POTOMAC CAPITAL MARKETS
LIMITED LIABILITY COMPANY

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

February 11, 2021

VIA EMAIL

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

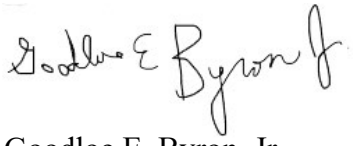
RE: In the matter of the Application for Review of Potomac Capital Markets LLC
Administrative Proceeding No. 3-19917

Dear Ms. Countryman:

Enclosed please find an electronic copy of Potomac Capital Markets LLC's Reply to FINRA's Opposition to Potomac'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
President

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

REPLY TO FINRA'S OPPOSITION TO 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

February 11, 2021

TABLE OF CONTENTS

I. LEGAL ARGUMENT

A. Likelihood of Success

Potomac has both demonstrated a likelihood of success on the merits and raised serious legal questions on the merits.

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

FINRA makes no new argument to support its assertion that Potomac's expulsion should stand due to failure to exhaust administrative remedies, apart from citing yet another case that involves investigations into wrongdoing, where an appellant failed to provide information that was entirely within their control to provide, and their nonresponsiveness was extreme in comparison to this case. *See David Richard Kerr III*, Exchange Act Release No. 79744, 2017 SEC LEXIS 76, at *11-12 (Jan. 5, 2017) (investigation of broker fired after 10 days for nondisclosure of felony conviction, where FINRA granted 4 (largely unsolicited) extensions of time, and broker still failed to provide information entirely within his control). It is telling that FINRA cannot find a single case upholding a permanent expulsion of a member for late filing of an audited financial statement, much less one that upholds such an expulsion when FINRA shares partial responsibility for the delay or in a year where a global pandemic has taken the lives of hundreds of thousands of Americans.

FINRA reiterates the argument that Potomac "could have requested an extension in advance of its filing deadline." Potomac requested an extension, and FINRA did not even respond, much less grant it. FINRA then states that Potomac could have requested a hearing and presented reasons why the Firm should not be suspended. FINRA's rules and the correspondence it sent to Potomac expressly denied that such a hearing was available to Potomac under the circumstances. Potomac expressly asked about the possibility of a hearing via email, and was told that it would not be possible to get one. FINRA now says Potomac should have sought a hearing anyway, in defiance of FINRA's rules, correspondence, and responses to Potomac's inquiries. The exhaustion requirement is not meant to be a trap for the unwary – it is meant to require exhaustion of reasonably available remedies,

in a manner that ensures development of a complete record at the agency level. Potomac utilized the administrative remedies reasonably available to it under the circumstances

FINRA next argues that any reference to its own role in delaying the audit is "troubling."[1] FINRA faults Potomac for not mentioning FINRA's role in the delay in its July 2, 2019 letter requesting an extension of time (the request to which FINRA never responded). Potomac's auditor had not told Potomac this information at that time. Even if Potomac had had that information at that time, it should not be faulted for striking a conciliatory and apologetic tone in its letter. FINRA elsewhere alleges Potomac took insufficient responsibility for its own role in filing the audit report late, but here faults Potomac for not blaming the delay on FINRA, in effect for taking too much responsibility for the delay. FINRA's contradictory arguments do not support denial of a stay.

2. 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

FINRA adds little of substance to its arguments against abuse of discretion. FINRA does not deny that an extension of time would have been possible, or that most cases it cites upholding an expulsion involved multiple extensions of time, or that those cases occurred in non-pandemic times. FINRA appears to complain that Potomac did not propose an amount of time for the extension request, but FINRA was certainly free to propose one. Indeed, in cases FINRA cites, it set deadlines, got no response from the party in question, and then granted an extension of time to a new date certain, without an extension even being requested. *See, e.g.*, *Kerr*, 2017 SEC LEXIS 76, at *11-12.

