inaccurate with respect to accrual of expenses and computation of Net Capital; that Potomac had failed to comply with various securities laws; that Potomac had failed to file required monthly and quarterly reports; that Potomac had failed to comply with FINRA fidelity bond requirements; and that Potomac had failed to file notice that net capital was below minimum required amounts. (R. at 37). All of these

allegations would ultimately result in cautionary action or no further action, a substantial retreat from the initial report.

Potomac on multiple occasions requested that its suspension be terminated. This was memorialized in an email exchange between Cathy Cucharale, of consultant Cucharale Consulting Group, who was assisting Potomac with compliance matters, and RMA Shahzad Sultan. A June 9 email from Cucharale to Sultan states:

> Can you please advise if we should file the official request for termination of suspension letter at this time or should we wait until we file the audit? I know that Geb has submitted an email request already to the accounts receivable department. Please let me know how best to proceed.

Sultan's June 10 reply stated "The firm can only file for the lifting of the suspension only after the firm corrects the reason for suspension. I believe that would be the submission of the audit and payment of the fee associated with the late audit." As Cucharale indicated in her reply later that evening, Potomac had already paid the fees, and would submit the letter seeking termination of the suspension when the audit was submitted.

Following the issuance of the Exam Report, the Auditor resumed the Audit. On July 2, 2020, the Auditor indicated to Potomac that the Audit would not be completed within the allotted 90 day period prior to automatic expulsion on July 2, 2020, in part because a key staff person had gone on vacation. As a result of this information, the Firm contacted FINRA via letter on July 2, 2020, explaining the circumstances and asking for an extension of time. On July 6, 2020 the Firm received a letter from FINRA notifying the Firm of their expulsion from FINRA membership.

Without responding in any way to Potomac's request for an extension of time, much less offering any reason for denying it, FINRA issued a letter on July 6, 2020, expelling Potomac from membership. (R at 49). The letter did not indicate that any administrative remedy remained available to Potomac at the FINRA level; the only mechanism it described for challenging the decision was an appeal to the Commission. *Id*. Potomac had additional communications with FINRA's Office of the Ombudsman and FINRA's counsel regarding options for reversing Potomac's expulsion, and was told in each instance that no administrative options remained, apart

from appeal to the Commission.

On July 15, 2020, the Firm responded to FINRA's Exam Report, and cced the Auditor. Upon receipt of the Firm's response to FINRA, it was indicated by the auditor that the audit would not resume until a response was received from FINRA regarding the Exam Report Response submitted by the Firm on July 15, 2020. Based on this determination, the Firm contacted the Ombudsman Department of FINRA requesting an update with regard to a response from FINRA. FINRA's response did not arrive until August 7, 2020. That response indicated cautionary action on the first three items in the examination report, and no further action on the fourth. On August 27, 2020, the auditor contacted AnnMarie McGarrigle at FINRA to confirm the authenticity of FINRA's sur-reply, because he was surprised at how far it had retreated from the initial examination report. This further reinforces the importance of the examination to the audit process.

Having finally received FINRA's examination correspondence, months late, the auditor completed the audited annual report on November 13, 2020, and Potomac submitted it to FINRA on November 17, 2020. Potomac has remained engaged with its auditor, who has been reviewing 2020 information. in service of limiting the time needed to catch up on filings upon reinstatement.

C. Irreparable Harm

Potomac has managed to remain in business during this appeal, but has reached a point where it will have to close if it is not able to act as a broker-dealer in the immediate term, pending final determination of its appeal. Byron Aff. ¶7. The broker-dealer business is Potomac's sole source of income, and Potomac cannot continue accruing expenses without income. *Id.* If Potomac has to close, due to its inability to act as a broker-dealer in the immediate term, then it will lose any benefit of its appeal, should the appeal ultimately succeed. *Id.* ¶8. A new membership application with FINRA is not a viable alternative, given the time involved and the expense of the process. *Id.* ¶9. Potomac has already incurred substantial expense in preparing its 2020 audited financial report, so that it can promptly return to compliance upon reinstatement. *Id.* ¶10. If Potomac does not close down in the immediate term, it will have to incur numerous additional expenses to preserve its ability to be in compliance upon reinstatement. *Id.*

If Potomac is not able to return to operation as a broker-dealer in the immediate term, its customers will not be able to place securities through their preferred broker-dealer – a company with unique expertise in clean technology and uniquely strong relationships with the experienced "super accredited" institutional investors who are among these customers' best investment prospects. Byron Aff. ¶11. Losing Potomac as their broker-dealer threatens these customers with the heightened prospect of failing to obtain capital altogether. *Id.* ¶12. Potomac's inability to operate as a broker-dealer in the immediate term thus threatens the prospect that one or more of its customers may have to cease operation as well, with resulting termination of their employees and cessation of the services that the companies provide. *Id.*

While the closure of any customer's business is an irreparable harm, the businesses Potomac serves are bringing uniquely vital products and services to the world, in areas ranging from the transition to electric vehicles and infrastructure to information/medical technologies that could optimize COVID-19 vaccine distribution. Byron Aff. ¶13. The closure of these businesses would be uniquely inconsistent with the public interest. *Id.*

If Potomac is able to return to operation via a stay pending appeal, Potomac will continue serving customers diligently and in accordance with the highest industry standards. Byron Aff. ¶14. In 23 years of operation, Potomac has not had a single customer complaint. *Id.* Just as FINRA found nothing of concern in Potomac's audited 2019 annual report, Byron does not anticipate that it will find anything of concern in Potomac's audited 2020 annual report. *Id.* ¶15. A stay of Potomac's suspension and expulsion will thus prevent irreparable harm to Potomac and its customers, and serve the public interest. *Id.* ¶16.

