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February 5, 2021

**VIA EMAIL**

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
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Room 10915  
Washington, D.C. 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 FINRA's Brief in Opposition to the Motion for a Stay in the above-captioned matter.

Please contact me at (202) 728-8207 if you have any questions.

Sincerely,

*/s/Ashley Martin*

Ashley Martin

Enclosures

cc: Goodloe E. Byron, Jr. (via Email)  
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**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

In the Matter of the Application of  
vs.

Potomac Capital Markets LLC

For Review of

FINRA Disciplinary Action

File No. 3-19917

**FINRA'S BRIEF IN OPPOSITION TO  
THE MOTION FOR A STAY**

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February 5, 2021

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File No. 3-19917

**FINRA'S BRIEF IN OPPOSITION TO  
THE MOTION FOR A STAY**

**I. INTRODUCTION**

Potomac Capital Markets LLC (“Potomac,” or “the Firm”) seeks to stay its July 6, 2020 expulsion, which was imposed by operation of FINRA Rule 9552’s provisions. FINRA served Potomac with notice of its impending suspension under FINRA Rule 9552 on April 2, 2020, after Potomac failed to file timely its 2019 annual audited report (the firm’s second straight year of failing to timely file an audited annual report and receiving a suspension notice). Although the notice informed Potomac of its ability to request a hearing (and thereby stay or avert suspension), the Firm elected not to request a hearing. As a result, it was suspended on April 27, 2020, by operation of FINRA Rule 9552(d). On several occasions, FINRA notified Potomac that the Firm’s failure to request termination of its suspension on grounds of full compliance would

result in the Firm's expulsion. Potomac did not request termination on grounds of full compliance and, as a result, it was expelled on July 6, 2020.

Potomac filed an application for review of its expulsion with the Commission on July 31, 2020. FINRA moved to dismiss Potomac's application on exhaustion grounds on September 9, 2020 ("Motion to Dismiss").<sup>1</sup> Now, more than six months after its expulsion, Potomac moves the Commission for a stay. The Commission should deny Potomac's long-delayed motion, as the Firm has not shown that extraordinary circumstances warrant such drastic relief. First, Potomac has not demonstrated that it is likely to succeed on the merits of the application for review (or that its application raises a serious legal question). Indeed, Potomac has not even shown that its application is properly before the Commission, as the Commission's precedent is clear that dismissal is proper where, as here, an applicant fails to exhaust FINRA Rule 9552's administrative remedies. For the reasons discussed in FINRA's briefing in support of dismissal, and summarized herein, the Commission should apply that precedent to dismiss Potomac's application, and reject the Firm's meritless arguments that an exception to the exhaustion doctrine somehow applies.

Second, the other factors that the Commission considers in deciding whether to grant a stay weigh in favor of maintaining Potomac's expulsion during this appeal. Potomac's six-month delay in seeking a stay weighs against its assertions of irreparable harm. And, even if Potomac promptly had filed the motion, it has not demonstrated that it or anyone else will suffer irreparable harm without a stay. Potomac also has not shown that the public interest favors a

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<sup>1</sup> The factual background of this matter is recounted in greater detail in FINRA's Motion to Dismiss. Potomac initially did not respond to the motion but, after receiving an extension on December 15, 2020, it filed an opposition ("Opposition"). FINRA timely filed a reply in support of its motion ("Reply").



stay, as the Firm repeatedly has failed to timely meet its reporting obligations, and persists in refusing to take responsibility for this failure. Instead, Potomac blames FINRA, its auditor, and the pandemic for its failure to comply with its obligation to file timely audited reports. In addition, Potomac’s president and chief compliance officer has a significant disciplinary history that further weighs against a finding that the Firm’s reinstatement would serve the public interest.

Potomac has not demonstrated that the drastic remedy of a stay is warranted, and FINRA urges the Commission to deny Potomac’s stay request.<sup>2</sup>

## **II. ARGUMENT**

### **A. The Standard for Considering a Request to Stay**

“[T]he imposition of a stay is an extraordinary and drastic remedy,” and the moving party has the burden of establishing that a stay is appropriate. *William Timpinaro*, Exchange Act Release No. 29927, 1991 SEC LEXIS 2544, at \*6 (Nov. 12, 1991). In balancing the harms that would result from the grant or denial of a stay, the Commission generally considers four factors: (1) a strong likelihood that the movant will prevail on the merits; (2) whether the movant will suffer irreparable harm without a stay; (3) whether there would be substantial harm to other parties if a stay were granted; and (4) whether the issuance of a stay would serve the public interest. *John Montelbano*, Exchange Act Release No. 45107, 2001 SEC LEXIS 2490, at \*12 & n.17 (Nov. 27, 2001) (internal citation omitted). “The first two factors are the most critical, but a stay decision rests on the balancing of all four factors.” *Se. Invs., N.C., Inc.*, Exchange Act

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<sup>2</sup> Potomac requests that the Commission grant a stay “on an immediate basis.” Stay Mtn. at 1 (all citations to “Stay Mtn. at \_\_\_” refer to Potomac’s Motion for a Stay). In light of Potomac’s six-month delay in seeking this relief—as well as its failure to show that any of the relevant factors weigh in favor of a stay—the Firm has failed to show that an immediate stay is warranted.

Release No. 86097, 2019 SEC LEXIS 1370, \*4-5 (Jun. 12, 2019); *see also Bruce Zipper*, Exchange Act Release No. 82158, 2017 SEC LEXIS 3706, at \*19 (Nov. 27, 2017) (stating that the D.C. Circuit has suggested that a movant cannot obtain a stay unless he shows both a likelihood of success and irreparable harm).

The Commission has observed that certain courts utilize a somewhat different standard in considering whether to grant a stay. If a movant does not establish that it is likely to succeed on the merits of its appeal, this alternate standard requires that the movant must at least raise “a serious legal question on the merits” *and* show that the other three factors weigh *heavily* in its favor. *See Zipper*, 2017 SEC LEXIS 3706, at \*19-21. The Commission emphasized that the overall burden on a movant under this standard “is no lighter than the one it bears under the ‘likelihood of success’ standard.” *Zipper*, 2017 SEC LEXIS 3706, at \*21.

For the reasons discussed below, Potomac has not demonstrated that the relevant factors weigh in favor of the extraordinary relief it seeks.

B. Potomac Has Not Shown a Strong Likelihood of Success and Has Not Raised a Serious Legal Question

Potomac has not shown a strong likelihood that it will succeed on the merits of its application. *See Montelbano*, 2001 SEC LEXIS 2490, at \*12 & n.17. Indeed, Potomac has not even raised a “serious legal question on the merits.” *See Zipper*, 2017 SEC LEXIS 3706, at \*19-21. For this reason alone, the Commission should deny Potomac’s stay request. *See Zipper*, 2017 SEC LEXIS 3706, at \*19.

