SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 99662 / March 4, 2024

Admin. Proc. File No. 3-20362

In the Matter of the Application of

DEEP ATS, LLC

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF DENIAL OF MEMBERSHIP APPLICATION

Registered securities association denied application for membership on the ground that firm failed to demonstrate that it meets association's standards for membership. *Held*, application for review is dismissed.

APPEARANCES:

Deep ATS, LLC, *pro se*.

Alan Lawhead, *Jante Turner*, and *Colleen E. Durbin* for FINRA.

Appeal filed: June 3, 2021
Last brief received: November 2, 2021

Deep ATS, LLC, appeals from a FINRA decision denying its new membership application. FINRA found that the firm did not adequately demonstrate that it satisfied FINRA Rule 1014(a)'s standards for membership. We find that FINRA properly denied the firm's application and accordingly dismiss the application for review.

I. Background

A. FINRA by-laws and rules govern its membership application process.

FINRA evaluates applications for membership pursuant to Article III, Section 2 of its By-laws. The By-laws authorize FINRA to set "financial responsibility and operational capability" standards for membership; to consider the "nature, extent, and type" of the applicant's proposed securities business; and to apply those standards as "necessary or desirable" in its discretion. Under FINRA Rule 1014(a), FINRA's Department of Member Supervision ("Member Supervision") evaluates new member applications based on fourteen membership standards and in light of "the public interest and the protection of investors."[1] A new member application includes not only the application form but also, among other things, a detailed business plan; a list of all associated persons; copies of final or proposed contracts with banks; a description of the supervisors and principals' experience and qualifications; any additional information and documents requested by Member Supervision; and a required interview.[2] The applicant firm bears the burden of demonstrating that it satisfies each of the fourteen membership standards and that its membership is in the public interest.[3]

B. Deep ATS filed its initial new member application.

Deep ATS filed its initial new membership application with Member Supervision on November 5, 2019. Deep ATS proposed to engage in four 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 Deep ATS identified as "investment banking activities." The firm stated that it would not hold customer funds or securities.

The initial application further stated that Deep ATS was wholly owned by Spot Quote Holdings, Inc. ("Spot Quote"), a Delaware corporation of which Sam Balabon was the majority owner. In its application, Deep ATS proposed that Balabon would serve as its chief executive officer ("CEO"), chief compliance officer ("CCO"), anti-money laundering compliance officer, and general securities principal responsible for the supervision of the firm's ATS and proprietary trading activities. Deep ATS further proposed to register Ramesh Puranik as its financial and

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1 Member Supervision may approve, deny, or grant membership subject to business restrictions. FINRA Rule 1014(b).

2 FINRA Rule 1013(a)(1), (4), (b)(1), (5), (7).

3 *Asensio & Co., Inc.*, Exchange Act Release No. 68505, 2012 WL 6642666, at * 4 (Dec. 20, 2012).

operations principal ("FINOP") and second general securities principal responsible for supervising the private placement and investment banking activities.

The firm stated that it did not intend to retain any additional registered representatives and proposed to operate one office, located on property owned by Balabon, during the first 12 months of operation. The firm also indicated that its parent company, Spot Quote, and another firm identified as Intelligent Resources, Inc., would initially pay Deep ATS's expenses.

On November 11, 2019, Membership Supervision informed Deep ATS that it found the initial application "to be substantially incomplete." Among other things, Member Supervision requested that Deep ATS provide additional information about Spot Quote; bank account information for Deep ATS and Spot Quote; Deep ATS's procedures for its proposed private placement business; and whether the firm's ATS was "demo-ready." In response, Deep ATS filed a revised membership application.

C. Member Supervision reviewed Deep ATS's revised new member application.

After accepting Deep ATS's revised application as substantially complete, Member Supervision made several additional requests for information.[4]

1. Member Supervision made an initial information request.

On January 6, 2020, Member Supervision requested that Deep ATS submit an updated application clarifying the firm's written supervisory procedures and answering questions about, among other things, Deep ATS's ownership and control, the firm's proposed business activities, and whether the firm would engage in activities that required Series 79 registration. Member Supervision also requested copies of documents such as a clearing agreement or letter of intent, a fidelity bond, and the name of the firm's electronic storage/email archiving vendor and its contract with the vendor.

The firm responded that it planned to engage in private placement and investment banking activities that required a Series 79 registration (investment banking representative) and that Puranik would be taking the Series 79 examination. Deep ATS also stated that Balabon would "conduct and supervise the [firm's] proprietary trading activity" and that the firm did not think that he needed to pass any additional exams. And the firm represented that it was "propos[ing] to enter into" a clearing arrangement, "making arrangements" for a fidelity bond, and "plan[ning] to subscribe" to a vendor "to store electronic data and email archiving."