III. LEGAL ARGUMENT

The Commission has indicated that, in this time of global pandemic, the Commission and any self-regulating organizations conducting proceedings under its jurisdiction should exhibit greater procedural flexibility and leniency than in ordinary times. The Commission's policy makes sense – the COVID-19 pandemic has infected 25.6 million Americans and 101 million worldwide, and caused 429,000 deaths in the U.S. and 2.2 million deaths worldwide. On March 18, 2020, the

Commission issued an order providing that reasonable requests for extension of time will not be disfavored, notwithstanding Rule of Practice 161. Pending Administrative Proceedings, Exchange Act Release No. 88415, 2020 WL 1322001, at *1 (Mar. 18, 2020) (relaxing the strictures of Rule of Practice 154(b), 17 C.F.R. §201.154(b)).

The Commission has evidenced this flexibility and leniency in this case. On November 19, 2020, over a month after any response to FINRA's Motion was due, Potomac sent a letter to the Secretary that stated it had not received "a schedule on how to move forward with [its] application." The letter did not mention FINRA's Motion. The Commission nonetheless treated Potomac's letter as a motion for extension of time to file an opposition, and granted that motion.

This matter is before the Commission because Potomac made a request to FINRA for extension of time, before the deadline for response, and explained the reasons why more time was needed, but FINRA simply proceeded with expulsion. FINRA not only failed to grant the request – it did not even respond, much less offer reasons for denying or ignoring the request. The contrast with the Commission's handling of procedural matters is stark. The Commission generously interpreted Potomac's letter to ask for relief that it did not request, then granted the relief, even though the deadline had long since passed.

Similarly, while a stay would be appropriate under any circumstances, the current pandemic and the crisis of unemployment and business failures it has created make an interim stay even more appropriate.

A. Legal Standard

A party appealing an SRO's action may request a stay of that action, pursuant to Rule of Practice 401. 17 C.F.R. § 201.401; *see* 15 U.S.C. §78s(d)(2). A stay pending appeal is an "extraordinary remedy." *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 432-434 (2009)). The burden is on the movant to establish the stay is warranted. *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *6 (Nov. 27, 2017). The Commission considers whether: (i) there is a strong likelihood that the moving party will eventually succeed on the merits of the appeal; (ii) the moving

party will suffer irreparable harm without a stay; (iii) another party will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest. *Id.* "The appropriateness of a stay turns on a weighing of the strengths of these four factors; not all four factors must favor a stay for a stay to be granted." *Bloomberg*, 2018 WL 3640780, at *7. "The first two factors are the most critical, but a stay decision rests on the balancing of all four factors." *Id.*

Under this approach, in order to obtain a stay a movant need not necessarily establish that it is likely to succeed on the merits of its appeal but must at least show "that the other factors weigh heavily in its favor" and that it has "raised a serious legal question on the merits." *Zipper*, 2017 WL 5712555, at *6 (quoting *Sherley v. Sebelius*, 644 F.3d 388, 392-393 (D.C. Cir. 2011)); *see also Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843–44 (D.C. Cir. 1977) (stating that the "necessary 'level' or 'degree' of possibility of success will vary according to the court's assessment of the other factors" and that a "court, when confronted with a case in which the other three factors strongly favor interim relief may exercise its discretion to grant a stay if the movant has made a substantial case on the merits"). "In other words, even if a movant demonstrates irreparable harm that decidedly outweighs any potential harm to the [stay opponent] if a stay is granted, [it] is still required to show, at a minimum, serious questions going to the merits." *Zipper*, 2017 WL 5712555, at *6 (quoting *In re Revel AC, Inc.*, 802 F.3d 558, 570 (3d Cir. 2015). "Because the moving party must not only show that there are 'serious questions' going to the merits, but must additionally establish that the 'balance of the hardships tips *decidedly*' in its favor, its overall burden is no lighter than the one it bears under the 'likelihood of success' standard." *Id.* (quoting *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (emphasis in original)).

The Commission has awarded stays in cases where the movant "has at least raised serious legal questions" and "the balance of hardships tips decidedly in favor of a stay. See, e.g., *Scottsdale Capital Advisors Corp.*, Exchange Act Release No. 83783, 2018 WL 3738189, at *2 (Aug. 6, 2018) (citing *Scattered Corp.*, 52 S.E.C. 1314, 1997 SEC LEXIS 2748, at *11-12 (Apr. 28, 1997), which granted a stay where it was "unclear . . . due to the complexity" of the case whether

applicants had "a strong likelihood" of success, because the applicants had "shown this to be a substantial case on the merits and . . . the other three factors" supported a stay). "For example, a stay may be granted where there is a high probability of irreparable harm, but a lower probability of success on the merits, or vice versa."

The Commission has also granted stays where "requiring applicants to comply with the sanctions during the pendency of the appeal would put them in jeopardy of losing the benefit of a successful appeal." *Michael Earl McCune*, Exchange Act Release No. 77921, 2016 WL 2997935, at *1 (May 25, 2016) (citing *Elec. Transaction Clearing, Inc*., Exchange Act Release No. 73698, 2014 WL 6680112, at *1 (Nov. 26, 2014)). Such cases have generally involved short-term sanctions. *See id*.; *see also Anthony A. Adonnino and Thomas Cannizzaro*, Admin. Proc. File No. 3-10916 (Nov. 14, 2003).

