BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application of

Deep ATS, LLC

For Review of Action Taken by

FINRA

File No. 3-20362

FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

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I. INTRODUCTION

Deep ATS, LLC ("Deep ATS") filed a new membership application ("NMA") with FINRA for broker-dealer registration. FINRA correctly determined that Deep ATS failed to demonstrate that it satisfied the admission standards necessary to approve the NMA. FINRA provided five bases for the denial: (1) Deep ATS's proposed supervisors lacked the required licenses to supervise the proposed broker-dealer; (2) Deep ATS lacked the required contracts and business relationships to operate as a broker-dealer; (3) Deep ATS's CEO, Sam Balabon ("Balabon"), failed to disclose that he also served as the CEO of a cryptocurrency company, which he operated from the same building as Deep ATS; (4) one of Deep ATS's proposed supervisors, Ramesh Puranik ("Puranik"), did not have adequate experience to supervise the proposed broker-dealer; and (5) FINRA possessed evidence that Deep ATS may circumvent or

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evade federal securities laws or FINRA rules. These factors led FINRA to conclude that denial of Deep ATS's NMA was necessary to protect investors.

Rather than address the substance of FINRA's decision to deny the NMA, or otherwise address the bases of FINRA's denial, Deep ATS touts the importance of its proprietary technology, criticizes FINRA's membership application process, and derides FINRA and its regulatory mission. Deep ATS's arguments are distractions that ignore the facts of this case – FINRA denied Deep ATS's NMA because the firm failed to demonstrate that it met FINRA's standards of admission for broker-dealer registration.

During the NMA process, FINRA provided Deep ATS with numerous opportunities to show that it had satisfied the admission standards. But, at every turn, Deep ATS missed the mark. FINRA's admission standards are a crucial tool for protecting investors and maintaining market integrity, and FINRA correctly determined that Deep ATS failed to show that it had met those minimum requirements. The Commission should affirm FINRA's denial of Deep ATS's NMA and dismiss the application for review.

II. FACTUAL BACKGROUND

A. Deep ATS Files its NMA

Deep ATS filed its initial NMA with FINRA's Department of Member Supervision ("Member Supervision") on November 5, 2019. (RP 6366-6384). Pursuant to its NMA, the firm proposed to engage in the following lines of business: (1) developing and operating an alternative trading system ("ATS"); (2) selling private placement securities to accredited investors; (3) engaging in proprietary trading; and (4) acting as an underwriter or selling group participant, which the firm identified as "investment banking activities." (RP 6370). The NMA stated that to launch its ATS operations, Deep ATS would need to raise approximately $50

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million in financing. (RP 6370). The firm stated it would not hold customer funds or securities. (RP 6372).

The NMA stated that Deep ATS is wholly owned by Spot Quote Holdings, Inc. ("Spot Quote"), and that Balabon is the majority owner and control person of Spot Quote. (RP 6372). Balabon proposed to act as Deep ATS's CEO, CCO, and AMLCO, or anti-money laundering compliance officer. (RP 6371). Relevant to this appeal, Balabon's CRD reflected that he had the following outside business activities: Spot Quote, Deep ATS's parent company, and Intelligent Resources, Inc. (RP 6647-48). The NMA also stated that Balabon would serve as the firm's general securities principal responsible for the supervision of the ATS and proprietary trading activities. (RP 6371).

Deep ATS proposed to register Puranik as its FINOP. The firm also planned to have Puranik register as a second general securities principal with responsibility for supervising the private placement of securities and investment banking activities. (RP 6380). 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. (RP 6377). The firm also represented that it may enter into an Expense Sharing Agreement with Spot Quote and Intelligent Resources. (RP 6376).

On November 11, 2019, Member Supervision alerted Deep ATS that there were several deficiencies in its initial NMA. (RP 5639-40). Member Supervision requested that Deep ATS provide additional information about Spot 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. (RP 5639-40). In response, Deep ATS filed revised NMAs on November 18, 2019 and November 30, 2019. (RP

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6386-404, 6406-25). Deep ATS represented that it would have a "demo ready" ATS available. (RP 5653-5654). Member Supervision accepted the NMA as substantially complete on December 6, 2019. (RP 5653-5654).

