

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 89260 / July 8, 2020

Admin. Proc. File No. 3-18554

In the Matter of the Application of
COMMONWEALTH CAPITAL SECURITIES CORP.
For Review of Action Taken by
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF DENIAL OF
MEMBERSHIP CONTINUANCE APPLICATION

Member firm of registered securities association filed application for review of association's decision denying member firm's application to permit its continued membership while associating with an individual who was subject to a statutory disqualification. *Held*, application for review is *dismissed*.

APPEARANCES:

Stephen M. Felsenstein, Elaine C. Greenberg, and Donald N. Cohen, Greenberg Traurig, LLP, for Commonwealth Capital Securities Corp.

Alan Lawhead, Andrew Love, and Gary Dernelle, for FINRA.

Appeal filed: June 22, 2018

Last brief received: October 10, 2018

Commonwealth Capital Securities Corp. (“CCS”), a broker-dealer and FINRA member firm, appeals from a FINRA decision denying its MC-400 Membership Continuance Application. The application sought permission for CCS to continue in membership while associating with Kimberly Springsteen-Abbott, and approval of Springsteen-Abbott’s continued association with CCS, notwithstanding her statutory disqualification. We dismiss CCS’s appeal.

I. BACKGROUND

A. Springsteen-Abbott became subject to a statutory disqualification.

CCS is a subsidiary of Commonwealth Capital Corporation (“CCC”), an equipment-leasing company. CCS acts as the dealer-manager to unaffiliated broker-dealers that sell the equipment-leasing funds (the “Funds”) that CCC sponsors. Springsteen-Abbott owns 100% of CCC. CCC owns 100% of holding company Commonwealth of Delaware Inc. (“CDI”). CDI owns 100% of both CCS and Commonwealth Income & Growth Fund, Inc. (“CIG”).¹

Springsteen-Abbott began working in the securities industry in 1980. Her late husband founded CCC, and she has worked there since 1997, when she helped establish CCS. Following her late husband’s death, Springsteen-Abbott has been the Chair and CEO of CCC and—until August 2016—the Chair, CEO, and chief compliance officer of CCS.

On October 22, 2013, FINRA brought a disciplinary proceeding against Springsteen-Abbott for improper allocation of expenses to the Funds. On August 23, 2016, FINRA found that Springsteen-Abbott violated FINRA Rule 2010 by improperly allocating to the Funds personal and non-related business expenses. FINRA imposed on Springsteen-Abbott a bar “from association with any FINRA member in all capacities” and disgorgement, a fine, and costs.

¹ CCS’s opening brief stated that, after FINRA’s decision, CDI transferred its direct ownership of CCS to the HJA Statutory Trust (the “Trust”). But CCS did not move to supplement the record by filing a motion to adduce additional evidence under Rule of Practice 452, 17 C.F.R. § 201.452. “Absent such a motion, under Exchange Act Section 19(f), we consider only the record presented to [FINRA].” *Scott E. Wiard*, Exchange Act Release No. 50393, 2004 WL 2076190, at *4 n.23 (Sept. 16, 2004). Thus we cannot conclude, as CCS contends, that Springsteen-Abbott today “has no ownership interest in” CCS. Nonetheless, we take official notice under our Rule of Practice 323, 17 C.F.R. § 201.323, of CCS’s BrokerCheck report stating that the Trust is now CCS’s majority direct owner. As discussed below, *see infra* note 26, we would sustain FINRA’s decision to deny the membership continuance application even if we considered Springsteen-Abbott to no longer have an ownership interest in CCS.

Springsteen-Abbott appealed to the Commission, but did not seek a stay of the bar pending appeal.² On March 31, 2017, the Commission issued an order remanding the disciplinary proceeding to FINRA for it to clarify the basis for its finding of a violation.³

On July 20, 2017, FINRA issued a decision on remand. FINRA again found that Springsteen-Abbott violated FINRA Rule 2010 by misusing the Funds' assets to pay for personal and other expenses not related to the Funds in about 100 specific instances. FINRA again imposed a bar and reduced the disgorgement and fine amounts previously imposed.

