From:	apfilings
To:	Administrative Proceedings Fax
Subject:	FW: Deep ATS LLC , Review application CRD No. 306008 , Application N0. 20190644898
Date:	Thursday, June 3, 2021 11:23:23 AM
Attachments:	DeepATS 20190644898 Final NAC Decision 06.02.21.pdf Filing Confirmation-SEC.pdf

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From: Ramesh Puranik
Sent: Thursday, June 3, 2021 11:22:37 AM (UTC-05:00) Eastern Time (US & Canada)
To: apfilings
Subject: Deep ATS LLC , Review application CRD No. 306008 , Application N0. 20190644898

Vanessa A. Countryman
Securities and Exchange Commission
100 F Street, NE Room 10915
Washington, D.C. 20549-1090

Dear Ms. Countryman

We had applied for membership with Finra , which was denied and NAC has affirmed the denial.
We are of the opinion that the decision to deny membership is unfair and hence elect to file a request for review.
Request for review has been electronically filed.
We would be glad to present ourselves to explain our case if a hearing is made available.

Regards,
Ramesh Puranik
Designated Principal
Deep ATS LLC

DEEP ATS, LLC
3225, Smoky Ridge, Austin, TX 78730

October 15, 2020

National Adjudicatory Counsel
Office of General Counsel
FINRA
1735 K Street, N.W.
7th Floor
Washington, DC 20006

RE: New Membership Application of Deep ATS, LLC

CRD No. 306008 , Application N0. 20190644898

Dear Sir / Madam

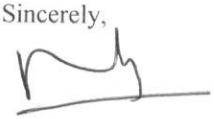
We had filed the NMA on Dec 6 , 2019 and after several information requests and interview , the membership was denied vide Finra letter dated Sep 21, 2020.

We are of the opinion that the decision to deny membership is unfair and hence elect to a file a request for review.

The denial letter and our response as reasons why we believe that the decision is unjust is enclosed.

We would be glad to present ourselves if a hearing is made available.

Sincerely,



Ramesh Puranik

Designated Principal

Ph: 512 487 1896

Email: rameshpuranik09@gmail.com

cc: Lisa Robinson, Senior Director, Membership Application Program

September 21, 2020

Sent via Electronic Mail
And FedEx # 7715 8519 7905

Mr. Sam Balabon
Mr. Ramesh Puranik
DEEP ATS LLC
3225 Smoky Ridge Road
Austin, TX 78730

RE: **Decision Regarding New Member Application of Deep ATS LLC**
CRD# 306008; Application Number: 20190644898

Dear Mr. Balabon & Mr. Puranik:

Pursuant to FINRA Membership Rule 1014 ("Rule 1014"), FINRA Membership Application Program staff ("Staff") denies the New Member Application (the "Application") of Deep ATS LLC (the "Applicant"). After considering the Application, the membership interview, and other information and documentation provided by the Applicant, it has been determined that the Applicant does not meet each of the standards in Rule 1014(a). Specifically, as set forth in detail below, Staff determined that the Applicant fails to meet the standards in Rule 1014(a)(1), (2), (4), (10) and (13). This denial is based on investor protection considerations and is reasonably designed to address the standards for admission of Rule 1014 (collectively, the "Standards" and each a "Standard").

I. Introduction and Background

The Application was accepted for review on December 6, 2019.[1] The Applicant requested approval to conduct the following business activities: a) operate an alternate trading system ("ATS"); b) private placements of securities; c) trading securities for own account; and d) underwriter or selling group participant (corporate securities other than mutual funds).

The Applicant represented in the November Application Filing that in order to launch the ATS operations, the Firm would need to raise approximately $50 million in financing and once financed, would plan to enter into a clearing arrangement as it does not plan to hold customer funds or securities.

The documentation provided by the Applicant as part of the Application process indicates that that Spot Quote Holdings, Inc. ("SQH") wholly owns the Applicant and Sam Balabon (CRD#

[1] The application was initially submitted on November 5, 2019. However, it did not contain adequate information for Staff to commence a meaningful review and thus – pursuant to Rule 1017(d) – was not deemed to be "substantially complete" to commence the review until December 6, 2019, based on Staff's assessment of the amended Application submitted by the Firm on November 30, 2019 (the "November Application Filing").

2731194) is the majority owner and control person of SQH responsible for managing the Applicant's operations and generating its revenue. Accordingly, Mr. Balabon proposed to act as the Chief Executive Officer ("CEO"), Anti-Money Laundering Compliance Officer ("AMLCO") and General Securities Principal ("GSP")[2] responsible for the supervision of the ATS and proprietary trading activities. The Applicant proposes to register Ramesh Puranik (CRD# 5032629) as its Chief Compliance Officer ("CCO"), Financial and Operations Principal ("FinOp"), and second GSP with responsibility for supervising the private placement of securities and underwriting activities ("Investment Banking" or "IB"). The Applicant does not intend to retain any additional registered representatives. The Applicant proposes to operate one (1) office during the first 12 months of operation, which is located on the property owned by Mr. Balabon.

II. Rationale and Basis for Denial of Application

1. The Application is Not Complete and Accurate as Required by Rule 1014(a)(1).

The Standard in Rule 1014(a)(1) requires the Staff to determine whether the Applicant has submitted a complete and accurate Application. After careful consideration, Staff has determined that the Application is not complete and accurate because the Applicant failed to set forth a feasible business model, the Applicant's communications with Staff call into question whether or not the Applicant intends to actually launch the proposed business activities, and the Application contains significant omissions of material facts regarding the owner and CEO of the Applicant Mr. Balabon and the scope of his outside business activities.

a. The Applicant Failed to Set Forth a Feasible Business Model

The Applicant states that it seeks approval to develop and operate an ATS which is the key driver of the overall proposed business model. In order for Staff to fully assess the proposal, and in connection therewith, the completeness of the Application in accordance with this Standard, Staff requested the Applicant provide a detailed description of the ATS and its operations, detailed information in regards to the source of funding the Applicant planned to utilize to launch the ATS operations, and provide a status update as to the regulatory approvals required in order to operate an ATS.

However, in response Staff received incomplete and inconsistent representations from the Applicant and thus has concluded that the Applicant fails to present a cohesive business model and has failed to take the actions necessary in order to be in a position to commence the business operations for which it seeks approval.

For example, as it relates to Staff's request to the Applicant to provide a detailed description of its proposed ATS, the Applicant stated in its November Application Filing, that it "…*is not*

[2]The November Application Filing initially identified Mr. Puranik would serve only as the Applicant's FinOp, however the Application was amended on March 4, 2020 in order to place Mr. Puranik in the role of GSP and Investment Banking Supervisor. The Application was amended again on April 30, 2020 in order to place Mr. Puranik in the role of CCO.

anticipating conducting any business until the ATS becomes operational" and in addition, the Applicant plans to "*commence software development once capital is raised. There are currently no offerings to sell stock offered to the market. Spot Quote Holdings hopes to secure a large partner such as a global bank to take over project."* In addition, Staff inquired at the outset of the Application whether or not the Applicant's ATS functions were ready to be demonstrated to Staff, to which the Applicant responded "*...the technology currently built does not have current technical support so any demos will not be possible other than old videos of the software".* Staff conduct the Applicant's Membership Interview ("MI") on June 24, 2020, at which time it was presented with a rudimentary demonstration of an ATS, and which, based on the Applicant's own representations outlined above, Staff has no confidence that the system demonstrated at the MI is either the final version of the ATS and whether this system would comply with Form ATS-N requirements.

In addition, the Applicant stated that in order to launch and operate its proposed ATS, it would require approximately $50 million in financing, and plans to *"...solicit mainly large NMS traders/exchanges/money managers to raise finance"*. However, the Applicant has provided no further detailed financing plan or the names of any potential investors to date. When asked by Staff to provide an update regarding its efforts to obtain the financing required to launch operations of the ATS, the Applicant responded on July 3, 2020, stating that only after approval is achieved would the Applicant approach "*big banks and traders for financing*", and provided no further detail. As a result, Staff has no confidence that the Applicant will be in a position to obtain the financing necessary to launch the ATS operations.

In short, the Applicant has not provided to Staff a true picture of the ATS at the MI for Staff's consideration and a bona fide plan as to how it intends to source capital to launch the ATS, and thus is unable to outline with any degree of specificity and certainty the business in which it proposes to engage in.

b. The Applicant's Communications with Staff during the Course of the Application Review Call into Question the Applicant's Intention to Conduct Business as a FINRA Member

Staff has received conflicting information from the Applicant specifically related to whether or not it, if it becomes a Member of FINRA, it intends to actually operate as a business pursuant to their Application request. As stated previously, the Applicant indicated in its November Application Filing that it has maintained rights to the technology and patents and necessary software development would only commence once capital is raised. The Applicant also indicated that it *"hopes to secure a large partner such as a global bank to take over project"* which may suggest it is creating the broker dealer as a vehicle to sell its patents and technology. As previously mentioned, Staff conducted the MI in June 2020, during which the Applicant generally described its business model and presented a preliminary demonstration of an older version of its proposed ATS. Immediately following the MI, (and on the same day) Mr. Balabon sent an email to Staff indicating that he would be willing to *"...hand over all the patents to FINRA and all the technology already built to FINRA for a 3% royalty of sales by way of your Alternative*

Display Facility." The Applicant also stated in a July 3, 2020, response to Staff's request to provide additional information related to investors who may assist in launching the ATS that it may just *"sell the company"*.

The By-Laws of the Corporation of FINRA under Article III (Qualifications of Members and Associated Persons) outline the requirements of persons who are eligible to become members and associated persons of members. Section 1(a) of Article III states in part that "*Any registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States, under the laws of the United States, shall be eligible for membership in the Corporation.*" There is no provision for dormant or inactive membership.

Based on the aforementioned, Staff continues to maintain significant unresolved questions regarding the manner in which the Applicant proposes to engage in business operations, and quite frankly, given the multiple conflicting statements made by the Applicant during the course of the Application, whether or not the Applicant actually intends to conduct a business operation at all, or in the alternative, simply plans to attempt to sell a shell company and related intellectual property to the highest bidder (or to FINRA itself), contrary to FINRA's By-Laws.

c. *Failure to Disclose Outside Business Activities of the Applicant*

The Standard in Rule 1014(a)(1) requires the Applicant identify by name all entities under common control with the Applicant, describe the nature of each such entity's business, and identify each entity's relationship to the Applicant.

Staff's normal procedure while engaging in a review of a new member application is to conduct an independent due diligence review of the Applicant and its principals, to ensure all OBA's have been identified and properly disclosed. During the course of this review it has come to light that Mr. Balabon has failed to identify a business venture that he is directly involved with which may have a direct nexus to the operation of a broker-dealer.

Mr. Balabon failed to disclose to Staff that he is the CEO of an entity named Moentum Token ("Moemtum")[3]. The Moentum website (which includes a link to a related White Paper)[4] states its business purpose as:

- An "ERC20 cryptocurrency that is being sold to raise funds to launch two exchanges, one for trading of crypto currencies *and the other for stocks*. The Use of Proceeds section of the White Paper states "*proceeds from the sale of Tokens will be used to*

[3] https://moentum.com/
[4] The White Paper referenced above indicates Moentum Trading Services Ltd is incorporated in the Isle of Man Company with offices at 3225 Smoky Ridge Road, Austin, TX 78730 (which is Mr. Balabon's address as listed in the Application). https://moentum.com/doc/MoentumWhitePaper.pdf

> *develop and launch an MOM new Cryptocurrency Exchange, which will seek a license from the Isle of Man Government and finance Spot Quote Holdings, Inc. so it can launch Spot Quote LLC which currently is an U.S. SEC Regulated Alternative Trading System (ATS) which plans to become a formal U.S. Stock Exchange. Moentum has entered into a patent licensing/marketing/financing/staffing agreement with Spot Quote Holdings, Inc. which grants Moentum unlimited use of Spot Quote Holdings' patents in exchange for financing for Spot Quote Holdings, Inc. Spot Quote Holdings, Inc. has agreed to allow the use of Moentum Tokens to purchase any of the services provided by Spot Quote LLC at a 10% discount provided the SEC and FINRA approve."*

The website identifies Mr. Balabon as the CEO of Moentum Trading Services Ltd. and it appears an Initial Coin Offering ("ICO") was held in 2018. The website further discloses that 755,701 tokens have been sold to approximately 32 members. This business activity was never disclosed on Mr. Balabon's Form U4. The descriptions of Moentum's activities are of particular concern to Staff due to the opacity of the purpose of the capital raise and subsequent business activities, and the multiple references in the business activities description which to a layperson may imply that both the Commission and FINRA have endorsed such activities.

The Applicant's failure to disclose Mr. Balabon's ownership and control of Moentum, is in direct contrast to FINRA's New Member Application Requirements. All Applicants seeking FINRA approval to operate a broker-dealer are required to fully disclose all OBAs and provide detailed information surrounding the scope of their business operations in order to meet the Standards for Admission. The failure of the Applicant to disclose any OBA which the CEO of the Applicant actively engages in, results in a failure for the Applicant to meet the Standards for Admission.

In addition, the Application states the Firm's indirect owner and CEO (Mr. Balabon) has certain outside business activities that he will dedicate no more than ten (10) hours a week to, which were not named with any specificity. Staff's review of Central Registration Depository ("CRD") indicates that Mr. Balabon disclosed OBA affiliations with 3 entities: Spot Quote Holdings, Inc., Spot Quote LLC and Intelligent Resources. Spot Quote Holdings is described as the Parent company to Spot Quote LLC and is not investment related. Spot Quote LLC was renamed OKCoin Securities on August 6, 2019 and the Application states that Spot Quote Holdings, Inc. has no ongoing relationship with OKCoin Securities[5]. Intelligent Resources is described as a contractor to Spot Quote LLC for the development of its software platform and consulting work. Staff requested on April 2, 2020 that the Applicant provide a description of the business activities conducted by Intelligent Resources to provide the contemplated interaction with the Applicant both operationally and financially. The Applicant's response lacked specific detail, stating Intelligent Resources is "*a company in existence since 1997, thorough [sic] which Sam Balabon had carried out several business operations. It continues to meet several running expenses*"

[5] Mr. Balabon previously owned another FINRA broker-dealer (CRD#136696), also named Deep ATS (from August 3, 2005 through September 3, 2015), then renamed to Spot Quote LLC (from September 3, 2015 through August 6, 2019). That broker-dealer was sold to a third party in late 2019 and was subsequently renamed OKCoin Securities LLC on August 6, 2019.

and thus has not provided any relevant details as to what business operations are conducted by Mr. Balabon through his OBA, Intelligent Resources.

As noted above, the Standard in Rule 1014(a)(1) requires an accurate and complete application. Despite Staff's repeated requests and Membership Interview, the application fails to set forth a feasible business model, calls into question whether or not the Applicant intends to launch the proposed business activities at all, and contains significant omissions of material facts regarding the owner and CEO of the Applicant Mr. Balabon and the scope of his outside business activities. Staff has concluded that the Application does not meet the Standard in Rule 1014(a)(1).

2. The Applicant and its Associated Persons have Failed to Satisfy FINRA Rule 1014(a)(2).

The Applicant has failed to demonstrate that its supervisory principals are properly licensed. FINRA Rule 1014(a)(2) requires Staff to determine whether the Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations. In order to engage in the proposed business lines, the Applicant would need to register an Investment Banking Representative (Series 79) and a Securities Trader Representative (Series 57) to supervise its investment banking and proprietary trading businesses.

The Applicant stated that Mr. Puranik would act as the supervisor for the proposed Investment Banking activities, and that Mr. Balabon would act as the supervisor of the proposed proprietary trading activities.[6] A review of CRD on September 10, 2020, revealed that neither Mr. Puranik nor Mr. Balabon have obtained the Series 79 or Series 57 examinations, respectively.

Designated supervisors must be properly licensed and registered to engage in the proposed business activities. Accordingly, the Applicant has not satisfied the requirements of Rule 1014(a)(2), due to its failure to identify properly licensed supervisors for its proposed Investment Banking and Proprietary Trading activities.

3. The Applicant has not Established All Contractual or Other Arrangements and Business Relationships as Required in Standard 1014(a)(4).

FINRA Rule 1014(a)(4) requires the Applicant's establish all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus or others

[6] Investment Banking activities that include pricing and structuring of deals must be supervised by a principal that holds both the Series 79 and Series 24 which the Applicant confirmed on March 4, 2020 they plan to conduct. Proprietary Trading activities involving equity products must be supervised by a principal that holds both the Series 57 and Series 24, however the proposed supervisory principal (Mr. Balabon), has expressed that he does not believe his business requires this license, stating in its April 30, 2020 to Staff *"…Trading / market making activity would be for the firm's own account and shall not be carried out for customers or third parties*" and *"…in future if need arises the firm may recruit licensed persons for the activity. Hence we feel series 52 (SIC) is not needed now".* Staff finds this assessment inaccurate.

necessary to: a) initiate the operations described in the Applicant's business plan considering the nature and scope of operations and the number of personnel; and b) comply with the federal securities laws, the rules and regulations thereunder, and FINRA Rules.

The Applicant has failed to provide evidence of contractual and/or business arrangements necessary to initiate operations as a broker dealer. The Applicant was advised in information requests dated January 6, 2020 and June 4, 2020, that evidence of such arrangements and/or contracts were required to be provided prior to the conclusion of the application

To date the Applicant has not provided:

a. A Fidelity Bond as required by FINRA Rule 4360.

b. An Audit Engagement Letter pursuant to SEC Rule 17a-5(f)(2).

c. Evidence of a contract or agreement with an electronic storage/email archiving vendor to satisfy requirements specified in SEA Rule 17a-4(b).

In total, the Applicant has not provided the basic contracts and agreements necessary for the operation of a broker dealer. Consequently, the Applicant and its associated persons do not meet the standard in Rule 1014(a)(4).

4. <u>The Applicant and its Associated Persons Failed to Satisfy the Standards Established By Rule 1014(a)(10).</u>

The Standard in FINRA Rule 1014(a)(10) requires the Staff to consider, among other factors, the experience of supervisory personnel, the experience of the personnel to be supervised and whether such supervisory personnel have at least one year of direct or two years of related experience in the subject area to be supervised.

a. Lack of Supervisory Experience on the Part of Mr. Puranik

FINRA Rule 1014(a)(10) requires that each associated person that is identified by an applicant as having a supervisory function have at least one year of direct experience or two years of related experience in the subject area to be supervised. The Applicant identified Mr. Puranik as its FinOp, GSP, Investment Banking Principal and CCO, however, the Applicant has not identified any of Mr. Puranik's direct experience, nor has the Applicant provided any evidence that Mr. Puranik's banking experience from twenty years ago is relevant to the subject area to be supervised.

