UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75868 / September 9, 2015

Admin. Proc. File No. 3-16209

In the Matter of the Application of

WD CLEARING, LLC, a Nevada limited liability company; WDMC TRUST d/t/d SEPTEMBER 18, 2013; WDJJ TRUST d/t/d SEPTEMBER 18, 2013; WDCHUM TRUST d/t/d SEPTEMBER 18, 2013; and WDPOP TRUST d/t/d SEPTEMBER 18, 2013

For Review of Action Taken by

Financial Industry Regulatory Authority

ORDER DISMISSING APPLICATION FOR REVIEW

WD Clearing, LLC, et al. ("WD Clearing")[1] requests that we review the September 17, 2014 decision of FINRA member Wilson-Davis & Co., Inc. ("Wilson-Davis" or the "Firm")[2] to withdraw its continuing membership application ("CMA") requesting approval of the Firm's change in ownership, pursuant to which Wilson-Davis would be owned by WD Clearing. WD Clearing asserts that Wilson-Davis's email withdrawing its CMA was a "*de facto* denial of the CMA" by FINRA because Wilson-Davis's email apparently was precipitated by FINRA's warning to Wilson-Davis of a potential impediment to FINRA's approval of the CMA.

WD Clearing contends that FINRA's actions denied it membership, prohibited or limited its access to FINRA's services, and barred it from associating with a FINRA-member firm within the meaning of Section 19(d) of the Securities Exchange Act of 1934.[3] It also contends that it has standing to challenge FINRA's actions as a "person aggrieved" within the meaning of Exchange

[1] Petitioners include WD Clearing, Inc., WDMC Trust d/t/d September 18, 2013, WDJJ Trust d/t/d September 18, 2013, WDCHUM Trust d/t/d September 18, 2013, and WDPOP Trust d/t/d September 13, 2013.

[2] Wilson-Davis became a FINRA member firm in 1968. The Firm is headquartered in Salt Lake City, Utah, and conducts a general securities business.

[3] *See* 15 U.S.C. § 78s(d)(1).

Act Section 19(d)(2) because it had entered into a securities purchase agreement with Wilson-Davis to purchase the firm, contingent on FINRA's approval of the CMA.[4] We conclude that we lack jurisdiction to entertain this challenge because Wilson-Davis withdrew its CMA before FINRA issued a final decision on the matter. As a result, there is no FINRA action for us to review. We thus dismiss WD Clearing's application and find it unnecessary to address whether WD Clearing has standing under Section 19(d)(2).

I. Background

A. FINRA rules require a member firm to file an application requesting approval of a change in its ownership or control prior to any such change.

Before a member firm may effect a change in ownership or control, it must file a CMA with FINRA seeking approval of the change.[5] An applicant for a change in ownership or control bears the burden of establishing the merits of its application—specifically, that it and its "Associated Persons" will continue to meet each of the fourteen standards for membership set forth in NASD Rule 1014(a) upon approval of the application.[6] During its review, FINRA may place interim restrictions on the applicant based upon those standards, including an interim restriction that prohibits the deal from closing.[7]

B. Wilson-Davis granted nonmember WD Clearing the right to purchase its outstanding stock in exchange for financing and agreed to seek approval from FINRA of the change in ownership.

In April 2013, to satisfy short-term cash requirements, Wilson-Davis borrowed $4 million from John Hurry, a director of Alpine Securities Corporation and Scottsdale Capital Advisors,[8]

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4 *See id.* § 78s(d)(2).

5 NASD Rule 1017(a).

6 *See id.* (h)(1)(a); *see also* NASD Rule 1014(a).

7 NASD Rule 1017(c)(1); *see also* NASD Membership Application Rules, 2002 WL 1966444, at *4 n.2 (Aug. 15, 2002) ("As with other Rule 1017 applications, Rule 1017(c)(1) allows NASD to place interim restrictions on any asset transfer if NASD believes that the application does not meet Rule 1014 standards. These interim restrictions are meant for the protection of investors and ordinarily would not prevent a transaction from moving forward. However, there may be some instances where the protection of investors will require that interim restrictions will prohibit or delay a transaction from closing."); FINRA, Filing a Change in Membership Application at 3, *available at* http://www.finra.org/sites/default/files/Education/p018711.pdf ("[T]he firm can make the ownership change any time after the 30 days has passed—so long as the firm isn't under an interim restriction that prohibits the deal closing prior to FINRA approval.").