Springsteen-Abbott again appealed to the Commission, and on February 7, 2020, we issued an opinion finding that Springsteen-Abbott engaged in the misconduct FINRA found—a pattern and practice of using the Funds' money to pay for charges not related to legitimate business of the Funds.⁴ We sustained the bar and disgorgement, but set aside the fine.⁵

B. CCS filed a membership continuance application.

On August 30, 2016, FINRA's Department of Member Regulation notified Springsteen-Abbott that FINRA's August 23, 2016 decision imposing a bar made her statutorily disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934,⁶ and that FINRA's By-Laws therefore disqualified her from associating with a member firm.⁷ Member Regulation explained that CCS could file a membership continuance application on Form MC-400 to request permission for Springsteen-Abbott to continue to associate with CCS despite her disqualification.⁸ CCS submitted its MC-400 application on September 28, 2016.

² See FINRA Rule 9370(a) (stating that an appeal to the Commission does not automatically stay the effectiveness of a bar).

³ *Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 WL 1206062, at *5 (Mar. 31, 2017).

⁴ *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 WL 605918, at *12 (Feb. 7, 2020).

⁵ *Id.* at *15-18.

⁶ See 15 U.S.C. § 78c(a)(39).

⁷ See FINRA By-Laws, Art. III, § 4 (stating that a person is subject to “disqualification” from association with a member firm if such person is subject to “statutory disqualification” as defined in Exchange Act Section 3(a)(39)).

⁸ See FINRA By-Laws, Art. III, § 3(d) (providing that FINRA may grant relief from the ineligibility to associate if it determines that relief is consistent with the public interest and the protection of investors); see also FINRA Rules 9521-27 (setting forth procedures for a member firm to sponsor the proposed association of a person subject to disqualification).

The application included a copy of a “Non-Participation Agreement” Springsteen-Abbott executed on August 23, 2016 (the “NPA”). The NPA stated that Springsteen-Abbott is the “indirect owner of [CCS]” and that “so long as the bar remains in effect,” she would not “engage[] in the management of CCS’s securities business” or be compensated by CCS. It also stated that CCC employee Henry Abbott would take over as CCS’s Chairman and CEO and CCC employee James Pruett would take over as chief compliance officer.

The application proposed a supervisory plan under which Abbott, who is Springsteen-Abbott’s current husband, would be “the primary supervisor responsible for assuring that” Springsteen-Abbott “complies with the [NPA].” The supervisory plan also proposed that Pruett would be Springsteen-Abbott’s interim supervisor when Abbott is on vacation or not in the office for an extended period. The supervisory plan provided further that Springsteen-Abbott will not maintain discretionary accounts, open investor accounts, or write order tickets.

FINRA scheduled a hearing before a subcommittee of FINRA’s Statutory Disqualification Committee (the “Hearing Panel”). It notified CCS that both Springsteen-Abbott and “her immediate supervisor should plan to attend” and “should be prepared to discuss the events surrounding her disqualifying event, her proposed duties at the firm, and the manner in which she will be supervised.” Member Regulation recommended denying CCS’s application.

Following several postponements, including a postponement pending additional disciplinary proceedings before FINRA consistent with the Commission’s remand order, the Hearing Panel held a hearing in CCS’s membership continuance proceeding across two days in February and March 2018. Springsteen-Abbott, Abbott, Pruett, and Theodore Cavaliere, who is CCS’s financial and operations principal, testified at the hearing. CCS and Member Regulation also filed briefs addressing the impact of the Commission’s remand order.

C. FINRA denied the application and Springsteen-Abbott appealed to the Commission.

After the hearing, the Hearing Panel submitted its written recommendation to FINRA’s full Statutory Disqualification Committee. The Statutory Disqualification Committee in turn presented a written recommendation to FINRA’s National Adjudicatory Council (the “NAC”). The NAC denied CCS’s membership continuance application on May 24, 2018.

The NAC found that Springsteen-Abbott was statutorily disqualified because of FINRA’s August 2016 and July 2017 decisions imposing a bar and that “it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Springsteen-Abbott to continue to associate with” CCS. First, the NAC found that Springsteen-Abbott improperly continued to associate with CCS following the August 2016 bar and that CCS’s application sought “to avoid the real and immediate effects of the unqualified bar.” Second, the NAC found that the conduct underlying Springsteen-Abbott’s statutory disqualification was serious and the bar was recent and noted that Springsteen-Abbott and the other hearing witnesses “attempted to downplay the seriousness of her misconduct by recasting it as having resulted from mere accounting errors and other process deficiencies that have been corrected.” Third, the NAC found that CCS could not stringently supervise Springsteen-Abbott in the manner it proposed. It

observed that Abbott lacked the necessary independence to supervise his wife, that it is difficult for employees to supervise the owner of a firm, and that the proposed supervisory plan was inadequate as it “consist[ed] mainly of boilerplate language and other generic provisions and contain[ed] a number of provisions that are inapplicable to [CCS’s] business.”