In requests submitted to the Applicant on April 2, 2020 and June 4, 2020, Staff asked the Applicant provide detailed descriptions of how Mr. Puranik's background and experience meets the Standard of Rule 1014(a)(10)(D) with respect to his role as the Investment Banking Principal and to provide specific experience with investment banking and underwriting,

including structuring and pricing deals and whether such experience was direct or related. In response, the Applicant failed to provide sufficient evidence to demonstrate direct or related experience in the Supervision of Investment Banking activities.

In response to these requests, the Applicant indicated "*Ramesh Puranik has worked in a bank for 12 years and has experience in Investment Banking and Venture Capital" and "… he will be taking up the Series 79 exam shortly".*

Staff reviewed the resume for Mr. Puranik provided by the Applicant which indicates Mr. Puranik was employed by Canara Bank in India from 1986 to 1999. While there is some reference to investment banking activity, there are no specifics about his role or responsibilities and Staff has no method by which to confirm this employment and the nature of his role at the Bank over twenty years ago. His resume states his most recent employment (from 1999 to the present) has been working at Intelligent Resources as a systems analyst and fund manager. Nowhere in the description of responsibilities at Intelligent Resources does it indicate Mr. Puranik has been conducting investment banking activity, rather his resume only states indicates he acted as the FinOp of a subsidiary broker dealer firm, which as the Applicant confirmed "…*did not have investment banking business".*

The lack of specificity and responsiveness to multiple requests by Staff seeking clarity around the nature of Mr. Puranik's investment banking experience, how the Applicant determined the adequacy of his experience and whether such experience is characterized as direct or related experience in the context of meeting the requirements of FINRA Rule 1014(a)(10) has led Staff to the conclusion that Mr. Puranik is not sufficiently qualified and experienced to function as the Investment Banking Principal of the Applicant. In addition and as noted above, Mr. Puranik is not properly licensed to supervise the investment banking activities outlined in the Application. The Applicant has not demonstrated that Mr. Puranik has sufficient experience in the subject area to be supervised by him, as required under Rule 1014(a)(10).

As a result of all of the above, Staff had determined that the Applicant and Mr. Puranik failed to meet the criteria in Rule 1014(a)(10).

5. <u>There Is Information Indicating that the Applicant May Circumvent Evade or Otherwise Avoid Compliance With Federal Securities Laws the Rules Thereunder and FINRA Rules.</u>

FINRA Rule 1014(a)(13) allows for the denial of an application if FINRA possesses any information indicating that the applicant may circumvent, evade or otherwise avoid compliance with applicable securities laws. Based on the information and documents provided by the Applicant, as well as the Staff's own due diligence, the Staff concluded that the Applicant may circumvent, evade or otherwise avoid compliance with applicable securities laws for three main reasons.

First, the Applicant has consistently failed to present a feasible model of its business activities and made representations which led Staff to conclude the Applicant may not truly intend to commence business operations of the Applicant, (including its failure establish contractual and other arrangements and business relationships).

Second, the Applicant failed to disclose Mr. Balabon's ownership and control of an outside business activity, which is in direct contrast to FINRA's New Member Application Requirements.

Last, the Applicant failed to obtain the licenses and registrations required to engage in the proposed business operations and proposed an Investment Banking Principal, Mr. Puranik, who is not adequately qualified and experienced to effectively discharge his designated responsibilities.

Notably, the Standard in Rule 1014(a)(13) does not require a finding of intent. Instead, the Standard requires that Staff identify any possibility that may result in circumvention, evasion or avoidance of compliance (whether it be knowing or unintentional). Here, the Applicant's several failures to comply with the standards for membership reflects that there is a possibility that the Applicant might circumvent, evade, or avoid compliance in the future.

A key function of Staff in the Membership Application Process is ultimately the protection of investors. Staff's role in the Membership Application review process is to act as gatekeepers on behalf investors to identify the risk of investor harm before an applicant is approved for membership. Upon review of the totality of facts as presented in this application process, Staff concluded that: a) the business model is not viable or complete such that the relevant standards are met: and; b) the supervisory structure and qualifications of are insufficient to meet the relevant standards. Further, Staff has determined that, if approved, the Applicant may circumvent, evade, or otherwise avoid compliance with federal securities laws, the rules and regulations thereunder, and FINRA Rules, pursuant to the Standard in Rule 1014(a)(13).

III. Conclusion

Based upon its review and assessment, Staff has determined that the Applicant has failed to meet the Standards in FINRA Rule 1014(a)(1), (2), (4), (10) and (13). Accordingly, the Application for FINRA membership is denied. The Staff's denial of this Application is appropriate, is based on investor protection considerations and is reasonably designed to address the standards for admission of under FINRA Rule 1014.

IV. Procedure for Review

FINRA Membership and Registration Rule 1015 provides for the opportunity of an applicant to file a written request for a review of this decision with the National Adjudicatory Council within twenty-five (25) days after service of the decision. In this regard, the Applicant may request a review of this decision until **October 16, 2020.** A request for review must include the specific reasons supporting the Applicant's belief that the decision is inconsistent with the

membership standards set forth in FINRA Rule 1014, or otherwise should be set aside. If you would like to present this information at a hearing, the Applicant's written request must indicate that a hearing is requested.

Any questions regarding this decision may be directed to Lisa Robinson at 212-858-4764, or Alissa.Robinson@finra.org.

Sincerely,

Lisa Robinson

Lisa Robinson
Senior Director
Membership Application Program

cc: William St. Louis, Sr. Vice President, FINRA
Jennifer Crawford, Vice President, Litigation, Enforcement, FINRA
Loyd Gattis, Litigation Director, Enforcement, FINRA
Michelle Galloway, Principal Litigation Counsel, Enforcement, FINRA
Leyna Goro, Associate Director, Membership Application Program, FINRA
Jennifer Danby, Application Manager, Membership Application Program, FINRA
Lucy Palmieri, Director, Risk Monitoring, FINRA
Cliff Wexler, Principal Analyst, Risk Monitoring, FINRA

Colleen Durbin
Associate General Counsel

Direct: (202) 728-8816
Fax: (202) 728-8264

June 2, 2021

VIA ELECTRONIC MAIL

Vanessa A. Countryman
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549-1090
apfilings@sec.gov

Re: Application No. 20190644898: Deep ATS LLC

Dear Ms. Countryman:

Enclosed please find the decision of the National Adjudicatory Council ("NAC") in the above referenced matter. The FINRA Board of Governors did not call this matter for review and the attached NAC decision is the final decision of FINRA.

Sincerely,

/s/ Colleen Durbin

Colleen Durbin

Enclosure

Jennifer Piorko Mitchell
Vice President and
Deputy Corporate Secretary

Direct: (202) 728-8949
Fax: (202) 728-8300

June 2, 2021

VIA ELECTRONIC MAIL

Sam Balabon
Ramesh Puranik
Deep ATS LLC
3225 Smoky Ridge Road
Austin, TX 78730
deepliquidity@gmail.com
rameshpuranik09@gmail.com

Re: Application No. 20190644898: Deep ATS LLC

Dear Messrs. Balabon and Puranik:

Enclosed is the decision of the National Adjudicatory Council ("NAC") in the above-referenced matter. The Board of Governors of the Financial Industry Regulatory Authority ("FINRA") did not call this matter for review, and the attached NAC decision is the final decision of FINRA.

In the enclosed decision, the NAC affirmed Member Supervision's denial of the membership application.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application for review with the SEC within 30 days of receipt of this decision. A copy of this application must be sent to the FINRA Office of General Counsel, as must copies of all documents filed with the SEC.

The address of the SEC is:

The Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Room 10915
Washington, D.C. 20549-1090
APfilings@sec.gov

The address of FINRA is:

Attn: Colleen Durbin
Office of General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
Colleen.Durbin@finra.org

If you file an application for review with the SEC, the application must identify the FINRA case number and state the basis for the appeal. You must include an email address, mailing address where you may be served and a phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and FINRA. Attorneys must file a notice of appearance.

Effective as of April 12, 2021, the SEC's Rules of Practice (Rules) (17 CFR §§ 201.100 – 201.1106) require the electronic filing and service of documents in Commission administrative proceedings. *See Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. 86,464 (Dec. 30, 2020) (copy attached). The SEC's Rules of Practice and instructions for electronic filing are available on the SEC's website on the Rules of Practice page at http://www.sec.gov/about/rulesofpractice.shtml. The SEC's electronic filing system ("eFAP") is available at https://www.sec.gov/efap.

Although the SEC's electronic filing requirements took effect on April 12, 2021, there is a 90-day phase-in period beginning on that date and ending on July 12, 2021. During this period, in addition to submitting electronic filings through eFAP, parties and representatives also must file documents with the SEC by email at APfilings@sec.gov or in paper format. If filed in paper format, an original and three (3) paper copies of the complete electronic filing, including all attachments, must be submitted to the Office of the Secretary in accordance with any of the delivery methods set forth in Rule 152(a)(2) of the SEC's Rules of Practice.

The SEC's instructions for electronic filing also require that parties and representatives serve and accept service of documents electronically. Should you decide to avail yourself of the opportunity to appeal the NAC's decision to the SEC, we request that you serve a copy of the application for review, and copies of any documents you may file in support of the application for review, on FINRA electronically at **Colleen.Durbin@finra.org**. We consent to accept electronic service of appeal on behalf of FINRA at this email address.

If a person reasonably cannot serve documents electronically (due, for example, to a failure to have a functional email address or a lack of access to electronic transmission devices due to incarceration or otherwise), that person may follow the procedures at 17 CFR § 201.150(c)(1) to file a certification of inability to serve electronically. A person who properly files such a certification may serve paper documents by any additional method of service listed in 17 CFR § 201.150(d).

Sincerely,

Jennifer Piorko Mitchell

Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

Enclosure

cc:

Jennifer Crawford, Esq.
Loyd Gattis, Esq.
Michael Manning, Esq.
William St. Louis, Sr.
Leyna Goro
Jennifer Danby
Lucy Palmieri
Cliff Wexler
FNC Finance
RegTaskGroup
Natesha Cromwell
Paula Jackson

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the	DECISION
New Member Application of	Application No. 20190644898
Deep ATS, LLC,	Dated: June 2, 2021
Austin, TX	

FINRA's Department of Member Supervision denied firm's application for membership. Held, denial affirmed.

Appearances

For Deep ATS, LLC: Sam Balabon and Ramesh Puranik

For the Department of Member Supervision: Jennifer Crawford, Esq., Loyd Gattis, Esq., and Michael Manning, Esq.

Decision

Pursuant to FINRA Rule 1015(a), Deep ATS, LLC ("Deep ATS") appeals a September 21, 2020 Department of Member Supervision ("Member Supervision") decision denying the firm's application to become a FINRA member firm. After conducting a hearing, reviewing the record, and considering the parties' arguments, we affirm Member Supervision's decision to deny Deep ATS's FINRA membership application.

I. Background and Procedural History

The FINRA Membership Rule 1010 Series sets out the substantive standards and procedural guidelines for the membership application and registration process. FINRA Rule 1013 governs the new member application process. Once a prospective firm files a substantially complete application with FINRA, Member Supervision conducts a review to determine whether FINRA requires any additional information from the applicant firm to conduct a meaningful review of the application. After receiving any additional requested information or documentation from the applicant firm, FINRA may make subsequent requests for information.

Prior to making a decision on the application, Member Supervision conducts a membership interview with the applicant firm. During the membership interview, Member

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Supervision reviews the application and FINRA's standards for admission to membership with the applicant firm and its representatives.

Member Supervision then issues its decision. The decision whether to admit a firm to FINRA membership is governed by the membership standards articulated in FINRA Rule 1014. The applicant firm bears the burden of demonstrating that it meets each of the rule's standards. If the applicant firm fails to demonstrate that it satisfies each of the rule's 14 standards, the application will be denied.

A. Deep ATS's New Member Application

Deep ATS filed its initial New Member Application ("NMA") on November 5, 2019. Pursuant to its NMA, the firm proposed to engage in four lines of business: developing and operating an alternative trading system ("ATS");[1] selling private placement securities to accredited investors; engaging in proprietary trading; and acting as an underwriter or selling group participant ("investment banking activities"). The NMA stated that to launch its ATS operations, Deep ATS would need to raise approximately $50 million in financing. The firm stated it would not hold customer funds or securities.

The NMA stated that Deep ATS is wholly owned by Spot Quote Holdings, Inc., and that Sam Balabon ("Balabon") is the majority owner and control person of Spot Quote. Balabon proposed to act as the chief executive officer ("CEO"), chief compliance officer ("CCO"), anti-money laundering compliance officer ("AMLCO"), and general securities principal responsible for the supervision of the ATS and proprietary trading activities. Deep ATS proposed to register Ramesh Puranik ("Puranik") as its financial and operations principal ("FINOP") and second general supervisory principal with responsibility for supervising the private placement of securities and investment banking activities. The firm stated it did not intend to retain any additional registered representatives and proposed to operate one office during the first 12 months of operation, which would be located on property owned by Balabon. The NMA disclosed that Balabon had outside business activities to which he would dedicate no more than ten hours a week: Spot Quote Holdings, Inc. (Deep ATS's parent company), Spot Quote LLC,[2] and Intelligent Resources.

On November 11, 2019, Member Supervision alerted Deep ATS that there were several deficiencies in its initial NMA. Member Supervision specifically requested that Deep ATS provide additional information about Spot Quote, bank account information for the firm and Spot

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[1] An ATS is a non-exchange trading venue that matches buyers and sellers to find counterparties for transactions. ATSs are generally regulated as broker-dealers rather than as exchanges.

[2] Balabon previously owned another FINRA broker-dealer, also named Deep ATS (from August 3, 2005 through September 3, 2015), then renamed Spot Quote LLC (from September 3, 2015 through August 6, 2019). Spot Quote LLC was renamed OKCoin Securities on August 6, 2019 when it was sold to a third party.

Quote, the firm's procedures for its proposed private placement of securities business, and whether the firm's ATS was "demo-ready," such that the firm could present a functioning trading platform to Member Supervision. In response, Deep ATS filed revised NMAs on November 18, 2019, and November 30, 2019.[3] Deep ATS represented that it would have a "demo ready" ATS available. Member Supervision accepted the NMA as substantially complete on December 6, 2019.

B. Member Supervision's Review of Deep ATS's New Member Application

1. Member Supervision's Request for Additional Information[4]

After accepting Deep ATS's NMA as substantially complete, Member Supervision made several requests to the firm for additional information to adequately assess the firm's ability to meet the standards for membership contained in FINRA Rule 1014.

a. First Information Request

On January 6, 2020, Member Supervision requested that Deep ATS submit an updated NMA that addressed Member Supervision's questions concerning the ownership and control of the firm, the proposed business activities, registration requirements, the general requirements for the operation of a broker-dealer (including clearing arrangements, fidelity bond, and the firm's electronic storage/email archiving vendor), and clarification of the firm's written supervisory procedures (WSPs). Deep ATS responded on March 4, 2020. In relevant part, the firm replied that it planned to engage in private placement and investment banking activities that require Series 79 registration (investment banking representative), and that Puranik would be taking the Series 79 examination. In addition, Deep ATS responded that Balabon would engage in and supervise the firm's proposed proprietary trading and that it believed Balabon would not need to pass any additional trading exams.[5] Finally, the firm represented that it was making arrangements to procure a clearing arrangement, a fidelity bond, and a contract for the firm's electronic storage/email archive system.

b. Second Information Request

On April 1, 2020, after a telephone conversation with Puranik, Member Supervision emailed him seeking clarification and additional information regarding Deep ATS's proposed membership. Specifically, Member Supervision asked for the following information:

- an explanation as to why Balabon believed he did not need to take the Series 57 (securities trader representative) examination if he would be conducting and supervising proprietary trading and market making activities;

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3 Deep ATS submitted nine revised NMAs over the course of the application process.

4 Member Supervision's requests and Deep ATS's responses that are not germane to Member Supervision's denial or the instant appeal are not discussed in this decision.

5 Balabon possesses Series 24, 62, and 63 registrations.

- a description of Intelligent Resources' business and any planned interaction between it and Deep ATS, as well as payments made on behalf of Deep ATS by Spot Quote Holdings and Intelligent Resources; and

- a resume for Puranik that included his work history and educational background, as well as a narrative description of Puranik's specific experience with investment banking and underwriting.

Deep ATS responded on April 30, 2020. The firm explained that it believed Balabon did not need to take the Series 57 examination because "trading/ market making activity would be for the firm's own account and shall not be carried out for customers or third parties. Such activity is not anticipated till the ATS becomes functional." It stated that, because Deep ATS would not have any income until it started business operations, its expenses would be paid by Spot Quote and Intelligent Resources. In response to Member Supervision's questions concerning Intelligent Resources' business, Deep ATS responded that Intelligent Resources was "a company in existence since 1997, through which Sam Balabon had carried out several business operations. It continues to meet several running expenses." The firm included Puranik's resume and explained that Puranik had 12 years of investment banking and venture capital experience, and would be taking the Series 79 exam shortly.[6] The firm also included updated WSPs that identified Puranik as the proposed CCO, replacing Balabon.

c. Third Information Request

On June 3, 2020, Member Supervision sent its third request for additional information to the firm, via an email to Puranik. Member Supervision sought an update on Deep ATS's efforts to partner with an investor in connection with the development of the proposed ATS. Member Supervision sought additional information related to the adequacy of Puranik's experience to serve as the firm's CCO and a detailed description of Puranik's experience specific to investment banking, underwriting, and compliance. Member Supervision again sought clarity regarding Balabon's belief that he did not need a Series 57 to supervise the firm's proposed proprietary trading. Member Supervision also advised Deep ATS that it needed to provide copies of contracts or agreements evidencing that it had secured a fidelity bond, a third-party provider of electronic storage, as well as an auditor engagement letter.

Deep ATS responded on July 3, 2020. Deep ATS represented that once its membership application was approved, it would attempt to secure financing from banks and other sources. In response to Member Supervision's inquiry into the adequacy of Puranik's experience to serve as the firm's CCO, Deep ATS responded:

[6] Puranik twice took the Series 79 examination—in November 2019 and July 2020— and did not pass either time.

> Ramesh Puranik has worked in a bank in India for 12 years in a managerial capacity.[7] He has been a Principal and FINOP in the erstwhile Deep ATS since 2006. Apart from filing FOCUS reports, he has been involved in all activities of the firm, including compliance with FINRA and state agencies. The Firm is of the opinion that Mr. Puranik would be able to serve as CCO satisfactorily.

In response to Member Supervision's inquiry concerning Puranik's experience specific to investment banking and underwriting, Deep ATS responded:

> Mr. Puranik, while working in the bank, has [sic] involved in the due diligence and preparation of prospectus for companies doing public or private placement of securities. While working in the venture capital arm of the bank, he has [sic] involved in pricing of private placements seeking additional finance by the invested companies. Erstwhile Deep ATS, did not have investment banking business, but Deep Liquidity Inc, the parent had done some private placements and Mr. Puranik had taken care of the procedures to [sic] in the issue of securities and subsequent reporting to state agencies.