B. Likelihood of Success

Potomac has presented its arguments as to why it is likely to succeed in its Opposition To FINRA's Motion To Dismiss, which Opposition is incorporated herein by reference.

1. Potomac has shown a likelihood of success on the merits because it filed its 2019 audited annual report

Potomac understands the importance of filing audited annual reports, and has filed them annually since becoming a FINRA member, though the 2018 and 2019 reports were filed late.

At the same time, the authorities FINRA cites regarding the substantive importance of filing audited annual reports illustrate that the sanction of expulsion is excessive and oppressive (*see* 15 U.S.C. §78s(e)(2)), and FINRA's refusal to grant an extension constituted an abuse of discretion. In *In re TMR Bayhead Securities*, the appealing FINRA member was suspended and fined, *not expelled*, for failing to file *three years* of audited financial statements, rather than filing *one* statement late. Exchange Act Release No. 88006, 2020 SEC LEXIS 2833, at *1 (Jan. 17, 2020), The Commission upheld the suspension, but reversed the imposition of a $3,000 fine. *Id.* at *6–*7, *9. The appellant would be able to lift its suspension once it filed the audited financial statements. *Id.* at *9 (citing *In re Sharemaster*, Exchange Act Release No. 83138, 2018 WL

2017542, at *8 (Apr. 30, 2018), where FINRA removed a suspension after the appellant filed audited financial statements). Likewise, the appellant in *In re Gremo Investments, Inc.* was suspended for filing a financial statement audited by an accounting firm that was not registered with the Public Company Accounting Oversight Board, but would be able to terminate the suspension upon filing a properly audited statement. Exchange Act Release No. 64481, 2011 SEC LEXIS 1695, at *7 (May 12, 2011).

Thus, in non-pandemic times, FINRA and the Commission deemed suspension until audited financial reports are filed to be the appropriate sanction, even when failure to file has occurred over three years. Here, Potomac was months late, not years, under circumstances where FINRA itself was months late in providing an examination report that Potomac's auditor deemed essential to completion of the audit.

2. Potomac has shown a likelihood of success on the merits and a substantial legal question with respect to whether Potomac exhausted administrative remedies

Invariably, the cases FINRA cites to support its assertion that Potomac's expulsion should stand due to failure to exhaust administrative remedies involve investigations into wrongdoing, where appellants failed to provide information that was entirely within their control to provide, and their nonresponsiveness was extreme in comparison to this case. Most of these cases involved affirmative misconduct by the appellant. *See Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 SEC LEXIS 1875, at *1–5 (July 25, 2018) (investigation of representative fired for annuity applications with inaccurate information and falsified signatures, where representative made no response to information requests or suspension notice); *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 SEC LEXIS 970, at *2–5 (Mar. 24, 2017) (investigation of firm's termination of applicant, who made no response to information requests or suspension notice); *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233 (June 22, 2016) (investigation of registered representative who had resigned for making premium payments for clients from a personal account, where representative provided no response to information requests or suspension

notice); *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at *1–4 (Sept. 19, 2014) (investigation of customer complaint, petitioner made no response to information requests or suspension notices); *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at *2–6 (Apr. 10, 2014) (in FINRA investigation of customer complaint, petitioner failed to appear for testimony, repeatedly refused to respond to information requests, took no action to oppose suspension); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563 (May 6, 2010) (FINRA investigation of potential criminal background of applicant, who made no response to information requests or suspension notice).

In short, the cases FINRA cites involve individuals who did not engage with the administrative process in any way whatsoever, and who failed or refused to provide information within their control, even though the process involved investigations of potential securities law violations. By contrast, Potomac was not under investigation. After FINRA issued its first overdue notice, Potomac communicated with FINRA on multiple occasions about completing the audit. Potomac directly requested an extension, and FINRA never responded, much less explained why it wasn't granted. While Potomac is ultimately responsible for timely submitting an audit, the timing of the audit's arrival was not in Potomac's control. This is all the more true, because FINRA was 7 months delinquent in providing an examination report that the auditor deemed crucial.

Once Potomac realized its auditor was not going to meet the deadline, it had no realistic options, other than asking for an extension. Potomac could hardly have terminated its auditor at that point. Such terminations are discouraged for obvious reasons, but even if they weren't, an audit commenced from scratch at that point would have taken significant additional time.

Exhaustion does not require a litigant to use every conceivable procedural opportunity under an administrative scheme; it requires the litigant to engage with the administrative process and to use remedies that are available under the circumstances. After April 27, 2020, FINRA Rules did not permit Potomac to seek a hearing regarding its suspension. Potomac would not find out about FINRA's gross delinquency on the examination report or its auditor's challenges in completing the audit until long after that deadline. Under FINRA Rule 9552(e), Potomac was

required to request a hearing before the suspension date, and to list all defenses, but the major defenses were not knowable until after that deadline. Similarly, under FINRA Rule 9552(f), Potomac could only request termination of suspension on grounds of full compliance with the notice. Potomac had no avenue to claim full compliance – it could not compel its auditor to produce the audit by the deadline in question. In its expulsion notice, FINRA itself confirmed that no administrative remedies remained to Potomac, other than appeal to the Commission.

In short, Potomac fully engaged with the administrative process, and utilized every administrative remedy that was realistically available to it.