On June 22, 2018, CCS filed with the Commission this application for review of FINRA’s denial of its membership continuance application.⁹

II. ANALYSIS

Section 19(f) of the Exchange Act governs our review of FINRA’s denial of a membership continuance application.¹⁰ We must dismiss the appeal if (1) the specific grounds on which FINRA based its denial exist in fact; (2) the denial was in accordance with FINRA’s rules; and (3) FINRA’s rules “are, and were applied in a manner, consistent with” the Exchange Act’s purposes.¹¹ We find all three requirements satisfied and therefore dismiss the appeal.

A. The specific grounds for FINRA’s denial of CCS’s application exist in fact.

1. Springsteen-Abbott is subject to a statutory disqualification.

The record supports FINRA’s finding that Springsteen-Abbott is subject to a statutory disqualification because FINRA barred Springsteen-Abbott from associating with any member firm. FINRA’s By-Laws provide that no person shall continue to be associated with a FINRA member if such person becomes subject to a “disqualification” and that a “disqualification” means “any statutory disqualification as such term is defined in Section 3(a)(39)” of the Exchange Act.¹² Section 3(a)(39)(A) includes in the definition of a statutory disqualification any person who is barred from being associated with a member of any self-regulatory organization.¹³

⁹ CCS requested oral argument in connection with its application for review. Because the firm has not demonstrated that our disposition would be “significantly aided” by oral argument, oral argument is denied. *See* Rule of Practice 451(a), 17 C.F.R. § 201.451(a).

¹⁰ 15 U.S.C. § 78s(f).

¹¹ *Id.* Section 19(f) also requires us to set aside FINRA’s action if we find that the action imposes an undue burden on competition. *Id.* CCS does not claim, nor does the record support, a finding that FINRA’s denial imposes such a burden.

¹² *See* FINRA By-Laws, Art. III, §§ 3(b), 4.

¹³ 15 U.S.C. § 78c(a)(39)(A).

2. Springsteen-Abbott's misconduct underlying her bar was serious, the bar is recent, and she engaged in intervening misconduct following the bar.

The record supports FINRA's finding that the conduct that led to Springsteen-Abbott's statutory disqualification was serious and that the statutory disqualification occurred too recently to allow Springsteen-Abbott to associate with a FINRA member firm. FINRA found that Springsteen-Abbott misused the Funds' money to pay for personal, non-business expenses. FINRA first imposed a bar for this misconduct in 2016 and then reaffirmed the bar upon remand in 2017. In denying the MC-400 application in 2018, FINRA found that Springsteen-Abbott's misconduct was serious because it involved "a betrayal of the most basic and fundamental trust owed to a customer," that the bar that rendered her subject to a statutory disqualification had been imposed because her misconduct demonstrated that she was unfit to associate with a FINRA member firm, and that "far too little time ha[d] passed since" the bar based on this misconduct had been imposed for Springsteen-Abbott to have demonstrated that she could comply with the securities laws in the future. We find that the record supports these determinations and that denying the MC-400 application on these bases was reasonable.¹⁴

The record also supports the NAC's finding that Springsteen-Abbott engaged in intervening misconduct by improperly associating with CCS while subject to FINRA's bar.¹⁵ Section 3(b) of Article III of FINRA's By-Laws provides that "no person shall become associated with a member, continue to be associated with a member, or transfer association to another member . . . if such person is or becomes subject to a disqualification under Section 4."¹⁶ FINRA Rule 8311 provides further that if "a person is subject to suspension, revocation, cancellation of registration, bar from association with a member . . . or other disqualification, a member shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity." Because the bar rendered Springsteen-Abbott a statutorily disqualified person, CCS was thus prohibited from associating with her.¹⁷ Nonetheless, CCS did not dispute before FINRA that

¹⁴ See *Robert J. Escobio*, Exchange Act Release No. 83501, 2018 WL 3090840, at *5 (June 22, 2018) (noting the "reasonabl[eness]" of denying an MC-400 application where the underlying misconduct was serious and the injunction that was imposed based on the underlying misconduct and that rendered the individual subject to a statutory disqualification "was too recent for" the statutorily disqualified individual "to have demonstrated that he could comply with the securities laws in the future" and rejecting the argument that the MC-400 application should have been granted because the underlying misconduct itself was not recent).