Deep ATS also noted that Puranik handled other compliance requirements such as computing net capital, filing FOCUS reports with FINRA, and working with FINRA during its examinations. Deep ATS reiterated that Balabon was not required to have the Series 57 because the firm would be using loaned funds from its parent company rather than its own funds. Finally, as to the requirement that it secure the necessary contracts and agreements prior to the application being submitted for approval, Deep ATS responded that it had secured letters of intent but would not finalize the contracts until after its membership application had been approved.

d. Fourth Information Request

On July 17, 2020, Member Supervision sent Deep ATS its final request for additional information.[8] Among other things, Member Supervision asked the firm to further elaborate on how Puranik's compliance experience qualified him to act as the firm's CCO.

Deep ATS responded the following day, stating that:

> Mr. Puranik has worked for Intelligent Resources for [sic] since 1999. He has attended to administrative duties including compliance with FINRA and state security agencies since 2006. He served as a Series 24 principal and Series 27 FINOP for a FINRA BD from 2006 to 2019 that was owned by Spot Quote. Due to the fact that the proposed firm may not have customers and trading business in the immediate future, there may not be specific day to day responsibilities for Mr. Puranik. He will be responsible for any compliance and administrative tasks

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[7] Puranik's resume reflects that he worked at the Canara Bank in India from 1986 through 1999.

[8] This final request was made after the June 24, 2020 membership interview.

related to keeping the BD in good standing with FINRA and SEC. He will also continue as FINOP of the firm.

3. Deep ATS's Membership Interview

On June 23, 2020, the day before the membership interview, Member Supervision emailed the firm about Member Supervision's expectations regarding Deep ATS's demonstration of its ATS. Member Supervision asked that during the membership interview, Deep ATS "provide a walk-through of the platform explaining the user experience and functionality, and provide a review of the system capabilities and Firm controls and oversight." Member Supervision also asked Deep ATS to be ready to demonstrate the "functionality and purpose of each trading system within the Deep ATS," onboarding of customers, a walk-through of a typical transaction, trade reporting, risk management controls, surveillance and reporting functionality, and development status. In addition, Member Supervision indicated that the membership interview would cover proposed business activities, supervision and management, funding of the firm, and expense reimbursement/sharing agreements with Intelligent Resources.

On June 24, 2020, Member Supervision conducted the membership interview with Deep ATS. At the hearing in this matter, Member Supervision described the membership interview as "chaotic." Despite Member Supervision's specific request, Deep ATS did not provide a demonstration of its ATS platform for Member Supervision to review. Rather, the firm presented schematics and screenshots, i.e., not an operational system. In addition, at its membership interview and in subsequent correspondence, Deep ATS offered to "hand over all the patents … and all technology already built to FINRA for a 3% royalty. . . ."

4. Member Supervision's Due Diligence

Member Supervision engaged in an independent due diligence review of Deep ATS, Balabon, and Puranik to determine, among other things, whether all outside business activities had been identified and properly disclosed. During its review, Member Supervision discovered that Balabon did not disclose in his NMA that he was the CEO of Moentum Token ("Moentum"), a cryptocurrency company that operated from the same address as Deep ATS. Nor did Balabon disclose this outside business activity on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). In December 2018, while he was still associated with his previous firm, Balabon had updated his Form U4, but did not disclose his affiliation with Moentum.

Moentum Token described itself as "an ERC20 cryptocurrency based on the Ethereum blockchain," which was "currently being sold to get the necessary funding for the creation of two exchanges, own [sic] which will be a cryptocurrency exchange and the other will be focused on financial stocks." Furthermore, Moentum stated that it planned to "fund Spot Quote Holdings and its subsidiary Spot Quote . . . [which] will immediately launch its SEC-regulated Alternative Trading System into the market . . . ."

C. Member Supervision Denies Deep ATS's New Member Application

Member Supervision issued its decision letter on September 21, 2020, denying Deep ATS's application because the firm failed to satisfy the requirements of FINRA Rule 1014(a)(1), (2), (4), (10), and (13). Specifically, Member Supervision stated that it denied Deep ATS's application because it had found that Deep ATS: failed to file a complete and accurate application; the firm's principals were not properly licensed; the firm failed to establish all contractual or other arrangements necessary to operate in compliance with the federal securities laws, the rules and regulations thereunder, and FINRA rules; the firm did not have a supervisory system designed to prevent and detect violations of federal securities laws and FINRA rules; and Member Supervision possessed information that the firm may circumvent or evade federal securities laws or FINRA rules.

1. Member Supervision's Findings Under FINRA Rule 1014(a)(1)

Member Supervision determined that Deep ATS did not submit a complete and accurate application as required by FINRA Rule 1014(a)(1). First, Member Supervision concluded that Deep ATS failed to set forth a feasible business model. Because of the firm's failure to provide a detailed description and demonstration of the proposed ATS, and its failure to provide any specific details regarding the financing needed to launch and operate the ATS, Member Supervision concluded the firm did not provide a sufficient picture of how it would fund and operate the ATS.

Second, Member Supervision determined that Deep ATS's communications and representations during the application process did not instill confidence that the firm intended to conduct business as a FINRA member. Specifically, Deep ATS gave Member Supervision conflicting information regarding whether it intends to operate as an "active" member firm or if it is seeking membership just to sell its technology or the broker-dealer. Member Supervision's decision stated that the FINRA By-Laws do not provide for dormant or inactive membership.

The final basis for Member Supervision's denial based on FINRA Rule 1014(a)(1) was the firm's failure to disclose Balabon's involvement with Moentum, which Deep ATS was required to do as part of the application process. In addition, Member Supervision determined that the firm's responses with respect to Balabon's involvement with Intelligent Resources lacked sufficient detail for Member Supervision to ascertain what business operations are conducted by Balabon through Intelligent Resources.

2. Member Supervision's Findings Under FINRA Rule 1014(a)(2)

Member Supervision concluded that Deep ATS failed to demonstrate that its supervisory principals were properly licensed. To engage in the proposed business lines, the firm would need to register an investment banking representative (Series 79) and a securities trader representative (Series 57) to supervise its investment banking and proprietary trading businesses. However, neither Puranik nor Balabon obtained their respective licenses.

3. Member Supervision's Findings Under FINRA Rule 1014(a)(4)

Member Supervision concluded that Deep ATS did not establish all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus or others necessary to initiate the operations described in the firm's business plan considering the nature and scope of operations and the number of personnel and comply with the federal securities laws, the rules and regulations thereunder, and FINRA rules. Specifically, the firm was required to secure a fidelity bond, an audit engagement letter, and a contract or agreement with an electronic storage company prior to its application being approved. Deep ATS did none of those things.

4. Member Supervision's Findings Under FINRA Rule 1014(a)(10)

Member Supervision determined that the firm and Puranik failed to meet the criteria in Rule 1014(a)(10), which required the firm to have a supervisory system designed to prevent and detect, to the extent practicable, violations of the federal securities laws and FINRA rules. Deep ATS did not provide sufficient information for Member Supervision to conclude that Puranik had the requisite experience to serve as the firm's CCO or to supervise the firm's investment banking activities, as required by the rule.

5. Member Supervision's Findings Under FINRA Rule 1014(a)(13)

Member Supervision's final basis for denial arose out of its conclusion that Deep ATS may circumvent, evade, or otherwise avoid compliance with applicable securities laws. First, Member Supervision found that the firm failed to present a feasible business model and made representations which led Member Supervision to conclude the firm may not actually intend to commence business operations. Second, the firm failed to disclose Balabon's ownership and control of an outside business activity, which is contrary to the new membership application requirement. Finally, the firm failed to obtain the licenses and registrations required to engage in the proposed business operations, and Puranik lacked the experience and qualifications to adequately perform his supervisory and compliance responsibilities. In sum, Member Supervision concluded that the firm's failures to comply with the membership requirements on several fronts indicated that it may circumvent, evade, or avoid compliance in the future.

D. Deep ATS Appeals Member Supervision's Denial

Pursuant to FINRA Rule 1015(a), Deep ATS appealed Member Supervision's decision on October 15, 2020. On appeal, Deep ATS argues that Member Supervision's decision is untimely and inconsistent with the membership standards set forth in FINRA Rule 1014. As stated in greater detail below, Deep ATS's appeal letter argues why each of the reasons presented by Member Supervision should be rejected.

On February 11, 2021, a Subcommittee of the National Adjudicatory Council ("NAC") presided over an evidentiary hearing at which the parties presented opening and closing

statements, witness testimony, and documentary evidence.[9] Deep ATS was represented at the hearing by Balabon, who also testified on behalf of the firm, and Puranik. Deep ATS called three additional witnesses: Alissa Robinson, Senior Director in the Membership Application Program; Cliff Wexler, Principal Analyst in Risk Monitoring; and Puranik. Member Supervision called three witnesses: Robinson; Kasey Bowen, Principal Examiner in the Membership Application Program; and Leyna Goro, Associate District Director in the Membership Application Program. On February 28, 2021, the parties submitted their post-hearing briefs.[10]

III. Discussion

FINRA Rule 1014(a) delineates the standards that an applicant firm must meet before Member Supervision may approve a request for membership admission. The standards under FINRA Rule 1014(a) are intended to ensure that members can satisfy all relevant regulatory requirements for the protection of the investing public, the securities markets, the applicant, and other member applicants. *Membership Continuance Application of Member Firm*, Application No. 20060058633, 2007 FINRA Discip. LEXIS 31, at *44-45 (FINRA NAC July 2007). When assessing whether an applicant for membership meets these standards, FINRA Rule 1014(a) requires Member Supervision to consider, among other things, "the public interest and the protection of investors." The applicant firm bears the burden of demonstrating that it meets each of the rule's standards for membership approval. *New Membership Application of Firm A*, Application No. 20090182345, 2010 FINRA Discip. LEXIS 24, at *22 (FINRA NAC Sept. 28, 2010); *see also* FINRA Rules 1014(a), (b). Member Supervision found that Deep ATS failed to demonstrate it could meet five of the standards articulated in FINRA Rule 1014(a).

A. Member Supervision's Late Issuance of the Decision

Before addressing whether the firm meets the standards for FINRA membership, we consider Deep ATS's argument that Member Supervision's decision is invalid because it was issued late, in contravention of FINRA rules. Deep ATS argues that Member Supervision

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[9] The Subcommittee hearing this appeal admitted all of Deep ATS's and Member Supervision's proposed exhibits that were proffered for admission.

[10] Pursuant to FINRA Rule 1015(g), on February 18, 2021, the Subcommittee asked Member Supervision to provide a copy of the rule, policy, or procedure that addressed Member Supervision's requirement that any applicant seeking approval to operate an ATS must present or provide a "demo-ready" platform during the membership application process, and the year that the rule, policy, or procedure was implemented. Member Supervision included its response to this request in its post-hearing brief. It explained that its practice of requiring applicants seeking to operate an ATS to present a "demo-ready" platform is based on FINRA Rule 1014(a)(6), which requires Member Supervision to determine whether the "communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate," as well as Member Supervision's inherent authority to investigate issues that it discovers while reviewing an application, which the NAC has recognized since at least 2006.

"violated the law" when it issued its decision outside the 180-day window prescribed by the rules.[11] Member Supervision acknowledges that it issued its decision late, but argues that the rules provide for relief that the firm did not seek. We agree with Member Supervision.

FINRA Rule 1014(c) contains two provisions regarding the timing of Member Supervision's decision on a membership application. First, FINRA Rule 1014(c)(1) provides that Member Supervision "shall serve a written decision on the membership application within 30 days after the conclusion of the membership interview or after the filing of additional information or documents, whichever is later." Second, FINRA Rule 1014(c)(3) provides that, if Member Supervision "fails to serve a decision within 180 days after the filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the FINRA Board requesting that the FINRA Board direct the Department to serve a decision." Once such a request is filed, the FINRA Board must, within seven days, "direct [Member Supervision] to serve its written decision immediately or to show good cause for an extension of time." There is no dispute that Member Supervision did not act on Deep ATS's application within either time period set out in FINRA Rule 1014(c).

Member Supervision did not issue its written decision within 30 days after the conclusion of the membership interview or after the filing of additional information or documents. Although Deep ATS's membership interview occurred on June 24, 2020, Member Supervision issued its fourth and final information request on July 17, 2020. Deep ATS responded the following day. Thus, under FINRA Rule 1014(c), Member Supervision's deadline for issuing its decision was 30 days after July 18, 2020, i.e., August 17, 2020. Member Supervision served its decision on September 21, approximately one month later.

Nor did Member Supervision issue its written decision within 180 days after Deep ATS filed its application or "such later date" as Member Supervision and Deep ATS had agreed in writing.[12] FINRA Rule 1014(c)(3) provides the remedy for this delay— if Member Supervision fails to serve a decision within 180 days after the filing of an application (or such later date as the Department and the Applicant have agreed in writing), the applicant firm may ask FINRA's Board of Governors in writing to "direct [Member Supervision] to serve a decision." If the firm files such a request, within seven days the board must direct Member Supervision to issue its decision immediately or show good cause for an extension of time. This is the only remedy an

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[11] Deep ATS argues that Member Supervision's delay in issuing its decision was criminal and violated the "34 Act." Nevertheless, we understand the alleged violation to be of FINRA Rule 1014(c)(3). The firm further argues that the delay violated Balabon's constitutional right to due process. Putting aside that the firm had notice, production of all documents called for by Rule 1015(b), and a full evidentiary hearing, "[it] is well established that the requirements of constitutional due process do not apply to FINRA because FINRA is not a state actor." *Asensio & Co., Inc*., Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *61 (Dec. 20, 2012).

[12] Deep ATS and Member Supervision agreed to an application extension at least through July 20, 2020.

applicant firm can seek. *See Sierra Nevada Secs., Inc.*, 54 S.E.C. 112, 122 (1999) (finding that a procedural error did not deny the firm a fair hearing and that "the only remedy for delay provided by Rule 1014 is an order requiring that a decision be issued immediately").

Deep ATS did not, however, request such an order. On appeal, the firm essentially argues that its application must be granted because Member Supervision's decision was late. While we are concerned about a FINRA applicant not receiving a decision within the time allotted in FINRA Rule 1014, we will not avoid evaluating the substance of this application when neither logic nor the rules support our doing so. Deep ATS's contention that we should grant its application because Member Supervision's decision was issued late has no merit. Member Supervision's decision is valid, despite its untimeliness.

B. Deep ATS Does Not Satisfy FINRA's Standards for Membership

We now turn to the substance of Member Supervision's finding that Deep ATS failed to carry its burden to demonstrate that it has satisfied the standards set forth in FINRA Rule 1014(a).

1. Deep ATS Does Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(2)

FINRA Rule 1014(a)(2) requires applicants to have "have all licenses and registrations required by state and federal authorities and self-regulatory organizations." Two of Deep ATS's proposed lines of business are proprietary trading and investment banking. Member Supervision determined that those activities require Series 57 and 79 registrations, respectively. While Deep ATS concedes the need for the Series 79 for the firm's investment banking activities, and represents that Puranik would take that exam, it disagrees with Member Supervision's determination that Balabon needs the Series 57 to supervise the firm's proprietary trading. We agree with Member Supervision that both Series 57 and 79 are required.

a. Balabon Lacked Series 57 Registration

Deep ATS maintains that Balabon does not need Series 57 registration because his Series 24 registration allows him to "supervise all areas" of the firm's business including "trading and market making." This is incorrect. FINRA Rule 1220 provides that "[e]ach principal . . . who is responsible for supervising" certain trading activities, including proprietary trading, "shall be required to register with FINRA as a Securities Trader Principal." FINRA Rule 1220(a)(7), (b)(4). The rule further provides that "[e]ach person seeking to register as a Securities Trader Principal shall, prior to or concurrent with such registration, become registered . . . as a Securities Trader and pass the General Securities Principal qualification examination." FINRA Rule 1220(a)(7). In order to become registered as a securities trader, a person must pass the Series 57 examination. FINRA Rule 1220(b)(4). Therefore, to supervise Deep ATS's proprietary trading, Balabon must pass the Series 24 and 57 examinations. Balabon has not passed the Series 57 examination, and therefore he is not qualified to supervise the firm's proprietary trading.

Deep ATS also argues that its proposed trading activity would not be true proprietary trading because it would use funds loaned from its parent company rather than its own funds. However, Rule 1220 does not carve out an exception for trading with loaned funds.

In addition, Deep ATS maintains that Member Supervision did not raise any "further objections" to Deep ATS's arguments that Balabon did not need the Series 57 registration to supervise the firm's proprietary trading. In fact, Member Supervision gave Deep ATS multiple opportunities to justify its position on Series 57 registration, highlighting FINRA's published guidance and asking the firm to identify any authority supporting its contrary view. Deep ATS failed to do so. Member Supervision is not required "to continue making repeated requests where an applicant repeatedly fails to adequately respond." *Membership Continuance Application of the Firm*, 2014 FINRA Discip. LEXIS 42, at *44–45 (FINRA NAC Sept. 29, 2014).

b. Puranik Lacked Series 79 Registration

Deep ATS proposed that Puranik would engage in and supervise its investment banking business, which would include "structuring / pricing deals." Associated persons who engage in "structuring ... and pricing" of "debt or equity securities offerings"—in addition to other related activities—must register as an investment banking representative. FINRA Rule 1220(b)(5)(A). Obtaining that registration requires passing the Series 79 qualification examination.

On appeal, Deep ATS incorrectly argues that Puranik was unable to take the Series 79 examination because of the pandemic. In fact, Puranik sat for the exam on two occasions—in November 2019 and again in July 2020 (after Deep ATS's membership interview). He did not pass.

In the alternative, Deep ATS argues that regardless of Mr. Puranik's lacking Series 79 registration, his Series 24 registration allows him to supervise all areas of Deep ATS's investment banking activities. The Series 24 examination assesses the competency of an entry-level principal to perform their job as a principal dependent on their corequisite registrations. "In addition to the Series 24 exam, candidates must pass the Securities Industry Essentials (SIE) Exam and a representative-level qualification exam . . . to hold an appropriate principal registration."[13] FINRA's guidance on Series 24 explicitly states that, for an investment banking principal, the "corequisite registration" is the Series 79. Thus, Puranik's Series 24 registration is not sufficient for supervising the firm's investment banking activities.

Therefore, we agree with Member Supervision that Deep ATS did not demonstrate that it satisfies the standards of FINRA Rule 1014(a)(2).