B. Member Supervision's Review of Deep ATS's NMA

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 admission standards for FINRA broker-dealer membership. (RP 6588-91, 6596-99, 6604-08, 6618-19). In response to Member Supervision's requests, Deep ATS made several revisions to its NMA. In all, Deep ATS submitted nine revised NMAs over the course of the approximately eight-month application process.

1. Member Supervision's 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, and the general requirements for the operation of a broker-dealer (including clearing arrangements, fidelity bond, and the firm's electronic storage and email archiving vendor). (RP 6588-91). Deep ATS responded on March 4, 2020. (RP 6592-94). The firm explained that it planned to engage in private placement and investment banking activities that require a Series 79 registration (investment banking representative), and that Puranik would be taking the Series 79 examination. (RP 6593). 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. (RP 6593). Finally, the firm represented that it was making arrangements to procure a

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clearing arrangement, a fidelity bond, and a contract for the firm's electronic storage and email archive system. (RP 6593).

2. Member Supervision's 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 NMA. (RP 6596-99). Member Supervision asked for an explanation as to why Balabon believed he did not need to take the securities trader representative, or Series 57, examination. Member Supervision also requested a description of Intelligent Resources' business in general, any planned interaction between Intelligent Resources and Deep ATS, and any payments made on behalf of Deep ATS by Spot Quote, and Intelligent Resources. Finally, Member Supervision asked Deep ATS to provide a resume for Puranik and a narrative description of Puranik's experience with investment banking and underwriting. (RP 6596-99).

Deep ATS responded on April 30, 2020. (RP 6600-6603). 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." (RP 6600). 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. (RP 6601). 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." (RP 6601). 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. (RP 6601). The firm also included updated WSPs that identified Puranik as the proposed CCO, replacing Balabon.

3. Member Supervision's Third Information Request

On June 3, 2020, Member Supervision sent its third request for additional information to the firm via an email to Puranik. (RP 6604-08). 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. (RP 6604). 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. (RP 6605). 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. (RP 6605-06).

Deep ATS responded on July 3, 2020. (RP 6610-17). In response to Member Supervision's inquiry into the adequacy of Puranik's experience to serve as the firm's CCO, Deep ATS responded that Puranik had worked in a bank in India for 12 years in a managerial capacity, served as principal and FINOP of a prior iteration of Deep ATS beginning in 2006, and had been involved in "all activities of the firm, including compliance with FINRA and state agencies." (RP 6610-11). In response to Member Supervision's inquiry concerning Puranik's experience specific to investment banking and underwriting, Deep ATS responded that while working at the bank, Puranik was involved with due diligence and preparation of prospectuses for companies doing public or private placements of securities. The firm also represented that Deep ATS's parent company, Spot Quote, had done private placements, and that Puranik "had

taken care of the procedures to [sic] in the issue of securities and subsequent reporting to state agencies." (RP 6611).

Deep ATS also noted that Puranik had handled other compliance requirements such as computing net capital, filing FOCUS reports with FINRA, and working with FINRA during its inspections and examinations. (RP 6612). Deep ATS stated 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. (RP 6612). Finally, as to the requirement that it secure the necessary contracts and agreements prior to the application being submitted for approval, Deep ATS reiterated its response that it had secured letters of intent, but it would not finalize the contracts until after its NMA had been approved. (RP 6613).

4. Member Supervision's Fourth Information Request

On July 17, 2020, Member Supervision sent Deep ATS its final request for additional information. (RP 6618-19). In this request, Member Supervision asked the firm to elaborate on how Puranik's compliance experience qualified him to act as the firm's CCO. (RP 6618).

Deep ATS's response noted that Puranik worked for Intelligent Resources beginning in 1999, and, during his tenure with the company, he "attended to administrative duties including compliance with FINRA and state security agencies since 2006." (RP 6620). The firm's response also noted that Puranik previously served as a Series 24 general securities principal and Series 27 FINOP from 2006 to 2019. (*Id*.) The firm represented that Puranik would be "responsible for any compliance and administrative tasks related to keeping the BD in good standing with FINRA and SEC." (*Id*.)