¹⁵ Cf. *Kirk A. Knapp*, Exchange Act Release No. 30391, 1992 WL 40436, at *5 (Feb. 21, 1992) (finding that firm's majority owner engaged in "very serious misconduct" when he, among other things, "flouted the NASD's bar by exercising a managerial role").

¹⁶ FINRA By-Laws, Art. III, § 3(b).

¹⁷ *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 WL 3554584, at *7 (Sept. 13, 2010).

despite her bar Springsteen-Abbott continued to act as an associated person of CCS through her continued ownership of CCC which in turn owned CCS.¹⁸

FINRA's By-Laws provide that any "member that is ineligible for continuance in membership may file with the Board an application requesting relief from the ineligibility . . . on its own behalf and on behalf of a current or prospective associated person."¹⁹ FINRA's website at the time of the conduct at issue here provided the following general guidance (emphasis in original):

Generally speaking, a person who is subject to disqualification may not associate with a FINRA member in **any capacity** unless and until approved in an Eligibility Proceeding. If a person is currently associated with a FINRA member at the time the disqualifying event occurs, the person **may be** permitted to continue to work in certain circumstances, provided the employer member promptly files a written application with FINRA seeking permission to continue that person's employment with the member firm.

CCS maintains that this language should be read to mean that, so long as the employer member firm files an MC-400 application seeking permission to continue to associate with the person subject to a statutory disqualification, the person is allowed to continue to associate with the employer member firm pending FINRA's consideration of the application. CCS argues that the guidance establishes that Springsteen-Abbott did not associate with it improperly.

CCS is mistaken. The guidance says that if the employer member firm files a membership continuance application the person may be permitted to continue to associate with the member firm in certain circumstances. It does not say that the person will be permitted to continue to associate with the employer member firm during the pendency of the application. Nor does it say that the person may be permitted to continue to associate in all circumstances. CCS's reading of the guidance ignores its wording. As a result, CCS's view that the guidance permitted Springsteen-Abbott to continue to associate with it so long as it filed an MC-400

¹⁸ 15 U.S.C. 78c(a)(21) ("The term 'person associated with a member' or 'associated person of a member' when used with respect to a member of a national securities exchange or registered securities association means . . . , any person directly or indirectly controlling, controlled by, or under common control with such member,"); FINRA By-Laws, Art. III § 3(b), (d).

¹⁹ FINRA By-Laws, Art. III, § 3(d).

application is unreasonable. Because CCS did not seek or obtain permission for Springsteen-Abbott to continue to associate with the firm pending FINRA's consideration of the membership continuance application, it was improper for Springsteen-Abbott to continue her association with the firm notwithstanding her bar.²⁰

We also reject CCS's argument that examinations FINRA conducted of CCS in October 2016 and June 2017, which found no exceptions, establish that Springsteen-Abbott's continued association with CCS did not violate FINRA rules. An exam's failure to note exceptions is not tantamount to finding that a member firm complied with FINRA's rules.²¹ We note that FINRA's exam letters stated that the examination "is not an audit and is not designed to be a substitute for management's responsibility to comply with appropriate securities rules and regulations."

Here, FINRA's By-Laws and rules provided explicitly that a person subject to a statutory disqualification could not associate with a member. The guidance regarding relief from that prohibition also stated explicitly that generally a person subject to a disqualification may not associate with a member in any capacity unless and until FINRA approved a membership continuance application. The guidance did not say that so long as CCS filed a membership continuance application Springsteen-Abbott could continue associating with CCS during the pendency of the application. And CCS points to no evidence that FINRA told it that this was

²⁰ CCS argues that its reading of the guidance is correct because, after the events at issue here, FINRA modified the guidance to add that the disqualified individual may be permitted to continue to work in limited circumstances if the member promptly files a membership continuance application *and* the member and the person are in compliance with FINRA Rule 8311. According to CCS, it is the reference to FINRA Rule 8311 that makes the guidance mean that a person cannot continue to associate with her or his member firm in all circumstances despite the pendency of a membership continuance application, and FINRA cannot "pretend[] that the old website guidance actually states the requirements set forth in the new guidance." But the additional reference to FINRA Rule 8311 does not change the analysis. Without that reference, the guidance still says that if the employer member firm files a membership continuance application the person may be permitted to continue to associate with the member firm in certain circumstances only.