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[4] FINRA may serve requests for any additional information or documents necessary to render a decision on an applicant's new member application, and applicants must provide the requested information within 60 days of an initial request and 30 days of a subsequent request. FINRA Rule 1013(a)(4). A new member application "shall lapse" if the applicant does not timely "respond fully" to a request by FINRA for more information or documents. FINRA Rule 1012(b)(1)(A).

2. Member Supervision made a second information request.

On April 1, 2020, after a telephone conversation with Puranik, Member Supervision emailed him for clarification and additional information. Among other requests, Member Supervision asked what licenses allowed Balabon to "conduct and supervise the proposed proprietary trading/market making activities" and "why the Series 57 is not needed." Member Supervision also asked for a description of "the overall business of Intelligent Resources and any planned interaction between Intelligent Resources and Deep ATS, both operationally and financially," and of any payments that Spot Quote and Intelligent Resources made on Deep ATS's behalf. Member Supervision also requested that Deep ATS provide Puranik's resume and "a detailed narrative description of [his] specific experience with investment banking and underwriting, including structuring and pricing deals."

Deep ATS wrote in response that it "fe[lt] series 52 [*sic*] is not needed now" because "[t]rading/market making activity would be for the firm's own account and shall not be carried out for customers or third parties." The firm also wrote that Spot Quote and Intelligent Resources would pay Deep ATS's expenses because Deep ATS "is a start up and will have no income until it starts business operations." Deep ATS further provided that, through Intelligent Resources, Balabon "carried out several business operations" and used the company "to meet several running expenses" such as "the remuneration of Ramesh Puranik," "Auditor's fee," and "office expenses." Deep ATS included Puranik's resume and explained that he had "worked in a bank for 12 years and has experience in Investment Banking and Venture Capital" and would be taking the Series 79 exam shortly.[5] The firm also included updated WSPs that identified Puranik as the proposed CCO, replacing Balabon.

3. Member Supervision made a third information request.

On June 3, 2020, Member Supervision emailed Puranik for an update on Deep ATS's "efforts to partner with an investor in connection with the development of the proposed ATS." It also sought information about the adequacy of Puranik's experience to serve as the firm's CCO and for a "detailed description" of his "experience specific to investment banking and underwriting, including structuring and pricing deals" and "his specific responsibilities related to compliance." Member Supervision added that, under FINRA registration guidance, the Series 57 is required for proprietary trading of equities, as well as certain types of debt, and asked the firm to clarify what products Deep ATS intended to trade for its own account and why Balabon did not need a Series 57 to conduct such trading. In addition, Member Supervision advised Deep ATS that the firm needed to provide copies of contracts or agreements evidencing that it had secured a fidelity bond, a third-party provider of electronic storage, and an auditor.

In a written submission dated July 3, 2020, Deep ATS represented that it would attempt to obtain financing once its membership application was approved. Deep ATS further responded that Puranik had "worked in a bank in India for 12 years in a managerial capacity," where he was involved with due diligence and preparation of prospectuses for companies engaged in public or

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[5] Puranik took the Series 79 examination in November 2019 and July 2020 and failed each time.

private placement of securities, and in pricing private placements. The firm also represented that Puranik served as a principal and FINOP of a prior FINRA broker-dealer that Balabon had owned.[6] Deep ATS explained that, while that broker-dealer lacked an investment banking business, its parent company "had some private placements and Mr. Puranik has taken care of the procedures to [*sic*] in the issue of securities and subsequent reporting to state agencies." Deep ATS also represented that Puranik had handled other compliance requirements such as computing net capital, filing FOCUS reports with FINRA, and working with FINRA during inspections.

The firm stated that Balabon was not required to obtain the Series 57 license because "[p]roprietary trading is defined as investment by a firm for direct market gain rather than earning commissions by trading on behalf of its clients" and "Deep ATS does not propose to indulge in proprietary trading by investing [its] own funds." As to the request that it secure the necessary contracts and agreements, Deep ATS responded that it had "identified" service providers and "obtained letters on [sic] intent," but that "actual contracts would be signed" after FINRA approved its application.