8 The Hurry Family Revocable Trust owns Alpine Securities and Scottsdale Capital, two FINRA member firms.

pursuant to a financing agreement which granted Hurry, or his assignees, the right to purchase the Firm's outstanding stock. On December 2, 2013, Wilson-Davis and Hurry's assignees (known collectively as WD Clearing)[9] entered into an agreement to effectuate the purchase. The securities purchase agreement required Wilson-Davis to seek approval from FINRA of the anticipated change in ownership by submitting a CMA in accordance with NASD Rule 1017.

C. Wilson-Davis filed an application with FINRA requesting approval of its change in ownership, pursuant to which Wilson-Davis would be owned by WD Clearing.

On February 24, 2014, FINRA accepted Wilson-Davis's CMA requesting approval of the Firm's change in ownership.[10] The CMA indicated that Hurry, as manager of WD Clearing, would become associated with Wilson-Davis as an owner. The CMA further stated that Hurry, through the Hurry Family Revocable Trust, was the source of funding for the purchase of Wilson-Davis, and that Hurry could and would provide any additional funding necessary to meet the Firm's net capital requirements.

D. FINRA discovered information indicating Hurry might not be capable of complying with federal securities laws, the rules and regulations thereunder, or NASD Rules.

In a letter dated February 25, 2014, FINRA notified Wilson-Davis that, pursuant to NASD Rule 1017(c), interim restrictions would be placed on the Firm to ensure that investors were protected during the pendency of the CMA review process. The letter provided that "effective immediately," the Firm was prohibited from:

- Effecting any portion of the aforementioned ownership change transaction, including unapproved individuals or entities acting in any capacity that would suggest that they are approved direct and/or indirect owners of the Firm, and
- Permitting any trustee, grantor, or beneficiary of the trusts—including, but not limited to, Mr. Hurry—to act in any principal, supervisory or control capacity.

FINRA attributed the restrictions to its ongoing investigation into whether the Firm would continue to meet the standards in NASD Rule 1014 if the change in ownership was approved. In particular, the letter alerted the Firm that FINRA had "identified an article relating to an investigation involving Scottsdale Capital and Alpine Securities, which are controlled by Mr. Hurry." Accordingly, FINRA explained that it was deepening its review into whether the proposed new owner-trusts affiliated with John Hurry "are capable of complying with the federal

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[9] WD Clearing, as defined above (*see supra* note 1), is composed of a series of trusts affiliated with Hurry, and WD Clearing, LLC, a Nevada limited liability company formed for the purpose of holding the Hurry Family Revocable Trust's investment in Wilson-Davis. Hurry, through the Hurry Family Revocable Trust, was the source of capital for WD Clearing, LLC, et al.

[10] The firm submitted an initial CMA on January 22, 2014, which FINRA deemed substantially incomplete. After the Firm provided additional information on February 24, 2014, FINRA accepted the CMA as substantially complete.

securities laws, the rules and regulations thereunder, and FINRA Rules, including observing high standards of commercial honor and just and equitable principles of trade"[11] and whether the Firm, under the new ownership proposed, "may circumvent, evade or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, and FINRA Rules."[12]

On September 12, 2014, FINRA notified Hurry and his firm, Scottsdale Capital, through a Wells Notice, that FINRA had preliminarily determined that it would bring disciplinary action against Hurry and Scottsdale Capital. Specifically, FINRA alleged that Hurry and Scottsdale Capital sold securities in potential violation of FINRA Rule 2010 and Section 5 of the Securities Act of 1933, and that Hurry, as an owner of Scottsdale Capital, aided and abetted or caused the alleged violation.

E. Wilson-Davis withdrew its application for change in ownership after learning of potential impediments to approval.

On September 15, 2014, Wilson-Davis, in a conversation with FINRA staff overseeing the Firm's CMA, learned about the Wells Notice that had been sent to Hurry. On September 17, 2014, Wilson-Davis, through counsel, sent an email to FINRA staff withdrawing its CMA. The email stated that the Firm understood that "the issues associated with the Wells [N]otice would ultimately cause FINRA to deny the CMA," and that FINRA staff had "requested that Wilson-Davis withdraw the CMA application."[13] On September 17, 2014, FINRA acknowledged the withdrawal in an email stating: "Thank you for your email. This is to confirm receipt of your request; the CMA is hereby withdrawn."