1. Dismissal for Failure to Exhaust is Proper under the Commission's Precedent

As discussed in FINRA's briefs in support of its Motion to Dismiss, Potomac has not shown that its application for review is properly before the Commission because it failed to exhaust the available administrative remedies in FINRA's forum. Mot. to Dism., at 8-10; Reply, at 3-8.<sup>3</sup> The Commission's precedent is clear that an applicant must exhaust the remedies available to it under FINRA Rule 9552 before it may properly challenge its expulsion under that rule before the Commission. *Patrick H. Dowd*, Exchange Release No. 83710, 2018 SEC LEXIS 1875, at \*12-13 (Jul. 25, 2018) (the applicant failed to exhaust his remedies, as he failed to request a hearing or seek termination based on full compliance under FINRA Rule 9552); *David Richard Kerr III*, Exchange Act Release No. 79744, 2017 SEC LEXIS 76, at \*11-12 (Jan. 5, 2017) (same). Here, Potomac did not seek to stay or avert its suspension by requesting a hearing under FINRA Rule 9552(e), and did not seek to terminate its suspension (and thereby avert expulsion) on grounds of full compliance under FINRA Rule 9552(f). See Mtn. to Dism. at 8-10. As a result, the Commission should dismiss the application based on Potomac's failure to exhaust administrative remedies, and Potomac has not demonstrated that it has any likelihood of success on the merits of its appeal. See *Dowd*, 2018 SEC LEXIS 1875, at \*13 (the applicant forfeited his right to challenge a bar due to his failure to exhaust); *Kerr*, 2017 SEC LEXIS 76, at \*1 (dismissing the application on exhaustion grounds); *Montelbano*, 2001 SEC LEXIS 2490, at \*12 & n.17.

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<sup>3</sup> Citations to "Mot. to Dism. at \_\_\_\_" refer to FINRA's Motion to Dismiss the Application for Review, and citations to "Reply at \_\_\_\_" refer to FINRA's Reply in Support of Its Motion to Dismiss.

2. Potomac’s Arguments Fail to Raise a Serious Legal Question or Demonstrate a Likelihood of Success

In its Motion for a Stay, Potomac reiterates arguments raised in its Opposition—namely, that: (1) seeking a hearing or termination of its suspension would have been futile (Stay Mtn. at 12-13); (2) FINRA is to blame for its failure to file timely the Firm’s annual audited report because an exam report was pending, and Potomac’s auditor was purportedly unwilling to complete the annual audited report without the exam report (Stay Mtn. at 11, 13); (3) FINRA abused its discretion because it did not specifically respond to an extension request the Firm submitted on the final day to request termination of its suspension, and did not grant an extension or a hearing upon receiving the letter (Stay Mtn. at 11, 14-15); and (4) FINRA abused its discretion because it did not adequately explain the reasons for Potomac’s expulsion, and the expulsion itself is excessive and oppressive (Stay Mtn. at 15-16).

None of Potomac’s arguments raise a “serious legal question,” let alone demonstrate a likelihood of success on the merits. *See Zipper*, 2017 SEC LEXIS 3706, at \*19-21; *Montelbano*, 2001 SEC LEXIS 2490, at \*12 & n.17. First, as discussed in FINRA’s Reply, Potomac has failed to demonstrate that the administrative procedures available to it were “clearly useless.” Stay Mtn. at 12-13; Reply at 6-8; *Dowd*, 2018 SEC LEXIS 1875, at \*18 (explaining that a party invoking the futility exception to the exhaustion requirement must show that the administrative procedures in question were “clearly useless”) (internal quotation omitted). Therefore, it cannot properly invoke the futility exception to the exhaustion requirement. *See Dowd*, 2018 SEC LEXIS 1875 at \*18. In particular, Potomac could have requested an extension in advance of its filing deadline, or requested a hearing and presented reasons for why the Firm should not be suspended. Reply at 3-4, 6-7. It simply decided not to do so, instead choosing to wager that it could finish the annual audited report prior to the rule’s expulsion date. *Id.*; FINRA Rules

9552(f), (h). Potomac bears the responsibility for the consequences of its choice. *See Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at \*7-8 (May 6, 2010) (explaining that the applicant “chose not to respond to FINRA’s letters [] or request a hearing to challenge his impending sanction, and therefore cannot complain at this stage about the consequence of his choice”).

Second, Potomac’s argument that FINRA is responsible for the delay because a pending exam report delayed the audit is troubling, for several reasons. *See Stay Mtn.* at 11, 13. The assertion remains uncorroborated by Potomac’s auditor or applicable guidance from the Public Company Accounting Oversight Board.<sup>4</sup> *See Mtn. to Dismiss* at 11-12 & n.9. The assertion also is inconsistent with statements Potomac made in its July 2, 2020 letter requesting an extension, which blamed the Firm’s delay on its auditor’s vacation and—for the first time—the pandemic. (R. at 47.) Nothing in Potomac’s letter mentioned the pending exam report. Moreover, FINRA member firms regularly file annual audits while examinations are open, and Potomac has failed to establish that it could not do so here. In any event, a member firm such as Potomac may not shift its responsibility for meeting its reporting requirements to FINRA. *Robert Marcus Lane*, Exchange Act Release 74269, 2015 SEC LEXIS 558, at \*56 (Feb. 13, 2015) (a member or associated person may not shift its compliance burden to FINRA).

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<sup>4</sup> It is particularly opportunistic for Potomac to challenge the expulsion by relying on hearsay evidence about its auditor when it did not request a hearing and present evidence about why its audit was months late. FINRA did not cross-examine Byron about his interactions with his Firm’s auditor and did not present testimony about standard auditor practices because Potomac did not challenge FINRA’s pending expulsion at a hearing. A motion for a stay should not serve as a cross-examination-free platform for asserting facts that have not been scrutinized at a hearing.

Third, Potomac's arguments that FINRA somehow abused its discretion with respect to a response to the Firm's July 2, 2020 letter are unpersuasive. *See Stay Mtn.* at 11, 13-14. The letter did not request a hearing and, even if it had, nothing in FINRA Rule 9552 authorizes or requires FINRA to grant an untimely hearing request. Furthermore, FINRA advised Potomac on at least three occasions that, once the time to request a hearing expired, the only means to avert an expulsion under FINRA Rule 9552 was a request for termination on grounds of full compliance. (R. at 33-36.); Opp., Ex. A ¶¶ 26-27. Thus, when Potomac filed its last-minute, open-ended extension request on July 2, it was well-informed that the request was insufficient to avert an expulsion. (R. at 47.) FINRA confirmed as much when it sent Potomac written notice of its expulsion on July 6, 2020. (R. at 49.) Potomac does not explain what an additional communication from FINRA would have accomplished, particularly because it did not complete its 2019 annual audited report until more than four months after it sent the July 2, 2020 letter. *See Stay Mtn.* at 11, 13-14; *Stay Mtn.*, Ex. A ¶ 31 (stating that the Firm completed its 2019 annual audited report on November 13, 2020).