²¹ See *Boruski v. SEC*, 289 F.2d 738, 740 (2d Cir. 1961) ("Nor did the failure of the NASD to advise petitioner of non-compliance operate as an estoppel or an implied admission that his books were in approved form."); see also, e.g., *Rita H. Malm*, Exchange Act Release No. 35000, 1994 WL 665963, at *8 n.40 (Nov. 23, 1994) (rejecting contention that "because the NASD noted no markup, pricing, or other 'exceptions' during its audit . . . NASD was subsequently precluded from bringing markup or supervisory charges").

the case during the exams or otherwise.²² The exam process did not change the fact that it was CCS's responsibility to comply with FINRA's rules, and therefore Springsteen-Abbott's continued association with CCS was improper.

3. CCS proposed a deficient supervisory plan.

The record supports the NAC's finding that CCS's proposed plan for supervising Springsteen-Abbott was deficient because CCS did not demonstrate that its proposed supervisors could exercise effective supervision and did not demonstrate that its proposed supervisory plan was tailored to the specific circumstances of Springsteen-Abbott's situation. First, the supervisors CCS proposed could not supervise Springsteen-Abbott effectively. In assessing a proposed heightened supervisory plan for a statutorily disqualified person, "the quality of the supervision . . . is of the utmost importance."²³ A proposed supervisor should "possess[] the necessary independence to supervise" a statutorily disqualified person.²⁴ We have held that "stringent supervision free of any conflicts of interest . . . is of the utmost importance" when supervising a statutorily disqualified person and that a spousal relationship can "undermine the independence of a supervisor."²⁵ Abbott and Springsteen-Abbott's spousal relationship undermines the effectiveness of the proposed supervision. Springsteen-Abbott also owns CCC, which employs Abbott and Pruett. She was involved in Pruett's hiring, pays Abbott's and Pruett's salaries, and has the ability to fire Abbott and Pruett. And neither Abbott nor Pruett has previously implemented a plan of heightened supervision or supervised a statutorily disqualified person. Under the circumstances, the supervisors that CCS proposed could not exercise effective supervision.²⁶

Second, the record supports the NAC's finding that the proposed supervisory plan is deficient. The plan is not tailored to CCS's business or the challenges Abbott and Pruett would face supervising Springsteen-Abbott. For example, the plan does not address how CCS, Abbott,

²² Cf. *B.R. Stickle & Co.*, Exchange Act Release No. 33705, 1994 WL 69413, *2 (Mar. 3, 1994) (stating that if, after applicant was told he had to register as an LFINOP, he was confused as to whether he had an exemption from the registration requirement based on a communication from an NASD staff person he "at a minimum . . . should have inquired further of the NASD").

²³ *Citadel Sec. Corp.*, Exchange Act Release No. 49666, 2004 WL 1027581, at *4 (May 7, 2004).

²⁴ *Escobio*, 2018 WL 3090840, at *6.

²⁵ *Id.*

²⁶ The NAC also found that it is "especially difficult for employees to supervise effectively the activities of the owner of a firm." To the extent that the circumstances of Springsteen-Abbott's ownership of CCS have changed since the NAC's decision, *see supra* note 1, we find that the supervisors CCS proposed could not effectively supervise Springsteen-Abbott for the reasons discussed above regardless of CCS's ownership structure.

or Pruett would deal with the challenges of physical proximity and overlapping business operations given that CCS has the same office address, email domain, and telephone number as CCC.²⁷ The plan also omits pertinent details such as how much time Abbott would spend supervising Springsteen-Abbott, how he would review her emails, and how, and how often, he would review her compliance with the plan and the NPA.²⁸

When questioned at the hearing about the proposed supervisory plan, Abbott admitted that a detailed plan had not yet been created: “We thought it was premature to write a [written supervisory procedure (WSP)] concerning [Springsteen-Abbott]’s role in the future until we had met with you and received a ruling. But we would immediately put a WSP in place.” However, we have held that FINRA is “fully justified” in requiring that a firm propose a sufficient supervisory plan “before approving the application, rather than accepting general assurances that [the firm] would devise an appropriate plan” afterwards.²⁹ CCS’s proposed supervisory plan was inadequate because it lacked provisions tailored to its business that demonstrated how the proposed supervisors would carry out heightened supervision.