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C. 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. (RP 6624-25). Member Supervision asked that during the membership interview, Deep ATS be ready to demonstrate multiple aspects of the functionality of its ATS platform, including onboarding of customers, a walk-through of a typical transaction, trade reporting, risk management controls, surveillance and reporting functionality, and development status. (RP 6624). In addition, Member Supervision indicated that the membership interview would cover Deep ATS's proposed business activities, supervision and management structure, funding of the firm, and expense reimbursement and sharing agreements with Intelligent Resources. (RP 6624).

On June 24, 2020, Member Supervision conducted the membership interview with Deep ATS. At the hearing, Member Supervision's witnesses described the membership interview as "chaotic." (RP 7364). Despite Member Supervision's pre-interview 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. . . ." (RP 6626).

D. Member Supervision Discovers Balabon's Undisclosed Business Activity

During the application process, Member Supervision completed an independent due diligence review of Deep ATS, Balabon, and Puranik to determine 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.

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(RP 6634-38). Nor did Balabon disclose this outside business activity on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). (RP 6640-54). In December 2018, while he was still associated with his previous firm, Balabon had updated his Form U4, but he did not disclose his affiliation or activities with Moentum. (*Id*.).

Moentum 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 one will be focused on financial stocks." (RP 6634). 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 . . . ." (RP 6638).

E. Member Supervision Denies Deep ATS's NMA

Member Supervision issued its decision on September 21, 2020. Member Supervision denied Deep ATS's NMA. (RP 5911-20).

First, Member Supervision determined that Deep ATS did not submit a complete and accurate application as required by FINRA Rule 1014(a)(1). (RP 5912). Under this standard, Member Supervision explained that Deep ATS failed to set forth a feasible business model because the firm failed to provide a detailed description, and demonstration, of the proposed ATS, and it failed to provide any specific details regarding the financing needed to launch and operate the ATS. (RP 5912-13). Member Supervision also stressed that Deep ATS's communications and representations during the NMA process reinforced the department's concerns about Deep ATS's ability to comply with federal securities laws and FINRA's rules. Member Supervision noted that Deep ATS gave Member Supervision conflicting information regarding whether it intended to operate as an "active" FINRA member firm, or if it was seeking

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FINRA membership to sell its technology or the broker-dealer at a later date. (RP 5913-14). Finally, under the standards of FINRA Rule 1014(a)(1), Member Supervision stated that it denied the NMA because the firm provided deficient responses with respect to Balabon's involvement with Intelligent Resources, and it failed to disclose Balabon's involvement with Moentum. (RP 5915-16).

Second, under the standards of FINRA Rule 1014(a)(2), Member Supervision found that Deep ATS failed to demonstrate that its supervisory principals were properly licensed. (RP 5916). To engage in the proposed business lines, Deep ATS 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. (RP 5916). However, neither Puranik nor Balabon obtained the necessary licenses. (RP 5916).

Third, under the standards of FINRA Rule 1014(a)(4), Member Supervision determined that Deep ATS did not establish all contractual or other arrangements and business relationships to operate as a regulatory-compliant broker-dealer. (RP 5916-17). Member Supervision explained that Deep ATS was required to secure a fidelity bond, an audit engagement letter, and a contract or agreement with an electronic storage company prior to approval of the NMA. But Deep ATS did none of those things. (RP 5917).

Fourth, under the standards of FINRA Rule 1014(a)(10), Member Supervision concluded that Deep ATS and Puranik failed to have a supervisory system designed to prevent and detect, to the extent practicable, violations of the federal securities laws and FINRA rules. (RP 5917-18). Member Supervision explained that Deep ATS did not provide sufficient information for the department to conclude that Puranik had the requisite experience to serve as the firm's CCO or to supervise the firm's investment banking activities. (RP 5917-18).

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Finally, under the standards of FINRA Rule 1014(a)(13), Member Supervision found that Deep ATS may circumvent, evade, or otherwise avoid compliance with applicable federal securities laws. Member Supervision found that the firm failed to present a feasible business model, failed to disclose Balabon's ownership and control of an outside business activity, and failed to obtain the licenses and registrations required to engage in the proposed business operations. (RP 5918-19).

F. Deep ATS Appeals Member Supervision's Denial to the NAC

Pursuant to FINRA Rule 1015(a), on October 15, 2020, Deep ATS appealed Member Supervision's decision to FINRA's National Adjudicatory Council ("NAC"). (RP 5921-25). On appeal, Deep ATS argued that Member Supervision's decision was untimely and inconsistent with the admission standards set forth in FINRA Rule 1014, and it discussed why the NAC should reject each of Member Supervision's reasons for denying the NMA. (RP 5922-25).