Fourth, Potomac's arguments that FINRA abused its discretion in imposing the expulsion lack merit. *See Stay Mtn.* at 15-16. As in its Opposition, Potomac continues to ignore the fact that it was expelled by operation of FINRA Rule 9552's provisions because it did not request a hearing or termination of its suspension on grounds of full compliance. *See Reply*, at 11-12; *Opp.* at 12-13. Potomac's expulsion is consistent with the terms of FINRA Rule 9552, as well as with other cases in which a respondent failed to request a hearing, or termination on grounds of full compliance, under that rule. *See FINRA Rules 9552(e)-(f), (h); Dowd*, 2018 SEC LEXIS 1875, at \*19; *Kerr*, 2017 SEC LEXIS 76, at \*1, 11-12.

Finally, Potomac has not shown that its circumstances are similar to those described in the Commission's decision in *Feitelberg*. See Stay Mtn. at 16 (citing *Brendan D. Feitelberg*, Exchange Act Release No. 89365, 2020 SEC LEXIS 2746 (July 21, 2020)). Unlike the applicant in *Feitelberg*, Potomac does not contend that it did not receive notice of the impending suspension and expulsion. See 2020 SEC LEXIS 2746 at \*14-15. It did. Moreover, the Firm's failure to prepare in advance to meet its reporting deadline does not qualify as a justification for failing to file its annual audited report. See *Feitelberg*, 2020 SEC LEXIS 2746 at \*12.

For all of these reasons, Potomac has failed to show that its application raises a serious legal question or strong likelihood of success on the merits. Based on Potomac's failure to satisfy this factor alone, the Commission should deny its motion. See *Zipper*, 2017 SEC LEXIS 3706, at \*19. Nevertheless, as discussed below, Potomac also has failed to demonstrate that the remaining factors weigh in favor of a stay.

C. Potomac Has Not Demonstrated That a Denial of the Stay Request Will Result In Irreparable Harm

Potomac has failed to satisfy another essential element for a stay—a showing that, absent a stay, it will suffer irreparable harm. See *Zipper*, 2017 SEC LEXIS 3706, at \*19. Potomac's undue delay in seeking a stay weighs heavily against its assertions of irreparable harm. Moreover, even if Potomac's request for a stay were not delayed, it did not meet its burden because its claims of irreparable harm are unspecific, speculative, and unsupported.

1. Potomac's undue delay in seeking a stay weighs against its assertions of irreparable harm, and in favor of denial

Potomac's assertions of urgency and irreparable harm are undermined by the fact that it waited more than six months after its July 6, 2020 expulsion to seek a stay. See Stay Mtn. (filed Jan. 29, 2021); (R. at 49.); *Kenny A. Akindemowo*, Exchange Act Release No. 78352, 2016 SEC LEXIS 2522, at \*7 (July 18, 2016) (explaining that the applicant's failure to seek a stay until five

months after he filed his application for review weighed against his claim of irreparable harm). This conclusion is supported not only by the Commission’s decision in *Akindemowo*, but also by federal court decisions concluding that a party’s delay in seeking an interim injunction undermines its assertions that such drastic relief is necessary.<sup>5</sup> See *Tough Traveler, Ltd. v. Outbound Prods.*, 60 F.3d 964, 968 (2d Cir. 1995) (“[T]he failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury”) (quoting *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985)); *Miller v. Cal. Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir. 1993) (although “[d]elay by itself is not a determinative factor in whether the grant of interim relief is just and proper,” that the movant “tarried so long before seeking this injunction is nonetheless relevant in determining whether relief is truly necessary”) (internal quotation and citations omitted).<sup>6</sup> The Commission should apply the same reasoning here. The full length of time that Potomac has been prohibited from conducting a securities business began with its suspension on April 27, 2020—over nine months ago. (R. at 34.) Potomac’s unexplained months-long delay in seeking a stay undermines its assertions of irreparable harm. See *Akindemowo*, 2016 SEC LEXIS 2522, at \*7; *Kobell v. Suburban Lines, Inc.*, 731 F.2d 1076, 1091 n.27 (3rd Cir. 1984) (explaining that a “court may legitimately think it suspicious that the party who asks to preserve the status quo

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<sup>5</sup> Although a stay and an interim injunction are not synonymous, these two forms of relief are similar because they both seek to maintain the status quo pending adjudication on the merits, and they are governed by the same four-factor standard. *Nken v. Holder*, 556 U.S. 418, 428-29 (2009) (explaining that a stay and a preliminary injunction are not synonymous, but the two forms of relief may “functional[ly] overlap”); *Wash. Metro. Area Transit Comm’n v Holiday Tours, Inc.*, 559 F.2d 841, 842, 844 & n.1 (D.C. Cir. 1977).

<sup>6</sup> *Vacated on reh’g, on other grounds, by Miller ex rel. NLRB v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 451-52, 461 (9th Cir. 1994).



through interim injunctive relief has allowed the status quo to change through unexplained delay”).

2. Even if Potomac’s stay request were timely, Potomac still has not met its burden

Even if Potomac’s stay request were timely, it still would not meet the burden of demonstrating irreparable harm. Potomac argues that it will suffer irreparable harm because, absent a stay, the Firm will have to close. Stay Mtn. at 5, 17 & Ex. A ¶ 7. Potomac also represents that it assists its clients with private placements of securities and that, if it were to close, its clients would potentially lose access to the institutional investors that provide them with capital. Stay Mtn. at 6, 18 & Ex. A ¶¶ 5-6, 11-12. As a result, the Firm asserts, the absence of stay may also lead to its clients ceasing operations. Stay Mtn. at 6, 18 & Ex. A ¶ 12.

The potential harms Potomac describes do not constitute irreparable harm that is related to its current request for a stay and sufficient to justify granting a stay. To establish irreparable harm, an applicant “must show an injury that is ‘both certain and great’ and ‘actual and not theoretical.’” *Zipper*, 2017 SEC LEXIS 3706, at \*13; *see also Whitehall Wellington Invs., Inc.*, Exchange Act Release No. 43051, 2000 SEC LEXIS 1481, at \*5 (July 18, 2000) (holding that the movant must show that FINRA’s decision will impose injury that is “irreparable as well as certain and great”); *Timpinaro*, 1991 SEC LEXIS 2544, at \*8 (stating that “[t]he key word in this consideration is irreparable”). Potomac has not met this burden because its assertions of harm are “unspecific, speculative, and unsupported.” *See Se. Invs., Inc.*, 2019 SEC LEXIS 1370, at \*15.