4. Member Supervision made a fourth information request.

On July 17, 2020, Member Supervision sent Deep ATS a final information request, asking the firm to elaborate on Puranik's compliance experience and describe what Puranik's day-to-day responsibilities would be at Deep ATS. In response, Deep ATS provided the following description:

> Mr. Puranik has worked for Intelligent Resources for [*sic*] since 1999. He has attended to administrative duties including compliance with Finra and state security agencies since 2006. He served as a series 24 principal and series 27 FinOp for a Finra BD from 2006 to 2019 that was owned by Spot Quote.

In describing Puranik's proposed compliance responsibilities as Deep ATS's CCO, the firm explained that he may not have "specific day to day responsibilities" because initially "the proposed firm may not have customers and trading business." The firm also stated, without elaboration, that Puranik "will be responsible for any compliance and administrative tasks related to keeping the BD in good standing with Finra and SEC" and "will also continue as FinOp of the firm."

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[6] Balabon's prior FINRA broker-dealer was also named Deep ATS from August 2005 until early September 2015 and then renamed Spot Quote LLC. Spot Quote LLC became OKCoin Securities in August 2019 when it was sold to a third party.

D. Member Supervision conducted the membership interview of Deep ATS.

On June 23, 2020, Member Supervision emailed Deep ATS, requesting that, during the required membership interview,[7] Deep ATS provide a demonstration of its ATS platform. But during the subsequent interview, Deep ATS did not demonstrate an operational ATS platform. The firm instead presented schematics and screenshots. During the interview, Deep ATS also expressed an interest in securing a large partner such as a global bank to take over the project. And on the same day as the interview, Balabon emailed Member Supervision staff that he would be willing to "hand over all the patents to FINRA and all technology already built to FINRA for a 3% royalty of sales . . . ."

E. Member Supervision discovered information that Deep ATS failed to disclose.

Member Supervision conducted an independent due diligence review of Deep ATS, Balabon, and Puranik to determine, among other things, whether the firm had disclosed all outside business activities.[8] During this review, Member Supervision discovered that the firm had not disclosed that Balabon was CEO of Moentum Token ("Moentum"), a crypto asset company that operated from the same address as Deep ATS. Member Supervision also discovered that Balabon had not disclosed this outside business activity on his Uniform Application for Securities Industry Registration of Transfer ("Form U4"), despite having otherwise updated his Form U4 in December 2018 while associated with his previous firm.[9]

F. Member Supervision denied Deep ATS's new member application and Deep ATS appealed to the NAC.

On September 21, 2020, Member Supervision denied Deep ATS's new member application for failing to comply with the standards in FINRA Rule 1014. Deep ATS appealed the decision to FINRA's National Adjudicatory Council ("NAC").

After holding an evidentiary hearing, the NAC affirmed the denial of Deep ATS's new member application. The NAC found that the firm failed to meet the admission criteria in FINRA Rule 1014 because (1) the application was not "complete and accurate" given the firm's statements proposing to sell the main business line described in the application and failure to disclose that Deep ATS's CEO also served as the CEO of another company that operated from the same address as Deep ATS; (2) Deep ATS's proposed supervisors lacked the required licenses to supervise the proposed broker-dealer; (3) Deep ATS lacked the required contracts and

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[7] FINRA Rule 1013(b)(1) provides that, before Member Supervision issues its decision on a new membership application, it "shall conduct a membership interview with a representative or representatives of the Applicant."

[8] As part of a new member application, an applicant is required to disclose "any business activities that the [Applicant's] supervisors or principals may engage in outside of their association with the Applicant." FINRA Rule 1013(a)(1)(O).

[9] Form U4, Section 13 "Other Business" (requiring identifying information and details about any other business that individual is engaged in "as a proprietor, partner, officer, director, employee, trustee, agent or otherwise").

agreements to operate as a broker-dealer; (4) one of Deep ATS's proposed supervisors lacked adequate experience; and (5) FINRA had evidence that Deep ATS may circumvent or evade federal securities laws or FINRA rules from Deep ATS's and Balabon's failure to disclose Balabon's involvement with Moentum. In reaching this conclusion, the NAC also rejected Deep ATS's procedural arguments, including claims about the timeliness of Member Supervision's decision.[10] This appeal followed.

II. Analysis

Section 19(f) of the Securities Exchange Act of 1934 governs our review of FINRA's denial of an application for membership.[11] "FINRA has discretion in applying and interpreting its membership rules," and an "applicant firm bears the burden of demonstrating that it satisfies the membership standards and that its membership is in the public interest."[12] We must dismiss Deep ATS's appeal of FINRA's membership denial if we find that (i) the specific grounds on which FINRA based its denial exist in fact; (ii) the denial was in accordance with FINRA's rules; and (iii) FINRA's rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[13] FINRA's decision satisfies these criteria.[14]

A. The specific grounds for FINRA's denial of Deep ATS's new member application exist in fact.

FINRA's findings regarding Deep ATS's new member application, the licenses held by Balabon and Puranik, Deep ATS's contractual arrangements, and Puranik's experience, discussed above, exist in fact. Deep ATS does not contest these facts, and they are established by the firm's application materials, interview, and publicly available information.