F. WD Clearing filed applications for review with the Commission.

On October 14, 2014, WD Clearing filed an application with us requesting review. Wilson-Davis did not join the application. In a letter dated October 22, 2014, we stated that the matter was "not ripe for Commission review" and rejected the application because FINRA had not entered a final decision.

On November 10, 2014, WD Clearing submitted a second application for review, which Wilson-Davis likewise did not join. On November 20, 2014, we acknowledged the application for review but stated that acceptance of the application did not "constitute a Commission

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[11] *See* NASD Rule 1014(a)(3) ("The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and NASD Rules, including observing high standards of commercial honor and just and equitable principles of trade.").

[12] *See id.* (a)(13) ("FINRA does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or NASD Rules.").

[13] The details of any discussions between FINRA staff members and Wilson-Davis's counsel are not in the record.

determination as to the proper statutory basis" for the application or "a prejudgment . . . pertaining to the Commission's jurisdiction to consider the matter."[14]

II. Analysis

For the reasons explained below, we conclude that FINRA's actions associated with the withdrawal of Wilson-Davis's CMA do not constitute a reviewable limitation or prohibition of access to services, and we accordingly dismiss WD Clearing's application for review.[15] We thus do not address whether WD Clearing is a person aggrieved with standing to challenge those actions.

A. The Commission lacks jurisdiction to review FINRA's preliminary consideration of Wilson-Davis's CMA.

Action by a self-regulatory organization ("SRO"), such as FINRA, "is not reviewable merely because it adversely affects the applicant."[16] Rather, there must be a statutory basis for us to exercise jurisdiction. Section 19(d) of the Exchange Act authorizes us to review an SRO action only if that action: (1) imposes a final disciplinary sanction; (2) denies membership or participation to any applicant; (3) prohibits or limits any person in respect to access to services offered by such organization or member thereof; or (4) bars any person from becoming associated with a member.[17]

WD Clearing argues that "three of these four statutory bases" provide us with jurisdiction to review FINRA's action in considering Wilson-Davis's application.[18] Because Wilson-Davis voluntarily withdrew its application before FINRA had an opportunity to complete its

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[14] Notwithstanding this cautionary language, WD Clearing incorrectly claims in its brief before us that we "agreed to consider the Petition."

[15] *See Matthew Brian Proman*, Exchange Act Release No. 57740, 93 SEC 300, 2008 WL 1902072, at *1 (Apr. 30, 2008) ("If we find that we do not have jurisdiction, we must dismiss the proceeding.").

[16] *Id.* at *2 (quoting *Sky Capital LLC*, Exchange Act Release No. 55828, 90 SEC 1942, 2007 WL 1559228, at *3 (May 30, 2007)).

[17] 15 U.S.C. § 78s(d)(1), (2). "The grounds for Commission jurisdiction enumerated in Rule 420(a) are the same as those described in Section 19(d)(1) of the Exchange Act." *Lawrence Gage*, Exchange Act Release No. 54600, 89 SEC 289, 2006 WL 2987058, at *3 (Oct. 13, 2006).

[18] WD Clearing contends that FINRA denied it access to membership, limited its access to services, and barred it from associating with a FINRA-member firm. We address these contentions below. WD Clearing does not assert, nor do we find, that FINRA imposed a "final disciplinary sanction" as a basis for jurisdiction under Exchange Act Section 19(d), which occurs when an SRO imposes "a punishment or sanction" following a "determination of wrongdoing," *Morgan Stanley & Co., Inc.*, Exchange Act Release No. 39459, 53 SEC 379, 1997 WL 802072, at *2 (Dec. 17, 1997).

investigation and reach a final decision on the merits, we find that none of FINRA's actions in considering Wilson-Davis's CMA—whether viewed individually or collectively—fall within the categories subject to our review.

1. FINRA did not deny membership or participation to WD Clearing.

FINRA did not take any action regarding Wilson-Davis's CMA that qualifies as a denial of membership or participation under Exchange Act Section 19(d). This jurisdictional basis for review is directed at SRO decisions actually denying applications for membership or imposing restrictions on business activities as a condition of membership.[19] In this case, FINRA did not render any decision on the CMA or render a decision that denied, altered, or otherwise affected membership. Wilson-Davis continues to be a FINRA member, notwithstanding the withdrawal of its CMA; and WD Clearing—which has never applied for FINRA membership—remains a nonmember.[20] Even if Wilson-Davis withdrew its application in response to a request from a FINRA staff member, an informal staff request does not constitute a final decision or an official FINRA action. FINRA staff cannot force an applicant to withdraw a CMA and there is no evidence that it did so in this case. Wilson-Davis was free to decline a request to withdraw and proceed with its application process.