Potomac’s assertions concerning the potential effect of its possible closure on its clients are purely speculative, as the Firm identifies no specific reason why its clients could not engage another broker-dealer to assist them with private placements. *See Stay Mtn.*, Ex. A ¶¶ 6-7, 11-

12. And, to the extent that Potomac purports to repeat statements by its clients, its assertions are the sort of hearsay the Commission should consider unreliable. *See Mark James Hankoff*, 50 S.E.C. 1009, 1012 (1992) (explaining that, while hearsay might be admissible, such statements should be viewed as unreliable where, among other things, the declarant is biased, the statement is uncorroborated, and there is no showing that the witness is unavailable). In addition, Potomac's contentions concerning the potential effect of its possible closure on its clients are unsupported by its 2018 and 2019 annual audited reports, which reflect limited revenue. *See Potomac's 2019 Annual Audited Report*, at 4 (reflecting total revenue of \$7,500 in advisory fees and \$13 in other income for 2019) (attached as Ex. A); (*Potomac's 2018 Annual Audited Report*) (reflecting total revenue of \$12,000 in advisory fees and \$13,587 in other income for 2018) (R. at 12.). Potomac's limited revenue suggests that the Firm's client services are likewise limited and, as a result, its financial statements cast doubt on its contentions that its closure would be catastrophic for clients. *See Ex. A; (R. at 12.)*

Although the imminent destruction of a business may rise to the level of irreparable harm, Potomac's assertions are unspecific and unsupported. For purposes of assessing imminent harm, Potomac's suspension in April 2020 is important. (R. at 34.) In light of the Firm conducting no securities business for nine months, the Potomac's claim of its impending closure is unsupported. *See Stay Mtn.* at 5, 17 & Ex. A ¶ 7; *Se. Invs, Inc.*, 2019 SEC LEXIS 1370, at \*15 (explaining that "[a]lthough the Commission has held that the destruction of a business, absent a stay, rises to the level of irreparable injury, [the applicant's] claim is unspecific, speculative, and unsupported") (internal quotation and alteration omitted); *see also Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (explaining that a movant must substantiate claims of irreparable harm, as "[b]are allegations of what is likely to occur are of no value"). Moreover,

Potomac’s 2018 and 2019 annual audited reports reflected that the Firm was able to continue as a going concern, despite limited revenue, because its affiliates pledged to capitalize the Firm. (R. at 15.) (stating that Potomac’s “affiliate companies, Potomac Asset Management Company [(“PAMCO”)] and Potomac Investment Services, Inc., pledged to support [the Firm] by funding its operations”); Ex. A at 12 (stating that Potomac’s “affiliate company, [PAMCO], has pledged to support [the Firm] by funding operations”). Potomac has adduced no evidence showing that these affiliates are unable to assist the Firm until its application for review is resolved. *See generally* Stay Mtn. & Ex A.

Furthermore, Potomac has the option to reapply to FINRA through the membership application process, potentially as a Capital Acquisition Broker (“CAB”) firm.<sup>7</sup> *See generally* FINRA Rule 1000 Series (governing membership applications). While Potomac states that it does not consider this to be a viable option due to the time and expense involved, the Commission has held that “mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough to constitute irreparable harm.” *Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 SEC LEXIS 4712, at \*10 (Nov. 13, 2015); Stay Mtn, Ex. A ¶ 9. Moreover, Potomac has not established that its affiliates would be unwilling to provide it with financial assistance during the application process. (R. at 15.); Ex. A at 12.

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<sup>7</sup> A CAB firm engages in a limited range of activities, including “advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions.” Such firms are “governed by a regulatory structure that is better suited to the limited nature of their business.” FINRA, “Registration, Exams, and CE,” “Capital Acquisition Brokers,” *available at*: <https://www.finra.org/registration-exams-ce/capital-acquisition-brokers> (last visited Feb. 4, 2021). Any such membership application would, however, need to meet the exacting membership standards for a FINRA member before it would be approved.

For all of the reasons above, Potomac has not met its burden to demonstrate irreparable harm, and the Commission should deny the stay request for this reason alone. *See Zipper*, 2017 SEC LEXIS 3706, at \*19.

D. Denial of the Stay Request Will Avoid Potential Harm to Others and Will Serve the Public Interest

Turning to the third and fourth criteria in deciding whether to grant a stay, the balance of equities weighs against staying Potomac's expulsion. The Firm previously failed to timely file its 2018 annual audited report and, more recently and with respect to this appeal, it waited until November 17, 2020 to attempt to submit a report that was due on March 2, 2020.<sup>8</sup> (R. at 1, 34.); Stay Mtn., Ex. A ¶ 31. Such delinquencies are not mere technical violations, as the obligation to file an annual audited report is "important to monitor the financial status of broker-dealers and to protect investors." *Gremo Invs., Inc.*, Exchange Act Release No. 64481, 2011 SEC LEXIS 1695, at \*14-15 (May 12, 2011). Potomac's repeated failure to file timely annual audited reports impeded FINRA's ability to monitor the Firm's financial status. *See id.*; (R. at 1, 34.); Stay Mtn., Ex. A ¶ 31. That impediment raises a significant public concern, particularly because the notes to Potomac's financial statements for 2018 and 2019 disclose liquidity and going concern issues. (R. at 15, n.1 Liquidity and Going Concern Issues.); Ex. A at 11 (Liquidity and Going Concern Issues). Moreover, Potomac's persistence in blaming FINRA and others for its failure

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<sup>8</sup> In the affidavit attached to Potomac's Motion for a Stay, its president and chief compliance officer avers that FINRA had no concerns with the Firm's 2019 annual audited report. Stay Mtn., Ex. A ¶¶ 2, 15. That statement is inaccurate. Although Potomac emailed its 2019 annual audited report to FINRA on November 17, 2020, the report was not properly filed with FINRA because the Firm already had been expelled for more than four months. *See* FINRA, "Filing & Reporting," "Annual Reports," *available at*: <https://www.finra.org/filing-reporting/annual-audit> (last visited Feb. 4, 2021) (explaining that annual reports must be filed through FINRA's Gateway system, which a firm may access with a current identification and password). Because the report was not properly filed, FINRA's Department of Member Supervision has not assigned staff to review it.

to meet its reporting obligations is concerning, and does not reflect favorably on the Firm's ability to take responsibility for these filings moving forward. *See, e.g.*, Opp. at 1, 7, 9, 14-15; Stay Mtn. at 11, 13; (R. at 47.); *Thomas C. Kocherhans*, 52 S.E.C. 528, 531 (1995) ("Participants in the securities industry must take responsibility for compliance with regulatory requirements.").

Furthermore, Potomac's president and chief compliance officer has been disciplined by the Commission. *See Asensio & Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at \*9, 20 (Dec. 20, 2012) (noting, in the context of a membership application, the connection between the disciplinary history of the firm's principal executive and the firm's ability to satisfy regulatory requirements); *see also Midas Sec., LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at \*55 (Jan. 20, 2012) (finding that "the president of a brokerage firm is responsible for the firm's compliance with all applicable requirements," absent a delegation of authority); Stay Mtn., Ex. A ¶ 2. Specifically, in September 2017, the Commission entered an order censuring Potomac's president and chief compliance officer, Goodloe Byron, in his capacity as the principal of one of Potomac's affiliate companies, PAMCO. *Potomac Asset Mgmt. Co., Inc.*, Inv. Advisers Act Rel. No. 4766, 2017 SEC LEXIS 2796 (Sep. 11, 2017). In its order, the Commission found that Byron and PAMCO violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940. *Potomac Asset Mgmt. Co.*, 2017 SEC LEXIS 2796, at \*19-21. The Commission found that these violations involved the improper allocation of fees and expenses to two private equity fund clients, and the use of the private equity fund clients' assets to pay PAMCO's adviser-related expenses, which was neither authorized by nor disclosed in the applicable governing documents. *Potomac Asset Mgmt. Co.*, 2017 SEC LEXIS 2796, at \*6-12. In addition, the Commission ordered Byron and PAMCO to pay civil and administrative

penalties in the amount of \$300,000. *Potomac Asset Mgmt. Co.*, 2017 SEC LEXIS 2796, at \*23. Because Byron is Potomac's president and chief compliance officer, this significant disciplinary history weighs against a finding that the Firm's reinstatement would serve the public interest. *See Asensio & Co.*, 2012 SEC LEXIS 3954, at \*9, 20; *Midas Sec., LLC*, 2012 SEC LEXIS 199, at \*55.