CCS argues that its proposed supervisory plan is sufficient given CCS’s “unique and very limited business” and the limited nature of Springsteen-Abbott’s continued involvement in CCS. According to CCS, its “sole role is as an introducing broker-dealer that serves as the dealer-manager with respect to other broker-dealers that sell the Funds to the public,” it has “no customers or clients, no customer accounts, [and] no access to investor funds,” and Springsteen-Abbott continues to be involved “in an extremely limited capacity,” only to “infuse capital into CCS on an as-needed basis.” As to the limited nature of Springsteen-Abbott’s role at the firm, providing the firm with capital is not insignificant. As to the nature of CCS’s business, we find that the proposed supervisory plan is inadequate regardless of CCS’s lack of customers and the other aspects of its business that CCS highlights.

²⁷ See *Bruce Zipper*, Exchange Act Release No. 84334, 2018 WL 4727001, at *8 (Oct. 1, 2018) (stating that “the final supervisory plan was inadequate because it lacked specifically tailored provisions demonstrating that the proposed supervisors would carry out an appropriately heightened level of supervision” and that “supervisory plans that . . . lack detail are insufficient”) (internal quotation marks and formatting omitted) (quoting *Escobio*, 2018 WL 3090840, at *7).

²⁸ See *id.* at *8 (finding a proposed supervisory plan deficient where it omitted information regarding the time supervisor would spend supervising and how email correspondence would be reviewed); *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *15-16 (June 26, 2014) (finding plan deficient where it did not “set forth procedures for reviewing or monitoring [the disqualified person’s] communications with customers”); *Arouh*, 2010 WL 3554584, at *10 (finding plan deficient where it “lack[ed] detail” about how the supervisor “would conduct his reviews, or what records would be kept”).

²⁹ *Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 WL 1143089, at *6 n.32 (Mar. 26, 2010) (agreeing with FINRA that the “proposed supervisory plan [was] inadequate” because the firm could not “work out the details of the plan” subsequently).

CCS is an introducing broker-dealer and is engaged in the business of offering securities of the Funds for sale to the public. It receives commissions on the executing broker-dealers' sales of the Funds to customers. We have previously found, both where a broker-dealer's "proposed business" was only to "sell[] mutual funds on an application basis"³⁰ and where a broker-dealer "had no customers," "had stopped making markets," and "had limited its activities to selling its remaining proprietary securities positions,"³¹ that an SRO appropriately denied the broker-dealer continued membership while associating with a statutorily disqualified individual. "A proposed supervisory plan must 'reflect the careful consideration required to effectively supervise a [statutorily] disqualified individual and [include] specifically tailored provisions designed to prevent and deter future misconduct.'"³² That is true regardless of the fact that CCS does not have any customer accounts or hold any customer funds.

In sustaining the bar FINRA imposed on Springsteen-Abbott, we found that Springsteen-Abbott's "continued association with a FINRA member firm would present a risk to the integrity of the markets and to investors."³³ We recognized the need for a bar because the "securities industry presents many opportunities for abuse and overreaching and depends very heavily upon the integrity of its participants."³⁴ As a firm conducting a securities business, CCS was required to, but did not, propose a supervisory plan that would ensure investors were protected if Springsteen-Abbott was allowed to associate with the firm notwithstanding the bar.

CCS also argues that the NAC improperly discounted that the underlying conduct did not involve CCS. We disagree that the NAC improperly failed to consider that Springsteen-Abbott's conduct did not involve CCS because, as we recently concluded after an independent review of the record in the disciplinary proceeding, "Springsteen-Abbott's misconduct did involve CCS."³⁵

B. FINRA's denial of CCS's application was in accordance with FINRA's rules.

We find that FINRA's denial of CCS's application was in accordance with FINRA's rules. FINRA's rules provided for, and CCS and Springsteen-Abbott received, a hearing in connection with the application.³⁶ CCS was given advance notice of the initial hearing date and

³⁰ *Asensio & Co.*, Exchange Act Release No. 68505, 2012 WL 6642666, at *6 (Dec.20, 2012).

³¹ *Citadel Sec. Corp.*, 2004 WL 1027581, at *2.

³² *Zipper*, 2018 WL 4727001, at *8 (alterations in original) (quoting *Savva*, 2014 WL 2887272, at *16).

³³ *Springsteen-Abbott*, 2020 WL 605918, at *15.

³⁴ *Id.* (citation omitted).

³⁵ *Id.* at *12.

³⁶ *See* FINRA Rule 9524(a)(1).

the reschedulings of the hearing,³⁷ witness and exhibit lists were exchanged prior to the hearing,³⁸ and Member Regulation provided its written recommendation on CCS's application before the hearing.³⁹ CCS and Springsteen-Abbott also received the opportunity to be heard in person and to be represented by an attorney, and to submit any relevant evidence at the hearing.⁴⁰

FINRA also complied with its post-hearing procedures: the NAC issued its decision after the Hearing Panel submitted a written recommendation to the Statutory Disqualification Committee, which presented a written recommendation to the NAC.⁴¹ In compliance with FINRA's rules, the NAC's decision included a description of the basis for the proceeding, a description of the business to be engaged in, and a statement in support of the disposition.⁴²

C. FINRA's rules are, and were applied in a manner, consistent with the Exchange Act.

We find that FINRA's rules are, and were applied in a manner, consistent with the Exchange Act's purposes. FINRA may grant a firm's membership continuance application only if it determines that the continued association of the disqualified person would be "consistent with the public interest and the protection of investors."⁴³ For its denial of an application to be consistent with the Exchange Act, it must independently evaluate the application based upon the totality of the circumstances and explain the bases for its conclusion.⁴⁴ "[T]he burden rests on the applicant to show that, despite the disqualification, it is in the public interest to permit the requested employment."⁴⁵ We "afford[] FINRA discretion in determining whether persons subject to statutory disqualification should be permitted to associate with a member firm."⁴⁶

³⁷ See FINRA Rule 9524(a)(2), (5).

³⁸ See FINRA Rule 9524(a)(3)(B).

³⁹ See FINRA Rule 9524(a)(3)(A).

⁴⁰ See FINRA Rule 9524(a)(4).

⁴¹ See FINRA Rule 9524(a)(10), (b)(1).

⁴² See FINRA Rule 9524(b)(2).

⁴³ *Arouh*, 2010 WL 3554584, at *12 (citing Exchange Act Section 15A(g)(2), 15 U.S.C. § 78o-3(g)(2), and *William J. Haberman*, Exchange Act Release No. 40673, 1998 WL 786945, at *2 n.7 (Nov. 12, 1998)); see also FINRA By-Laws, Art. III, § 3(d) (stating that FINRA will grant an MC-400 membership continuance application only if it determines that approval "is consistent with the public interest and the protection of investors").

⁴⁴ *Arouh*, 2010 WL 3554584, at *12 (citation omitted).

⁴⁵ *Gershon Tannenbaum*, Exchange Act Release No. 31080, 1992 WL 213844, at *3 (Aug. 24, 1992).

⁴⁶ *Id.* at *13.

In this case, the NAC denied CCS's application because the conduct underlying Springsteen-Abbott's bar was serious and FINRA imposed the bar recently, she engaged in intervening misconduct, and CCS's proposed supervisory plan was inadequate. The NAC based its conclusions on the totality of the circumstances, supported its conclusions with evidence and precedent, and adequately explained the bases for its conclusions. We agree that the considerations the NAC cited provided a reasonable basis for denying the application. Indeed, we have held that where a statutory disqualification results from a bar that the Commission imposed that did not include a right to reapply for association after a specified period of time, "[n]othing more than the nature and seriousness of the underlying conduct that led to the statutory disqualification and bar as assessed by the Commission is necessarily required" for FINRA to "deny the application" for consent to associate notwithstanding the disqualification.⁴⁷ On this record, we would have considered the nature and seriousness of the misconduct underlying the bar that we recently sustained and the inadequacy of CCS's proposed supervisory plan to be sufficient grounds for denying the membership continuance application. As a result, it was reasonable for FINRA to consider the nature and seriousness of the underlying misconduct that led it to impose an unconditional bar along with Springsteen-Abbott's intervening misconduct and the deficiencies in the supervisory plan and conclude that permitting Springsteen-Abbott's continued association with CCS was not in the public interest.