[13] https://www.finra.org/registration-exams-ce/qualification-exams/series24

2. Deep ATS Does Not Satisfy the Standard Set Forth in FINRA Rule 1014(a)(4)

FINRA Rule 1014(a)(4) requires the applicant firm to establish "all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others" necessary to initiate operations and comply with securities regulations and rules. Deep ATS's failure to do so is factually without dispute. Deep ATS failed to obtain a fidelity bond, which is required by FINRA Rule 4360; failed to secure an audit engagement letter, as required by Securities Exchange Act of 1934 ("Exchange Act") Rule 17a-5(f)(2); and failed to arrange for storage of its electronic records to comply with Exchange Act Rule 17a-4(b).

Deep ATS states that it chose not to establish these contracts and arrangements until after its membership application was approved, despite Member Supervision's explanation that it could not approve Deep ATS's membership until such contracts and arrangements were in place. Because of its failure to secure the requisite contracts or arrangements, Deep ATS failed to demonstrate that it satisfies the standards of FINRA Rule 1014(a)(4)

3. Deep ATS Does Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(10)

FINRA Rule 1014(a)(10) requires the applicant firm to establish that it has a "supervisory system . . . designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and [FINRA] Rules." According to FINRA Rule 1014(a)(10)(J), the applicant firm must establish the adequacy of the supervisory system based on, among other things, the nature of the proposed business; the number, experience (direct and indirect), and qualifications of supervisory personnel; and any other factors that "will have a material impact on the [firm's] ability to detect and prevent violations." FINRA Rule 1014(a)(10)(D) requires supervisors to have one year of direct experience or two years of related experience with the subject area to be supervised. Deep ATS proposes that Puranik would supervise its investment banking business and serve as the firm's CCO. We agree with Member Supervision that the firm has not shown that Puranik has the requisite experience to do either.

Deep ATS maintains that Puranik is qualified to supervise its investment banking activities because of his experience working at a bank in India. The firm does not explain, however, Puranik's specific role and responsibilities at the bank, how long he engaged in those activities, or how his experience relates to Deep ATS's proposed business. Instead, when Member Supervision asked for a detailed description of Puranik's specific experience within investment banking, the firm pointed to his work at the bank and made a conclusory declaration that he has experience in investment banking. When Member Supervision asked for additional details about his "specific responsibilities" relating to structuring and pricing deals, the firm failed to draw a connection between Puranik's background and his proposed role at the firm. Instead, Deep ATS merely asserted that Puranik was involved in due diligence, preparing prospectuses, and pricing private placements, without discussing his level of involvement.

Similarly, Deep ATS contends that Puranik is qualified to serve as its CCO because of his work at the bank in India (more than 20 years ago) and as a "Principal and FINOP" at Balabon's former broker-dealer. But again, Deep ATS fails to draw a nexus between Puranik's background

and his proposed role. Serving as a principal or FINOP involve different responsibilities than those of a CCO. Additionally, as noted by Member Supervision at the hearing, Puranik's previous broker-dealer was "inactive the entire time"— such that Puranik would not have performed the duties required of either role. Deep ATS's failure to provide details about Puranik's experience and explain how it was related to his proposed roles as investment banking principal and CCO support Member Supervision's conclusion that the firm did not satisfy FINRA Rule 1014(a)(10).[14]

4. Deep ATS Does Not Satisfy the Standards Set Forth in FINRA Rule1014(a)(1)

FINRA Rule 1014(a)(1) requires applications and supporting documents to be "complete and accurate." Member Supervision concluded that Deep ATS's application failed to meet this standard because the firm did not have a "demo-ready" ATS platform, might not have intended to be an active firm, and did not disclose or sufficiently explain Balabon's outside business activities. While we affirm Member Supervision's denial based on the firm's failure to meet the standards under FINRA Rule 1014(a)(1), we do so on more narrow grounds.

a. Failure to Have a "Demo-Ready" Platform

Member Supervision concluded that because Deep ATS did not have a "demo-ready" ATS platform, its application was not complete. The firm acknowledged that it did not have a working platform, but believed that once its membership was approved, it could attract investors to build out its platform and develop a clearer business model.

The Subcommittee asked Member Supervision to explain the rule or policy that required an applicant firm to have a demo-ready platform available for presentation at the membership interview. Member Supervision responded that its authority arises from FINRA Rule 1014(a)(6), which requires Member Supervision to consider whether "the communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate . . .," as well as Member Supervision's long-recognized inherent power to request such demonstrations. We agree with Member Supervision that this standard provides it with authority to require applicants, such as Deep ATS, to demonstrate during the application process that their systems, including ATSs, are functional.

Member Supervision, however, did not cite FINRA Rule 1014(a)(6) as the basis for its denial in its decision. Instead, it stated that Deep ATS's failure to have a working platform rendered it impossible for Member Supervision to determine whether the firm's ATS satisfied FINRA Rule 1014(a)(6), and therefore resulted in the firm's failure to satisfy FINRA Rule

[14] Deep ATS argues that Member Supervision failed to ask Puranik any questions during the membership interview regarding his qualifications or experience. However, Member Supervision asked the firm multiple times before and after the membership interview to elaborate on Puranik's experience and did not receive information that satisfied FINRA Rule 1014(a)(10).

1014(a)(1), which required the firm to provide the information Member Supervision needed to conduct its assessment.

We disagree with Member Supervision that Deep ATS's failure to provide a demonstration of its ATS violated FINRA Rule 1014(a)(1). If Deep ATS did not have a working ATS—which it did not— Member Supervision should have relied on FINRA Rule 1014(a)(6) for denial, not FINRA Rule 1014(a)(1). Member Supervision's advancement of new grounds in defense of its decision for the first time in its post-hearing brief raises fairness concerns because Deep ATS was not reasonably apprised of such a basis for denial. *See New Membership Application of Firm A*, Application No. 20090182345, 2010 FINRA Discip. LEXIS 24, at *26 (FINRA NAC Sept. 28, 2010). Therefore, we cannot conclude that Deep ATS's failure to present a "demo-ready" platform supported denial pursuant to FINRA Rule 1014(a)(1).

b. Intent to Operate as an Active Broker-Dealer

Member Supervision also based its denial under FINRA Rule 1014(a)(1) on the grounds that Deep ATS expressed conflicting sentiments with respect to whether it intended to operate as an "active" broker-dealer or instead to sell the firm and its patents and technology.[15] Deep ATS argues that it has the right to sell its patents and technology and such a hypothetical sale has no bearing on the firm or its ATS. It further notes that the broker-dealer may need to lay dormant while it secures funding, and that it is unfair for Member Supervision to deny its application on the basis of speculative future conduct.

We agree with Member Supervision that the inconsistencies in Deep ATS's application and its statements about selling the broker-dealer call into question whether the firm truly intends to conduct the business for which it is seeking membership, rendering the application incomplete and inaccurate under FINRA Rule 1014(a)(1). In all ten iterations of the NMA, Deep ATS represented that it intended to develop and operate an ATS, along with three other lines of business. However, in late June 2020, at its membership interview and in subsequent correspondence, Deep ATS offered to "hand over all the patents … and all technology already built to FINRA for a 3% royalty," in contravention of its earlier representations. While "[t]he new membership application process allows [an applicant] some flexibility" to hone its application in response to concerns raised by Member Supervision, "at some point an application must reach substantially a point of rest to be deemed complete." *New Membership Application of Firm A*, Application No. 20090196759, at *12 (FINRA NAC Dec. 2010).[16] Deep ATS's eleventh hour modification of its business plan evinces that its application did not reach the point of rest.

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15 Member Supervision maintains that FINRA's By-Laws do not provide for dormant or inactive memberships.

16 *Available at*: http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p125380.pdf.

In light of the uncertainty surrounding Deep ATS's intent to carry out the business described in its application, Member Supervision correctly concluded that the application did not satisfy FINRA Rule 1014(a)(1).[17]

c. Failure to Disclose Outside Business Activities

Member Supervision concluded that Deep ATS's NMA was not complete or accurate because it failed to disclose Balabon's involvement with the cryptocurrency firm, Moentum. Member Supervision also had concerns about the business activities conducted by Intelligent Resources and its interaction with the Deep ATS, both operationally and financially. Deep ATS argues that Balabon's involvement in Moentum was not disclosed on Balabon's Form U4 because "[i]t was reviewed by the SEC legal counsel" and because at the time "Mr. Balabon was not engaged in the securities business." It further argues that it provided Member Supervision with all relevant bank statements and sufficiently answered its questions.

We agree with Member Supervision that Deep ATS's failure to disclose Moentum as well as the firm's unspecific answers in response to questions about Intelligent Resources render Deep ATS's application incomplete and inaccurate under FINRA Rule 1014(a)(1). Balabon was obligated to disclose in the firm's NMA all of his outside business activities. He cannot pick and choose which business activities to disclose because FINRA's disclosure rules apply to *all* outside business activities. *See Dep't of Enf't v. Connors*, Complaint No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *24 (FINRA NAC Jan. 10, 2017); *accord Dep't of Enf't v. Akindemowo*, Complaint No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *39 (FINRA NAC Dec. 29, 2015) (FINRA Rule 3270 "extend[s] to all outside business activity"), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016). Furthermore, we agree with Member Supervision that the firm's description of Intelligent Resources' business operations was vague and non-responsive. We therefore affirm Member Supervision's denial on these grounds.

5. Deep ATS Does Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(13)

FINRA Rule 1014(a)(13) prohibits Member Supervision from approving a prospective firm's membership application if there is evidence that the firm "may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder,

[17] We do not find that FINRA Rule 1014(a)(1) requires an applicant to demonstrate that it will be an active broker-dealer. This standard for admission calls for disclosure and honesty, including the applicant giving complete and accurate responses when asked for additional information and to keep the application current during the membership process. We do not understand it to include an active member requirement. We do not address here the contours of when a FINRA firm that is inactive may be in violation of Section 1(a) of Article III of FINRA's By-Laws.

or FINRA rules."[18] Balabon's failure to disclose his ownership and control over the cryptocurrency company Moentum demonstrates that the firm has not satisfied this standard.

FINRA's rules and policies regarding disclosing outside business activities "address[] the securities industry's concern about preventing harm to the investing public or a firm's entanglement in legal difficulties based on an associated person's unmonitored outside business activities." *Connors*, 2017 FINRA Discip. LEXIS 2, at *32 (in the context of FINRA Rule 3270). In addition, an associated person, such as Balabon, has an obligation under FINRA rules to keep his or her Form U4 "current at all times" and update required information on the form as changes occur, but no later than 30 days after learning of the facts and circumstances that give rise to the reportable event. *See* Section 2(c) of Article V of the FINRA By-Laws. FINRA Rule 1122 provides that "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." The rule is intended to ensure that an associated person's Form U4 contains accurate, up-to-date information so that regulators, employers, and members of the public "have all of the material, current information about the registered representative with whom they are dealing." *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). Considering the importance of these disclosure requirements to regulators, FINRA's membership application program requires applicants to fully disclose all outside business activities and provide detailed information surrounding the scope of their business operations.

Balabon's failure to update his Form U4 or otherwise disclose his involvement with Moentum is a critically important failure. FINRA relies on member firms and associated persons to make complete and accurate disclosures. At the hearing, Bowen explained Member Supervision's concern about this failure to disclose:

> [Moentum] could potentially have a nexus to the Deep ATS. It referenced potentially starting an exchange. I believe it made references to an ATS, not to Deep ATS but possibly Spot Quote ATS. But what it just kind of boils down to is we don't know if there's an impact or not. So it is something we would want to look at to see if there are any conflicts of interest, to see what the status is. So, yes, it's something we would definitely be interested in. There's definitely regulatory interest there.

Balabon argues that, because Moentum did not have any customers, there couldn't be a conflict of interest, and thus he did not need to disclose his affiliation. This demonstrates Balabon's misunderstanding of his registration requirements and the importance of his disclosure

[18] In light of our findings that Deep ATS's failure to disclose Balabon's outside business activities violates the standards in FINRA Rule 1014(a)(13), it is unnecessary to further address whether the firm's failure to present a feasible model of its business activities or its failure to obtain the licenses and registrations required to engage in the proposed business operations and lack of the requisite qualifications also violate this standard.

obligations. This, coupled with the firm's nondescript responses concerning Intelligent Resources' business operations and its relationship to the firm, validates Member Supervision's concerns. Deep ATS's disregard for its membership obligations and lack of transparency with its future regulator supports the conclusion that the firm may might circumvent or evade federal securities laws or FINRA rules.

C. Deep ATS's Other Arguments on Appeal Fail

Deep ATS makes several procedural arguments related to the underlying application process and the fundamental fairness of FINRA. Each argument fails.

1. The Membership Application Process Was Fair

Deep ATS argues that because Balabon had previously filed a lawsuit against FINRA, Member Supervision was biased. We disagree. Balabon's decision to file a lawsuit against FINRA cannot create disqualifying bias for the department that reviews all new member applications. In any event, there is no evidence in the record to support bias. Moreover, we have conducted a de novo review, and have carefully considered all the evidence in the record as well as the hearing testimony, which "dissipates even the possibility of unfairness." *Robert Tretiak*, 56 S.E.C. 209, 232 (2003); *see also Robert E. Gibbs*, 51 S.E.C. 482, 484-85 (1993) (discussing how de novo review by the NASD Board during NASD disciplinary proceedings insulates against bias), *aff'd*, 25 F.3d 1056 (10th Cir. 1994) (table).

In addition, Deep ATS maintains that Member Supervision failed to keep the firm adequately apprised of purported deficiencies in, or problems with, its application, including but not limited to the need to have Series 57 and 79 registrations and Member Supervision's concerns over Puranik's relevant work experience.[19] Deep ATS contends that Member Supervision should have reached out to assist it with resolving these issues, such as advising the firm to drop the problematic proposed lines of business from its application.[20] Again, we disagree. "While Member [Supervision] may opt to do so, such as when it benefits the efficiency

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[19] In its post-hearing submission, with respect to the Series 57 and 79 examinations, the firm offers "to provide completion of these exams within 6 months from the date the license issues or forfeit these business lines." We decline to consider this request. Any changes or amendments to the NMA should occur during the application process and not on appeal.

[20] At the hearing Balabon explained his frustration over Member Supervision's perceived lack of assistance or collaboration:

> Did FINRA at any time communicate to us, well, if you remove investment banking maybe we could issue this or if you move proprietary trading or if you do anything, was there anything what I would say what you consider good faith among the parties that some action might occur if we resolve any of the issues? Was there a single attempt made by FINRA to conduct a conference phone call with us in attempt to resolve the issues that FINRA had with us as any normal civil interactions between competent parties would have?

of the overall membership application process, it is not mandated by the rules.[21] Rather, it is the applicant firm's burden to demonstrate that its application meets the standards for new membership, not FINRA's." *New Membership Application of Firm A*, Application No. 20090196759, at 12-13 (FINRA NAC Dec. 2010). Thus, the burden was on Deep ATS, not FINRA, to make sure that it was aware of and able to meet the requisites for membership. In addition, Member Supervision gave Deep ATS multiple opportunities to elaborate on Puranik's experience, but the firm simply did not do so. In sum, Deep ATS's "arguments confuse its inability to meet its burden under Rule 1014 with its assertion of an inherently unfair and futile process for reviewing NMA's." *Asensio & Co.*, 2012 SEC LEXIS 3954, at *52-53. We therefore conclude that the application process was not unfair.

2. Deep ATS's Additional Post-Hearing Arguments Fail

In its post-hearing submission, Deep ATS argues that FINRA, as an organization, is fundamentally unfair. It argues that FINRA's qualification examinations are obsolete and impossible to pass, that FINRA favors the "big banks," and "average members" don't matter. Deep ATS also blames FINRA for the general lack of capital formation for small companies. Finally, Deep ATS notes that if its membership application is denied, all the firm's investors will lose money.

Regardless of the lack of veracity of any of these assertions, none is relevant to our review. Our role is to evaluate a firm's fitness for FINRA membership based upon the firm's ability to demonstrate that it meets FINRA Rule 1014(a)'s standards for membership. Here, we conclude that because Deep ATS did not satisfy those standards for membership, Member Supervision properly denied the firm's membership application.

[21] Bowen had multiple conversations with Puranik regarding the membership application. She testified that "[t]here were so many deficiencies with the application, that it wasn't a matter of us saying everything will be okay if you just take that structuring and pricing off the table. There was [sic]widespread deficiencies. [Member Supervision is] not in the position of changing the [firm's] business plan."

IV. Conclusion

Deep ATS failed to demonstrate that it meets the standards of membership contained in FINRA Rules 1014(a)(1), (2), (4), (10), and (13). Accordingly, Member Supervision's decision to deny the firm's application for FINRA membership is affirmed.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the	DECISION
New Membership Application	Application No.
Firm X,	Dated: May 4, 2015
City 1, State 1	

Department of Member Regulation denied a firm's application for membership. Held, denial affirmed.

Appearances

For Firm X: Attorney 1

For FINRA's Department of Member Regulation: Ann-Marie Mason, Esq., Deon McNeil-Lambkin, Esq., Sarah Razaq, Esq.

Decision

Pursuant to NASD Rule 1015(a), Firm X appeals an October 3, 2014 decision by the Department of Member Regulation ("Member Regulation") denying Firm X's application for membership based on its finding that Firm X failed to satisfy five of the 14 standards for membership established under NASD Rule 1014(a). After conducting a two-day hearing and reviewing the record, we affirm the denial of membership.

I. Background

Firm X organized as a limited liability company in State 1 in 2013. Firm X is wholly owned by Parent Company, a limited liability company in State 1, which is wholly owned by Principal 1.

OS Received 06/03/2021

Principal 1 entered the securities industry in 1985 and has associated with several firms. Principal 1 passed the Series 6 (investment company products and variable contracts representative) examination in December 1985; the Series 7 (general securities representative) examination in April 1986; the Series 22 (direct participation program limited representative) examination in January 1986; the Series 63 (uniform securities agent state law) examination in February 1986; and the Series 65 (uniform investment adviser law) examination in September 2012. He was granted an official waiver of the Series 24 (general securities principal) examination in June 1991.

II. Relevant Facts

A. Principal 1's Termination for Cause

From December 1994 to August 2010, Principal 1 worked as a general securities representative and principal for Firm Y. While at Firm Y, Principal 1 had approximately 500 customer accounts under management. Of those 500 accounts, approximately 90 percent were invested in variable annuities and Real Estate Investment Trusts ("REITs"), and 70 percent employed a 72(t) distribution strategy because of liquidity needs.[1] In 2010, Principal 1's supervisor at Firm Y sent a letter of caution to Principal 1 stating that Principal 1 submitted variable annuity paperwork to product sponsor companies prior to receiving pre-approval, as required by the firm's sales practice manual. After receiving the letter of caution, Principal 1 submitted all of the required variable annuity pre-approval paperwork, but Firm Y did not approve any of the sales because it found them unsuitable or over-concentrated in variable annuities.