In balancing the possibility of injury to Potomac against the possibility of harm to the investing public, the interest in protecting the public outweighs any potential injury to the Firm or any other parties. *See Montelbano*, 2001 SEC LEXIS 2490, at \*12-13. Accordingly, the Commission would further the public interest by denying the stay.

### **III. CONCLUSION**

For all of these reasons, the Commission should deny Potomac's request to stay its automatic expulsion pending the outcome of its application for review.

Respectfully submitted,

/s/ Ashley Martin

Ashley Martin  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8207

February 5, 2021

# Exhibit A

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0123
Expires:	August 31, 2020
Estimated average burden hours per response.....	12.00

**ANNUAL AUDITED REPORT  
FORM X-17A-5  
PART III**

SEC FILE NUMBER
8-48848

FACING PAGE

**Information Required of Brokers and Dealers Pursuant to Section 17 of the  
Securities Exchange Act of 1934 and Rule 17a-5 Thereunder**

REPORT FOR THE PERIOD BEGINNING 01/01/2019 AND ENDING 12/31/2019  
MM/DD/YY MM/DD/YY

**A. REGISTRANT IDENTIFICATION**

NAME OF BROKER-DEALER: Potomac Capital Markets, LLC

OFFICIAL USE ONLY
FIRM I.D. NO.

ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use P.O. Box No.)

8926 Mt Tabor Road

(No. and Street)

Middletown

Maryland

21769

(City)

(State)

(Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT IN REGARD TO THIS REPORT

Goodloe E. Byron, Jr. (301) 695-9229

(Area Code - Telephone Number)

**B. ACCOUNTANT IDENTIFICATION**

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report\*

Postlethwaite & Netterville, APAC

(Name - if individual, state last, first, middle name)

8550 United Plaza Blvd, Suite 1001 Baton Rouge

LA

70809

(Address)

(City)

(State)

(Zip Code)

CHECK ONE:

- Certified Public Accountant  
 Public Accountant  
 Accountant not resident in United States or any of its possessions.

**FOR OFFICIAL USE ONLY**

\*Claims for exemption from the requirement that the annual report be covered by the opinion of an independent public accountant must be supported by a statement of facts and circumstances relied on as the basis for the exemption. See Section 240.17a-5(e)(2)



## OATH OR AFFIRMATION

I, Goodloe E. Byron, Jr., swear (or affirm) that, to the best of my knowledge and belief the accompanying financial statement and supporting schedules pertaining to the firm of Potomac Capital Markets, LLC, as of December 31, 2019, are true and correct. I further swear (or affirm) that neither the company nor any partner, proprietor, principal officer or director has any proprietary interest in any account classified solely as that of a customer, except as follows:



Goodloe E. Byron Jr  
Signature

President and Chief Compliance Officer  
Title

Barbara L. Burdette

Notary Public

This report \*\* contains (check all applicable boxes):

- (a) Facing Page.
- (b) Statement of Financial Condition.
- (c) Statement of Income (Loss) or, if there is other comprehensive income in the period(s) presented, a Statement of Comprehensive Income (as defined in §210.1-02 of Regulation S-X).
- (d) Statement of Changes in Financial Condition.
- (e) Statement of Changes in Stockholders' Equity or Partners' or Sole Proprietors' Capital.
- (f) Statement of Changes in Liabilities Subordinated to Claims of Creditors.
- (g) Computation of Net Capital.
- (h) Computation for Determination of Reserve Requirements Pursuant to Rule 15c3-3.
- (i) Information Relating to the Possession or Control Requirements Under Rule 15c3-3.
- (j) A Reconciliation, including appropriate explanation of the Computation of Net Capital Under Rule 15c3-1 and the Computation for Determination of the Reserve Requirements Under Exhibit A of Rule 15c3-3.
- (k) A Reconciliation between the audited and unaudited Statements of Financial Condition with respect to methods of consolidation.
- (l) An Oath or Affirmation.
- (m) A copy of the SIPC Supplemental Report.
- (n) A report describing any material inadequacies found to exist or found to have existed since the date of the previous audit.

*\*\*For conditions of confidential treatment of certain portions of this filing, see section 240.17a-5(e)(3).*

**POTOMAC CAPITAL MARKETS, LLC**

FINANCIAL STATEMENTS  
AND  
SUPPLEMENTARY INFORMATION  
(WITH REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM)  
DECEMBER 31, 2019

(CONFIDENTIAL PURSANT TO RULE 17a-5(e)(3))

# POTOMAC CAPITAL MARKETS, LLC

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## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

### The Members

Potomac Capital Markets, LLC

Middletown, Maryland

### **Opinion on the Financial Statements**

We have audited the accompanying statement of financial condition of Potomac Capital Markets, LLC (the Company) as of December 31, 2019, the related statements of operations, changes in members' equity, changes in liabilities subordinated to claims of general creditors, and cash flows for the year then ended, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of Potomac Capital Markets, LLC as of December 31, 2019, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

These financial statements are the responsibility of Potomac Capital Markets, LLC's management. Our responsibility is to express an opinion on the Potomac Capital Markets, LLC's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to Potomac Capital Markets, LLC in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Potomac Capital Markets, LLC is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of Potomac Capital Markets, LLC's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.



### **Emphasis of Matter Regarding Going Concern**

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has a history of a lack of significant revenues and recurring losses from operations and has stated that substantial doubt exists about the Company's ability to continue as a going concern. Management's evaluation of the events and conditions and management's plan regarding these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to this matter.

### **Auditors' Report on Supplemental Information**

The supplemental information contained in the Computation of Net Capital Under Rule 15c3-1 of the Securities and Exchange Commission and the Computation for Determination of Reserve Requirements and Information for Possession and Control Requirements Under Rule 15c3-3 of the Securities and Exchange Commission has been subjected to audit procedures performed in conjunction with the audit of the Company's financial statements. The supplemental information is the responsibility of the Company's management. Our audit procedures included determining whether the supplemental information reconciles to the financial statements or the underlying accounting and other records, as applicable, and performing procedures to test the completeness and accuracy of the information presented in the supplemental information. In forming our opinion on the supplemental information, we evaluated whether the supplemental information, including its form and content, is presented in conformity with 17 C.F.R. §240.17a-5. In our opinion, the Computation of Net Capital Under Rule 15c3-1 of the Securities and Exchange Commission and the Computation for Determination of Reserve Requirements and Information for Possession and Control Requirements Under Rule 15c3-3 of the Securities and Exchange Commission are fairly stated, in all material respects, in relation to the financial statements as a whole.