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10 Because the FINRA Board did not call the NAC's decision for review, the NAC decision became FINRA's final decision. *See* FINRA Rule 1015(j)(3).

11 *See Bering Strait Secs., Inc.*, Exchange Act Release No. 76307, 2015 WL 6575667, at *4 (Oct. 29, 2015) (citing 15 U.S.C. § 78s(f)).

12 *Id.* (citing *Exchange Servs., Inc.*, Exchange Act Release No. 22245, 1985 WL 548404, at *3 & n.11 (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)).

13 15 U.S.C. § 78s(f).

14 Exchange Act 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.* Deep ATS does not claim, nor does the record support a finding, that FINRA's denial imposes such a burden.

B. The denial of Deep ATS's new member application was in accordance with FINRA's rules.

1. Deep ATS did not establish that its new member application was complete and accurate.

FINRA Rule 1014(a)(1) requires that a new member "application and supporting documents [be] complete and accurate." In the various iterations of its new member application, Deep ATS indicated that it intended to develop and operate an ATS, along with three other lines of business. But in its membership interview, Deep ATS expressed an interest in selling its ATS business to a global bank and in subsequent correspondence Balabon offered to give FINRA the firm's patents and technology for the ATS business in exchange for "a 3% royalty." We agree with FINRA that these varying statements about its intentions with respect to its ATS business call into question the extent to which the firm intends to conduct one of the primary businesses for which it is seeking membership, rendering the firm's application incomplete and inaccurate under FINRA Rule 1014(a)(1).

In its reply brief, Deep ATS argues that Balabon, "as a businessman, may utilize any lawful opportunity for gains . . . [and] if FINRA is interested in the technology he might pass it on for a royalty." But the question is not whether Balabon may sell the firm's ATS. The question is whether Deep ATS demonstrated that its new member application was "complete and accurate." And based on the firm's expressed interest in selling one of the main business lines described in Deep ATS's application, FINRA was justified in concluding that the firm's application was not complete and accurate.

We also agree with FINRA that Deep ATS's failure to disclose Moentum as one of Balabon's outside business activities made the application incomplete and inaccurate.[15] Rule 1013(a)(1)(O) requires an application to disclose all outside business activities of an applicant's supervisors and principals. Deep ATS does not dispute that its application failed to disclose Moentum as one of Balabon's outside business activities. Instead, the firm suggests that Balabon's failure to disclose Moentum on his Form U4 could not "breach" FINRA's rule on outside business activities—Rule 3270—because "the firm never had any clients and thus it would have been impossible for Rule 3270 to have any effect in protecting the general public." But FINRA did not deny Deep ATS's new membership application based on Balabon's violating Rule 3270. FINRA denied the application as incomplete and inaccurate under Rule 1014(a)(1), based on Deep ATS's failure to disclose all of its supervisors' and principals' outside business activities as required by Rule 1013(a)(1)(O). Although the NAC cited Rule 3270 in its decision,

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[15] *See* FINRA Rule 1013(a)(1)(O) (requiring Applicant to disclose its supervisors and principals' "business activities . . . outside of their association with the Applicant"); *cf.* FINRA Form NMA, Standard 1: Overview of the Applicant, Additional Information Regarding Applicant, Request 4 (requiring the applicant to "[i]dentify by name all entities (including other broker-dealers and investment advisory firms) under common control with the Applicant, describe the nature of each such entity's business, and identify each entity's relationship to the Applicant").

it did so only by analogy, to support the proposition that FINRA's disclosure rules apply to all outside business activities.

In an apparent effort to argue that Balabon had effectively disclosed his involvement with Moentum to the Commission (and thus did not need to include the activity on Deep ATS's new member application), Deep ATS also claims that Balabon informed the Commission about Moentum's activities and had a phone call regarding crypto assets with "two SEC attorneys . . . [and] no action was taken by the SEC." But any conversation that Balabon may have had about Moentum with Commission staff are not relevant to Deep ATS's new member application filed with FINRA. And Deep ATS's failure to disclose Balabon's outside business interests with Moentum in its new membership application rendered that application incomplete and inaccurate.