On February 11, 2021, a Subcommittee of the NAC presided over an evidentiary hearing at which the parties presented opening and closing statements, witness testimony, and documentary evidence. 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 ("MAP"); 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 26, 2021, the parties submitted their post-hearing briefs. (RP 6658-63, 6664-704).

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After its de novo review, the NAC affirmed Member Supervision's denial of Deep ATS's NMA, albeit on more narrow grounds.[1] (RP 6720-6739). The NAC affirmed Member Supervision's findings that Deep ATS failed to demonstrate that it met the admission standards in FINRA Rules 1014(a)(1), (2), (4), (10), and (13). (RP 6739). The NAC also addressed the firm's arguments regarding the timeliness of Member Supervision's decision and the fairness of the membership application process. (RP 6728-30, 6737-38). This appeal followed.

III. ARGUMENT

The NAC's decision to deny Deep ATS's NMA is well supported by the evidence and the Commission should affirm the NAC's decision.

The Commission's review of the NAC's decision is governed by Section 19(f) of the Exchange Act, which applies to proceedings to review "the denial of membership . . . in a self-regulatory organization." 15 U.S.C. § 78s(f). The applicant bears the burden of demonstrating that it satisfies the admission standards, and FINRA has discretion in applying and interpreting its membership rules. *See Exchange Servs., Inc*., Exchange Act Release No. 22245, 1985 SEC LEXIS 1138, at *7 & n.10 (July 10, 1985) (explaining that the Commission "will not substitute our judgment for that of the" SRO in reviewing a decision under §19(f)), *aff'd*, 797 F.2d 188 (4th Cir. 1986).

In accordance with that section, the Commission must dismiss Deep ATS's appeal because: (1) the specific grounds upon which FINRA based its denial "exist in fact"; (2) the

[1] The NAC concluded that Deep ATS's failure to provide a demonstration of its ATS or demonstrate that it will be an "active" (rather than dormant) broker-dealer were not proper bases for denial under FINRA Rule 1014(a)(1). The NAC also concluded that in light of its finding that Deep ATS's failure to disclose Balabon's outside business activities violates the standards in FINRA Rule 1014(a)(13), it was 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 violated the standard.

action is in accordance with FINRA rules; and (3) FINRA applied its rules in a manner consistent with the purposes of the Exchange Act.[2] *Id*. at *6; *accord Bering Strait Sec., Inc*., Exchange Act Release No. 76307, 2015 SEC LEXIS 4473, at *11 (Oct. 29, 2015) (stating standard of review under Exchange Act § 19(f)); *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *25 (Sept. 13, 2010)(same). For the reasons discussed below, FINRA's denial of Deep ATS's NMA meets these criteria, and the firm's appeal should be dismissed.

A. The Specific Grounds Upon Which FINRA Denied the NMA Exist in Fact

1. The Firm Bears the Burden of Proving That It Meets All Admission Standards

FINRA's membership rules, the FINRA Rule 1010 Series, provide a means for FINRA, through its MAP Program, to assess the proposed business activities of potential and current member firms with the ultimate goal of ensuring that each applicant is capable of conducting its business in compliance with applicable rules and regulations and utilizes business practices are consistent with just and equitable principles of trade. *See FINRA Regulatory Notice 13-29*, 2013 FINRA LEXIS 41 (Sept. 2013).

FINRA Rule 1014(a) delineates the 14 standards that an applicant must meet before FINRA may approve an NMA. The applicant carries the burden of demonstrating that it meets each of the admission standards. *New Membership Application of Firm A*, Application No.

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[2] Exchange Act § 19(f) also requires the Commission to set aside FINRA's action if it finds that the action imposed an undue burden on competition. 15 U.S.C. § 78s(f). Deep ATS does not claim that FINRA's actions imposed such a burden. In any event, "[w]hile a restriction may in theory impose a burden on competition because it limits a competitor's access to the marketplace, the issue is whether this burden is unnecessary or inappropriate, given the regulatory purpose to be served." *Sierra Nevada Sec., Inc*., 54 S.E.C. 112, 123 (1999). Here, the regulatory purpose served by denying the firm's application is the protection of the public interest and investors. *Id*. at 124 (denial of firm's request to modify restrictive agreement created no undue burden on competition where firm's supervisory system was inadequate and "put the public, other broker-dealers, and the market itself at risk").