Nor can FINRA's actions in reviewing the CMA pursuant to its authority under NASD Rule 1017—including its imposition of interim restrictions on Wilson-Davis to address specific concerns about whether the Firm, under the proposed change in ownership, would satisfy the membership standards set forth in NASD Rule 1014(a)—be construed as a reviewable condition placed upon Wilson-Davis's membership. As we have previously held, "the requirement that SRO members comply with SRO rules does not constitute a condition on membership providing a basis for jurisdiction."[21]

NASD Rule 1014 sets forth minimum requirements that a firm, and its associated persons, must meet to qualify for FINRA membership. These standards are largely intended to ensure that

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19 *See id.* at *3.

20 In *Beatrice J. Feins*, we addressed our jurisdiction over an appeal from a final decision of the American Stock Exchange ("Amex") prohibiting a member from transferring his Amex membership to his grandmother. Exchange Act Release No. 33374, 51 SEC 918, 1993 WL 538913, at *2 (Dec. 23, 1993). We dismissed the member's appeal for lack of jurisdiction because the member, like Wilson-Davis, had "retained his membership and all the privileges thereto." *Id.* Because "Amex treats a transferee of an existing membership as an applicant for new membership," we found that the grandmother had applied for and was denied SRO membership within the meaning of Exchange Act Section 19(d), and we accepted jurisdiction on that ground. *Id.* In contrast, WD Clearing has neither applied for nor been denied FINRA membership, and WD Clearing does not claim that FINRA treats an application for a change in ownership as a new application for membership.

21 *Gage*, 2006 WL 2987058, at *3 (rejecting argument that PHLX's rule change imposed a condition on membership).

any firm that presents itself to the investing public as a FINRA member can and will comply with the federal securities laws, the rules and regulations thereunder, and NASD Rules, "including observing the high standards of commercial honor and just and equitable principles of trade."[22] NASD Rule 1017 provides that "[i]n rendering a decision on an application for approval of a change in ownership or control, . . . [FINRA] shall determine if the Applicant would continue to meet the standards in Rule 1014(a) upon approval of the application."[23] To that end, the Rule authorizes FINRA to "place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action."[24] The February 25, 2014 letter, which imposed the interim restrictions, identified specific concerns pursuant to NASD Rule 1014 that necessitated the restrictions.[25] This was a proper exercise of FINRA's authority under its rules. WD Clearing's desire for relief from the operation of the rules is not a valid jurisdictional ground for our review.[26]

2. FINRA did not prohibit or limit WD Clearing's access to services.

WD Clearing contends that FINRA "prohibited and limited" WD Clearing "from having access to services offered by FINRA" by imposing the interim restrictions on Wilson-Davis during the pendency of the CMA review process. Specifically, WD Clearing argues that "[b]ut for FINRA's unlawful 'interim restrictions,' ownership of Wilson-Davis would have been transferred to [WD Clearing] on or around April 9, 2014," and WD Clearing, "as the owners of Wilson-Davis,

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[22] NASD Rule 1014(a)(3); *see also id.* (a)(10) ("The 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 NASD Rules."); *id.* (a)(13) ("FINRA does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or NASD Rules."); *id.* (a)(14) ("The application and all supporting documents are consistent with the federal securities laws, the rules and regulations thereunder, and NASD Rules.").

[23] NASD Rule 1017(h)(1)(A).

[24] *Id.*(c)(1); *see supra* note 7.

[25] In general, the standards set forth in Rule 1014(a) are intended to ensure that members under new ownership will continue to be capable of satisfying all relevant regulatory requirements for the protection of the investing public, the securities markets, the firm, and other member firms.