We have served as Potomac Capital Markets, LLC 's auditor since 2020.

*Postlethwaite & Netterville*

Baton Rouge, Louisiana  
November 5, 2020

# POTOMAC CAPITAL MARKETS, LLC

## STATEMENT OF FINANCIAL CONDITION

---

December 31, 2019

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### ASSETS

Cash and Cash Equivalents	\$ 10,826
<b>TOTAL ASSETS</b>	<b>\$ 10,826</b>

### LIABILITIES AND MEMBERS' EQUITY

Accounts payable and accrued expenses	\$ 751
Due to related parties	3,678
Members' equity	<u>6,397</u>
<b>TOTAL LIABILITIES AND MEMBERS' EQUITY</b>	<b>\$ 10,826</b>

See accompanying notes to financial statements.

# POTOMAC CAPITAL MARKETS, LLC

## STATEMENT OF OPERATIONS

---

Year Ended December 31, 2019

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### Revenues

Advisory Fees	\$ 7,500
	<u>7,500</u>

### Expenses

Administrative services	10,625
Payments to correspondents	3,250
Professional Fees	39,849
Regulatory Fees	3,666
Miscellaneous	1,474
Taxes	300
	<u>59,164</u>

### Other Income

Other Income	13
	<u>13</u>

<b>Net loss</b>	<b>\$ (51,651)</b>
-----------------	--------------------

See accompanying notes to financial statements.

# POTOMAC CAPITAL MARKETS, LLC

## STATEMENT OF CHANGES IN MEMBERS' EQUITY

---

<b>Year Ended December 31, 2019</b>	
<b>Members' equity, beginning of year</b>	<b>\$ 24,858</b>
<b>Net loss</b>	<b>(51,651)</b>
<b>Contributions to members' equity</b>	<b>33,400</b>
<b>Distributions paid to members</b>	<b>(210)</b>
<b>Members' equity, end of year</b>	<b>\$ 6,397</b>

See accompanying notes to financial statements.



# POTOMAC CAPITAL MARKETS, LLC

## STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED TO THE CLAIMS OF GENERAL CREDITORS

---

Year Ended December 31, 2019

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Subordinated liabilities to claims of general creditors at January 1, 2019	\$	-
Increases		-
Decreases		-
Subordinated liabilities to claims of general creditors at December 31, 2019	\$	<u>-</u>

See accompanying notes to financial statements.

# POTOMAC CAPITAL MARKETS, LLC

## STATEMENT OF CASH FLOWS

---

**Year Ended December 31, 2019**

---

**Cash flows from operating activities**

Net loss	\$ (51,651)
Adjustments to reconcile net loss to net cash provided by (used) in operating activities:	
Changes in operating assets and liabilities:	
Due from/to related parties	21,899
Balance on deposit with FINRA	7
Accounts payable and accrued expenses	(2,202)
<b>Net cash (used) in operating activities</b>	<u>(31,947)</u>

**Cash flows from financing activities**

Proceeds from contributions to members' equity	33,400
Distributions paid to members	(210)
<b>Net cash provided by financing activities</b>	<u>33,190</u>

**Net increase in cash and cash equivalents** 1,243

**Cash and cash equivalents, beginning of year** 9,583

**Cash and cash equivalents, end of year** \$ 10,826

See accompanying notes to financial statements.

# POTOMAC CAPITAL MARKETS, LLC

## NOTES TO FINANCIAL STATEMENTS

---

### 1. Nature of business and summary of significant accounting policies

#### *Nature of Business*

Potomac Capital Markets, LLC (the "Company"), a majority owned subsidiary of Potomac Investment Services, Inc. ("Parent") is a Maryland Limited Liability Company ("LLC") organized and registered as a minimum net capital broker dealer. The Company is a member of the Securities and Exchange Commission ("SEC") and is a member of the Financial Industry Regulatory Authority ("FINRA"). The business activities of the Company as prescribed in the membership agreement are limited to private placement of securities.

As a minimum net capital broker-dealer, the Company does not hold customer securities or cash balances.

#### *Basis of presentation*

The financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP").

The accompanying financial statements have been prepared from separate records maintained by the Company and may not be indicative of the financial condition and results of operations, which would have existed if the Company had been operating as an unaffiliated entity.

#### *Cash Equivalents*

The Company considers its investment in short-term money market accounts to be cash equivalents.

#### *Revenue Recognition Policies*

Revenue is measured for merger and acquisition (M&A) advisory, placement and other related consulting services based on consideration specified, both fixed and variable, in a contract with a customer. The Company recognizes revenue when it satisfies a performance obligation by transferring control as services are performed for a customer. The recognition and measurement of revenue is based on the assessment of the individual contract terms. Significant judgement is required to determine the performance obligations and whether they are satisfied at point in time or over time; how to estimate variable consideration, including whether constraints on variable consideration should be applied due to uncertain future events; how to allocate the total transaction price where multiple performance obligations are identified; and when to recognize revenue based on the appropriate measure of progress for any performance obligations satisfied over time.

M&A advisory and other consulting services. The fees associated with advisory and consulting services are primarily paid upfront, when a contract is signed, through a nonrefundable fixed fee. The advisory and consulting services can consist of analyzing financial information such as financial statements and

# POTOMAC CAPITAL MARKETS, LLC

## NOTES TO FINANCIAL STATEMENTS

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### 1. Nature of business and summary of significant accounting policies (continued)

#### *Revenue Recognition Policies (continued)*

forecasts; information relevant to the transaction (“the deal”) and, as applicable, potential buyer(s) and seller entities; development of marketing materials to highlight customer (as seller) key attributes; assist with the buy-side or sell-side due diligence; assist with the evaluation of prospective offers and structuring of a deal; other advisory or consulting services such as valuation and other related advice. The various activities described as part of the advisory and consulting services are not considered distinct within the context of the contract because the services are generally delivered concurrently with one another and can be highly interrelated. For instance, for sell-side M&A advisory services, evaluation and analyses will support the marketing materials and other information provided to prospective buyers, and provide the basis for development of a viable target list. This then can lead to assistance with the due diligence and recommendations on potential deals. However, these services are considered a separate and distinct performance obligation from the placement services; although there is some dependency, the customer is receiving distinct value from these services regardless of whether or not a successful deal is consummated. The stated fees for advisory or consulting generally approximate a stand-alone-selling-price for these services and therefore, would also approximate the allocated transaction price. The transaction price allocated to this performance obligation is recognized over time as the related activities occur, beginning around the time of contract execution and continuing until the contract term has ended or there is termination or consummation of the deal, if sooner. The Company believes that using a ratable recognition method over the service period is the appropriate approach since the services have a consistent pattern of transfer and are performed as requested or as needed.

Placement services. There are two types of transaction fees associated with the placement related services. There is a “success” or “broker” fee that is paid upon a successful consummation of the transaction. There is a “contingent” fee that is paid, as applicable, once payment of a contingent portion of the deal purchase price occurs, such as a portion of the price paid based on future revenue or earnings measures or other future events such as continued employment of key personnel. The placement services generally consist of assisting with final activities associated with successful consummation of a deal, including financial negotiations on deal structure and pricing. As noted previously, although there is some dependency, the placement services are considered a separate and distinct performance obligation from M&A advisory and other services. The customer will utilize the results from the advisory and consulting services to determine whether they want to continue with an attempt at successful placement and deal consummation. That decision point drives the services provided within this next phase which, as described, consists primarily of the related activities to finalize and consummate a deal, plus, as applicable, certain activities that may take place during a period after consummation, such as those associated with

# POTOMAC CAPITAL MARKETS, LLC

## NOTES TO FINANCIAL STATEMENTS

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### 1. Nature of business and summary of significant accounting policies (continued)

#### *Revenue Recognition Policies (continued)*

earning a contingent fee. The pricing for these fees is typically based on a commission that is determined using defined percentages that are applied to different tiers of the final deal price (success fee) plus a defined percentage applied to a future event and /or earnings or other financial measure (contingent fee). The pricing generally approximates a stand-alone-selling-price because it falls within a standard, market-based range based on the potential deal size and specific, relevant market factors, such as geographic or industry factors. The transaction price that is allocated to this performance obligation is entirely variable. The portion of the price related to the success fee is not estimated using one of the available methods prescribed in ASC 606 for variable consideration since it is considered fully constrained. The events surrounding realization of the success fees are highly uncertain and typically, the expected consideration would be fully constrained until practically, consummation occurs. Therefore, the success fees are not included in the transaction price until consummation is certain to occur. Similarly, in many instances, the contingent fees are based on highly uncertain, future events which are highly susceptible to factors outside the Company's influence, such as specified financial target or other measures. When not fully constrained, the contingent fees are estimated using the most likely amount at the estimation date. Any allocated transaction price that is not constrained is recognized for the placement services over time, as the related activities are performed. Effectively, those associated with attempts at successful consummation of the deal are performed very close to the deal close (or scheduled) date. Additionally, as noted previously, the respective success fee is going to be fully constrained until it is known with certainty that the deal will be consummated. Therefore, the recognition will occur upon consummation of a successful deal. There is no recognition of a success fee if the deal is terminated. For contingent fees, once not constrained, the pattern of transfer will depend on when the underlying events have occurred or financial measures have been met. Generally, once the fees are not constrained, the related events or measures have occurred or have been met. If these have not yet occurred, such as when the fees are associated with future employment, ratable recognition over of the service period will typically be an appropriate approach for recognizing revenue due to the consistent pattern of transfer over the period.

Reimbursable expense. Out-of-pocket costs are reimbursed for some contacts and are considered immaterial. Revenue is recognized as the costs are incurred.

The following table presents revenue by major source.

Advisory Fees	<u>\$7,500</u>
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# POTOMAC CAPITAL MARKETS, LLC

## NOTES TO FINANCIAL STATEMENTS

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### 1. Nature of business and summary of significant accounting policies (continued)

#### *Revenue Recognition Policies (continued)*

#### Contract Costs to Obtain or Fulfill a Contract.

Contract costs to obtain or fulfill a contract are expensed as incurred since the costs do not meet the definition of “incremental” or other criteria for capitalization and recognition as an asset.

#### *Income Taxes*

The Company is a limited liability company and treated as a partnership for income tax reporting purposes. The Internal Revenue Code (“IRC”) provides that any income or loss is passed through to the members for federal and state income tax purposes. Accordingly, the Company has not provided for federal or state income taxes.

At December 31, 2019, the management has determined that the Company had no uncertain tax positions that would require financial statement recognition. This determination will always be subject to ongoing reevaluation as facts and circumstances require. The Company remains subject to U.S. federal and state income tax audits for all periods subsequent to 2016.

#### *Use of Estimates*

The preparation of financial statements in conformity with GAAP requires the Company’s management to make estimates and assumptions that affect the amounts disclosed in the financial statements. Actual results could differ from those estimates.

#### *Accounting Standards Adopted*

In February 2016, the FASB issued ASU No. 2016-02, “Leases (Topic 842),” which amends current lease guidance. This guidance requires, among other things, that lessees recognize the following for all leases (with the exception of short-term leases) at the commencement date: (1) a lease liability, which is a lessee’s obligation to make lease payments arising from a lease, measured on a discounted basis; and (2) a right-of-use asset, which is an asset that represents the lessee’s right to use, or control the use of, a specified asset for the lease term. Lessees and lessors must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. In July 2018, the FASB issued ASU No. 2018-11, “Leases (Topic 842): Targeted Improvements,” which simplifies the implementation by allowing entities the option to instead apply the provisions of the new guidance at the effective date, without adjusting the comparative periods presented. The Company adopted this guidance effective January 1, 2019. The adoption of the guidance had no impact on the financial statements as the Company has no leases recorded as of 2019.

### 2. Liquidity and Going Concerns

The Company has a history of a lack of significant revenues and operating losses for the last five years. Our cash at hand at December 31, 2019 is not sufficient to cover our operating costs for the next twelve months.

# POTOMAC CAPITAL MARKETS, LLC

## NOTES TO FINANCIAL STATEMENTS

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### **2. Liquidity and Going Concerns (continued)**

The ability of the Company to continue as a going concern is dependent on the Company obtaining adequate capital to fund operating losses until it becomes profitable. The Company is not currently generating sufficient revenues. Our affiliate company, Potomac Asset Management Company (PAMCO), has pledged to support the Company by funding operations. The Company can give no assurances that any additional capital that it is able to obtain will be adequate to meet its needs. These conditions raise substantial doubt to the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### **3. Net Capital Requirement**

The Company is a member of the FINRA and is subject to the SEC Uniform Net Capital Rule 15c3-1. This Rule requires maintenance of minimum net capital and ratio of aggregate indebtedness to net capital, both as defined, shall not exceed 15 to 1. At December 31, 2019, the Company's net capital was \$6,397 which was \$1,397 in excess of its minimum requirement of \$5,000.

### **4. Related party transactions and commitments**

#### *Service Agreement*

The Company is 99% owned by the Parent, a Maryland C corporation. The Parent provided office space, communication systems, and operational and administrative services for consideration from the Company of \$10,625 for the year ended December 31, 2019. There are no individuals which are employed directly by the Company. These services are provided under an Administration Services Agreement that provided for minimum charges for the basic services and additional charges when additional services are provided; the agreement had term of five years from March 2003 and is renewable annually, and is cancelable with 30 days notice by either party. As of December 31, 2019, the Company has recognized a liability of \$4,778 for services related to this agreement.

The Company has a receivable of \$1,100 due from a related party at December 31, 2019, unrelated to the service agreement.

### **5. Concentrations of credit risk**

The Company maintains its cash balances at various financial institutions, which at times, may exceed federally insured limits (\$250,000 per depositor). The Company has not experienced any issues in such accounts and believes it is not subject to any significant credit risk on cash.