CCS argues that the NAC erred in discounting that public investors in the Funds would pay more if CCC had to rely on an unaffiliated broker-dealer to offer the Funds rather than its in-house broker-dealer CCS. But the NAC acknowledged CCS's argument that investors would benefit from Springsteen-Abbott's continued association with the firm because then she could continue to fund it and determined that this did not compel approving the application. The NAC reasonably concluded that the risks posed by Springsteen-Abbott's continued association with the firm as a result of the seriousness of the underlying misconduct, recency of the bar, and inadequacy of CCS's proposed supervisory plan outweigh any potential increased expense to the Funds' investors, and we concur.⁴⁸

⁴⁷ *Reuben D. Peters*, Exchange Act Release No. 51237, 2005 WL 424918, at *2 (Feb. 22, 2005).

⁴⁸ *Cf. Kabani & Co.*, Exchange Act Release No. 80403, 2017 WL 1295034 (Apr. 7, 2017) ("Any detriment to their clients from the need to engage new auditors is outweighed by the substantial risk to movants' clients, and others, if the revocation of [the firm]'s registration and the bars from association imposed against movants are stayed.") (citing *Meyers Assocs., L.P.*, Exchange Act Release No. 77994, 2016 WL 3124674, at *4 (June 3, 2016) (denying stay motion where "[t]he alleged harm to Applicants' customers and employees is outweighed by the risk of allowing Meyers' continued participation in the securities industry")), *petition denied*, 733 F. App'x 918 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 2013 (2019).

CCS also argues that the NAC denied CCS “fair and equitable treatment” and “due process rights to a fair hearing” because it affirmed the Hearing Panel’s denial of CCS’s motion to recuse an attorney-advisor to the Hearing Panel. This attorney-advisor appeared on FINRA’s brief to the Commission defending the NAC’s decision barring Springsteen-Abbott in the disciplinary action. CCS alleges that, as a result, he “manifested a prejudice towards Ms. Springsteen-Abbott” and “formed a personal view that Ms. Springsteen-Abbott should have been sanctioned and that the sanctions were appropriate.” CCS claims that two rulings show the attorney-advisor’s bias and “pre-formed negative conclusions with respect to Ms. Springsteen-Abbott”: first, the NAC’s conclusion that Springsteen-Abbott engaged in interim misconduct by continuing to associate with CCS following the bar, and second, the Hearing Panel’s conclusion that Springsteen-Abbott’s and Abbott’s hearing testimony was not credible.

CCS cites no case holding that an attorney may not both defend an agency’s decision in an adjudication upon its appeal and then advise the agency as to how a related adjudication should be resolved. As to bias, we have held that bias “is disqualifying only when it stems from an extrajudicial source and results in a decision on the merits based on matters other than those gleaned from participation in a case.⁴⁹ Here, CCS cites merely adverse rulings, and “adverse rulings, without more, do not prove bias” that establishes a due process violation.⁵⁰

* * *

We find that the specific grounds on which FINRA denied CCS’s application exist in fact, that the denial was in accordance with FINRA’s rules, and that FINRA’s rules are, and were applied in a manner, consistent with the Exchange Act’s purposes. Accordingly, we dismiss the appeal.

⁴⁹ *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at *18 (Jan. 30, 2009) (citing *Phlo Corp.*, Exchange Act Release No. 55562 (Mar. 30, 2007), 90 SEC Docket 1089, 1109 (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966))).

⁵⁰ *Owens v. Evans*, 878 F.3d 559, 566 (7th Cir. 2017) (citing *Trask v. Rodriguez*, 854 F.3d 941, 944 (7th Cir. 2017); see also, e.g., *Marcus v. Dir., Office of Workers’ Comp. Programs*, 548 F.2d 1044, 1051 (D.C. Cir. 1976) (“The mere fact that a decision was reached contrary to a particular party’s interest cannot justify a claim of bias”); *Epstein*, 2009 WL 223611, at *18 (“Adverse rulings, by themselves, generally do not establish improper bias.”)).

An appropriate order will issue.⁵¹

By the Commission (Chairman CLAYTON and Commissioners PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman
Secretary

⁵¹ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89260 / July 8, 2020

Admin. Proc. File No. 3-18554

In the Matter of the Application of
COMMONWEALTH CAPITAL SECURITIES CORP.
For Review of Action Taken by
FINRA

ORDER DISMISSING REVIEW PROCEEDINGS

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Commonwealth Capital Securities Corp. is hereby dismissed.

By the Commission.

Vanessa A. Countryman
Secretary