The Central Registration Depository ("CRD"®) reflects that Firm Y discharged Principal 1 on August 26, 2010, for the "failure to abide by firm policy regarding the pre-approval of variable annuities."[2]

B. Firm X's Initial Application

On January 6, 2014, Firm X filed with Member Regulation its form New Member Application ("NMA") and supporting documentation, seeking FINRA approval to register as a broker-dealer. The application included Firm X's proposed business plan and written supervisory procedures ("WSPs"). Firm X stated "it would conduct a general securities business focusing on the sale of variable life insurance policies and the sale of [REITs]." Specifically, Firm X represented that it would engage in the following business activities: broker retailing corporate equities securities; broker retailing corporate debt securities; mutual fund retailer;

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[1] Section 72(t) of the Internal Revenue Code imposes an additional tax of 10 percent on distributions from qualified retirement plan made before age 59 ½. The IRS allows retirees to avoid this 10 percent penalty if the distributions from the retirement plan "are part of a series of substantially equal periodic payments."

[2] Principal 1's termination for cause is discussed in more detail in Part III.C.1.

OS Received 06/03/2021

broker selling variable life insurance or annuities, U.S. government securities broker; broker selling tax shelters or limited partnerships in primary distribution or in the secondary market; and the purchase and sale of REITs. Firm X said it would solicit retail customers, and it would not handle customer funds.

Firm X represented that Principal 1 would serve as Firm X's Chief Executive Officer ("CEO"), Chief Compliance Officer ("CCO"), Anti-Money Laundering Compliance Officer ("AMLCO"), and only representative. Principal 1 sought to register with Firm X as a general securities principal and investment company products and variable contracts representative, general securities representative, and direct participation program limited representative. Principal 2 would serve as Firm X's financial and operations principal ("FINOP") on a part-time basis at an offsite location. At the time of Member Regulation's decision, Principal 2 was serving as FINOP for five other FINRA member firms.

The initial application did not disclose Principal 1's termination for cause, any customer complaint against Principal 1, or any arbitration that named Principal 1 as a respondent.[3] In fact, as of January 6, 2014, seven customer complaints had been filed against Principal 1 alleging improprieties involving the sale of variable annuities and REITs while Principal 1 was working at Firm Y. In addition, Principal 1 was a named respondent in an arbitration filed in 2013, claiming that he failed to supervise another broker, who was alleged to have made unsuitable recommendations concerning variable annuities and REITs.[4]

C. Member Regulation's Review of Firm X's New Member Application

1. Member Regulation's Requests for Additional Information and Firm X's Responses

In a letter dated February 14, 2014, Member Regulation requested additional supporting information and documentation in connection with the application. Among other things, Member Regulation notified Firm X that Principal 1 was terminated for cause on August 26, 2010, and requested that Firm X submit a detailed explanation about how it believed it overcame the presumption of denial triggered by Principal 1's termination for cause, including demonstrating how Firm X believed it met the standards set forth in NASD Rule 1014.[5]

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[3] The NMA asks whether the applicant or any of its associated person is the subject of "[a] sales practice event, pending arbitration or pending private civil action" or "[t]ermination for [c]ause or permitted to resign after an investigation after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct." In each version of the NMA it filed, Firm X checked "No."

[4] By the time Member Regulation issued its decision letter, 23 complaints in total had been filed against Principal 1, and he was a respondent in three pending arbitrations.

[5] We discuss the presumption of denial in Part III.A.

Member Regulation also requested a detailed explanation of the customer complaints against Principal 1 provided in CRD that alleged unsuitable transactions in variable annuities and REITs. Member Regulation also sought clarification whether Principal 1 would be subject to heightened supervision at Firm X, who would oversee his activities, and whether Firm X was relying on the limited size and resources exemption pursuant to NASD Rule 3012.[6]

Firm X responded in two parts. On April 14, 2014, Firm X provided detailed information about the seven customer complaints. Then by letter dated May 8, 2014, in response to staff's question concerning Principal 1's termination for cause and customer complaints, Firm X wrote, "[t]he [NASD Rule] 1014 documentation and information concerning Principal 1, the only member with any matters to disclose, has already been provided in separate explanations regarding the customer disputes and the termination." Whereas Firm X had previously provided detailed information about the seven customer complaints on April 14, 2014, Firm X did not provide any explanation about how it believed it overcame the presumption of denial based on Principal 1's termination for cause.[7] Further, despite language in Firm X's WSPs that would require heightened supervision, Firm X wrote that Principal 1 would "not be subject to heightened supervision" because "[Firm X] only employs Principal 1 as the sole representative." Finally, Firm X stated it would be relying on the limited size and resources exemption pursuant to NASD Rule 3012, and it also would be using an outside compliance firm, Company Z, to assist in meeting daily compliance obligations.[8]

Member Regulation staff sent two additional written requests to Firm X, to which Firm X responded in writing. Member Regulation staff and Firm X also had approximately 10 conversations during the pendency of the application. Firm X filed 10 versions of the NMA. In each of the versions, Firm X failed to disclose Principal 1's termination for cause or the initial arbitration filed against Principal 1 in 2013.[9]

2. Additional Customer Complaints

After Firm X submitted its initial application, 16 more customer complaints were filed against Principal 1 in addition to the seven existing complaints against Principal 1. The

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[6] We discuss NASD Rule 3012 in Part III.D.1.

[7] Member Regulation staff testified that they never received further documentation or written explanation concerning Principal 1's termination for cause or how Firm X believed it overcame the presumption of denial.

[8] Company Z and its consultant also assisted Firm X with the submission and consideration of its application for membership.

[9] Principal 1 testified at the hearing that the application was inaccurate due to a clerical error by staff helping him prepare the documents. He further testified that Firm X was in constant contact with FINRA, so he was certain they were aware of the issues.

additional 16 complaints similarly alleged improprieties involving the sale of variable annuities and REITs.

Specifically, six customers of Principal 1 joined a multi-party FINRA arbitration proceeding, claiming breach of fiduciary duty, false representations, and failure to supervise. The statement of claim alleges that Principal 1 and his associate, Employee 1, whom Principal 1 supervised, solicited retired Company 1 employees or Company 1 employees nearing retirement and recommended that they take lump sum distributions from their IRA and 401(k) plans and invest the funds in variable annuities and REITs. Eight other customers became part of another multi-party FINRA arbitration and another six customers became part of a multi-party action in County 1, State 1.[10]

Member Regulation staff already had concerns about the existing customer complaints with respect to its initial review of the application, and the additional complaints and arbitrations only intensified its reservations concerning approval of the application because they considered Principal 1's regulatory history to be evolving. Member Regulation staff raised these concerns with Firm X during multiple telephone conversations and suggested that Firm X withdraw its application. Firm X's consultant from Company Z acknowledged to FINRA the concerns and their negative implications for approval of Firm X's application. Principal 1 also told FINRA he understood the concerns, but he did not want to withdraw the application.

3. Firm X's Membership Interview

On August 6, 2014, Member Regulation staff, along with the surveillance director, associate director, and regulatory coordinator at the FINRA District Office, conducted a membership interview of Firm X. Principal 1 and Firm X's consultant appeared in person, and Principal 2 participated telephonically.

At the interview, Member Regulation staff again expressed its concerns about Principal 1's termination for cause and Firm X's failure to rebut the presumption that the application should be denied; the numerous customer complaints filed against Principal 1, the subject of which were the very same business lines proposed by Firm X; and the proposed supervisory structure at Firm X, whereby Principal 1 would not be subject to heightened supervision and would supervising himself in the very same business lines that led to 23 customer complaints being filed against him. Member Regulation staff also testified that Principal 1 was unable to articulate basic suitability concepts at the interview.

Principal 1 stated that his termination was due to a falling out with his manager at Firm Y, but he admitted he violated firm policy regarding the pre-approval of variable annuities. He asserted he did so because Firm Y's review process was taking too long, and, as a general securities principal, he could approve the transactions.

[10] As of the date of this decision, all three multi-party proceedings are currently pending.

After the interview, Member Regulation staff and Firm X's consultant again spoke by telephone, and Member Regulation staff reasserted its belief that Firm X should withdraw its application. According to Member Regulation staff, the consultant agreed with the recommendation.

D. Member Regulation's Denial of Firm X's New Membership Application

After Firm X failed to withdraw its application for new membership, Member Regulation issued its decision denying Firm X's application on October 3, 2014. Member Regulation based its denial on several factors.

First, Member Regulation found that Firm X failed to meet the standards in NASD Rule 1014(a)(9) and (10), which require adequate compliance, supervisory, operational, and internal control practices and standards and an adequate supervisory system, including WSPs, internal operating procedures, and compliance procedures designed to prevent and detect violations of federal securities laws, the rules and regulations thereunder, and FINRA rules. Specifically, Member Regulation found problematic Principal 1's role in the supervisory structure. Principal 1 would engage in the very same lines of business that he engaged in at Firm Y that led to 23 customer complaints being filed against him but with a less rigorous supervisory structure in which he supervised himself. Member Regulation also found that Firm X's intent to not place Principal 1 under heightened supervision—in spite of requirements in Firm X's WSPs due to Principal 1's relevant regulatory history—resulted in Firm X's inability to satisfy NASD Rule 1014(a)(10). Member Regulation further found that Firm X's intent to not enforce its own WSPs to evidence a culture of non-compliance.

Second, Member Regulation found that Firm X failed to meet the standard in NASD Rule 1014(a)(3), which requires Firm X and its associated persons to be capable of complying with federal securities laws, the rules and regulations thereunder, and FINRA rules. Member Regulation based this conclusion on Principal 1's termination for cause by Firm Y and the fact that, despite inquiry by Member Regulation, Firm X never specifically addressed the resulting presumption of denial. Member Regulation also based this conclusion on the fact that Principal 1 was the subject of a pending arbitration at the time the application was filed (which Firm X failed to disclose) and three additional multi-party arbitrations filed during the pendency of the application.

Third, Member Regulation found that Firm X failed to meet the standard in NASD Rule 1014(a)(13) because Member Regulation possessed additional information that Firm X may circumvent, evade, or otherwise avoid compliance with the federal securities laws, rules and regulations, and FINRA rules. Member Regulation took into account Principal 1's termination for cause, the customer complaints filed against Principal 1, the arbitrations naming Principal 1 as a respondent, Firm X's failure to disclose the termination for cause and the initial arbitration in his application, and Principal 1 being the subject of a FINRA cause examination.[11] Member

[11] We address the on-the-record interview of Principal 1 that was conducted pursuant to the FINRA cause examination in Part III.B.1.

Regulation noted that, while not adjudicated, the serious nature of the allegations in the complaints and arbitrations, along with the nexus between Principal 1's role at Firm Y and his intended role at Firm X and the activities to be conducted at Firm X compelled Member Regulation to conclude that the standard had not been met.

Finally, Member Regulation found that Firm X failed to meet the standard in Rule 1014(a)(1), which requires the membership application and all supporting documents to be complete and accurate. Among other things, Member Regulation noted that Firm X failed to disclose on the Form NMA Principal 1's August 2010 termination for cause, customer complaints, and the arbitration pending at the time.

E. Firm X Requests a Review of Member Regulation's Decision

On October 27, 2014, Firm X filed a written request that we review Member Regulation's denial of its membership application pursuant to NASD Rule 1015(a). On January 12-13, 2015, a subcommittee ("Subcommittee") of the National Adjudicatory Council ("NAC") empaneled to hear this matter presided over an evidentiary hearing. Firm X submitted six exhibits and presented two witnesses: Principal 1 and Firm Expert. Member Regulation submitted 32 exhibits and presented four witnesses: (1) Member Regulation Witness 1, Principal Examiner, FINRA's Membership Application Program; (2) Member Regulation Witness 2, Examination Manager, FINRA's Membership Application Program; (3) Member Regulation Witness 3, Director, FINRA's Membership Application Program; and (4) Member Regulation Witness 4, Surveillance Director, FINRA's District Office. At and following the hearing, Firm X moved to adduce two additional documents, which Member Regulation opposed.[12]

III. Discussion

A. Relevant Standards

NASD Rule 1014(a) delineates 14 standards that an applicant must meet before Member Regulation may approve a request for membership admission. In general, the standards in NASD Rule 1014(a) are intended to ensure that members are capable of satisfying all relevant regulatory requirements for the protection of the investing public, the securities markets, the firm, and other member firms. *See Membership Continuance Application of Member Firm*, Application No. 20060058633, 2007 FINRA Discip. LEXIS 31, at *44-45 (FINRA NAC July 2007). When assessing whether an applicant for membership meets these standards, the rule requires Member Regulation to consider, among other things, "the public interest and protection of investors." NASD Rule 1014(a). The applicant bears the burden of demonstrating that it meets each of the standards for membership approval. *See New Membership Application of Firm A*, Application No. 20090182345, 2010 FINRA Discip. LEXIS 24, at *22 (FINRA NAC Sept. 28, 2010); *see also* NASD Rule 1014(a), (b). Member Regulation found that Firm X failed to demonstrate it could meet five of the standards articulated in NASD Rule 1014(a). We affirm

[12] We address these two additional documents in Part III.C.1.

Member Regulation's findings that Firm X failed to carry its burden to demonstrate that it has satisfied the standards set forth in NASD Rule 1014(a)(3), (9), and (10).[13]

Under NASD Rule 1014(b), where a prospective member firm or an associated person is subject to certain events set forth in the rule, including a termination for cause after an investigation of alleged violation of an industry standard of conduct, "a presumption exists that the application should be denied." The existence of such an event "[raises] a question of capacity to comply with the federal securities laws and the rules of [FINRA]," which results in a rebuttable presumption to deny the application. *See NASD Notice to Members 04-10*, 2004 FINRA LEXIS 13, at *9 (Feb. 2004). Member Regulation argues that following firm policy is an industry standard, thus Principal 1's termination for cause for the failure to abide by firm policy regarding the pre-approval of variable annuities triggers the rebuttable presumption pursuant to NASD Rule 1014(b) that the application should be denied. We agree that a termination for cause for failing to follow a firm's relevant and material sales practice policy is a violation of an industry standard that triggers the rebuttable presumption.

An applicant "may overcome the presumption by demonstrating that it can meet each of the standards in [NASD Rule 1014(a)]," notwithstanding the existence of the event. NASD Rule 1014(b). In considering whether an applicant has overcome the presumption, Member Regulation is directed to "consider the applicant's submission in light of the specific standards of Rule 1014(a), the public interest, protection of investors, and [FINRA]'s responsibility to provide a fair procedure in accordance with membership rules." *See NASD Notice to Members 04-10*, at *11. In its decision letter, Member Regulation concluded that Firm X failed to rebut the presumption based on Firm X's failure to specifically address the presumption despite its requests and Principal 1's testimony at a March 13, 2014 on-the-record interview that he was intimately involved in all aspects of the business at Firm Y, including Employee 1's sales of variable annuities and REITs.[14] In our review, we have conducted the same analysis.

Throughout the pendency of the application, Firm X argued that Principal 1 was not terminated for cause and, regardless whether he was terminated for cause, that its application for membership met the standards set forth in NASD Rule 1014. For example, in its notice of appeal, Firm X argued that, notwithstanding the termination for cause, "[Firm X] is committed to moving forward" and engaged the services of a compliance consulting firm, [Company Z]." Firm X continued, "[g]oing forward, [Firm X] is committed to proving it will strive to improve

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[13] In light of our findings that Firm X failed to satisfy these standards, it is unnecessary to discuss further whether Firm X's application was "complete and accurate," as required by Rule 1014(a)(1), and whether there is information indicating Firm X may circumvent, evade or otherwise avoid compliance with applicable securities laws, rules, and regulations and FINRA rules, as required by NASD Rule 1014(a)(13).

[14] Member Regulation staff also testified that Firm X did not adequately address questions related to his termination for cause and the resulting rebuttable presumption at the membership interview or during telephone conversations while the application was pending.

its compliance with securities laws and regulation wherever possible." At the hearing, in response to questioning about the rebuttable presumption, Principal 1 also referred to a November 4, 2010 letter he purportedly emailed to FINRA explaining the circumstances surrounding his termination for cause.

For reasons explain below, we conclude that Principal 1 was terminated for cause for purposes of NASD Rule 1014(a)(3)(D), thus triggering a presumption that the application should be denied. Fair procedure requires us, notwithstanding the existence of the termination for cause, to consider all of Firm X's submissions with respect to the specific standards of Rule 1014(a), the public interest, and protection of investors. After thorough review, we find that Firm X failed to overcome the presumption of denial. Firm X failed to demonstrate it could meet the standards set forth in NASD Rule 1014(a)(3), (9), and (10). Firm X failed to show that Principal 1, at this time, is capable of complying with federal securities laws, the rules and regulations thereunder, and FINRA rules; and Firm X's supervisory practices, standards, and system failed to adequately account for Principal 1's recent and relevant regulatory history to ensure compliance with federal securities laws, the rules and regulations thereunder, and FINRA rules.[15]

B. Procedural Arguments

Prior to discussing the relevant standards in NASD Rule 1014(a), we address the parties' procedural arguments concerning Principal 1's on-the-record interview testimony and Firm X's proposed expert.

1. March 13, 2014 On-the-Record Interview of Principal 1

In its decision letter denying Firm X's application, Member Regulation relies, in part, on a March 13, 2014 on-the-record interview ("OTR") of Principal 1 by Member Regulation. According to Member Regulation, the OTR was given as part of an on-going cause examination as the result of a customer complaint concerning Principal 1's sales of REITs while at Firm Y. Firm X argues that Member Regulation's reliance on the OTR is improper because "[t]he testimony was never raised by FINRA during the application process, and Staff did not provide in its decision letter any of the recorded testimony used to draw their conclusions."

NASD Rule 1013(b)(7) provides:

> During the membership interview, [Member Regulation] shall provide to the Applicant's representative . . . any information or document that the Department has obtained from . . . a source other than the Applicant and

[15] Even if we were to conclude that the rebuttable presumption was not triggered in this instance, we nonetheless find that Firm X, which bears the burden of demonstrating that it meets each of the standards for membership approval, failed to demonstrate it could meet the standards set forth in NASD Rule 1014(a)(3), (9), and (10). *See New Membership Application of Firm A*, 2010 FINRA Discip. LEXIS 24, at *22.

> upon which the Department intends to base its decision under Rule 1014. If [Member Regulation] receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

We find that Member Regulation erred and should have produced the OTR transcript at the membership interview or thereafter when it decided to base its decision upon it.