To the extent the Commission decides Potomac failed to exhaust administrative remedies, the Commission should apply the futility exception to the exhaustion requirement. *See McCarthy v. Madigan*, 503 U.S. 140, 148-149 (1992) (recognizing futility exception); *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 105-106 (D.C. Cir. 1986) (noting that the futility exception is appropriate in cases where the agency "has indicated that it does not have jurisdiction" or "has evidenced a strong stand on the issue in question and an unwillingness to reconsider the issue"). FINRA Rules did not give FINRA jurisdiction to grant a hearing after April 27, 2020, or to terminate the suspension without Potomac's provision of the audit before a deadline, as a FINRA representative indicated to Potomac's represenative. Invoking either remedy thus would have been futile for Potomac.

The chief case FINRA cites on non-exhaustion is *In re Li-Lin Hsu*, but the case is inapposite. *See* Exchange Act Release No. 78899, 2016 SEC LEXIS 3585 (Sept. 21, 2016). In that case, a broker-dealer was *under investigation* after being suspended and terminated from Ameriprise Financial Services, Inc. ("Ameriprise"). *Id.* at *1. She was temporarily suspended for failing to respond to two document requests, with the suspension lifted when she belatedly produced them, then suspended again for further failure to comply with document requests, with notification that she would be barred if she did not comply or seek termination of the suspension by June 1, 2016. *See id.* at *2. On that date, she requested an extension, asserting she had been out of the country being treated for injuries from an August 3, 2015 car accident and that her attorney had advised

her not to respond to FINRA's requests without his supervision. *Id.* at *2–*3. However, the Commission found that Hsu had not established that she could not comply with FINRA's document requests – she neither substantiated her alleged injuries nor established that those injuries prevented her from responding to document requests, and it appeared that her failure to provide document request responses that were within her control resulted from her attorney's advice to be cautious about the impact document request responses could have on Ameriprise's litigation against her.

In short, Ms. Hsu could have prevented suspension by complying with the document requests, and she elected not to do so. Here, however, Potomac did not have control over when its auditor completed the audit. Provision of an audited financial statement was not possible, when Potomac's auditor had not completed the audit. Potomac's agency was all the more limited, because FINRA itself had delayed for 7 months in providing an examination report that the auditor deemed critical for the audit.

FINRA asserts that the report was "irrelevant," but that is a judgment for the auditor to make, and FINRA cannot substitute its judgment for the auditor's reasonable professional judgment. The auditor's judgment here is more than reasonable, as the results of the examination, and Potomac's response to the objections, were objectively important to the audit. A FINRA examination could identify material risks or inaccuracies that an auditor would deem essential, particularly in the highly regulated broker-dealer world. FINRA's examination alleged: that Potomac's books and records were inaccurate with respect to accrual of expenses and computation of Net Capital; that Potomac had failed to comply with various securities laws; that Potomac had failed to file required monthly and quarterly reports; that Potomac had failed to comply with FINRA fidelity bond requirements; and that Potomac had failed to file notice that net capital was below minimum required amounts. All of these issues are material to evaluating the financial health and potential liabilities of the company under audit. The auditor deemed them sufficiently important that he called FINRA to confirm the authenticity of FINRA's sur-reply, in light of his astonishment at how thoroughly FINRA's sur-reply retreated from its initial exam findings.

3. Potomac has shown a likelihood of success on the merits and a substantial legal question with respect to whether FINRA abused its discretion in denying an extension

"Dismissal for failure to exhaust administrative remedies may not be appropriate if an applicant can establish that FINRA abused its discretion in denying a request for an extension of time." *Li-Lin Hsu*, 2016 SEC LEXIS 3585, at *9. As discussed above, failure to deny Potomac's request for extension of time was an abuse of discretion. In ordinary times, the records in the cases FINRA cites show that multiple extensions of time were routinely granted, even though those cases involved investigation of potential securities laws violations, rather than delayed filings. The Commission has expressly ordered that pandemic conditions make the standard for granting extensions of time more generous than in the past, yet FINRA is being less generous with Potomac than in past proceedings, even though FINRA bears partial responsibility for Potomac's delay.

FINRA's own policy, set in non-pandemic times, allows for requests for extension of time on audits with as little as three days' notice. FINRA, *Annual Audit Extension of Time Request Policy*, https://finra.org/filing-reporting/annual-audit/extension-time-request-policy. The Commission has mandated greater flexibility and generosity with time extension requests during the pandemic, and FINRA abused its discretion in failing to exhibit either here.

4. Potomac has shown a likelihood of success on the merits and a substantial legal question with respect to whether FINRA abused its discretion in failing to hold a hearing

To the extent that FINRA asserts that, in complete contravention of FINRA rules, it was possible for Potomac to seek a hearing on expulsion after April 27, 2020, then FINRA should have either granted Potomac's request for extension of time or offered Potomac an opportunity for hearing. The Commission has exhibited the proper approach to procedural matters in this pandemic year. Just as the Commission treated Potomac's letter to the Commission as a request for extension of time to file, FINRA should have treated Potomac's request for extension of time as a request for hearing, at least insofar as FINRA intended to deny the extension request. FINRA was aware of Potomac's reasons for delay. It could have asked Potomac to formally request a hearing. It was

an abuse of discretion for FINRA to fail to conduct itself in the manner that the Commission has mandated by order and demonstrated in this case. FINRA's actions would constitute abuse of discretion under ordinary circumstances, but all the more so in a year of global pandemic, when the Commission has prescribed a regime with greater procedural flexibility and leniency.