[26] *Gage*, 2006 WL 2987058, at *4 ("The operation of [FINRA's] rule[s] did not impose a condition on the firm's membership establishing a basis for jurisdiction because '[t]he membership of every [FINRA] member is conditioned on the member's continued compliance with [FINRA] rules.'" (quoting *Joseph Dillon & Co.*, Exchange Act Release No. 43523, 73 SEC 1662, 2000 WL 1664016, at *3 (Nov. 6, 2000))); *see also Morgan Stanley*, 1997 WL 802072, at *3 ("We conclude that the NASD's action does not constitute a denial of membership. . . . [Petitioner] is seeking relief from the operation of the rule, not from any condition imposed on its membership by the NASD.").

would then have been entitled to access services offered by FINRA, at the very least, until FINRA denied the CMA."[27]

We find that neither the interim restrictions nor any other FINRA action in considering Wilson-Davis's CMA "prohibited" or "limited" WD Clearing or Wilson-Davis within the meaning of Section 19(d).[28] The "interim restrictions" FINRA imposed on Wilson-Davis did not constitute a final disposition but were rather, as the name conveys, temporary and provisional. Those restrictions applied exclusively while the CMA was pending. Indeed, FINRA did not actually deny or reach any final disposition on the CMA because Wilson-Davis voluntarily withdrew its application from FINRA's consideration before it had the opportunity to do so, terminating both the interim restrictions and FINRA's review.[29] Given the information FINRA had discovered about Hurry and Scottsdale Capital, Wilson-Davis may have believed that its pending application would not be granted. But believing that an application will not be granted is not the same as receiving a denial. Nothing in the record suggests that FINRA required Wilson-Davis to withdraw its application. When Wilson-Davis voluntarily decided to withdraw its CMA from consideration—whatever its reasons—FINRA had not yet taken any action to limit or prohibit access to its services.[30]

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[27] In other words, WD Clearing argues that Wilson-Davis's CMA automatically entitled it to "at the very least" temporary FINRA membership irrespective of whether it, or its associated persons, could satisfy the membership criteria articulated in Rule 1014(a). Nothing in FINRA's rules entitled WD Clearing to enjoy an unregulated trial period.

[28] To determine whether FINRA's actions prohibited or limited access to services under the meaning of Section 19(d), we consider whether FINRA has "denied or limited the applicant's ability to utilize one of the fundamentally important services offered by the SRO," and whether the "services at issue were not merely important to the applicant but were central to the function of the SRO." *Sky Capital*, 2007 WL 1559228, at *4 (quoting *Morgan Stanley*, 1997 WL 802072, at *3); *accord Securities Indus. and Fin. Markets Assn.*, Exchange Act Release No. 72182, 2014 WL 1998525, at *9 (May 16, 2014); *see, e.g.*, *Proman*, 2008 WL 1902072, at *2 (finding that relevant standard was not satisfied when Proman failed to identify any services "'central to the function of the SRO,' such as access to an exchange trading floor or registration as a market maker" to which he had been denied access); *Sky Capital*, 2007 WL 1559228, at *4 (finding that *Morgan Stanley* test was not met when applicant failed to show that NASD "Office of the Ombudsman provide[d] a 'fundamentally important service' that [wa]s central to the function of NASD"); *Morgan Stanley*, 1997 WL 802072, at *3 (finding that application for review did not allege a denial of access where applicant merely sought "relief from the automatic operation of [an SRO] prohibition, which its employee's actions triggered").

[29] 15 U.S.C. § 78s(d)(1) (applicable only where a "*self-regulatory organization* . . . prohibits or limits any person in respect to access to services offered by such organization or member thereof" (emphasis added)).

[30] *Cf. William J. Higgins*, Exchange Act Release No. 24429, 48 SEC 713, 1987 WL 757509, at *1 (May 6, 1987) (finding reviewable SRO action under Section 19(d) where Exchange members "requested the NYSE's permission to install telephones" and "[t]hese requests were

3. FINRA did not bar WD Clearing from associating with all FINRA members.

WD Clearing contends that the interim restrictions in place during the CMA review process "effectively barred" WD Clearing's representatives from association with a FINRA member. But FINRA did not bar WD Clearing or its representatives from associating with Wilson-Davis or any other FINRA-member firm, let alone all FINRA-member firms, as would be required for us to assume jurisdiction on this ground.[31] FINRA did not render a decision on the CMA, and the interim restrictions—which were only *interim* and not final—are no longer in effect. WD Clearing remains free to apply for FINRA membership or encourage Wilson-Davis to file a new CMA requesting the change in ownership. But even if FINRA had barred WD Clearing from associating with Wilson-Davis, we would have no jurisdiction on this ground because WD Clearing and its representatives would still have remained free to associate with other FINRA-member firms.[32] Indeed, as WD Clearing concedes, Hurry is currently associated with at least two FINRA members, Alpine Securities and Scottsdale Capital.