We find, however, any error was harmless. Principal 1, and in turn Firm X, was not unaware of the contents of the OTR. Indeed, it was the OTR of Principal 1, the de facto owner of Firm X and its only representative, which was conducted during the pendency of Firm X's application for membership. We fail to see any unfairness in Member Regulation considering Principal 1's sworn testimony when evaluating Firm X's NMA. We disagree with Firm X's argument that the authors of the decision letter denying the application needed to be present at the OTR in order for the transcript to be reliable. Likewise, the fact that Principal 1 has yet to be charged with any violation as a result of the OTR does not make the transcript unreliable. Principal 1, who was represented by counsel, received proper notice of his requested testimony pursuant to FINRA Rule 8210, was properly sworn in at the OTR, and testified under oath in the presence of a court reporter. Following the OTR, Principal 1 could have reviewed a copy of the transcript or requested, in writing, a copy of the transcript. *See* FINRA Rule 8210(f); *FINRA Regulatory Notice 09-17*, 2009 FINRA LEXIS 45, at *4 (Mar. 2009). Moreover, after receiving Firm X's notice of appeal, Member Regulation provided copies to Firm X's counsel of all the documents that were considered in connection with its decision letter, including the OTR transcript, on November 10, 2014—more than two months in advance of the hearing. Therefore, Firm X had the ability to review the transcript in detail and present evidence and question witnesses, including Principal 1, at the hearing about the subject matter and events surrounding Principal 1's testimony. *See Sierra Nevada Sec., Inc.*, 54 S.E.C. 112, 120-122 (1999) (finding FINRA's failure to produce a draft letter to the applicant firm that FINRA relied on in connection with its denial of an application for membership was harmless because the letter contained no independent, new information and those responsible for the draft letter were examined by the applicant firm at the hearing).

2. Firm X's Proposed Expert Witness

In its witness list, Firm X stated it planned to call two witnesses: Principal 1 and "Firm Expert, expert witness."[16] Member Regulation filed a written objection to Firm Expert's testimony, arguing that expert testimony was beyond the scope of the proceeding, his testimony would unnecessarily prolong the hearing, and Firm X's notice of its intent to call a witness was deficient because it did not proffer the scope of Firm Expert's testimony or his qualifications as an expert. Firm X filed a written response, in which it argued, among other things, that it advised Member Regulation of its intent to present expert testimony in its notice of appeal, a

[16] Pursuant to the scheduling order, the parties exchanged witness and exhibit lists five days prior to the hearing.

formal motion for leave to present expert testimony is not required, and Firm Expert's testimony was relevant and not duplicative. Later, Firm X asserted that Firm Expert was expected to testify to "the relevance and the application of NASD Rule 1014, [Principal 1's] qualifications, as well as the various applicable rules and regulations pertaining to [Principal 1's] circumstances and [Member Regulation's] interpretation of them."

FINRA and NASD rules relevant to membership proceedings do not address the provision of expert testimony. The Subcommittee for the NAC empanelled to hear the matter allowed Firm Expert to testify but reserved its right to deem Firm Expert an expert and to determine the scope and weight, if any, afforded to his testimony.

Firm Expert entered the securities industry in 1984 and has associated with several firms. Firm Expert passed the Series 7 examination in February 1998; the Series 24 examination in March 1998; the Series 27 (financial and operations principal) examination in April 1989; the Series 53 (municipal securities principal) examination in May 2001; the Series 55 (limited representative – equity trader) examination in September 2000; and the Series 63 examination in July 1989. As of the hearing, he was registered with 15 firms in a variety of capacities.

At the hearing, Firm Expert testified that he had worked in the financial services industry for more than 30 years and as a chief compliance officer for 15 years. His resume did not reflect any experience with membership applications, but he testified that he had worked on approximately five to 10 new membership applications and "numerous" continuing membership applications, in the capacity of a FINOP, chief compliance officer, or a consultant for the applicant firms. With regard to these applications, Firm Expert testified that a subordinate or someone he hired prepared the applications and he would act as a "quarterback" and supervisor during the membership application process.

Firm Expert testified that he spent approximately eight hours preparing to testify. He further testified that he did not review the record in this matter, did not review any version of the NMA submitted by Firm X, or any correspondence between Firm X and Member Regulation during the application process. In fact, other than the decision letter, two of the 27 customer complaints, and FINRA's BrokerCheck, he was unable to recall with any specificity what documents he reviewed to prepare to testify.

Based on the record, we find that Firm Expert does not qualify as an expert in this proceeding. Among other things, Firm Expert lacked familiarity with NASD Rule 1014, and we find his experience does not qualify as expertise in the area of membership applications and proceedings. Even if we were to find that Firm Expert was an expert, we find that he lacked the necessary foundation to opine on the matter because he never reviewed, among other things, any version of the NMA or any correspondence between Firm X and Member Regulation during the application process. Accordingly, we afford no weight to the testimony of Firm Expert.

C. Firm X Failed to Demonstrate that It Satisfied the Standard of NASD Rule 1014(a)(3)

NASD Rule 1014(a)(3) requires that Member Regulation determine whether "[t]he Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and NASD [and FINRA] Rules, including observing high standards of commercial honor and just and equitable principles of trade." Member Regulation found that Firm X failed to meet the standard based on Principal 1's termination for cause and the arbitrations pending against him. For the reasons explained below, we agree.

1. Principal 1's Termination for Cause

NASD Rule 1014(a)(3) instructs Member Regulation, when determining whether the standard has been met, to consider whether "an [a]ssociated [p]erson was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct." NASD Rule 1014(a)(3)(D). Member Regulation found that Principal 1 was terminated for cause by Firm Y on August 26, 2010, as reflected by a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by the firm on September 2, 2010. Firm X disputes this conclusion. It argues that Principal 1 was not terminated for cause because Principal 1 tendered his letter of resignation and it was received by Firm X prior to his termination for cause. Firm X also argues that Firm Y filed a false Form U5 stating that Principal 1 was terminated in retaliation for Principal 1 resigning and taking his large of book of business away from the firm.[17] Firm X, relying on BrokerCheck, also argues that Firm Y updated Principal 1's Form U5 prior to the hearing to reflect that Principal 1 was not terminated for cause.

a. The Evidence Does Not Support that Principal 1 Resigned Prior to Being Notified that He Was Going to Be Terminated

Firm X argues that Principal 1 resigned prior to being terminated, so he was not terminated for cause. We disagree. The preponderance of the evidence supports that Principal 1 tendered his letter of resignation only after being told he was being terminated for cause. Indeed, Firm X does not argue, or even suggest, that Principal 1 resigned prior to being notified that he was going to be terminated. Under these circumstances, we find an associated person's resignation prior to a forthcoming termination for cause does not negate a firm's termination for cause and its collateral consequences with respect to NASD Rule 1014(a)(3).

[17] Firm X further argues that, following Firm Y's "retroactive" termination of Principal 1, the firm began a "mailing campaign" directed at Principal 1's clients explaining the risks and downsides associated with variable annuities and informing them of Principal 1's "termination" for variable annuity violations.

In support of its argument that Principal 1 tendered his letter of resignation prior to his termination for cause, Firm X relies on a letter dated August 20, 2010, from Principal 1 addressed to the Compliance Department at Firm Y in City 2, State 2, which reads, "Consider this letter notification of my resignation effective August 25, 2010." Firm X argues that Principal 1 mailed this resignation letter on August 26, 2010, and it was received on August 27, 2010, as evidenced by a FedEx tracking update email. First, we note that the FedEx tracking update email provides that correspondence was sent to Firm Y Supervisor in City 3, State 3, not the Firm Y Compliance Department in City 2, State 2, as provided in the letter.[18] Firm X did not explain this discrepancy. More importantly, at the March 13, 2014 OTR, Principal 1 never mentioned his August 25, 2010 resignation letter when asked to explain the circumstances surrounding his termination from Firm Y. Instead, Principal 1 testified that, prior to receiving a copy of the Form U5, he was told by Firm Y that he "was going to be terminated for cause." Principal 1 did not dispute his testimony at the hearing.

At the hearing, Principal 1 further testified that he previously provided information to FINRA concerning his termination for cause, and Firm X moved to adduce a document—a November 4, 2010 letter without any delivery confirmation—that Principal 1 testified that he emailed to FINRA in response to an inquiry about his termination for cause. According to Firm X, the November 4, 2010 letter explains the "circumstances surrounding Principal 1's sale of variable annuities while associated with Firm Y which culminated in his eventual resignation at the firm." Firm X admits that it does not possess any documentation to authenticate the document or prove that FINRA received it, but argues that any existing evidence to authenticate the document or prove receipt would be in FINRA's custody and control. Member Regulation opposed Firm X's motion, arguing that Firm X failed to prove that Principal 1 emailed the document to FINRA and that the document was irrelevant.

Pursuant to NASD Rule 1015(f)(3) and the applicable scheduling order, the parties were required to exchange exhibit lists five days prior to the hearing. Firm X did not include the November 4, 2010 letter, so the Subcommittee must exclude it unless it "determines that good cause is shown for failure to comply with the production date." NASD Rule 1015(f)(3). Firm X has not demonstrated that good cause exists for its failure to include the November 4, 2010 letter on its exhibit list. Even assuming arguendo that the letter is authentic, the document was in existence and in Firm X's possession at the time the parties exchanged their exhibit lists. Firm X, who was represented by counsel, should have foreseen that the circumstances surrounding his termination for cause, the rebuttable presumption, and compliance with Member Regulation's requests for information during the application process would be a subject of scrutiny at the hearing, and therefore should have included on its exhibit list any document that would have supported its assertions. Nevertheless, we considered the substance of letter and conclude that, if anything, it supports that Principal 1 was terminated for cause because the letter does not suggest that Principal 1 resigned prior to being notified that he was going to be terminated.[19]

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[18] Firm Y Supervisor was Principal 1's direct supervisor at Firm Y.

[19] According to the 2010 letter, Principal 1's supervisor at Firm Y, Firm Y Supervisor telephoned Principal 1 on July 25, 2010, and said that, "I was being terminated for cause; that

[Footnote continued on next page]

b. The Evidence Does Not Support that Firm Y Filed a False Form U5

We find there is no evidence to suggest that Firm Y filed a false Form U5 in retaliation for Principal 1 resigning and taking his large of book of business away from the firm, as argued by Firm X. Other than Principal 1's testimony, Firm X did not offer any evidence to support its allegation that Firm Y's Form U5 was false.

Principal 1 admits that he submitted variable annuity paperwork to product sponsor companies prior to receiving pre-approval from Firm Y, which was the basis for his termination. The fact that Firm Y sent the letter of caution to Principal 1 on May 25, 2010, then terminated him three months later for the same transgressions, does not, by itself, provide that Principal 1's Form U5 was false. Further, the letters sent by Firm Y to its customers of Principal 1 and Employee 1 after their separation from the firm explaining the risks associated with variable annuities and seeking acknowledgment that its customers' variable annuity investments were in their best interest by themselves also do not support Firm X's allegation. Indeed, we find the letters are consistent with Firm Y's obligations under FINRA supervision and suitability rules and were a reasonable response to Principal 1's admitted violations of firm policy.

c. The Evidence Does Not Support that Firm Y Updated Principal 1's Form U5 Prior to the Hearing

We likewise find there is no evidence to suggest that Firm Y updated Principal 1's Form U5 prior to the hearing. At the hearing, Firm X's counsel argued that additional evidence existed that showed that Firm Y updated Principal 1's Form U5. Pursuant to an order by the Subcommittee, Firm X filed a written motion after the hearing seeking to adduce an incomplete copy of a BrokerCheck report for Principal 1. We need not rule on the admissibility of the report because we take official notice of the document. *See, e.g.*, *John J. Bravata*, Initial Decisions Release No. 737, 2015 SEC LEXIS 196, at *8 n.4 (Jan. 16, 2015).

As an initial matter, we note that BrokerCheck derives the information available about brokers specifically from CRD. *See BrokerCheck Frequently Asked Questions*, *available at* http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P015174 (last visited Feb. 3, 2015). Principal 1's BrokerCheck report, when viewed in its entirety, reflects that, on August 26, 2010, Principal 1 experienced an "Employment Separation After Allegations"—specifically, that Firm Y "discharged" Principal 1 for the "Failure to follow firm policy regarding the pre-

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[cont'd]

Employee 1 was being 'retroactively' terminated for cause; and that if another Registered Representative who worked with me, Employee 2, did not resign that he would be terminated as well. Both Employee 2 and I submitted our resignations." Even if we were to conclude that Firm Y permitted Principal 1 to resign, we find he only did so after an investigation of a violation of his firm's policy regarding the pre-approval of variable annuities, and thus Firm X still does not meet the applicable standard. *See* NASD Rule 1014(a)(3)(D).

approval of variable annuities," as described by both Principal 1 and Firm Y in the detail report. *See Richard Principal 1 BrokerCheck Report* at 33, *available at* http://brokercheck/finra.org (last visited Jan. 27, 2015). CRD likewise reflects that Firm Y discharged Principal 1 on August 26, 2010 for the "Failure to follow firm policy regarding the pre-approval of variable annuities." Comparing BrokerCheck and CRD, we conclude that both sources undeniably reflect that Firm Y terminated Principal 1, and any difference in the language of the sources is immaterial.

2. Pending Arbitrations

NASD Rule 1014(a)(3) also instructs Member Regulation, when determining whether the standard has been met, to consider whether "an [a]pplicant's or [a]ssociated [p]erson's record reflects a sales practice event, a pending arbitration, or a pending private civil action." NASD Rule 1014(a)(3)(B). In its decision letter, Member Regulation reasoned that the serious nature of the allegations required it to consider the pending arbitrations, particularly because Firm X proposed that Principal 1 would conduct the same business lines at Firm X without a supervisor. Member Regulation also found Firm X's failure to disclose the first arbitration in its initial application to further evidence a "complete lack of regard for the regulatory rules designed to prevent and detect future violations of applicable regulatory provisions." Firm X argues that the customer complaints that led to the arbitrations "are without merit, and were solicited against [Principal 1] by [Firm Y] as a personal attack." Firm X also argues that Principal 1 "has continually disputed any direct involvement with the [complaining] clients." Firm X therefore reasons that the pending complaints and arbitrations "are an insufficient basis for concluding that [Firm X] is unable to detect and prevent future violations of securities law such that he 'cannot comply' with the Standards of [NASD] Rule 1014(a)." We disagree.

The uncontroverted evidence provides that Principal 1 was a respondent in an arbitration at the time of Firm X's initial application (which Firm X failed to disclose), and Principal 1 became the respondent in three additional arbitration matters during the pendency of the application. The allegations in the matters include false representations, fraud, negligent representations, failure to supervise, and unsuitable investments and recommendations. The fact the arbitrations have not been adjudicated does not mean the matters cannot or should not be considered by FINRA when reviewing an application for membership. To the contrary, NASD Rule 1014(a)(3) was amended in March 2004 to explicitly direct consideration of "pending arbitrations." *Order Granting Approval of Proposed Rule Change*, Exchange Act Release No. 48969, 2003 SEC LEXIS 3062, at *4 (Dec. 22, 2003). In affirming the rule change, the Commission stated it believed that the change was "appropriate because such matters may demonstrate an applicant's ability or willingness to comply with the [Exchange Act], the regulations of the Commission and the rules of [FINRA]." *Id*. at *8.

Firm X argues that Principal 1 did not have any direct involvement with the clients underlying the complaints and arbitrations. In his OTR, however, Principal 1 testified he was responsible for all aspects of the supervision of his branch's three associated persons, including Employee 1. He further testified that his supervision responsibilities included approval of transactions, reviews of suitability, and reviews of communications. He said that although Employee 1 was permitted to recommend a variable annuity without discussing it with Principal 1, that did not occur. He also testified that he, his representative, and the client would get

together to discuss what variable annuity or REIT would be most appropriate for the client. Firm X did not reconcile these contradictions at the hearing.

Indeed, Firm X failed to offer evidence upon which we could conclude that the pending arbitrations should not be considered by us or Member Regulation or were solicited by Firm Y in retaliation for Principal 1 resigning from the firm. The letters that Firm Y sent to customers of Principal 1 and Employee 1 seeking their acknowledgment that their variable annuity investments were in their best interest do not by themselves evidence a retaliatory scheme by Firm Y. In fact, we find such letters are against the firm's own self-interest because they could expose not only Principal 1 to possible litigation, but the firm as well for a failure to supervise. At the hearing, Principal 1 testified that at least some of the investments that formed the basis of the complaints and arbitrations were profitable as of the hearing. Other than Principal 1's testimony and Firm X's description of the seven customer complaints submitted during the application process, Firm X offered no additional evidence regarding the underlying investments. For two complaints, Principal 1 testified he conducted "detailed research," and for the others a "cursory review." According to Principal 1, the customers "as of 2012, . . . they were up approximately around 20 to 30 percent in their annuities, they were down about five percent in their REITs, and as of May/June 2014, they were approximately one to five percent up in their REITs."

We find we do not have sufficient information to conclude that the investments underlying the complaints and arbitrations were, in fact, suitable. As an initial matter, we note that Principal 1 admits he conducted a mere cursory review of 21 of the 23 complaints. Moreover, for liability purposes with respect to suitability, the focus is on the suitability of broker's recommendations, not the end result. *See Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *37 (May 27, 2011) ("Suitability is determined at the time the recommendation is made; unsuitable recommendations do not become suitable if they later result in a profit."), *aff'd*, 693 F.3d 251 (1st Cir. 2012). Even if were to find Principal 1's testimony credible about the profitability of the underlying investments, this testimony does not account for the other attributes of variable annuities that could make the investments unsuitable (e.g., liquidity issues, surrender charges, associated fees and expenses, tax considerations, etc.) for clients. *See FINRA Investor Alert; Variable Annuities: Beyond the Hard Sell* (June 2012), *available at* http://www.finra.org/web/groups/investors/@inv/ documents/investors/p125846.pdf (last visited Jan. 27, 2015).

We conclude that Firm X, which bears the burden of demonstrating that it meets each of the standards of NASD Rule 1014, failed to offer evidence to substantiate its claim that the pending arbitrations should not be considered against Firm X with respect to whether it could meet the standard in NASD Rule 1014(a)(3).

* * * *

In conclusion, we find Principal 1 was terminated for cause and is named as a respondent in three pending arbitrations, and we find no reason to discount the implications of these events with respect to the standard articulated in NASD Rule 1014(a)(3). Based on Principal 1's termination for cause and the serious nature of the allegations against Principal 1 in the

numerous arbitrations, we conclude that Firm X failed to overcome the presumption of denial and failed to show that Principal 1, at this time, is capable of complying federal securities laws, the rules and regulations thereunder, and FINRA rules.

D. Firm X Failed to Demonstrate that It Satisfied the Standards of NASD Rule 1014(a)(9) and (10)

NASD Rule 1014(a)(9) requires Member Regulation to determine whether "[t]he Applicant has compliance, supervisory, operational and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business." NASD Rule 1014(a)(10) requires Member Regulation to determine whether "[t]he applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and [FINRA] Rules." Member Regulation found that Firm X failed to meet the standards based on Principal 1's role in Firm X's supervisory structure and Firm X's proposed implementation of its WSPs. For the reasons explained below, we agree.