5. Potomac has shown a likelihood of success on the merits and a substantial legal question with respect to whether FINRA's sanctions were excessive and oppressive

Pursuant to Exchange Act Section 19(e)(2), if the Commission finds, "having due regard for the public interest and the protection of investors," that a FINRA sanction "is excessive or oppressive," it "may cancel, reduce or require the remission of such sanction." *TMR Bayhead,* 2020 SEC LEXIS 2833, at *8 (quoting Section 19(e)(2)); *see Gremo Investments*, 2011 SEC LEXIS 1695, at *4. The sanction imposed in both *Gremo* and *TMR Bayhead* was suspension until audited statements were filed, *not* expulsion regardless of whether such statements were filed. In *TMR Bayhead*, the Commission held that adding a fine to said suspension was "excessive and oppressive." Potomac was a number of months late with a single audited annual report, but TMR Bayhead was *three years behind* in filing audited annual reports. Even though TMR Bayhead's conduct was far more objectionable than Potomac's, the Commission found the combination of suspension and a modest fine in that case to be "excessive and oppressive." That sanction was less severe than Potomac's expulsion, and Potomac's expulsion is therefore excessive and oppressive.

It is worth noting that suspension without expulsion is a typical sanction in cases involving more serious violations than in this case. In *In re Stephen J. Horning*, the respondent caused a broker-dealer's violation of Exchange Act Section 17(e) and Rule 17a-5(d) by filing an annual report that contained falsified financial statements, under circumstances that led to illegal taking of $4.5 million in customer funds, yet the respondent was suspended for a year, rather than having his license terminated. Securities Exchange Act Rel. No. 56886 (Dec. 3, 2007), 92 SEC Docket 207, 223–24.

While the sanction would be excessive and oppressive in ordinary times, it is more so in a

year of pandemic, when the Commission has prescribed greater procedural flexibility and leniency.

6. Potomac has shown a likelihood of success on the merits and a substantial legal question with respect to whether FINRA explained why the sanctions should not be reversed.

In *In re Brendan D. Feitelberg*, FINRA suspended and barred an individual for failing to respond to requests for information, and indicated, without explanation, that it would not consider removing the bar even if the individual later provided the information. Exchange Act Release 89365, 2020 SEC LEXIS 2746, at *12-13 (July 21, 2020). The Commission remanded to FINRA, even though Feitelberg had neither replied to the information requests nor responded to the suspension and bar notices. *Id.* Feitelberg provided the responses over five months after the suspension and bar went into effect. *Id.* at *4. The Commission remanded in part because FINRA had provided no explanation for why a bar was appropriate, given Feitelberg's special circumstances. Feitelberg's circumstances included illness and potential non-receipt of one or more relevant communications from FINRA. *Id.* In this case, Potomac likewise faced circumstances beyond its control, such as an auditor's delay, FINRA's delay, and a global pandemic. FINRA was aware of Potomac's circumstances, and of its own delay in providing the examination report, yet it provided no explanation whatsoever of why Potomac's request for extension was denied, or why removal of the expulsion would not be appropriate once the audit was submitted. FINRA refused to grant Potomac even one extension, but Feitelberg had received two extensions, *one of which was requested the day before documents were due*. *Id.*

At a minimum, then, remand is appropriate, because "[a]bsent this explanation, [the Commission is] unable to determine whether [Potomac] failed to exhaust [its] administrative remedies or otherwise opine on the merits of [Potomac's] appeal." *Destina M. Mantar*, Exchange Act Release No. 79851, 2017 WL 221653 (Jan. 19, 2017). FINRA's failure to explain its decision would be grounds for reversal or remand in ordinary times, but all the more so in a year of global pandemic, when the Commission has prescribed greater procedural flexibility and leniency.

C. Irreparable Harm

To demonstrate irreparable harm, "[a] movant must show an injury that is both certain and great and actual and not theoretical and must show that the alleged harm will directly result form the action which the movant seeks to [stay]." *Scottsdale Capital Advisors*, 2018 WL 3738189, at *2 (quoting *Zipper*, 2017 WL 5712555, at *4) (internal quotation marks omitted). The Commission has held that "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay." *Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004).

"Nonetheless, the Commission has also held that 'the destruction of a business, absent a stay, is more than just "mere" economic injury, and rises to the level of irreparable injury.'" *Scottsdale Capital Advisors*, 2018 WL 3738189, at *2 (quoting *Scattered Corp*., 1997 SEC LEXIS 2748, at *15); *accord Atlantis Internet Grp. Corp*., Exchange Act Release No. 70620, 2013 WL 5519826, at *5 n.14 (Oct. 7, 2013); *see also Wash. Metro. Area Transit Comm'n*, 559 F.2d at 843 (D.C. Cir. 1977) (stating that the destruction of a business constituted "irreparable injury" for purposes of stay of permanent injunction); s*ee generally Tom Doherty Assocs., Inc. v. Saban Entm't, Inc.*, 60 F.3d 27, 37 (2d Cir. 1995) (finding "irreparable harm where a party is threatened with the loss of a business" because "the right to continue a business 'is not measurable entirely in monetary terms'"); *Atwood Turnkey Drilling, Inc. v. Petroleo Brasilerio, S.A.*, 875 F.2d 1174, 1179 (5th Cir. 1989) (finding irreparable harm where the absence of a stay would "threaten the existence of the movant's business") (collecting cases); *Tri-State Generation and Transmission Ass'n Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 356 (10th Cir. 1986) (stating that a "threat to trade or business viability may constitute irreparable harm") (collecting cases).