Deep ATS also provided insufficient answers to Member Supervision about the firm's relationship with Intelligent Resources. Namely, in responding to requests from Member Supervision about that company, Deep ATS answered only that Intelligent Resources was a company through which Balabon "had carried out several business operations" and used "to meet several running expenses" such as "the remuneration of Ramesh Puranik," "Auditor's fee," and "office expenses." As FINRA found, and Deep ATS does not dispute, such Deep ATS's answers about Intelligent Resources were so unspecific as to be non-responsive and therefore rendered Deep ATS's application not complete and accurate under Rule 1014(a)(1).

2. Deep ATS did not establish that it had the required licenses to supervise its proposed lines of business.

FINRA Rule 1014(a)(2) requires an applicant firm to demonstrate that it and "its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations." FINRA found, and we agree, that Deep ATS failed to show that its associated persons had the necessary licenses and registrations. Deep ATS identified four proposed lines of business in its new member application, including proprietary trading and investment banking. Those lines of business required Series 57 and 79 registrations, respectively.[16] But neither Balabon nor Puranik obtained those registrations.

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[16] FINRA rules generally require an applicant for FINRA membership to have at least two registered principals who, in turn, must possess specific qualifications depending on the applicant's proposed business lines. FINRA Rule 1210.01. A firm that proposes to engage in investment banking must have an associated person who is a registered Investment Banking Principal, which requires, among other things, that the person have passed the Series 79 exam. FINRA Rule 1220(a)(5). And a firm that proposes to engage in proprietary trading must have an associated person who is a registered Securities Trader Principal, which requires, among other things, passing the Series 57 exam. FINRA Rule 1220(a)(4), (7); *see also* Series 24 – General Securities Principal Exam, FINRA, available at https://www.finra.org/registration-exams-ce/qualification-exams/series24 (defining corequisite exams to the Series 24 exam to obtain specific registrations).

Deep ATS argues that it does not need those registrations, because it will not be trading for customers or itself, and therefore Balabon's Series 24 license is sufficient without a Series 57 registration to supervise the market-making activities of the firm. But Deep ATS identified proprietary trading as one of its proposed business lines, and FINRA Rule 1220 requires that each principal supervising proprietary trading pass the General Securities Principal qualification examination and register as both a Securities Trader and a Securities Trader Principal.[17] Although Balabon passed the General Securities Principal qualification examination, FINRA Rule 1220 required him also to pass the Securities Industry Essentials and the Series 57 examinations to become a Securities Trader Principal able to supervise proprietary trading.[18] And, as the firm acknowledges, Balabon has not done so.

Deep ATS further admits that Puranik failed to pass the Series 79 examination, which is required for its planned investment banking line of business. The firm argues that FINRA nevertheless "could have approved the BD without investment banking activity instead of denying the entire BD application." But where an application does not satisfy all the standards for FINRA membership, as is the case here, FINRA's rules entitle it to decide whether to grant the application subject to restrictions or deny the application outright.[19] And given the extensive shortcomings in Deep ATS's application describe herein, denial of the application was reasonable.

3. Deep ATS did not establish that it had the contracts and agreements necessary to operate as a broker-dealer.

FINRA Rule 1014(a)(4) requires an applicant firm to demonstrate that it has established all contractual arrangements and business relationships necessary to initiate its planned business operations and comply with the federal securities laws, regulations, and rules.[20] We agree with

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17 FINRA Rule 1220(a)(7)(A) ("Each principal . . . who is responsible for supervising the securities trading activities specified in paragraph (b)(4) of this Rule shall be required to register with FINRA as a Securities Trader Principal."); FINRA Rule 1220(a)(7)(B) ("Each person seeking to register as a Securities Trader Principal shall, prior to or concurrent with such registration, become registered pursuant to paragraph (b)(4) of this Rule as a Securities Trader and pass the General Securities Principal qualification examination."); FINRA Rule 1220(b)(4)(A) ("Each representative . . . shall be required to register with FINRA as a Securities Trader if . . . such person is engaged in proprietary trading . . . or the direct supervision of such activities . . . ."); FINRA Rule 1220(b)(4)(B) ("[I]ndividuals registering as Securities Traders . . . shall, prior to or concurrent with such registration, pass the SIE and the Securities Trader qualification examination.").

18 *See* Series 24 – General Securities Principal Exam, FINRA, *available at* https://www.finra.org/registration-exams-ce/qualification-exams/series24 (defining corequisite exams to obtain specific registrations).

19 *See* FINRA Rule 1014(b)(3).