[1] FINRA here continues its pattern of citing cases out of context. It cites *Robert Marcus Lane* for the proposition that a member or associated person may not shift its compliance burden to FINRA, but what that case actually stands for is the unremarkable proposition that FINRA's failure to identify a violation does not excuse noncompliance – the case has absolutely nothing to do with cases where FINRA's failure to meet an obligation renders compliance infeasible. *See Robert Marcus Lane*, Exchange Act Release 74269, 2015 SEC LEXIS 558, at *56 (Feb. 13, 2015). FINRA has not cited a single case upholding an expulsion for a late audit filing where the audit was delayed in part because FINRA failed to meet its own obligations, nor could it. While FINRA questions whether Potomac's auditor in fact believed it needed the exam report before it could complete the audit, the only evidence in the record supports

While FINRA questions whether Potomac's auditor in fact believed it needed the exam report before it could complete the audit, the only evidence in the record supports such a factual finding. Byron's Affidavit makes clear that that happened, and FINRA cannot deny that Potomac's auditor in fact had a call with FINRA staff to review the exam findings. To receive a stay, Potomac need not demonstrate that its factual account will conclusively prevail in final resolution of the appeal. It needs to provide credible evidence that, if true, suggests a likelihood of success on the merits or raises a substantial legal question. The best FINRA can do is suggest that industry standards do not *compel* an auditor to take this approach, but the auditor is still permitted and indeed required to exercise independent professional judgment regarding the information necessary to complete an audit.

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 failing to hold a hearing

FINRA adds little of substance to its arguments against abuse of discretion in failing to hold a hearing. FINRA states elsewhere that Potomac failed to exhaust administrative remedies because it failed to seek a hearing when FINRA rules and communications indicated such a hearing was unavailable. FINRA here acknowledges that it cannot offer hearings under circumstances where the Rules render such hearings unavailable. FINRA's contradictory arguments do not articulate a basis for denying Potomac relief.

4. 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

FINRA offers essentially no argument against Potomac's assertion that the sanctions of suspension and expulsion were excessive and oppressive, at least insofar as they continued after Potomac filed its audited annual reports. It refers to FINRA Rule 9552, but the cases it cites do not even reach the merits of whether a bar or expulsion is excessive or oppressive – they rest on exhaustion grounds.

5. 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.

FINRA argues that Potomac cannot invoke *In re Brendan D. Feitelberg*, because Potomac did not face the same circumstances as Feitelberg. *See* Exchange Act Release 89365, 2020 SEC LEXIS 2746, at *12-13 (July 21, 2020). That case did not hold that there was only one set of circumstances that would justify reversing a bar or expulsion for failure to provide information to FINRA. *See id.* Potomac has explained the circumstances that make expulsion inappropriate, and as in Feitelberg, the record below provides no explanation for why a bar should remain once information was provided. *See id.* In any case, one of the similarities between the cases is also a distinction. In a non-pandemic year, FINRA granted Feitelberg an extension of time that he requested one day before a response was due, but when Potomac requested an extension one day before a document was due, *in a pandemic year*, FINRA ignored the request and summarily expelled Potomac. *See id*. Thus, even though Feitelberg received more generous treatment on time extensions than Potomac, in a non-pandemic year, the Commission still reversed FINRA's action in barring Feitelberg after he failed to take advantage of the extension.

B. Irreparable Harm

1. Seeking a stay at this point in the appeal is consistent with Potomac's assertions of irreparable harm

FINRA argues that Potomac's assertion of irreparable harm is inconsistent with the fact that it sought a stay in January 2021, after filing this appeal July 31, 2020. FINRA's arguments fail, and the cases it cites do not support its position.

Potomac is part of a family of companies that provide different products and services, and have overlapping personnel. Internal and external factors drive where those personnel focus their time and efforts. Potomac's clients are largely clean technology companies, as are the portfolio companies in the two venture funds sponsored by Potomac's affiliate, Potomac Asset Management Company ("PAMCO").

Clean technology companies and investment are more apt to thrive in times when governmental policy supports high environmental standards and makes the infrastructure and other investments necessary to allow clean technologies to supersede less environmentally friendly ones. For the last several years, public policy at the federal level has been hostile to environmental regulation. *See, e.g.*, Nadja Popovich, Livia Albeck-Ripka & Kendra Pierre-Louis, "The Trump Administration Rolled Back More than 100 Environmental Rules. Here's the Full List." *N.Y. Times* (available at https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks-list.html) (last visited February 10, 2021) (describing how "the Trump administration dismantled major climate policies and rolled back many more rules governing clean air, water, wildlife and toxic chemicals"). There has been a concomitant dramatic curtailment of federal investments in the development, commercialization, and widespread adoption of clean technologies. These policy reversals created challenges for PAMCO portfolio companies, which required personnel to focus efforts on assisting those companies. At the same time, the diminished opportunity for clean technology discouraged clean technology companies from raising capital and investors from investing in clean technology companies. This limited the need for personnel to focus on private placements through Potomac.