20090182345, 2010 FINRA Discip. LEXIS 24, at *22 (FINRA NAC Sept. 28, 2010); *see* FINRA Rule 1014(a) and 1014(b). Those standards 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. *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 meets these standards, FINRA Rule 1014(a) also requires the consideration of the public interest and the protection of investors. Failure to meet any one of these standards can be the basis for a denial. On appeal, Deep ATS does not demonstrate that it meets any of the five admission standards that served as the basis of the NAC's denial of the NMA. Therefore, the Commission should dismiss Deep ATS's appeal.

2. The Record Supports the NAC's Conclusion that Deep ATS Did Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(1)

FINRA Rule 1014(a)(1) requires that NMAs and supporting documents are "complete and accurate." Deep ATS's application failed to meet this standard. First, the inconsistencies in Deep ATS's NMA, and its statements about selling the broker-dealer, called into question whether the firm truly intended to conduct the business for which it is seeking membership, rendering the application incomplete and inaccurate under this standard. In both the original NMA and the subsequent nine iterations, Deep ATS represented that it intended to develop and operate an ATS, along with three other lines of business. (RP 6366-6568). 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. (RP 6626). 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).[3] Deep ATS's NMA did not reach the required point of rest.

The NAC also properly denied Deep ATS's NMA under the admission standards of FINRA Rule1014(a)(1) because the firm failed to disclose Balabon's involvement with the cryptocurrency firm, Moentum. On appeal, Deep ATS states that "Balabon's licenses were . . . deemed dormant by its own auditors[, and] . . . . [t]he firm never had any clients and thus would have been impossible for [FINRA] Rule 3270 to have any effect in protecting the general public." Deep ATS's Br. in Supp. of Application for Review at 1 ("Deep ATS's Br.") In connection with this argument, Deep ATS also asserts that "[a]ttempting to enforce [FINRA] Rule 3270 without the prerequisite to protect the public is a clear violation of the Fourth Amendment . . . ." *Id*. at 2.

The firm's arguments are faulty. First, FINRA did not allege a violation of FINRA Rule 3270 as a basis for its denial. FINRA cited to FINRA Rule 3270 to support the general proposition that Balabon is required to disclose all outside business activities. *See Dep't of Enf't v. Connors*, Complaint No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *32 (FINRA NAC Jan. 10, 2017) (FINRA's rules and policies regarding disclosure of 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"). Second, FINRA is not a state actor subject to constitutional restrictions. Thus, FINRA's actions do not violate the Constitution. *See, e.g.*, *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *37 n.52 (Mar. 15, 2016)

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[3] *Available at*: https://www.finra.org/sites/default/files/NACDecision/p125380_0_0_0.pdf.

(holding that FINRA is not a state actor and thus could not violate the applicant's due process rights), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). Third, although Deep ATS maintains that Balabon discussed his cryptocurrency offering with the SEC, and "no action was taken by the SEC," these considerations are not relevant to the firm's NMA. Deep ATS's Br. at 2. Balabon had an obligation to disclose to FINRA all outside business activities, but he failed to do so. Finally, Deep ATS failed to respond fully and completely to questions about Intelligent Resources. Member Supervision wanted a description of the business activities conducted by Intelligent Resources and its operational and financial links to Deep ATS. Deep ATS response that Intelligent Resources was "a company in existence since 1997, [through] which Sam Balabon had carried out several business operations" was insufficient. (RP 2461). Deep ATS's failure to provide fulsome responses to Member Supervision's questions about Intelligent Resources rendered Deep ATS's NMA incomplete and inaccurate under FINRA Rule 1014(a)(1), and, in response, FINRA properly denied the firm's NMA.

3. The Record Supports the NAC's Conclusion That Deep ATS Did Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(2)

FINRA Rule 1014(a)(2) requires applicants to demonstrate that they 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 were proprietary trading and investment banking. Member Supervision determined that those activities required the Series 57 and 79 registrations, and that neither Balabon nor Puranik obtained the necessary registrations.