### **6. Contingencies**

In the normal course of business activities, the Company is subject to regulatory / examinations or other inquiries. These matters could result in censures, fines or other sanctions. Management believes that the outcome of any resulting actions will not be material to the Company's Statement of Financial Condition. However, the Company is unable to predict the outcome of these matters.

# POTOMAC CAPITAL MARKETS, LLC

## NOTES TO FINANCIAL STATEMENTS

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### **7. Regulatory Actions**

The Company was notified by FINRA on April 2, 2020 that suspension procedures were initiated as it failed to file the 2019 audited financial statements by April 27, 2020 (suspension effective date). The Company's FINRA membership was cancelled on May 11, 2020 due to the failure to pay fees, and subsequently reinstated on June 8, 2020. The Company was officially expelled on July 6, 2020 as the Company failed to file the 2019 audited financial statements within three months of the notice of suspension. The Company will take actions to file a request for termination of the expulsion as soon as the financial statements are available to be issued.

### **8. Subsequent Events**

In December 2019, a novel strain of coronavirus disease ("COVID-19") was first reported in Wuhan, China. Less than four months later, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic. The extent of the COVID-19's effect on the Company's operations and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, all of which are uncertain and difficult to predict considering the rapidly evolving landscape. As a result, it is not currently possible to ascertain the overall impact of COVID-19 on the Company's business. However, if the pandemic continues to evolve into a severe worldwide health crisis, the disease could have material adverse effect on the Company's business, results of operations, financial condition and cash flows.

These financial statements were approved by management and available for issuance on November 5, 2020. Subsequent events have been evaluated through this date.



# POTOMAC CAPITAL MARKETS, LLC

## SUPPLEMENTARY INFORMATION COMPUTATION OF NET CAPITAL UNDER RULE 15C3-1 OF THE SECURITIES AND EXCHANGE COMMISSION

Year Ended December 31, 2019

	As filed on January 27, 2020	Adjustments	As Amended
Members' equity	\$ 6,907	\$ (510)	\$ 6,397
Less nonallowable assets	-	-	-
<b>Net capital</b>	<b>\$ 6,907</b>	<b>\$ (510)</b>	<b>\$ 6,397</b>
<b>Minimum net capital required</b> (the greater of \$5,000 or 6-2/3% of aggregate indebtedness)	<b>\$ 5,000</b>	<b>\$ 5,000</b>	<b>\$ 5,000</b>
<b>Excess net capital</b>	<b>\$ 1,907</b>	<b>\$ (510)</b>	<b>\$ 1,397</b>
<b>Amounts included in total liabilities which represent aggregate indebtedness</b>	<b>\$ 3,919</b>	<b>\$ 510</b>	<b>\$ 4,429</b>
Ratio of aggregate indebtedness to net capital	0.57		0.69

Note: The 4Q FOCUS report filed on January 27, 2020 differs from the presentation above due to an increase in franchise tax expense of \$300 and distributions of members' equity of \$210 which decreased members' equity \$510 and increased aggregate indebtedness by \$510. The Company filed an amended 4Q FOCUS on September 8, 2020.

See Report of Independent Registered Public Accounting Firm.

**POTOMAC CAPITAL MARKETS, LLC**  
**SUPPLEMENTARY INFORMATION**

**COMPUTATION FOR DETERMINATION OF RESERVE REQUIREMENTS AND INFORMATION  
RELATING TO POSSESSION AND CONTROL REQUIREMENTS UNDER RULE 15C3-3 OF THE  
SECURITIES AND EXCHANGE COMMISSION**

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**Year Ended December 31, 2019**

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The Company is exempt from the provisions of Rule 15c3-3 under the Securities and Exchange Act of 1934 in that the Company's activities are limited to those set forth in the conditions for exemption appearing in paragraph (k)(2)(i).



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225-922-4600 Phone – 225-922-4611 Fax – [pncpa.com](http://pncpa.com)

*A Professional Accounting Corporation*

## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Members  
Potomac Capital Markets, LLC  
Middletown, Maryland

We have reviewed management's statements, included in the accompanying Exemption Report, in which (1) Potomac Capital Markets, LLC identified the following provisions of 17 C.F.R. §15c3-3(k) under which Potomac Capital Markets, LLC claimed an exemption from 17 C.F.R. §240.15c3-3:(k)(2)(i) (exemption provisions) and (2) Potomac Capital Markets, LLC stated that Potomac Capital Markets, LLC met the identified exemption provisions throughout the most recent fiscal year without exception. Potomac Capital Markets, LLC's management is responsible for compliance with the exemption provisions and its statements.

Our review was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States) and, accordingly, included inquiries and other required procedures to obtain evidence about Potomac Capital Markets, LLC's compliance with the exemption provisions. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on management's statements. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to management's statements referred to above for them to be fairly stated, in all material respects, based on the provisions set forth in paragraph (k)(2)(i) of Rule 15c3-3 under the Securities Exchange Act of 1934.

*Postlethwaite & Netterville*

Baton Rouge, Louisiana  
November 5, 2020

**Potomac Capital Markets, LLC Exemption Report**

Potomac Capital Markets, LLC (the "Company") is a registered broker-dealer subject to Rule 17a-5 promulgated by the Securities and Exchange Commission (17 C.F.R. 5240.17a-5, "Reports to be made by certain brokers and dealers"). This Exemption Report was prepared as required by 17 C.F.R. § 240.17a-5(d)(1) and (4).

To the best of its knowledge and belief, the Company states the following:

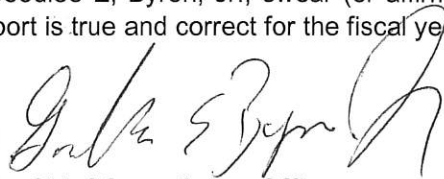
The Company claimed an exemption from 17 C.F.R. § 240.15c3-3 under the following provisions of 17 C.F.R. § 240.15c3-3(k)(2)(i).

The Company met the identified exemption provisions from 17 C.F.R. § 240.15c3-3(k) throughout the most recent fiscal year without exemption.

**Potomac Capital Markets, LLC,**

I, Goodloe E. Byron, Jr., swear (or affirm) that, to the best of my knowledge and belief, this Exemption Report is true and correct for the fiscal year ended December 31, 2019.

By:



Title: Chief Compliance Officer

Date: November 5, 2020



*Maryellen Gluck*  
MY COMMISSION EXPIRES  
10/17/23

**CERTIFICATE OF COMPLIANCE**

I, Ashley Martin, certify that this Brief in Opposition to the Motion for a Stay complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 5,020 words.

*/s/ Ashley Martin*  
\_\_\_\_\_  
Ashley Martin  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8207

Dated: February 5, 2021

**CERTIFICATE OF SERVICE**

I, Ashley Martin, certify that on this 5th day of February 2021, I caused a copy of the foregoing Brief in Opposition to the Motion for a Stay to be served by email on:

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

On this date, I also caused a copy of the reply to be served by email on:

Goodloe E. Byron, Jr.  
Potomac Capital Markets, LLC  
gebyron@potomacinvestments.com

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).

*/s/ Ashley Martin*

\_\_\_\_\_  
Ashley Martin  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8207