B. We also decline review because Wilson-Davis failed to exhaust FINRA's administrative remedies.

We decline review for the additional reason that Wilson-Davis's decision to withdraw its application foreclosed the possibility of its seeking review by FINRA —a predicate to meaningful Commission review. If we were to assume that FINRA would have rejected Wilson-Davis's application based on the incomplete record before us, we would divest FINRA of its "self-regulatory function" because FINRA did not have the opportunity to decide the issue for itself or review its own decision through its internal appellate process prior to Commission review.[33] Requiring Wilson-Davis to file a CMA, FINRA to address it, and Wilson-Davis to exhaust all internal FINRA appeals[34] helps ensure that there is an actual dispute[35] and a

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denied by the NYSE"), *aff'd*, 380 F.3d 611 (2d Cir. 2004); *Scattered Corp.*, Exchange Act Release No. 37249, 52 SEC 812, 1996 WL 284622, at *2 (May 29, 1996) (finding that the Chicago Stock Exchange, Inc.'s "determination not to process Scattered's application for registration as a market maker limits the firm's access to the CHX's services"). There is no allegation here, nor does the record reflect, that FINRA refused to process an application by Wilson-Davis. Instead, Wilson-Davis withdrew its application from review.

[31] *Joseph Dillon*, 2000 WL 1664016, at *3 (rejecting jurisdictional basis because, unlike "NASD actions having the effect of barring an individual from association with all NASD members," petitioner's representatives "remain free to associate with other firms").

[32] *Id.*

[33] *See MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004), *affirming MFS Sec. Corp.*, Exchange Act Release No. 47626, 56 SEC 380, 2003 WL 1751581, at *5-6 (Apr. 3, 2003) (refusing to consider applicant's denial of access to services claim because applicant failed to exhaust NYSE procedures).

[34] *Cf. Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 WL 6808366, at *2 (Dec. 4, 2014) ("[W]e will not consider an application for review if the applicant failed to exhaust [the

fully-developed record for us to review.[36] Because WD Clearing filed its application for review before FINRA entered a final decision on Wilson-Davis's CMA, we lack the end result of a complete review process and the associated record.[37]

Accordingly, for the reasons set forth above, IT IS ORDERED that the application for review filed by WD Clearing is DISMISSED.[38]

By the Commission.

Brent J. Fields
Secretary

SRO's] procedures." (citing *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at *2 n.5 (Sept. 19, 2014))); *cf. also MFS Sec. Corp.*, 2003 WL 1751581, at *5 & n.29 (emphasizing that it is "clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review" (quoting *Royal Sec. Corp.*, Exchange Act Release No. 5171, 36 SEC 275, 1955 WL 43159, at *2 (May 20, 1955))).

[35] We note that Wilson-Davis took no further action on its application with FINRA following its withdrawal, did not file or join in WD Clearing's application for review, and may lack the economic incentive to consummate the transaction with WD Clearing at this time. *Cf. Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (quotation and citation omitted)). Indeed, the record reveals an underlying dispute between WD Clearing and Wilson-Davis over Wilson-Davis's obligation to consummate the securities purchase agreement. For example, WD Clearing has apparently brought a civil action against Wilson-Davis in Utah for breach of contract. Whatever the nature of this private conflict, we do not have the authority to resolve it.

[36] *See MFS Sec. Corp.*, 380 F.3d at 621 (requiring applicant to exhaust administrative remedies "promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review").

[37] We note that national securities associations are required to "provide a fair procedure" for denials and limitations. Exchange Act Section 15A(b)(8), 15 U.S.C. § 78o-3(b)(8). They are required to keep a record and to provide notice, an opportunity to be heard, and a "statement setting forth the specific grounds" on which the limitation or prohibition is based. Exchange Act Section 15A(h)(2), 15 U.S.C. § 78o-3(h)(2). This process "also provides SROs with the opportunity to correct their own errors prior to review by the Commission." *MFS Sec. Corp.*, 380 F.3d at 621.

[38] We have considered all the arguments advanced by the parties. We need not reach FINRA's arguments for dismissal not addressed above or the parties' preliminary discussion of the merits. We reject or sustain the parties' remaining arguments to the extent that they are inconsistent or in accord with the views expressed herein.