On appeal, Deep ATS argues that both Balabon and Puranik already have Series 24 registrations and no "business activity is envisioned in the near future." Deep ATS's Br. at 6. These self-serving assertions do not alleviate FINRA's concerns under the admission standards of FINRA Rule 1014(a)(2).

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The general securities principal examination, the Series 24, standing alone, does not cure the registration issues raised in Deep ATS's NMA. The Series 24 examination assesses the competency of principals to perform their job as a principal dependent on their corequisite registrations.[4] "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."[5] FINRA's guidance on the Series 24 explicitly states that, for an investment banking principal, the corequisite registration is the Series 79, and for proprietary trading, the corequisite registration is the Series 57.[6] Moreover, the firm's representations that it anticipates no business activity "in the near future," when its NMA represents its intent to engage in investment banking and propriety trading does not absolve it from its registration requirements. Deep ATS's Br. at 6. A firm must be ready to be fully operational if an NMA is granted. Deep ATS was not in a position to be fully operational because its proposed supervisors did not have the required registrations. Consequently, the firm failed to meet the admission standards of FINRA Rule 1014(a)(2).

4. The Record Supports the NAC's Conclusion that Deep ATS Did Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(4)

FINRA Rule 1014(a)(4) requires the applicant 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

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4 https://www.finra.org/registration-exams-ce/qualification-exams/series24

5 *Id*.

6 *Id*.

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). 17 C.F.R. § 240.17a-5(f)(2) (2021), 17 C.F.R. § 240.17a-4(b) (2021).

Throughout these proceedings, Deep ATS has represented that it has secured "letters of intent" for the required contractual arrangements. (RP 4376). But, as Member Supervision testified at the hearing, at a minimum, a fidelity bond and an arrangement for storage of electronic records must be in place before an NMA is approved. (RP 7389). Because of its failure to secure the requisite contracts or arrangements, Deep ATS failed to demonstrate that it satisfied the admission standards of FINRA Rule 1014(a)(4).

5. The Record Supports the NAC's Conclusion that Deep ATS Did Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(10)

FINRA Rule 1014(a)(10) requires the applicant 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 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 proposed that Puranik would supervise its investment banking business and serve as the firm's CCO. On appeal, Deep ATS generally states that "Balabon owned a broker dealer firm with the same name earlier, which was maintained by him for more than 10 years . . . . Balabon and [] Puranik were the principals of this firm and have the knowledge and experience

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to manage all operations of a broker dealer." Deep ATS's explanation is insufficient to satisfy the admission standards of FINRA Rule 1014(a)(10). Deep ATS does not describe in any detail how Puranik's experience at the former broker-dealer qualifies him to serve as either the investment banking supervisor or CCO. Notably, Puranik's previous broker-dealer was "inactive the entire time"— such that Puranik would not have actually performed the duties required of either role. (RP 7249). Experience at a firm that has not commenced operations is not sufficient. *See Application of Sierra Nevada Sec., Inc.*, Application No. M01970005, 1998 NASD Discip. LEXIS 24, at *17–20 (NASD NAC May 11, 1998).

In addition, Deep ATS did not explain how Puranik's responsibilities during his employment at the bank in India related to Deep ATS's proposed investment banking business. Instead, when Member Supervision asked for a detailed description of Puranik's 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 suitable connection between Puranik's background and his proposed role at the firm. Instead, Deep ATS asserted that Puranik was involved in due diligence, preparing prospectuses, and pricing private placements, without discussing his level of involvement.

Deep ATS similarly failed to draw a nexus between Puranik's background and his proposed role as CCO. During the application process, Deep ATS represented that Puranik was qualified as a 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 serving as a principal or FINOP involves different responsibilities than those of a CCO. Deep ATS's failure to provide details

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about Puranik's experience and explain how it was related to his proposed roles as investment banking principal and CCO support FINRA's conclusion that the firm did not satisfy the admission standards of FINRA Rule 1014(a)(10).