If Potomac is not able to resume operation as a broker-dealer pursuant to a stay, its business will be destroyed. While Potomac has remained in existence to pursue this appeal, it will have to close down absent a stay. It has entered a new year, where it will incur costs for

audit and other professional activities that it cannot afford without access to revenues. Potomac's owners cannot afford to capitalize a company that may never again operate.

The Commission has also given consideration to whether clients or customers will suffer harm absent granting a stay, both in irreparable harm analysis and public interest analysis. *See Scottsdale Capital Advisors*, 2018 WL 3738189, at *2 & n.21 (irreparable harm); *Scattered Corp.*, 1997 SEC LEXIS 2748, at *15 (public interest); *cf. Bloomberg L.P.*, Exchange Act Release No. 47891 (May 20, 2003) (granting interim stay of NYSE action, in part based on injury that a vendor of quotation information argued would befall its business and its customers). Here, Potomac has clients who need access to Potomac's unique combination of clean technology expertise and relationships with institutional investors. Their companies, employees, vendors and customers face injury if Potomac's business is destroyed.

D. Risk of Harm to Others and the Public Interest

In *Scattered Corp.*, a leading case on staying expulsion to prevent destruction of a business, the Commission granted a stay even though CHX had raised "extremely serious allegations, many of which may ultimately be affirmed by our review." *Scattered Corp*., 1997 SEC LEXIS 2748, at *15. Those allegations included market manipulation, dishonesty and misrepresentation. *Id.* Any risk of harm to others suggested by those allegations did not prevent issuance of a stay.

Here, there is no suggestion of wrongdoing by Potomac. While Potomac acknowledges the importance of filing audited annual reports, the delay in filing was due to a number of factors beyond its control, and FINRA has made no allegation of misconduct or that the audit itself reveals any problem with Potomac's operations. Potomac's 2019 audit is filed now, and Potomac's auditor has done much of the work necessary for the 2020 audited annual report. The chief barrier to filing that audit is the absence of a stay in this case, and if a stay is granted in the near term, Potomac will file its audited annual report as soon as practicable. The Commission can certainly condition its

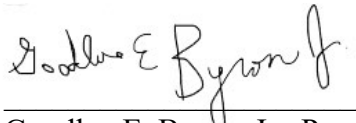
stay on timely submission of financial reports, with a reasonable allowance for the time that will be required to catch up on filings once the stay is put in place. *See* 17 C.F.R. §201.401(b); *Scottsdale Capital Advisors*, 2018 WL 3738189, at *2.

While there is no harm to any party or to the public interest in granting a stay, denying a stay would be against the public interest. In *Scattered Corp*., the Commission found that a stay served the public interest, because expulsion could injure firms for whom Scattered made markets. *Scattered Corp*., 1997 SEC LEXIS 2748, at *15. The Commission held as much even though CSX argued that Scattered had not engaged in market making transactions for some time. *Id.* Here, Potomac has clients who need access to Potomac's unique combination of clean technology expertise and relationships with super accredited institutional investors. Their companies, employees, vendors and customers face injury if Potomac's business is destroyed.

IV. CONCLUSION

Potomac has demonstrated likelihood of success on the merits and raised substantial legal questions thereon. There is a substantial likelihood of irreparable harm to Potomac and its customers absent a stay, which harm decidedly outweighs the nonexistent harm to FINRA. A stay also serves the public interest. Potomac's Motion should therefore be granted on an immediate basis pending briefing and decision on the Motion, and then on an interim basis pending resolution of this appeal.

Respectfully submitted,



Goodloe E. Byron, Jr., President
Potomac Capital Markets, LLC
CRD# 39800
129 West Patrick Street, Unit 4
Frederick, MD 21701
(240) 409-3867

January 29, 2021

CERTIFICATE OF SERVICE

I, Goodloe Byron, certify that on this 29th day of January, 2021, I caused a copy of Potomac Capital Markets, LLC's Motion for Stay, in the matter of *Application for Review of Potomac Capital Markets LLC*, Administrative Proceeding No. 3-19917, to be served by email on:

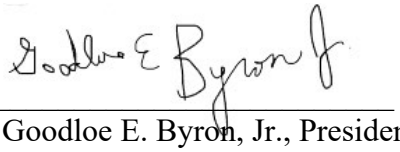
Vanessa Countryman, Secretary
Securities and Exchange Commission
apfilings@sec.gov

and by email on

Ashley Martin
Assistant General Counsel
FINRA
Ashley.Martin@finra.org

Service was made pursuant to the Commission's order in *Matter of Pending Administrative Proceedings*, Exchange Release No. 88415, 2020 SEC LEXIS 760 (March 18, 2020).

Respectfully submitted,



Goodloe E. Byron, Jr., President
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EXHIBIT A

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-19917

In the Matter of the Application of POTOMAC CAPITAL MARKETS, LLC For Review of Action Taken by FINRA	**AFFIDAVIT OF GOODLOE E. BYRON, JR. IN SUPPORT OF MOTION FOR STAY**

STATE OF MARYLAND)
) ss.
COUNTY OF FREDERICK)

Goodloe E. Byron, Jr., being duly sworn, states as follows under penalty of perjury:

1. I am an individual residing in Frederick, Maryland.

2. I am the President and Chief Compliance Officer of Potomac Capital Markets, LLC ("PCM").

3. I submit this Affidavit, in my individual capacity and in my capacity as President and Chief Compliance Officer of PCM, in support of PCM's Motion for Interim Stay.