1. Principal 1's Role in the Supervisory Structure

In its decision letter, Member Regulation found Firm X's supervisory structure—in which Principal 1 would supervise himself on the same business lines that resulted in 23 customer complaints being filed against him—inadequate. Member Regulation noted that, while at Firm Y, Principal 1 was supervised, and Firm X was proposing that Principal 1 conduct the very same sales activities but with a less rigorous supervisory structure in which he supervised himself. Member Regulation also found that, at the membership interview, Principal 1 displayed a general lack of understanding and concern for several FINRA rules at issue in the application and was unable to articulate the basic components of a suitability review, how Firm X would ensure compliance with applicable rules relating to variable annuities and REITs, or how Firm X's controls and processes would support an adequate supervisory system. Member Regulation further found Principal 1's admission that he purposefully violated Firm Y's pre-approval policies with respect to variable annuities to evidence indifference and blatant disregard for compliance responsibilities. Firm X argues that Member Regulation's analysis ignores the fact that Firm X is relying on the limited size and resources exception under NASD Rule 3012. Firm X notes that the 23 customer complaints filed against Principal 1 "seem to be the primary motivation for Staff's conclusion that a 30 year (sic) veteran of the industry with a near spotless record who is engaging an off-site FinOp and an independent compliance firm has a 'disturbing lack of appreciation' for the importance of an effective supervisory structure." Firm X further argues that "the number of customer complaints being filed against Principal 1 has led to the tacit assumption that Principal 1 is at fault before the disputes are resolved."

CRD reflects that Principal 1 was terminated for cause, is the subject of 23 customer complaints, and is the respondent in three pending arbitrations. The record shows that Firm X proposes that Principal 1 would serve as Firm X's CEO, CCO, AMLCO, sole representative, producing manager, and only supervisor. Principal 2, who would be acting as an off-site FINOP,

would have no supervisory responsibility and has no experience selling variable annuities or REITs. The record further reflects Firm X's intent to employ Company Z, an outside compliance firm, to "perform a monthly on site (sic) inspection and write a report for regulatory review" and "assist [Firm X] in maintaining compliance." Firm X also notes, "FINRA will perform its Cycle Exam as well which will further ensure [Firm X] remains in compliance."

We agree with Member Regulation that Firm X has failed to demonstrate that its intended supervisory structure satisfies the standards of NASD Rule 1014(a)(9) and (10). First, Firm X's application of the limited size and resources exception is misguided. NASD Rule 3012(a)(2)(A)(i) laid out specific requirements for the written supervisory control procedures. It requires that a producing manager be reviewed and supervised by an "otherwise independent" person and that the review be alternated with another qualified person every two years. An "otherwise independent" person is defined as someone who does not report either directly or indirectly to the producing manager under review and who is located in a different office than the producing manager. In addition, the "otherwise independent" person must not have supervisory responsibility over the activity being reviewed, including not being directly compensated in whole or in part based on revenues accruing from the reviewed activities. NASD Rule 3012(a)(2)(A)(ii), otherwise known as the limited size and resources exception and upon which Firm X relies, provided: "If a member is so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews pursuant to [general supervisory requirements in NASD Rule 3012(a)(2)(A)(i)] . . . , the reviews may be conducted by a principal who is sufficiently knowledgeable of the member's supervisory control procedures, provided that the reviews are in compliance with (i) to the extent practicable." NASD Rule 3012(a)(2)(A)(ii).[20] Thus, pursuant to the limited size and resources exception, small firms had an exception to the specific requirements of NASD Rule 3012(a)(2)(A)(i), not an exception from having requisite written supervisory control procedures, system, and infrastructure designed to ensure compliance with the applicable rules.

We, like Member Regulation, find that Firm X's intent to have Principal 1—who was terminated for cause, is the respondent in three pending arbitrations, and against whom 23 customer complaints were filed—function without supervision is a weak supervisory system which poses a risk to investors. Although Principal 1 has a 30-year career in the industry, his recent regulatory history raises serious questions about whether he is a sufficiently knowledgeable principal who may be relied upon to conduct supervision, including his own, at Firm X. Although the arbitrations are pending, the allegations contained therein are troubling and concern the same lines of business that Principal 1 would conduct at Firm X. Further, Principal 1 indicated that he would solicit customers similar to the complaining customers—i.e., retirees or those nearing retirement. The customer complaints also raise serious questions about Principal 1's ability to effectively supervise. We agree with Firm X that the 23 complaints filed against Principal 1 generally and almost identically contain the same allegations, but we note that we nonetheless would have the same concerns even if there were significantly fewer complaints.

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[20] NASD Rule 3012 was superseded by FINRA Rule 3120 on December 1, 2014. *FINRA Regulatory Notice 14-10*, 2014 FINRA LEXIS 17 (Mar. 2014).

"Customer complaints provide [FINRA] with important information that often times assists with the identification of problem firms, branch offices, and registered representatives." *NASD Notice to Members*, 2000 NASD LEXIS 104, at *57 (Sept. 2000). Indeed, reporting customer complaints "is intended to protect public investors by helping to identify potential sales practice violations in a timely manner." *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *44 (June 29, 2007). Member Regulation properly considered the customer complaints and their import with respect to investor protection when reviewing Firm X's application for membership.

We disagree that Firm X's engagement of Company Z presents "a supervisory structure that will effectively guard against future violations of federal securities laws, the rules and regulations thereunder, and [FINRA] Rules." Firm X asserts that Company Z will "aid in meeting day to day compliance obligations," "perform a monthly on site (sic) inspection," "write a report for regulatory review," and "will assist [Firm X] in maintaining compliance." But as FINRA guidance emphasi1es, "the ultimate responsibility for supervision lies with the member." *NASD Notice to Members 05-48*, 2005 Notice to Members 48, at *4 (July 2005). Company Z personnel are not associated persons, are not subject to FINRA rules, generally cannot be held liable for firm violations, and thus are an unacceptable substitute for proper supervision by the firm in this instance. Company Z personnel further cannot provide on location and continuous day-to-day and point-of-sale oversight to associated persons, which we find, at a minimum, necessary to supervise someone with Principal 1's regulatory history at this time.

Firm X argues that, at the membership interview, it proposed to have an outside person supervise Principal 1, but Member Regulation declined because Principal 1, through Firm X, would be paying the supervisor and it would create a conflict of interest. Firm X also proposed to have an outside broker-dealer supervise Principal 1, but Member Regulation said that would also create a conflict of interest between Firm X and the other broker-dealer.[21] At the outset, we note that neither of these proposed alternatives was included in Firm X's application, and we consider on appeal the application as it was presented to Member Regulation. We do not think that paying a representative to supervise a president and indirect owner of a firm with a regulatory history would necessarily create a conflict of interest or is otherwise untenable in certain circumstances. Firm X, however, did not offer a specific supervisor who would subject Principal 1 to heightened supervision or such a supervisory system for FINRA to consider. An outside broker-dealer supervising Principal 1, however, on its face, seems untenable because the supervisor would not be registered at Firm X and would not have the authority to enforce Firm X's policies and procedures. *See id.* ("[A] member may never contract its supervisory and compliance activities away from its direct control.").

In its decision letter, Member Regulation found that Principal 1 was unable to articulate the basic components of an adequate suitability review.[22] At the hearing, Principal 1 testified

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[21] At the hearing, Principal 1 also testified he would put himself under heightened supervision if there was a way to do it.

[22] Member Regulation staff testified to the same at the hearing.

[Footnote continued on next page]

generally how he qualified products and made recommendations to customers at Firm Y and how he would conduct a suitability review at Firm X. Firm X also introduced a suitability checklist for FINRA Rule 2111 that Principal 1 testified he would employ at Firm X. We need not find that Principal 1 is unable to articulate a basic suitability review to conclude that Firm X's supervisory system is inadequate.[23]

Firm X argues that Principal 1's termination for cause and 23 customer complaints were "crucial to [Member Regulation's] conclusion that [Firm X] failed to meet the standards set forth in Rule 1014(a)." We agree. Principal 1's recent regulatory history raises significant concerns, and therefore, a robust supervisory system at Firm X would be of the utmost importance. We find that Firm X's proposed supervisory practices, standards, and system, in which Principal 1 functions without supervision, and Firm X's reliance on Company Z to bolster its supervisory system, however, falls well short and does not adequately address those concerns and therefore poses a serious risk to investors.

2. Firm X's Implementation of Its WSPs

In its decision letter, Member Regulation also found Firm X's intent to not place Principal 1 under heightened supervision to be in contravention of Firm X's WSPs and sufficient reason by itself to deny the application because it evidenced a culture of non-compliance at Firm X. Firm X argues that, because Firm X intends to rely on the limited size and resources exemption of NASD Rule 3012, "[NASD Rule 3012] would prevail if inconsistent with [Firm X's] WSPs [and] [a]ny inconsistency is then reconcilable due to the fact that the WSPs are not designed to provide for every single contingency." Firm X continues that, "[t]he WSPs would simply have been amended to reflect the position that [Firm X] could in its judgment make a temporary exception for the enforcement of heightened supervision if it has a reasonable belief that the customer complaints are frivolous or retaliatory."

Firm X's business plan submitted with its application provides: "The Firm will further establish heightened supervisory procedures and special educational programs for any Associated Person whose records reflect: . . . (ii) customer complaints . . . . Further details concerning any heightened supervision requirements are contained in the Firm's [WSPs]." The first page of the WSPs notes that the procedures cannot address every situation and the appropriate person may exercise discretion when necessary. Section 2.1.2 of Firm X's WSPs provides that if any "associated person has been subject to three or more customer complaints and arbitrations in the previous five years . . . , the Firm will establish, maintain, and enforce

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[cont'd]

[23] Of course, Principal 1's ability to articulate the basic components of an adequate suitability review has no bearing on our conclusion that Firm X failed to offer evidence to substantiate its claim that the pending arbitrations and complaints against Principal 1 should not be considered for purposes of FINRA's review of Firm X's application. We explicitly find that Firm X failed to put forth sufficient information to conclude that the investments underlying the arbitrations and complaints were, in fact, suitable.

heightened written procedures for supervising the activities of the associated persons." Section 3.2.10 provides, "Heightened supervision is warranted whether the registered representative has a history of customer complaints, disciplinary actions, or arbitrations . . . ." In response to Member Regulation's initial inquiry about how Firm X intended to comply with its own heightened supervision requirement in light of Principal 1's regulatory history, Firm X stated, "Principal 1 will not be subjected to heightened supervision. [Firm X] employs Principal 1 as its sole representative."

Firm X's argument misses the mark. Firm X's reliance on the limited size and resources exception does not permit Firm X to maintain a less robust supervisory system, procedures, and infrastructure. At the hearing, Principal 1 testified that whereas he would place another representative under heightened supervisions who had 23 customer complaints, pending arbitrations, and a termination for cause, Firm X's WSPs are "situational dependent," and his situation did not warrant heightened supervision because the complaints "were not coming from clients, but . . . individuals that wanted to make money off of my fairly large book of business." We are troubled that Firm X intends to rely on Principal 1's discretion as a means to not implement its WSPs with respect to his heightened supervision at Firm X. FINRA consistently has recommended heightened supervisory procedures for registered representatives with a history of *pending* customer complaints, disciplinary actions, or arbitrations. *See, e.g.*, *NASD Notice to Members 97-19*, 1997 NASD LEXIS 23, at *12 (Apr. 1997) ("While final disciplinary actions, complaints, or arbitrations resolved in a manner adverse to the registered representative indicate a disciplinary problem, multiple pending complaints, disciplinary actions, or arbitrations may be indicative of a history that should be carefully reviewed."). Indeed, the Commission too has long emphasized the need for heightened supervision when a firm employs associated persons with known regulatory problems or customer complaints. *See Robert J. Prager*, 58 S.E.C. 634, 658-59 (2005). The WSPs, as drafted, also recognize the significance of an associated person being the subject of three or more customer complaints or arbitrations because the procedures require heightened supervision in such instances. The WSPs, as drafted, also do not explicitly provide for a subjective determination concerning heightened supervision by anyone, let alone the person who is the subject of the customer complaints, that the complaints are without merit.

Notwithstanding the guidance from FINRA and the Commission and Firm X's apparent acknowledgement in its own WSPs of the significance of regulatory history, Firm X argues that Principal 1 should be excused from heightened supervision because he is the sole representative at Firm X and because Principal 1 believes the complaints against him are frivolous and retaliatory. Such a supervisory system poses the potential for abuse and incredible risk to the investing public. Firm X's failure to appreciate the seriousness of Principal 1's regulatory history, even if not yet adjudicated, and the potential risk to investors is disconcerting. We are further troubled by Principal 1's testimony at the hearing that he would consider hiring someone at Firm X with similar regulatory history—specifically, Employee 1, whom he previously supervised at Firm Y and against whom numerous complaints and arbitrations were lodged for the very same transactions. Under Firm X's proposed implementation of its WSPs, Employee 1 would be subject to heightened supervision by Principal 1. We could not consider ourselves stewards of investor protection if we were to allow such a supervisory structure to exist in the face of numerous pending arbitrations and customer complaints, particularly in light of the clear

directive from both FINRA and the Commission regarding customer complaints and heightened supervision.

Finally, Firm X attempts to distinguish *Asensio & Company, Inc.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954 (Dec. 20, 2012), a denial of membership affirmed by the Commission and cited by Member Regulation in its decision letter. In that case, the applicant firm was denied membership where the sole principal, who was statutorily disqualified as the result of regulatory history, was proposing to serve in every executive and officer capacity of the firm. *See id.* Firm X argues that *Asensio* is not persuasive because the principal's disciplinary history was more severe and he was statutorily disqualified; the firm had no specific plan for heightened supervision whereas Firm X does; the firm was not relying on the limited size and resource exception; the firm was proposing the principal would serve in every capacity, including as the FINOP, whereas Firm X proposes to employ a FINOP; and the firm, unlike Firm X, did not employ an outside compliance firm.

We find Firm X's arguments unpersuasive. First, whereas Firm X's WSPs may provide for heightened supervision, by its own admission, it does not intend to implement them with respect to Principal 1. Second, to the extent that the applicant firm in *Asensio* was seeking to operate with only one principal, it was seeking to operate under an exception to FINRA's supervision rules. Regardless, as we have emphasized throughout this decision, Firm X's reliance on the limited size and resources exception does not allow it to operate without adequate written supervisory procedures and infrastructure. Third, Firm X's intended use of Principal 2 as an off-site FINOP is irrelevant to Firm X's supervisory structure: Principal 2 has no supervisory role and no experience with REITs and variable annuities. Fourth, although the statutory disqualification and corresponding disciplinary history of the firm's principal in *Asensio* is more severe than Principal 1's regulatory history, that comparison does not mean that Principal 1's history is not troubling for the reasons stated herein: established precedent and guidance provide for heightened supervision for associated persons with a history of pending customer complaints and arbitrations. Finally, as we explained, Firm X's intended use of an outside compliance firm is not a substitute for the requisite level of supervision at Firm X.

* * * *

Based on the foregoing, we agree with Member Regulation that Firm X does not have the supervisory practices, standards, and system designed to ensure compliance with federal securities laws, the rules and regulations thereunder, and FINRA rules. Indeed, we find that Firm X's proposed supervisory system is wholly inadequate based on Principal 1's termination for cause, pending arbitrations, and customer complaints. Further, Firm X's WSPs do not accurately reflect Firm X's intended implementation of heightened supervision at Firm X, and Firm X's intended implementation does not provide for heightened supervision of an associated person with a known history of customer complaints and pending arbitrations. Therefore, we find that Firm X failed to overcome the presumption of denial. Firm X failed to demonstrate it could meet the standards in NASD Rule 1014(a)(9) and (10) because Firm X's supervisory practices, standards, and system failed to adequately account for Principal 1's recent and relevant regulatory history to ensure compliance with federal securities laws, the rules and regulations thereunder, and FINRA rules.

IV. Conclusion

After a complete and independent review of the record, we conclude that Firm X failed to overcome the presumption of denial and failed to establish that it has satisfied all fourteen standards set forth in NASD Rule 1014(a). Accordingly, we affirm Member Regulation's denial of the application.

On behalf of the National Adjudicatory Council,

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Marcia E. Asquith,
Senior Vice President and Corporate Secretary

OS Received 06/03/2021

Replies to Finra's objections

1. *The Application is Not Complete and Accurate, as Required by Rule 1014(a)(1).*
   The Standard in Rule 1014(a)(1) requires the Staff to determine whether the Applicant has submitted a complete and accurate Application. After careful consideration, Staff has determined that the Application is not complete and accurate because the Applicant failed to set forth a feasible business model, the Applicant's communications with Staff call into question whether or not the Applicant intends to actually launch the proposed business activities, and the Application contains significant omissions of material facts regarding the owner and CEO of the Applicant Mr. Balabon and the scope of his outside business activities.
   a. *The Applicant Failed to Set Forth a Feasible Business Model*
      The Applicant states that it seeks approval to develop and operate an ATS which is the key driver of the overall proposed business model. In order for Staff to fully assess the proposal, and in connection therewith, the completeness of the Application in accordance with this Standard, Staff requested the Applicant provide a detailed description of the ATS and its operations, detailed information in regards to the source of funding the Applicant planned to utilize to launch the ATS operations, and provide a status update as to the regulatory approvals required in order to operate an ATS. However, in response Staff received incomplete and inconsistent representations from the Applicant and thus has concluded that the Applicant fails to present a cohesive business model and has failed to take the actions necessary in order to be in a position to commence the business operations for which it seeks approval. For example, as it relates to Staff's request to the Applicant to provide a detailed description of its proposed ATS, the Applicant stated in its November Application Filing, that it "…is not anticipating conducting any business until the ATS becomes operational" and in addition, the Applicant plans to "commence software development once capital is raised. There are currently no offerings to sell stock offered to the market. Spot Quote Holdings hopes to secure a large partner such as a global bank to take over project." In addition, Staff inquired at the outset of the Application whether or not the Applicant's ATS functions were ready to be demonstrated to Staff, to which the Applicant responded "…the technology currently built does not have current technical support so any demos will not be possible other than old videos of the software". Staff conduct the Applicant's Membership Interview ("MI") on June 24, 2020, at which time it was presented with a rudimentary demonstration of an ATS, and which, based on the Applicant's own representations outlined above, Staff has no confidence that the system demonstrated at the MI is either the final version of the ATS and whether this system would comply with Form ATS-N requirements. In addition, the Applicant stated that in order to launch and operate its proposed ATS, it would require approximately $50 million in financing, and plans to "…solicit mainly large NMS traders/exchanges/money managers to raise finance". However, the Applicant has provided no further detailed financing plan or the names of any potential investors to date. When asked by Staff to provide an update regarding its efforts to obtain the financing required to launch operations of the ATS, the Applicant responded on July 3, 2020, stating that only after approval is achieved would the Applicant approach "big banks and traders for financing", and provided no further detail. As a result, Staff has no confidence that the Applicant will be in a position to obtain the financing necessary to launch the ATS operations. In short, the Applicant has not provided to Staff a true picture of the ATS at the MI for Staff's consideration and a bona fide plan as to how it intends to source capital to launch the ATS, and thus is unable to outline with any degree of specificity and certainty the business in which it proposes to engage in.