6. The Record Supports the NAC's Conclusion that Deep ATS Did Not Satisfy the Standards Set Forth in FINRA Rule 1014(a)(13)

Balabon's refusal to disclose his involvement with Moentum not only rendered his firm's NMA incomplete and inaccurate, it also raised red flags concerning the firm's ability to comply with the federal securities laws and FINRA's rules. FINRA Rule 1014(a)(13) prohibits approval of a prospective firm's NMA if there is evidence that the firm "may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or FINRA rules." Balabon's failure to disclose his ownership and control over the cryptocurrency company, Moentum, and Deep ATS's general unresponsiveness to questions involving Intelligent Resources, raised questions about the firm's compliance and demonstrates the firm's failure to satisfy the admission standards of FINRA Rule 1014(a)(13).

B. FINRA's Denial of Deep ATS's NMA Was Conducted in Accordance with FINRA's Rules

On appeal, Deep ATS argues that FINRA "broke federal law" by failing to issue its membership denial within 180 days after the filing of the firm's application. Deep ATS's Br. at 5. It further states that if FINRA's concerns over the firm's application were "genuine," it should have been able to work within the 180-day window. *Id*. The NAC agreed with Deep ATS that Member Supervision failed to issue its decision within the 180-day period outlined in the rules. Nevertheless, the NAC correctly concluded that Member Supervision's decision was valid, despite its untimeliness.

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FINRA Rule 1014(c) contains two provisions regarding the timing of Member Supervision's decision on an NMA. 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 time periods prescribed in FINRA Rule 1014(c).

The only remedy for this situation is found in FINRA Rule 1014(c)(3)—a remedy that Deep ATS did not pursue. The rule 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 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 applicant can seek. *See Sierra Nevada*, 54 S.E.C. at 122 (finding that a procedural error did not deny the firm a fair hearing and that "the only remedy for delay provided by [FINRA] Rule 1014 is an order requiring that a decision be issued immediately"). Deep ATS did not, however, request such an order and has not otherwise demonstrated that it was harmed by any delay.

In all other ways, FINRA's membership process unfolded in accordance with the rules. Once Deep ATS filed a substantially complete application with FINRA, Member Supervision conducted a review to determine whether FINRA required any additional information from the firm to conduct a meaningful review of the application. FINRA Rule 1013(a)(4). Over the course of eight months, FINRA worked with the firm, seeking additional information and documentation to support the firm's application.

Prior to making a decision on the application, Member Supervision held a membership interview. *See* FINRA Rule 1013(b)(1). In accordance with FINRA Rule 1014, Member Supervision assessed whether the firm met each of the standards for admission and issued a written decision that explained in detail the reasons for denial. Deep ATS appealed to the NAC. *See* FINRA Rule 1015. The NAC Subcommittee held an evidentiary hearing during which the parties presented their arguments to the Subcommittee. In accordance with FINRA Rule 1015, the NAC timely issued a decision that explained how Deep ATS failed to meet the standards for admission.

FINRA acted consistently with its rules governing the application process and subsequent appeal. Deep ATS failed to demonstrate that it met the standards of FINRA Rule 1014(a)(1), (2), (4), (10), and (13). FINRA's decision to deny the application based on Deep ATS's failure to meet the admission standards was consistent with FINRA's rules. Deep ATS's appeal focuses on unsubstantiated claims and conspiracy theories. But the inconvenient truth for Deep ATS is that the firm submitted an NMA that failed to meet FINRA's admission standards. FINRA considered each admission standard and, in accordance with its rules, properly denied Deep ATS's NMA.

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C. FINRA Applied Its Rules in a Manner Consistent with the Purposes of the Exchange Act

FINRA's denial of Deep ATS's NMA is also consistent with the purposes of the Exchange Act because the denial protects the public interest and investors. Section 15A(b)(6) of the Exchange Act requires that FINRA have rules that are "designed to. . . promote just and equitable principles of trade . . . [and] protect investors and the public interest." 15 U.S.C. § 78o-3(b)(6). Section 15A(g)(3)(A) of the Exchange Act provides, in pertinent part, that a registered securities association "may deny membership to . . . a registered broker or dealer if (i) . . . such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association." 15 U.S.C. § 78o-3(g)(3)(A). That section further provides that a securities association "may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant." *Id*.

FINRA acted consistently with the purposes of the Exchange Act in this case. FINRA evaluated Deep ATS's NMA pursuant to the procedures in the FINRA Rule 1010 Series, including the 14 admission standards contained in FINRA Rule 1014. Indeed, the Commission has expressly found that those rules and admission standards are "consistent with the [Exchange] Act." *See Order Approving Proposed Rule Change,* 62 Fed. Reg. 43385, 43398-43400 (Aug. 13, 1997).