4. I founded PCM in 1995, and it was continuously registered with the Commission as a broker dealer from 1998 until the 2020 expulsion that is the subject of this appeal.

5. PCM is a minimum net capital broker dealer that engages in private placements of securities, and at times acts as a "finder" and receives "transaction-based" compensation. It does not effect transactions in commodities, commodity futures or commodity options, nor does it engage in other non-securities business. As a minimum net capital broker dealer, it does not hold

customer securities or cash balances. It does not provide clearing services for other broker-dealers, nor does it refer or introduce customers to other brokers and dealers.

6. PCM has a number of customers who rely on its unique combination of private placement and clean technology expertise and strong relationships with Taft-Hartley funds and other super accredited institutional investors to place their securities. Contracts with those customers call for a mix of merger and acquisition advisory, placement and other related consulting services.

7. PCM has managed to remain in business during this appeal, but has reached a point where it will have to close if it is not able to act as a broker dealer in the immediate term, pending final determination of its appeal. The broker dealer business is PCM's sole source of income, and PCM cannot continue accruing expenses without income.

8. If PCM has to close, due to its inability to act as a broker dealer in the immediate term, then it will lose any benefit of its appeal, should the appeal ultimately succeed.

9. A new membership application with FINRA is not a viable alternative, given the time involved and the expense of the process.

10. PCM has already incurred substantial expense in preparing its 2020 audited financial report, so that it can promptly return to compliance upon reinstatement. If PCM does not close down in the immediate term, it will have to incur numerous additional expenses to preserve its ability to be in compliance upon reinstatement.

11. If PCM is not able to return to operation as a broker dealer in the immediate term, its customers will not be able to place securities through their preferred broker dealer – a company with unique expertise in clean technology and uniquely strong relationships with the

experienced “super accredited” institutional investors who are among these customers’ best investment prospects.

12. Losing PCM as their broker dealer threatens these customers with the heightened prospect of failing to obtain capital altogether. PCM’s inability to operate as a broker dealer in the immediate term thus threatens the prospect that one or more of its customers may have to cease operation as well, with resulting termination of their employees and cessation of the services that the companies provide.

13. While the closure of any customer’s business is an irreparable harm, the businesses PCM serves are bringing uniquely vital products and services to the world, in areas ranging from the transition to electric vehicles and infrastructure to information/medical technologies that could optimize COVID-19 vaccine distribution. The closure of these businesses would be uniquely inconsistent with the public interest.

14. If PCM is able to return to operation via a stay pending appeal, PCM will continue serving customers diligently and in accordance with the highest industry standards. In 23 years of operation, PCM has not had a single customer complaint.

15. Just as FINRA found nothing of concern in PCM’s audited 2019 annual report, I do not anticipate that it will find anything of concern in PCM’s audited 2020 annual report.

16. A stay of PCM’s suspension and expulsion will thus prevent irreparable harm to PCM, its employees and its customers, and serve the public interest.

Verification of Factual History in Appeal

17. I hereby verify the factual background in PCM’s Motion for Stay and in PCM’s Opposition to FINRA’s Motion to Dismiss.

18. FINRA cancelled PCM's membership for failure to pay fees at a time that overlapped with Potomac's 2020 suspension. On March 26, 2020, FINRA notified PCM of its intent to cancel the Firm's membership pursuant to FINRA Rule 9553 for its failure to pay Central Registration Depository ("CRD") renewal fees (the "Cancellation Notice"). The notice advised PCM that the cancellation would become effective on April 16, 2020 unless the Firm paid the balance, and further advised Potomac of its right to request a hearing.

19. On May 11, 2020, FINRA notified Potomac in writing that its membership was cancelled due to its failure to pay the fees identified in the Cancellation Notice. In its letter, FINRA also stated that Potomac owed a total of $3,437.50 in other CRD fees and member regulation fees. On June 8, 2020, FINRA sent Potomac a letter confirming that, after a discussion with the Firm and the payment of the outstanding fees, FINRA had reinstated Potomac's membership. FINRA noted, however, that the Firm remained suspended due to a separate matter, which is described below.

20. On June 1, 2020, I sent the following email to accounts receivable at FINRA:

> Potomac Capital Markets is writing to request termination of the cancellation of membership notice received in your letter of May 11, 2020.
>
> Potomac Capital Markets was notified that the firm's membership would be cancelled in accordance with FINRA RULE 9553 for failure to pay the outstanding fees of $3,437.50 of which $1,637.50 were CRD RELATED FEES and $1,800 for MRGEN Fees.
>
> PCM believes there is no violation of Rule 9553 for the $1,800 MRGEN balances as these fees were for the annual assessment and FINRA provided COVID relief of these fees to small member firms making [them] due in September 2020.
>
> As for the CRD fees, the majority of the fees were billed April 28th so were not overdue by 21 days but outstanding for 13 days.
>
> Potomac Capital Markets fully complied with satisfying the entire CRD fee the following day of receipt of May 11th notification.
>
> Potomac Capital additionally paid all of subsequent May billings.

Potomac Capital requests termination of the suspension on the grounds it fully complied by making payment of the amount overdue and has shown good cause in resolving the payment of fees.