Developing a working ATS is a complicated, innovative process which consumes lot of time, effort and money. Currently, the basic principle of working system is fairly adopted but has not been tested with a large number of trials. In addition, the technology, best available has to be incorporated before finalising the design, after which the working platform has to be constructed. It is estimated that funds amounting to $50 million may be required to complete the project. Only after the ATS becomes operational, a feasible Business Model can be worked out.

It is required to get a Broker Dealer license to connect to the marketplace, get quotes and execute trades on a trial basis. Once we start moving in that direction, it is possible to attract interest from potential investors. This is the reason to obtain a BD license first and why we are unable to present a clear business model now.

The existing version of the ATS, only presents the basic principle and the actual execution of trades done as trials. This was demonstrated at the Membership interview, however, no questions about its efficiency or the compliance with ATS-N requirements were raised by Finra staff.

b. *The Applicant's Communications with Staff during the Course of the Application Review Call into Question the Applicant's Intention to Conduct Business as a FINRA Member Staff has received conflicting information from the Applicant specifically related to whether or not it, if it becomes a Member of FINRA, it intends to actually operate as a business pursuant to their Application request. As stated previously, the Applicant indicated in its November Application Filing that it has maintained rights to the technology and patents and necessary software development would only commence once capital is raised. The Applicant also indicated that it "hopes to secure a large partner such as a global bank to take over project" which may suggest it is creating the broker dealer as a vehicle to sell its patents and technology. As previously mentioned, Staff conducted the MI in June 2020, during which the Applicant generally described its business model and presented a preliminary demonstration of an older version of its proposed ATS. Immediately following the MI, (and on the same day) Mr. Balabon sent an email to Staff indicating that he would be willing to "…hand over all the patents to FINRA and all the technology already built to FINRA for a 3% royalty of sales by way of your Alternative Display Facility." The Applicant also stated in a July 3, 2020, response to Staff's request to provide additional information related to investors who may assist in launching the ATS that it may just "sell the company". The By-Laws of the Corporation of FINRA under Article III (Qualifications of Members and Associated Persons) outline the requirements of persons who are eligible to become members and associated persons of members. Section 1(a) of Article III states in part that "Any registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States, under the laws of the United States, shall be eligible for membership in the Corporation." There is no provision for dormant or inactive membership. Based on the aforementioned, Staff continues to maintain significant unresolved questions regarding the manner in which the Applicant proposes to engage in business operations, and quite frankly, given the multiple conflicting statements made by the Applicant during the course of the Application, whether or not the Applicant actually intends to conduct a business operation at all, or in the alternative, simply plans to attempt to sell a shell company and related intellectual property to the highest bidder (or to FINRA itself), contrary to FINRA's ByLaws.*

Patents have been obtained with lot of effort and have good value. They may be transferred to anyone who is willing to pay for them and put into use. This is a separate issue and has nothing to do with the operation of ATS or the business of the BD. Mr. Balabon had made an offer to Finra as he might have made to anyone in the business of trading. It should not be construed that the offer to sell the patent means the Mr. Balabon is not interested in conducting the BD business.

It is inevitable that the BD may lie dormant for some time till funds are secured and any proposed activity actually starts. In the meantime, if an interested party makes an offer to buy the company along with the patents, it is not forbidden for the BD to consider such a proposal. Any such sale, in any case has to be approved by Finra.

We do not recall making multiple conflicting statements in our replies to the questions raised by Finra. Our replies have been consistent.

Finra , in our opinion is not right in denying the membership on the basis of imagined future events as applicant's real intentions.

c. *The Standard in Rule 1014(a)(1) requires the Applicant identify by name all entities under common control with the Applicant, describe the nature of each such entity's business, and identify each entity's relationship to the Applicant. Staff's normal procedure while engaging in a review of a new member application is to conduct an independent due diligence review of the Applicant and its principals, to ensure all OBA's have been identified and properly disclosed. During the course of this review it has come to light that Mr. Balabon has failed to identify a business venture that he is directly involved with which may have a direct nexus to the operation of a broker-dealer. Mr. Balabon failed to disclose to Staff that he is the CEO of an entity named Moentum Token ("Moemtum")3 . The Moentum website (which includes a link to a related White Paper)4 states its business purpose as: An "ERC20 cryptocurrency that is being sold to raise funds to launch two exchanges,• one for trading of crypto currencies and the other for stocks. The Use of Proceeds section of the White Paper states "proceeds from the sale of Tokens will be used to develop and launch an MOM new Cryptocurrency Exchange, which will seek a license from the Isle of Man Government and finance Spot Quote Holdings, Inc. so it can launch Spot Quote LLC which currently is an U.S. SEC Regulated Alternative Trading System (ATS) which plans to become a formal U.S. Stock Exchange. Moentum has entered into a patent licensing/marketing/financing/staffing agreement with Spot Quote Holdings, Inc. which grants Moentum unlimited use of Spot Quote Holdings' patents in exchange for financing for Spot Quote Holdings, Inc. Spot Quote Holdings, Inc. has agreed to allow the use of Moentum Tokens to purchase any of the services provided by Spot Quote LLC at a 10% discount provided the SEC and FINRA approve." The website identifies Mr. Balabon as the CEO of Moentum Trading Services Ltd. and it appears an Initial Coin Offering ("ICO") was held in 2018. The website further discloses that 755,701 tokens have been sold to approximately 32 members. This business activity was never disclosed on Mr. Balabon's Form U4. The descriptions of Moentum's activities are of particular concern to Staff due to the opacity of the purpose of the capital raise and subsequent business activities, and the multiple references in the business activities description which to a layperson may imply that both the Commission and FINRA have endorsed such activities. The Applicant's failure to disclose Mr. Balabon's ownership and control of Moentum, is in direct contrast to FINRA's New Member Application Requirements. All Applicants seeking FINRA approval to operate a broker-dealer are required to fully disclose all OBAs and provide detailed information surrounding the scope of their business operations in order to meet the Standards for Admission. The failure of the Applicant to disclose any OBA which the CEO of the Applicant actively engages in, results in a failure for the Applicant to meet the Standards for Admission. In addition, the Application states the Firm's indirect owner and CEO (Mr. Balabon) has certain outside business activities that he will dedicate no more than ten (10) hours a week to, which were not named with any specificity. Staff's review of Central Registration Depository ("CRD") indicates that Mr. Balabon disclosed OBA affiliations with 3 entities: Spot Quote Holdings, Inc., Spot Quote LLC and Intelligent Resources. Spot Quote Holdings is described as the Parent company to Spot Quote LLC and is not investment related. Spot Quote LLC was renamed OKCoin Securities on August 6, 2019 and the Application states that Spot Quote Holdings, Inc. has no ongoing relationship with OKCoin Securities5 . Intelligent Resources is described as a contractor to Spot Quote LLC for the development of its software platform and consulting work. Staff requested on April 2, 2020 that the Applicant provide a description of the business activities conducted by Intelligent Resources to provide the contemplated interaction with the Applicant both operationally and financially. The Applicant's response lacked specific detail, stating Intelligent Resources is "a company in existence since 1997, thorough [sic] which Sam Balabon had carried out several business operations. It continues to meet several running expenses" and thus has not provided any relevant details as to what business operations are conducted by Mr. Balabon through his OBA, Intelligent Resources. As noted above, the Standard in Rule 1014(a)(1) requires an accurate and complete application. Despite Staff's repeated requests and Membership Interview, the*

application fails to set forth a feasible business model, calls into question whether or not the Applicant intends to launch the proposed business activities at all, and contains significant omissions of material facts regarding the owner and CEO of the Applicant Mr. Balabon and the scope of his outside business activities. Staff has concluded that the Application does not meet the Standard in Rule 1014(a)(1).

Mr. Balabon had tried several business ventures under different business entities in the past. We had clearly mentioned in the application that there no outside businesses other than Mr. Balabon's real estate business (which is primarily renting his house and managing other short term rentals) which are currently in operation.

Moentum Token was reviewed by the SEC legal counsel at their Fort Worth Office. It was not included in the U4 because at the time Mr. Balabon was not engaged in the security business. His licenses were essentially dormant. Mr. Balabon's company BD at the time that Mr. Balabon hanged his license at was considered dormant by its own auditor. The bank statements of all the related entities were provided to Finra and questions raised were answered.

Finra had ample opportunity to pose questions regarding the OBI in the interview and subsequent correspondences or phone calls, to satisfy themselves, but refrained from doing so.

It is not right to deny the application on the basis of a company floated in the past, but could not successfully do any fruitful business. Once again Finra is imagining that that the applicant has no intentions to launch any business activity.

2. *The Applicant and its Associated Persons have Failed to Satisfy FINRA Rule 1014(a)(2). The Applicant has failed to demonstrate that its supervisory principals are properly licensed. FINRA Rule 1014(a)(2) requires Staff to determine whether the Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and selfregulatory organizations. In order to engage in the proposed business lines, the Applicant would need to register an Investment Banking Representative (Series 79) and a Securities Trader Representative (Series 57) to supervise its investment banking and proprietary trading businesses. The Applicant stated that Mr. Puranik would act as the supervisor for the proposed Investment Banking activities, and that Mr. Balabon would act as the supervisor of the proposed proprietary trading activities.6 A review of CRD on September 10, 2020, revealed that neither Mr. Puranik nor Mr. Balabon have obtained the Series 79 or Series 57 examinations, respectively. Designated supervisors must be properly licensed and registered to engage in the proposed business activities. Accordingly, the Applicant has not satisfied the requirements of Rule 1014(a)(2), due to its failure to identify properly licensed supervisors for its proposed Investment Banking and Proprietary Trading activities.*

It was explained that for market making in ATS , series 57 is not required, but Finra did not raise any objection further. Mr. Puranik could not take the series 79 due to the pandemic situation.

Finra could have restricted the Investment Banking Activity in the BD license, till the licenses are obtained, as allowed in NASD Rule 1014, instead of denying the entire application.

3. *The Applicant has not Established All Contractual or Other Arrangements and Business Relationships as Required in Standard 1014(a)(4). FINRA Rule 1014(a)(4) requires the Applicant's establish all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus or others necessary to: a) initiate the operations described in the Applicant's business plan considering the nature and scope of operations and the number of personnel; and b) comply with the federal securities laws, the rules and regulations thereunder, and FINRA Rules. The Applicant has failed to provide evidence of contractual and/or business arrangements necessary to initiate operations as a broker dealer. The Applicant was advised in information requests dated January 6, 2020 and June 4, 2020, that evidence of such arrangements and/or contracts were required to be provided prior to the conclusion of the application To date the Applicant has not provided: a. A Fidelity Bond as required by FINRA Rule 4360. b. An Audit Engagement Letter pursuant to SEC Rule 17a-5(f)(2). c. Evidence of a contract or agreement with an electronic storage/email archiving vendor to satisfy requirements specified in SEA Rule 17a-4(b). In total, the Applicant has not provided the basic contracts and agreements necessary for the operation of a broker dealer. Consequently, the Applicant and its associated persons do not meet the standard in Rule 1014(a)(4).*

The applicant had approached the various service providers mentioned and had obtained letters of intent and submitted them. Without being established as a BD, it makes no sense to purchase a fiedelity bond or get an audit engagement letter. These would be obtained during the process of entering into the Membership agreement with Finra.

4. *The Applicant and its Associated Persons Failed to Satisfy the Standards Established By Rule 1014(a)(10). The Standard in FINRA Rule 1014(a)(10) requires the Staff to consider, among other factors, the experience of supervisory personnel, the experience of the personnel to be supervised and whether such supervisory personnel have at least one year of direct or two years of related experience in the subject area to be supervised. a. Lack of Supervisory Experience on the Part of Mr. Puranik FINRA Rule 1014(a)(10) requires that each associated person that is identified by an applicant as having a supervisory function have at least one year of direct experience or two years of related experience in the subject area to be supervised. The Applicant identified Mr. Puranik as its FinOp, GSP, Investment Banking Principal and CCO, however, the Applicant has not identified any of Mr. Puranik's direct experience, nor has the Applicant provided any evidence that Mr. Puranik's banking experience from twenty years ago is relevant to the subject area to be supervised. In requests submitted to the Applicant on April 2, 2020 and June 4, 2020, Staff asked the Applicant provide detailed descriptions of how Mr. Puranik's background and experience meets the Standard of Rule 1014(a)(10)(D) with respect to his role as the Investment Banking Principal and to provide specific experience with investment banking and underwriting, including structuring and pricing deals and whether such experience was direct or related. In response, the Applicant failed to provide sufficient evidence to demonstrate direct or related experience in the Supervision of Investment Banking activities. In response to these requests, the Applicant indicated "Ramesh Puranik has worked in a bank for 12 years and has experience in Investment Banking and Venture Capital" and "… he will be taking up the Series 79 exam shortly". Staff reviewed the resume for Mr. Puranik provided by the Applicant which indicates Mr. Puranik was employed by Canara Bank in India from 1986 to 1999. While there is some reference to investment banking activity, there are no specifics about his role or responsibilities and Staff has no method by which to confirm this employment and the nature of his role at the Bank over twenty years ago. His resume states his most recent employment (from 1999 to the present) has been working at Intelligent Resources as a systems analyst and fund manager. Nowhere in the description of responsibilities at Intelligent Resources does it indicate Mr. Puranik has been conducting investment banking activity, rather his resume only states indicates he acted as the FinOp of a subsidiary broker dealer firm, which as the Applicant confirmed "…did not have investment banking business". The lack of specificity and responsiveness to multiple requests by Staff seeking clarity around the nature of Mr. Puranik's investment banking experience, how the Applicant determined the adequacy of his experience and whether such experience is characterized as direct or related experience in the context of meeting the requirements of FINRA Rule 1014(a)(10) has led Staff to the conclusion that Mr. Puranik is not sufficiently qualified and experienced to function as the Investment Banking Principal of the Applicant. In addition and as noted above, Mr. Puranik is not properly licensed to supervise the investment banking activities outlined in the Application. The Applicant has not demonstrated that Mr. Puranik has sufficient experience in the subject area to be supervised by him, as required under Rule*

1014(a)(10). As a result of all of the above, Staff had determined that the Applicant and Mr. Puranik failed to meet the criteria in Rule 1014(a)(10).

If Finra's opinion is that the applicant is not qualified to conduct Investment Banking, it could have excluded that activity and licensed the others or could have restricted the activity till the standards are satisfied. It is not right to deny the entire application.
It is also noted that Finra did not raise the issue of experience for other activities such as running the ATS or market making.

5. *There Is Information Indicating that the Applicant May Circumvent, Evade, or Otherwise Avoid Compliance With Federal Securities Laws, the Rules Thereunder, and FINRA Rules. FINRA Rule 1014(a)(13) allows for the denial of an application if FINRA possesses any information indicating that the applicant may circumvent, evade or otherwise avoid compliance with applicable securities laws. Based on the information and documents provided by the Applicant, as well as the Staff's own due diligence, the Staff concluded that the Applicant may circumvent, evade or otherwise avoid compliance with applicable securities laws for three main reasons.*
   First, the Applicant has consistently failed to present a feasible model of its business activities and made representations which led Staff to conclude the Applicant may not truly intend to commence business operations of the Applicant, (including its failure establish contractual and other arrangements and business relationships). Second, the Applicant failed to disclose Mr. Balabon's ownership and control of an outside business activity, which is in direct contrast to FINRA's New Member Application Requirements. Last, the Applicant failed to obtain the licenses and registrations required to engage in the proposed business operations and proposed an Investment Banking Principal, Mr. Puranik, who is not adequately qualified and experienced to effectively discharge his designated responsibilities. Notably, the Standard in Rule 1014(a)(13) does not require a finding of intent. Instead, the Standard requires that Staff identify any possibility that may result in circumvention, evasion or avoidance of compliance (whether it be knowing or unintentional). Here, the Applicant's several failures to comply with the standards for membership reflects that there is a possibility that the Applicant might circumvent, evade, or avoid compliance in the future. A key function of Staff in the Membership Application Process is ultimately the protection of investors. Staff's role in the Membership Application review process is to act as gatekeepers on behalf investors to identify the risk of investor harm before an applicant is approved for membership. Upon review of the totality of facts as presented in this application process, Staff concluded that: a) the business model is not viable or complete such that the relevant standards are met: and; b) the supervisory structure and qualifications of are insufficient to meet the relevant standards. Further, Staff has determined that, if approved, the Applicant may circumvent, evade, or otherwise avoid compliance with federal securities laws, the rules and regulations thereunder, and FINRA Rules, pursuant to the Standard in Rule 1014(a)(13).

The initial application date was 6 Dec 2019.
The first set of questions was received on 6 January, 2020 and was replied on 4 March 2020. No questions were raised regarding Investment Banking experience and ATS operations.

Second set of questions was received on April 2, 2020 and was replied on April 30. Details of ATS and form ATS-n were requested. A number of changes to Working Supervisory Procedures (WSP) were asked to be made. Expense sharing agreements between Spot quote Holdings and Intelligent Resources were asked. Resume of Ramesh Puranik was requested.

Third set of questions was received on June 4 and was replied on July 3, 2020. A number of questions regarding Ramesh Puranik's experience in investment banking field were raised.

Also clarifications on deposits and withdrawals among the various bank accounts were requested. It was agreed that the parent would infuse enough capital to meet the expenses of the BD. Relationship with associated companies has become irrelevant.
Fourth set of questions were received on July 17 and was replied on July 18.
Issues on Puranik operating from India were raised. A number of questions on transactions in different bank accounts were raised.
The 6 month deadline was 6 June 2020. On 4 June , a request for additional time of 45 days was made at the behest of Finra. On July 18 another request for additional 30 days was made on behest of Finra. The new deadline was August 19, but Finra sent the denial after 30 days for which no extension was sought.

Finally, Finra raises issues in the denial , which it could have got clarified in the ample time and also in the interview.

The above suggests that Finra is not consistent in its requests. After the initial application, it could have sought all details in the first questionnaire. The manner in which information was sough piecemeal, with scant regard for deadlines, raises the question whether, Finra had the intention of approving the application in the first place.

Sincerely,

Ramesh Puranik,