Not only are FINRA's rules consistent with the Exchange Act, so was FINRA's application of those rules here. The firm's proposal was inconsistent with the public interest and the protection of investors. The intractable problem is that Deep ATS either refused to comply with membership requirements, such as having the required contractual relationships in place, or could not sufficiently demonstrate that it met other membership requirements, such as Puranik's

purported supervisory experience. The Commission has upheld FINRA's membership denial in similar circumstances. *See, e.g., Sierra Nevada*, 54 S.E.C. at 115-16, 122 (finding that denial of request to modify restrictive agreement was consistent with the Exchange Act where the firm had an inadequate system of supervision, and also stating that "[t]he Exchange Act recognizes the importance of establishing and enforcing standards of training and experience for broker-dealers and their personnel"); *Monroe Parker Sec., Inc.*, 53 S.E.C. 155, 160-61 (1997) (denial of request to increase the number of representatives was consistent with the Exchange Act where there was evidence of a "lack of adequate supervision and . . . deficiencies in [the Firm's] compliance procedures"). In addition, Deep ATS's deficient responses related to Intelligent Resources, its failure to disclose Balabon's involvement with the cryptocurrency company, and its continued justifications for this failure, further support FINRA's decision. Denying Deep ATS's NMA is fully consistent with the Exchange Act.

D. Deep ATS's Other Arguments Fail

Deep ATS's appeal focuses on issues that are immaterial to the denial of its NMA.[7] For example, the firm's brief discusses its view of the markets in general, the importance of Balabon's technology, and states that the Commission should "give credence to Mr. Balabon's contributions to the securities industry through his inventions." Deep ATS's Br. at 2. However, even taking the representations made about the markets and Balabon's contributions and inventions as true, they have no bearing on the matter before the Commission—whether Deep

[7] FINRA moves to strike the four attachments appended to Deep ATS's opening brief. Although many of these documents are part of the record, they were not admitted as evidence in the hearing below. In addition, none of these documents are relevant or material to this appeal. Because Deep ATS did not move to admit any of the documents into evidence under Commission Rule of Practice 452, or attempt to meet Rule 452's standards, the Commission should grant FINRA's motion to strike the attachments. *See* 17 C.F.R. § 201.452.

ATS can demonstrate that its application met each of the enumerated admission standards in FINRA's rules. It cannot.

Deep ATS also argues that because Balabon had previously filed a lawsuit against FINRA, FINRA had no intention of ever approving Deep ATS's NMA. There is no evidence in the record to support this accusation. Member Supervision did not rely on—or even mention—Deep ATS's lawsuit when it explained the basis for its denial of the firm's NMA. And in any event, the NAC conducted a de novo review, and 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).

Notwithstanding all its arguments to the contrary, Deep ATS's NMA was given fair consideration by Member Supervision and the NAC and was appropriately denied. Any unsubstantiated claims of bias or selective prosecution should be rejected. *See Meyers Assocs., L.P.*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869, at * 80 (July 26, 2019) (rejecting as unsubstantiated applicants' general allegations of unprofessional or improper conduct).

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V. CONCLUSION

Deep ATS has failed to demonstrate that it satisfied FINRA's admission standards. The specific grounds upon which FINRA based its denial "exist in fact;" the denial is in accordance with FINRA rules; and FINRA applied its rules in a manner consistent with the purposes of the Exchange Act. For these reasons, the Commission should affirm FINRA's denial of Deep ATS's NMA and dismiss the firm's application for review.

Respectfully submitted,

/s/ Colleen E. Durbin

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Dated: October 20, 2021

CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this 20th day of October 2021, I caused FINRA's Opposition to the Application for Review, in the matter of the Application for Review of Deep ATS LLC, Administrative Proceeding No. 3-20362, to be filed through the SEC's eFAP system:

Vanessa A. Countryman
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

I further certify that, on this date, I caused a copy of FINRA's Opposition to the Application for Review in the foregoing matter to be served by electronic service on:

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that this motion complies with the Commission's Rules of Practice by filing a motion that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

/s/ *Colleen Durbin*
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