21. As of January 2020, PCM's FINRA Coordinator was replaced with a new contact, now known as a Risk Monitoring Analyst, (RMA). This change in personnel meant the RMA had limited familiarity with PCM, and may be part of why FINRA was 7 months late in providing an Exam Report to PCM. The examination had concluded in September 2019, and the report was due in November 2019.

22. In preparation for filing the December 2019 Annual Audit Report, PCM underwent a change in accounting firms in February of 2020. PCM was able to engage with the accounting firm in March 2020, just prior to a State-ordered shut down due to the current pandemic. Following the initial State ordered shutdown, PCM was forced to relocate its offices to a new facility in March 2020. The Firm's Annual Filing of its completed audit was due to be filed on or before March 2, 2020. Accordingly, and based on the foregoing, the Firm spoke with its assigned RMA to request an extension for filing. Simultaneously, the Firm worked with its Auditor to complete the above-referenced filing.

23. On April 2, 2020, FINRA sent PCM a notice under FINRA Rule 9552(a) (the "Pre-Suspension Notice") advising it that PCM would be suspended, effective April 27, 2020, for failure to file its 2019 audited annual report. The Pre-Suspension Notice stated that PCM could avoid imposition of the suspension if it filed the audit report before the suspension date. The notice further explained that PCM could request a hearing before the suspension date to contest the imposition of the suspension, and that such a request would stay the effectiveness of the suspension. The Pre-Suspension Notice also advised PCM that—if it was suspended—it could seek termination of the suspension based on full compliance with the notice (i.e., by filing the 2019 audited annual report), but that failure to request termination of the suspension within

three months of the issuance of the Pre-Suspension Notice would result in an expulsion of the Firm.

24. During the course of completing the above-referenced filing, PCM's auditor discovered that FINRA had failed to issue the Firm's Exam Report, Examination Number: 20190639753, to the firm via the CRD Firm Gateway. That report had been due in November 2019. As such, the Auditor was unable to continue the audit. FINRA issued the Exam Report, dated June 22, 2020, providing a 30-day response period – in other words PCM's response deadline was 20 days after the due date for its Annual Audit Report.

25. FINRA's examination alleged: that PCM's books and records were inaccurate with respect to accrual of expenses and computation of Net Capital; that PCM had failed to comply with various securities laws; that PCM had failed to file required monthly and quarterly reports; that PCM had failed to comply with FINRA fidelity bond requirements; and that PCM had failed to file notice that net capital was below minimum required amounts. All of these allegations would ultimately result in cautionary action or no further action

26. PCM on multiple occasions requested that its suspension be terminated. This was memorialized in an email exchange between Cathy Cucharale of consultant Cucharale Group Consulting, who was assisting PCM with compliance matters, and RMA Shahzad Sultan. A June 9 email from Cucharale to Sultan states:

> Can you please advise if we should file the official request for termination of suspension letter at this time or should we wait until we file the audit? I know that Geb has submitted an email request already to the accounts receivable department. Please let me know how best to proceed.

27. Sultan's June 10 reply stated "The firm can only file for the lifting of the suspension only after the firm corrects the reason for suspension. I believe that would be the submission of the audit and payment of the fee associated with the late audit." As Cucharale

indicated in her reply later that evening, PCM had already paid the fees, and would submit the letter seeking termination of the suspension when the audit was submitted.

28. Following the issuance of the Exam Report, the Auditor resumed the Audit. On July 2, 2020, the Auditor indicated to PCM that the Audit would not be completed within the allotted 90 day period prior to automatic expulsion on July 2, 2020, in part because a key staff person had gone on vacation. As a result of this information, the Firm contacted FINRA via letter on July 2, 2020, explaining the circumstances and asking for an extension of time. On July 6, 2020 the Firm received a letter from FINRA notifying the Firm of their expulsion from FINRA membership.

29. Without responding in any way to PCM's request for an extension of time, much less offering any reason for denying it, FINRA issued a letter on July 6, 2020, expelling PCM from membership. The letter did not indicate that any administrative remedy remained available to PCM at the FINRA level; the only mechanism it described for challenging the decision was an appeal to the Commission. PCM had additional communications with FINRA's Office of the Ombudsman and FINRA's counsel regarding options for reversing PCM's expulsion, and was told in each instance that no administrative options remained, apart from appeal to the Commission.

30. On July 15, 2020, the Firm responded to FINRA's Exam Report, and cc'ed the Auditor. Upon receipt of the Firm's response to FINRA, it was indicated by the auditor that the audit would not resume until a response was received from FINRA regarding the Exam Report Response submitted by the Firm on July 15, 2020. Based on this determination, the Firm contacted the Ombudsman Department of FINRA, requesting an update with regard to a response from FINRA. FINRA's response did not arrive until August 7, 2020. That response

indicated cautionary action on the first three items in the examination report, and no further action on the fourth. On August 27, 2020, the auditor contacted AnnMarie McGarrigal at FINRA to confirm the authenticity of FINRA's sur-reply, because he was surprised at how far it had retreated from the initial examination report. This further reinforces the importance of the examination to the audit process.

31. Having finally received FINRA's examination correspondence, months late, the auditor completed the audited annual report on November 13, 2020, and PCM submitted it to FINRA on November 17, 2020. PCM has remained engaged with its auditor, who has been reviewing 2020 information. in service of limiting the time needed to catch up on filings upon reinstatement.

GOODLOE E. BYRON, JR.

Sworn to before me this
29th day of January, 2021

Elizabeth A. Hummel
NOTARY PUBLIC
My commission expires 5-15-2023