20 FINRA Rule 1014(a)(4) ("The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to . . . initiate the operations described in the Applicant's business plan . . . and

FINRA that Deep ATS did not demonstrate that it satisfied this standard here because it failed to (1) obtain a fidelity bond as required by FINRA Rule 4360; (2) secure an audit engagement letter as required by Exchange Act Rule 17a-5(f)(2);[21] and (3) arrange for storage of its electronic records to comply with Exchange Act Rule 17a-4(b).[22]

Deep ATS claims, without further support or evidence, that it had "letters of in principle agreement/intent" and argues that signing "working contracts . . . is only possible after obtaining the BD license." Deep ATS's unsupported statements are insufficient to satisfy the requirement that the firm have "established all [necessary] contractual or other arrangements and business relationships" in order to become a FINRA member.[23] Because Deep ATS lacked multiple critical contractual agreements and failed to submit even letters of intent or agreements in principle in lieu of such agreements, we agree with FINRA that Deep ATS did not meet its burden of showing in its application that it had established the contractual arrangements necessary for it to operate its planned businesses or fully comply with the federal securities laws.

4. Deep ATS did not establish the adequacy of its supervisory system.

FINRA Rule 1014(a)(10) requires the applicant firm to establish that it has a supervisory system adequately designed to prevent and detect violations of the federal securities laws and related rules and regulations.[24] The applicant firm must establish the adequacy of the supervisory system based on, among other things, the nature of the proposed business, and the experience and qualifications of its supervisory personnel.[25] At a minimum, the applicant firm must establish that each supervisor "has at least one year of direct experience or two years of related experience in the subject area to be supervised."[26]

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comply with the federal securities laws, the rules and regulations thereunder, and FINRA rules.").

21 17 C.F.R. § 240.17a-5(f)(2).

22 17 C.F.R. § 240.17a-4(b).

23 FINRA Rule 1014(a)(4). Member Supervision indicated that there had been past instances of a firm submitting an auditing engagement letter "shortly after" a membership approval, but "never for a fidelity bond or the electronic storage media." To the contrary, staff from Member Supervision testified, a fidelity bond and an arrangement for electronic records "are absolutely required prior to FINRA granting an approval."

24 FINRA Rule 1014(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 FINRA rules.").

25 *See id.*; *see also Bering Strait Secs., Inc.*, 2015 WL 6575667, at *8 (explaining that the adequacy of the system also depends on any other factors that "will have a material impact on the [firm's] ability to detect and prevent violations").

26 FINRA Rule 1014(a)(10)(D).

FINRA concluded that the Deep ATS did not establish the adequacy of its supervisory system because the firm had not demonstrated that Puranik had the experience or qualifications to enable him to supervise its investment banking business. We agree. Although Balabon previously owned another broker-dealer at which he and Puranik were principals, Deep ATS did not adequately explain how Puranik's experience at the former broker-dealer qualified him to supervise the firm's investment banking business or serve as its CCO.

For example, FINRA asked Deep ATS for "a detailed description of Mr. Puranik's experience specific to investment banking and underwriting," including "his specific responsibilities related to structuring and pricing deals." But Deep ATS responded with only generalities that Puranik (1) was "involved in the due diligence and preparation of prospectus [*sic*] for companies doing public or private placement of securities"; (2) was "involved in pricing of private placements seeking additional finance by the invested companies"; and (3) "had taken care of the procedures to in [*sic*] the issue of securities and subsequent reporting to state agencies" for private placements by the former broker-dealer's parent company. In doing so, Deep ATS provided no specifics about Puranik's responsibilities at his former broker-dealer. And despite its obligation to demonstrate the adequacy of its supervisory system, including its supervisors' qualifications, Deep ATS also failed to explain how Puranik's experience at the prior broker-dealer qualified him to act as the supervisor for Deep ATS's investment banking business. Moreover, Puranik failed to pass the Series 79 exam needed to serve as the firm's investment banking principal—further undermining Deep ATS's claim that he has the qualifications and experience to supervise the firm's investment banking activities.

Deep ATS also failed to demonstrate that Puranik has the experience or qualifications necessary to serve as Deep ATS's CCO. FINRA asked Deep ATS to "provide a detailed description of [Puranik's] specific responsibilities [at his prior firm] related to compliance." In response, Deep ATS stated only that, when Puranik's former firm "had trading activity, computing the net capital after haircuts on positions and filing the FOCUS with Finra was being done by Mr.Puranik" and that "[f]acilitating with Finra during annual inspections and subsequent correspondences was attended to by Mr.Puranik." Deep ATS never explained what Puranik's compliance experience entailed or how that experience qualifies him to operate as the CCO of Deep ATS. Moreover, as FINRA found and Deep ATS does not dispute, "Puranik's previous broker-dealer was 'inactive the entire time' – such that Puranik would not have performed the duties of either role."