On January 6, 2021, President Biden was certified as the President-elect. On January 19, 2021, Georgia's certification of the election of Senators John Ossoff and Raphael Warnock resolved uncertainty about which political party would control the United States Senate, with President Biden's party now controlling the presidency and both houses of Congress. President Biden, Speaker Pelosi, and Senate Majority Leader Schumer have all proclaimed strong support for policies to address climate change and protect the environment, including a combination of stronger regulation and robust investment in clean infrastructure. *See, e.g.*, Coral Davenport & Lisa Friedman, "Biden Plans to Move Fast With a 'Climate Administration.' Here's How." *N.Y. Times*

(Nov. 17, 2020), (available at https://www.nytimes.com/2020/11/17/climate/biden-climate-change.html) (last visited February 10, 2021) (describing the incoming administration's "whole government approach" to addressing climate change).

This sea change in the direction of federal environmental policy has strengthened the prospects of clean technology companies, and ignited investor interest in the clean technology sector. While personnel still need to provide assistance to PAMCO portfolio companies, past and future Potomac clients will soon need Potomac's 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.

Potomac could afford to lie dormant during the second half of 2020. It wasn't incurring material costs beyond completion of its audit, and there wasn't a near-term demand for Potomac's broker-dealer services. The lull in clean technology investment meant that its customers did not face imminent irreparable harm absent a stay, and the limited cost of remaining open but dormant was one Potomac's affiliates were willing to bear on its behalf.

However, Potomac learned on January 19, 2021 that clients would begin to need its services in the immediate future. On January 19, 2021, it became clear that Potomac's clients would suffer irreparable harm if Potomac were unable to resume providing services to them. At the same time, if Potomac had to turn significant customers away due to the expulsion, its long-term business prospects would evaporate, at a time when Potomac's affiliates were about to incur substantial cost for Potomac's 2020 audit and other expenses. The cost-benefit analysis for Potomac's affiliates changed at that time – they were not willing to make substantial outlays for a business that would be destroyed by the absence of a stay. Potomac therefore moved for a stay within 7 business days of learning that its expulsion presented an imminent risk of irreparable harm

to Potomac (in the destruction of its business) and to its clients (in the loss of Potomac's services and expertise).

Potomac's request for a stay was, in this sense, not "delayed" at all. Even if it were deemed "delayed," however, that "delay" is explained by the changes in circumstances described above.

The cases FINRA cites do not support its delay arguments. The *Tough Traveler* case involved trademark infringement and a "high probability of confusion," which would normally create a presumption of irreparable harm, but the Plaintiff had delayed over nine months in filing suit, then another four months in seeking a preliminary injunction. *Tough Traveler, Ltd. v. Outbound Prods.*, 60 F.3d 964, 968–69 (2d Cir. 1995). Potomac appealed FINRA's actions almost immediately, not nine months later, and sought a stay as soon as evolving conditions created a strong likelihood of irreparable harm. There were two substantial changes in circumstances during Potomac's "delay" period that increased the likelihood of irreparable harm (imminent incursion of a new year's costs and arrival of a sea change in federal policy), both of which occurred close to the end of the "delay period," whereas there was no changed circumstance or other explanation behind Tough Traveler Inc.'s delay. *See id.*

The *Akindemowo* case involved an individual broker whose alleged irreparable harm was loss of income (which generally does not constitute irreparable harm), and who did not explain why a finding of irreparable harm would be consistent with his delaying a stay request until two months after he filed his brief supporting his application. *See Kenny A. Akindemowo,* Exchange Act Release No. 78352, 2016 SEC LEXIS 2522, at *7 (July 18, 2016). In this case, the harm alleged is in fact irreparable, and changing circumstances raised harm to the irreparable level less than two weeks before the applicant requested a stay. It should be noted that Akindemowo also showed no likelihood of success on the merits, and strong findings of fraud and conversion both

precluded likely success on the merits and made a stay strongly against the public interest. *Id*. None of those factors applies in this case.

Miller involved the special instance of labor injunctions, which are generally barred under the Norris Laguardia Act. *See Miller v. Cal. Pac. Med. Ctr*., 991 F.2d 536, 544 (9th Cir. 1993) Even in this context where preliminary injunctions are uniquely disfavored, the *Miller* Court acknowledged that "[d]elay by itself is not a determinative factor," then determined that in this particular case, "[b]ecause the detrimental effects, if any, of the alleged unfair labor practice have already taken their toll, the [National Labor Relations] Board's final order is likely to be as effective as an order for interim relief." *Id*. (citations and internal quotation marks omitted). Unlike in *Miller*, expulsion has not yet made irreparable harm inevitable, and winning an appeal after the destruction of its business is not "as effective" as a stay that allows Potomac to continue operating and providing vital services to customers pending the final outcome. *Kobell*, which also involves the inapposite labor injunction context, explains that "delay by the Board constitutes relevant (though not dispositive) evidence that interim injunctive relief is not truly necessary." *Kobell v. Suburban Lines, Inc.*, 731 F.2d 1076, 1091 n.27 (3rd Cir. 1984). Here, Potomac has provided context to show why the timing of its stay request is not inconsistent with a finding that interim injunctive relief is "truly necessary."

2. Potomac has demonstrated a likelihood of irreparable harm

FINRA baselessly claims that Potomac's assertions of harm are "unspecific, speculative, and unsupported." *See Se. Invs., N.C., Inc*., Exchange Act Release No. 86097, 2019 SEC LEXIS 1370, *4-5 (Jun. 12, 2019). In the case FINRA quotes, the Commission made this finding because, rather than stating that a bar would result in destruction of a business, the applicant stated the bar "will severely hamper [his firm's] ability to function," under circumstance where he had admitted he was no longer even the firm's owner. *See id.* A statement that a firm's ability to function will be

"severely hampered" is unspecific as to whether harms suffered will be irreparable, to what the relationship between the bar and the harm is, and to every other detail relevant to irreparable harm analysis. By contrast, Potomac precisely articulates two types of harm that the Commission has found irreparable in the past (destruction of a business and loss by companies of access to markets for their securities), and explains precisely why failure to stay will lead to those harms. In general, when an applicant has made specific, credible assertions that a business will be destroyed or that a company will lose access to markets for its securities, the Commission has credited them for purposes of irreparable harm analysis, even when those opposing the stay have questioned those assertions. *See Scottsdale Capital Advisors Corp*., Exchange Act Release No. 83783, 2018 WL 3738189, at *2 (Aug. 6, 2018); *Scattered Corp.*, 52 S.E.C. 1314, 1997 SEC LEXIS 2748, at *11-12 (Apr. 28, 1997),

FINRA falsely asserts that Potomac "identifies no specific reason why its clients could not engage another broker-deal to assist them with private placements." Potomac explains, however, that it has "unique expertise in clean technology and uniquely strong relationships with the experienced 'super accredited' institutional investors who are among these customers' best investment prospects." Stay Mot. at 6; *see id.* at 17. In *Scattered Corp*., the applicant did not need to show that companies for whom it made markets could not possibly have markets made for them by another firm. *See Scattered Corp.*, 52 S.E.C. 1314, 1997 SEC LEXIS 2748, at *11-12 (Apr. 28, 1997). It was enough that Scattered Corp. sometimes made markets for firms, and it was somewhere between plausible and credible that market-making activity would not occur in Scattered Corp.'s absence. Potomac need not prove the impossibility of its customers finding another broker-dealer with similar expertise and relationships. It is enough that there is a universe of customers that seek and rely on that expertise and those relationships, and that loss of access to them may impact their ability to raise capital.

FINRA next asserts that Potomac's limited financial activity in 2018 and 2019 undermines its contention that clients would be impacted by its closure. As Potomac explains above, however, its clients did not need its services during the clean technology winter of the past few years, but the clean technology investment environment changed dramatically on January 19, 2021.