We accordingly agree with FINRA that the insufficient and incomplete information Deep ATS provided in its application about its proposed CCO's prior experience—much of which Puranik gained at an inactive firm—does not demonstrate that the firm had an adequate supervisory system as required by FINRA Rule 1014(a)(10).

5. Evidence suggested that Deep ATS may circumvent or evade federal securities laws or FINRA rules.

FINRA Rule 1014(a)(13) prohibits approval of an applicant firm's new member application if there is "any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or FINRA rules." Here, FINRA found that numerous failures by Deep ATS and Balabon, its

CEO, indicated that it might circumvent or evade the federal securities laws or FINRA rules, including: the firm's failure to identify Moentum in its new member application; Balabon's failure to disclose his affiliation with Moentum in his Form U4, including when he updated it in December 2018;[27] and the firm's incomplete answers about Intelligent Resources' operations and its relationship to the firm. We agree with FINRA's assessment.

Deep ATS's failure to fully disclose outside business activities, combined with its proposed CEO's failure to comply with his disclosure requirements, raises significant questions about whether the firm will comply with the obligations required of a FINRA member firm.[28] For example, Form U4 conveys critical information to the investing public about registered representatives of broker-dealers, and FINRA relies on full and accurate self-reporting on the form to effectively "determine who may enter (and remain in) the industry."[29] Balabon's failure to comply with this disclosure obligation in his Form U4, along with Deep ATS's failure to disclose outside business activities in its new membership application, raises concerns about their commitment to the firm's complying with securities laws and regulations and, as a result, FINRA's ability to monitor Deep ATS as a FINRA member.

Deep ATS argues that a proper disclosure on Balabon's Form U4 would not have had any effect in protecting the public, because Moentum never had any clients. And, as noted above, Balabon claims to have discussed Moentum with Commission staff. But whether Balabon's failure to disclose information caused investor harm, or whether he allegedly disclosed that information to Commission staff, does not change the importance to FINRA's regulatory regime of complete and accurate disclosure on his Form U4. Nor were Balabon's disclosure failures isolated, as Deep ATS also failed to identify Moentum in its membership application and gave incomplete responses about Intelligent Resources' business operations—all of which, taken together, adequately support FINRA's conclusion that the firm might circumvent or evade federal securities laws or FINRA rules.

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

FINRA acted consistently with the Exchange Act when it denied Deep ATS's new member application. FINRA reasonably exercised its authority under Exchange Act Section

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27 *See supra* note 9 and accompanying text.

28 *Cf. Blair C. Mielke*, Exchange Act Release No. 75981, 2015 WL 5608531, at *17 (Sept. 24, 2015) (observing that associated persons "may not decide which specific FINRA information requests they will fulfill" and that their failure to disclose outside business interests was "inconsistent with just and equitable principles of trade and reflect[ed] poorly on their ability to comply with regulatory requirements"); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 WL 5462896, at *8 (Nov. 9, 2012) (recognizing that "[u]ntruthful answers [on a Form U4] call into question an associated person's ability to comply with regulatory requirements").

29 *Tucker*, 2012 WL 5462896, at *8; *see also Robert E. Kauffman*, Exchange Act Release No. 33219, 1993 WL 483323, at *1 (Nov. 18, 1993) (explaining that FINRA "cannot investigate the veracity of every detail in each document filed with it" and "must depend on its members to report to it accurately and clearly in a manner that is not misleading").

15A(g)(3)(A) to "examine and verify the qualifications of an applicant" based on FINRA standards of "training, experience, and competence" and "financial responsibility and operational capacity."[30]

"The application process is designed to 'fully evaluate relevant aspects of applicants and to identify potential weaknesses in their internal systems' to ensure that member firms are 'capable of conducting their business in compliance with applicable regulation.'"[31] Each membership standard plays a critical role in protecting the public interest and investors.[32] And, "[e]ffective supervision and controls are critical 'investor protection tools' to help 'identify and prevent abusive practices.'"[33] Given the purpose of these requirements, and FINRA's evaluation of the new member application, we find that FINRA's rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.