FINRA next asserts that "Potomac has adduced no evidence showing that [its] affiliates are unable to assist the Firm until its application for review is resolved." However, Potomac filed an affidavit by Byron, *the principal of those affiliates*, stating under oath that Potomac "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." Byron Aff. ¶7. It is implicit in that statement that Byron, as principal for those affiliates, will not have those affiliates commit addition capital to Potomac if it cannot operate as a broker dealer. FINRA provides no evidence that Byron is being untruthful, nor could it. While it is not physically impossible for Potomac's affiliates to waste capital on a business that is about to be destroyed due to the absence of a stay, physical impossibility is not the test. In *Scottsdale*, the broker-dealer whose bar threatened to destroy a FINRA member business was physically capable of putting money into the business – it simply did not make economic sense for him to do so, and he indicated he would not do so. *See Scottsdale Capital Advisors Corp*., Exchange Act Release No. 83783, 2018 WL 3738189, at *2 (Aug. 6, 2018). This Reply has further explained why the escalation of costs in the new year, combined with the threat that Potomac will lose its customers absent a stay, make affiliate investment infeasible absent a stay.

FINRA then presents re-applying for FINRA membership, either as a limited purpose broker-dealer (as it was before) or as a capital acquisition broker ("CAB"). Either option would

require Potomac to wait for a membership process that can take up to nine months. FINRA's rules give it up to *180 days* to process an application from the date the application is complete, which deadline can be extended by another *90 days*. FINRA Rule 1014(c)(3). FINRA could not even file the record in this case on time, and was nine months late providing Potomac with an examination report Potomac needed for its audit. Potomac can ill afford to gamble its business on FINRA processing on the timeline it needs to prevent irreparable harm. By the time FINRA processes the application, Potomac's business could be destroyed. If FINRA prefers new application to reinstatement, the most logical approach is for a stay to issue pending Potomac's re-application.

C. Risk of Harm to Others and the Public Interest

FINRA acknowledges that Potomac ultimately filed its 2019 audit.[2] However, FINRA asserts that Potomac's reference to the role of outside factors in delaying the audit's completion, including a global pandemic and FINRA's own 9-month delay in providing a crucial examination, "does not reflect favorably on the Firm's ability to take responsibility for these filings moving forward."[3] Potomac has been a broker-dealer in good standing for 23 years. It filed audits late in two particularly difficult years, but acknowledged its responsibility for meeting filing requirements. Byron's affidavit describes steps taken to ensure timely filing of audited annual reports in the future.

---

[2] FINRA disingenuously asserts that Potomac did not properly file its 2019 audit, because it did not use FINRA's Gateway system. Use of the system is impossible for an expelled member, so Potomac contacted FINRA, and submitted the audit in precisely the way FINRA instructed. FINRA's assertion that the submission approach it approved is invalid is a good illustration of the approach FINRA has taken to Potomac's case throughout. If FINRA wants Potomac's audited annual reports to be filed through Gateway, it should consent to a stay, so Potomac can timely file the 2020 audit that is due in the near future. FINRA has refused to do so.

[3] The authority FINRA cites here is quoted out of context. When *Kocherhans* states that "participants in the securities industry must take responsibility for compliance with regulatory requirements," it means simply that ignorance of those requirements is not an excuse for noncompliance. *Thomas C. Kocherhans*, 52 S.E.C. 528, 531 (1995). Potomac is not asserting ignorance of the rules. It acknowledges the importance of the rules, accepts that it is ultimately responsible for timely filing of audited annual reports, and has taken steps to ensure timely filing in the future.

FINRA next asserts that a consent decree involving Byron and PAMCO provides grounds for denying a stay. FINRA never mentioned that decree anywhere in its communications with Potomac in the record or in its decisions on suspension and expulsion, nor has it raised the issue in the six months this appeal has been pending.

The consent decree is not properly before the Commission, and cannot form a basis for decision here. FINRA did not include the consent decree in the record for this case, and the Commission therefore cannot consider it at this juncture. *See Kerr*, 2017 SEC LEXIS 76, at *n.4 (holding that material that FINRA could have included but failed to include in the appeal record could not be considered); *see also* 17 C.F.R. § 201.420 (requiring self-regulatory organizations to certify and file with the Commission "one copy of the record upon which the action complained of was taken"); *cf.* 17 C.F.R. § 201.452 (discussing submission of new evidence before the Commission).

More importantly, courts have consistently dismissed complaints based on consent decrees where, like the decree in question, the defendants neither admit nor deny the factual and legal allegations therein. *See, e.g*., *In re. Lipsky*, 551 F.2d 887, 893–94 (2d Cir.1976) (upholding grant of Rule 12(f) motion to strike consent decree language cited in complaint, on grounds that it would not be admissible under Federal Rules of Evidence); *In re: Rough Rice Commodity Lit*., Case No. 11 C 618, 2012 WL 473091, at*4-7 (N. D. Ill. 2013); *In re: Platinum and Palladium Commodities Litigation*, No. 10 C 3617, 2011 WL 4048780, at *8–9 (S.D.N.Y. Sept. 13, 2011); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 218 F.R.D. 76, 78 (S.D.N.Y. 2003); *Seventy-five Defenses Securities Litigators Need to Know*, 62 BUS. LAW. 1281, 1373-74 (2007) (summarizing decisions striking references to consent orders in complaints).

The *Rough Rice* court explained the rationale for excluding consent judgment factual findings from pleadings as follows:

> This is a consent judgment between a federal agency and a private corporation which is not the result of an actual adjudication of any of the issues. Consequently, it can not be used as evidence in subsequent litigation between that corporation and another party. Fed.Rules Evid., Rule 410, 28 U.S.C.A., prohibits a plea of nolo contender from being later used against the party who so pleaded. Although CUC did not, technically, plead nolo contendere to the SEC's complaint, nolo pleas have been equated with "consent decrees" for purposes of the proviso to § 5(a) of the Clayton Act. The reason for this equivalence is that both consent decrees and pleas of nolo contendere are not true adjudications of the underlying issues; a prior judgment can only be introduced in a later trial for collateral estoppel purposes if the issues sought to be precluded were actually adjudicated in the prior trial. The consent decree entered into by the SEC and CUC was the result of private bargaining, and there was no hearing or rulings or any form of decision on the merits by the district court.

Rough Rice, 012 WL 473091, at*7 (citations omitted).

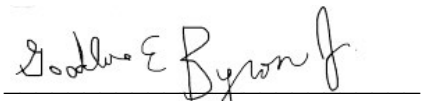
The allegations in the consent decree FINRA cites would be inadmissible as evidence in any hearing in this proceeding, and cannot serve as the basis for any decision the Commission reaches on this Motion or on any other matter in this proceeding. This would be so, even if the consent decree were in the record, which it is not.

Even if the consent decree were properly before the Commission, it provides no basis for a finding that a stay is against the public interest. The decree notes that PAMCO "adopted a number of compliance upgrades and controls," and credits PAMCO "for these remedial steps and its cooperation during the investigation." R. at 81. As FINRA's summary describes, "[t]here were no findings or allegations in the settlement order of intentional misconduct or recklessness on the part of [PAMCO]." *Id.* FINRA's own description of the consent decree thus indicates the lack of "possibility of harm to the investing public." This is all the more true, as the consent decree involved issues unrelated to Potomac's business, where it holds neither client funds nor securities. Potomac has not had a single customer complaint in its 23 years of operation. By contrast, the Commission has found stays to be consistent with the public interest in cases that involved significant allegations of intentional misconduct by the applicant. *See, e.g.*, *Scottsdale Capital Advisors*, 2018 WL 3738189, at *2; *Scattered Corp.*, 1997 SEC LEXIS 2748, at *15.

II. 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

February 11, 2021

CERTIFICATE OF SERVICE

I, Goodloe Byron, certify that on this 11th day of February, 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:

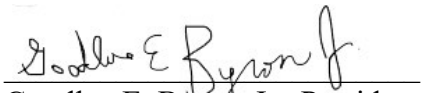
Vanessa Countryman, Secretary
Securities and Exchange Commission
apfilings@sec.gov

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
Potomac Capital Markets, LLC
CRD# 39800
129 West Patrick Street, Unit 4
Frederick, MD 21701
(240) 409-3867