E. Deep ATS's procedural and other arguments against liability are unavailing.

Much of Deep ATS's appeal revolves around claims that "FINRA had no intention to approve the membership of [Deep ATS] as payback for Mr. Balabon suing them in federal court." Specifically, the firm cites the fact that Balabon sued FINRA in federal court for alleged discrimination in assessing fines and tortious interference with his business. The court dismissed that complaint for failure to exhaust administrative remedies.[34] And Deep ATS provides no evidence or other support, nor can we find any, that FINRA denied Deep ATS's new member application as retribution. To the contrary, ample evidence shows that Deep ATS failed to meet the necessary member admission standards, as we have discussed herein.

Deep ATS also argues that "FINRA broke federal law by delaying their decision to decline the broker dealer application past the 180-day deadline." If the reasons for denial "were genuine," Deep ATS claims, FINRA should have been able to issue its decision within the 180-day period "as prescribed by federal law." But Deep ATS does not cite a federal law, nor are we aware of one, that governs the timeliness of Member Supervision's decision. Rather, FINRA Rule 1014 provides that, if Member Supervision does not serve a decision within 180 days after an application is filed (or a later agreed-to date), an applicant "may file a written request with the FINRA Board requesting that the FINRA Board direct [Member Supervision] to serve a

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30 15 U.S.C. § 78*o*-3(g)(3)(A); *Bering Strait Sec., Inc.*, 2015 WL 6575667 at *12 (citing *Frank Kufrovich*, Exchange Act Release No. 45437, 2002 WL 215446, at *4 (Feb. 13, 2002) (describing the steps an SRO must take when denying an application under the Exchange Act)).

31 *Bering Strait Sec., Inc.*, 2015 WL 6575667, at *12 (citing *Duties of Brokers, Dealers, and Investment Advisers*, Exchange Act Release No. 69013, 2013 WL 771910, at *28 (Mar.1, 2013)).

32 *Id.*

33 *Id.* (citing *Duties of Brokers, Dealers, and Investment Advisers*, 2013 WL 771910, at *27).

34 *See Balabon v. Ketchum*, Case No. 1:17-cv-486-LY, 2018 WL 835206, at *2 (W.D. Tex. Feb. 9, 2018) (report and recommendation), *adopted by* 2018 WL 1858135 (Mar. 7, 2018), *aff'd*, 785 F. App'x 263 (5th Cir. 2019).

decision."[35] And here, although Member Supervision did not issue a decision within 180 days of Deep ATS filing its application, Deep ATS did not then file a written request for the FINRA Board to direct Member Supervision to issue its decision.[36] By not doing so, Deep ATS forfeited its right to object on such timeliness grounds.[37]

Deep ATS also makes various broad and unsupported claims about its own business, FINRA, and the overall market. Deep ATS discusses, for example, the benefits of its unique trading platform; problems in the "markets"; and FINRA's alleged "clueless[ness]" and "rigid system of rules." Even if we accepted these claims as true, which we do not, they have no bearing on whether Deep ATS met its burden of establishing that it satisfied the standards for membership discussed above under FINRA Rule 1014(a).

* * *

For the reasons above, we find that FINRA properly denied Deep ATS's new membership application under FINRA rules.[38]

An appropriate order will issue.[39]

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

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35 FINRA Rule 1014(c)(3).

36 *See Sierra Nevada Sec., Inc.*, Exchange Act Release No. 41330, 1999 WL 239682, at *5 (Apr. 26, 1999) (finding that a procedural error did not deny the firm a fair hearing and that "[t]he only remedy for delay provided by Rule 1014 is an order requiring that a decision be issued immediately").

37 *Cf. Potomac Cap. Mkts., LLC*, Exchange Act Release No. 91172, 2021 WL 666510, at *2 (Feb. 19, 2021) (explaining that "applicants who fail to exhaust administrative remedies before FINRA thereby forfeit any future challenge to FINRA's actions before the Commission").

38 On November 30, 2021, Deep ATS filed a letter from Balabon that the firm requested be added to the record. In the letter, Balabon "report[s] a felony committed by FINRA this year." Balabon states that FINRA requested documents from him more than "two years after . . . all of his security licenses expired" and later informed him that he had violated FINRA Rule 8210 and "threatened to fine, ban him from the industry, and destroy his good name." If Balabon wishes to have the Commission review any sanctions imposed by FINRA for a violation of FINRA Rule 8210, he must do so in a separate appeal.

39 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. 99662 / March 4, 2024

Admin. Proc. File No. 3-20362

In the Matter of the Application of

DEEP ATS, LLC

For Review of Action Taken by

FINRA

ORDER DISMISSING APPLICATION FOR REVIEW

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

ORDERED that the application for review filed by Deep ATS, LLC, is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary